

STATE-OPERATED SCHOOL DISTRICT :
 OF THE CITY OF PATERSON, :
 PASSAIC COUNTY, :

PETITIONER, : COMMISSIONER OF EDUCATION

V. : DECISION

NEW JERSEY STATE :
 INTERSCHOLASTIC :
 ATHLETIC ASSOCIATION, :

RESPONDENT. :

SYNOPSIS

Petitioner appealed the decision of the Executive Committee of the New Jersey State Interscholastic Athletic Association (NJSIAA), disqualifying the Paterson School District’s boys and girls basketball teams from participating in state tournaments for two years as one of several penalties imposed upon the District for egregious violations of NJSIAA rules and regulations. Petitioner contended, *inter alia*, that both the decision of the NJSIAA Executive Committee and the underlying decision of the Controversies Committee were arbitrary, capricious and unreasonable because the penalty imposed would have a “disproportionate impact” on students, parents, and fans of the basketball teams; the petitioner further claimed that “it shocks the conscience that NJSIAA, presumably charged with instilling the values of fair play and sportsmanship, would penalize children for the acts of adults.”

The NJSIAA contended, *inter alia*, that: the petitioner was provided with full and fair due process; petitioner misstated the applicable standard of review herein, as the Commissioner’s review is appellate in nature and the arbitrary, capricious or unreasonable standard is applicable in this case; the decision of the Executive Committee was not arbitrary and capricious, as it is supported by sufficient credible evidence in the record showing that petitioner violated several NJSIAA rules and regulations; and NJSIAA acted within its authority when it disqualified the petitioner’s basketball teams from playing in the state tournament for two years based on violation of NJSIAA rules. The NJSIAA urged the Commissioner to affirm the decision of the NJSIAA Executive Committee.

The Commissioner upheld the NJSIAA’s decision and dismissed the petition, finding, *inter alia*, that petitioner did not meet its burden so as to entitle the District to prevail on appeal. In so deciding, the Commissioner – who may not substitute her judgment for that of the NJSIAA on appeal – noted that petitioner’s contentions that the “values associated with interscholastic athletics include fair play, integrity, and good faith sportsmanship” and the goals of interscholastic athletics to prepare “student athlete participants for life by instilling within them overriding notions of teamwork, fair play and discipline,” are well aligned with the NJSIAA’s decision to disqualify Paterson’s basketball teams from participating in tournament play as a consequence of egregious violations of NJSIAA rules and regulations.

<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, Frances E. Barto, Esq. (Barto & Barto, LLC)

For Respondent, Kayleen Egan, Esq. (Parker McCay, P.A.)

In this matter, petitioner seeks review of the decision of the Executive Committee of the New Jersey State Interscholastic Athletic Association (NJSIAA) affirming the penalty imposed on the District by its Controversies Committee. The Controversies Committee found that petitioner violated several rules of the NJSIAA and imposed – among other penalties – a two-year disqualification of the boys and girls basketball teams from participating in the state tournament for 2017 and 2018, which is the subject matter of this appeal.

On appeal, petitioner maintains that the NJSIAA’s decision was arbitrary, capricious and unreasonable because the penalty imposed on petitioner has a “disproportionate impact,” and should be reversed. Petitioner argues that the penalty ultimately punishes the students, the parents, and the community for the conduct of the adults who were in charge of the basketball program. Petitioner states that the District’s students are generally poor and living in an urban environment where the student athletes depend on sports in numerous ways, including college scholarships and opportunities to play at a more competitive level. Petitioner also argues

that the standard of review in this matter should be whether the penalty is disproportionate to the offense alleged because the District is not challenging the findings but rather the penalty that “disproportionately impacts” the students, the parents, and the fans of the teams. Petitioner claims that “it shocks the conscience that NJSIAA, presumably charged with instilling the values of fair play and sportsmanship, would penalize children for the acts of adults.” Petitioner’s Brief at 12-13.

The NJSIAA maintains that petitioner was provided adequate due process and that the Executive Committee’s decision was not arbitrary or capricious, as it was supported by sufficient credible evidence. Respondent argues that petitioner has misstated the applicable standard of review, as the Commissioner’s review is appellate in nature and the arbitrary, capricious, or unreasonable standard should be applied. Respondent contends that the NJSIAA acted within its authority when it restricted the District’s eligibility for the tournaments for violation of NJSIAA rules, and notes that it considered petitioner’s voluntary withdrawal from the 2017 tournament as “time served” in rendering a proper penalty. Respondent further contends that the fact that individual players were not involved in the violation of NJSIAA rules is immaterial to the penalty imposed because the penalty is imposed on the District and not the students. The NJSIAA notes that students have no right to participate in extra-curricular athletics, and applying its rules differently to urban districts – as petitioner proposes – would be arbitrary and capricious. Respondent submits that the NJSIAA, therefore, did not apply its rules in an arbitrary, capricious or unreasonable manner with respect to the petitioner, and as such, the Commissioner should affirm its decision.

Petitioner filed a sur-reply on November 17, 2017, in violation of *N.J.A.C. 6A:3-7.3(c)*, arguing that the NJSIAA’s decision was arbitrary, capricious and unreasonable under the circumstances because the NJSIAA rendered a different decision in a

separate matter involving recruitment of student athletes. On November 22, 2017, respondent submitted a letter requesting that the Commissioner decline to consider petitioner's submission. The Commissioner has considered petitioner's sur-reply – despite the submission having been filed without permission – as well as respondent's correspondence thereof, and finds that the arguments set forth in the sur-reply have no bearing on the facts and the penalties imposed in this matter

The NJSIAA is an independent, voluntary association of public, non-public, and independent high schools in New Jersey, responsible for the promulgation of rules and regulations in connection with orderly administration of athletic programs. The member schools are bound by the NJSIAA rules and regulations – as set forth in its Constitution, Bylaws, Rules and Regulations – including eligibility requirements, athletic recruitment and transfer procedures, and administrative responsibilities of member schools. The NJSIAA is charged with enforcing its rules and regulations, and decisions made by the NJSIAA relating to any member public school district may be appealed to the Commissioner pursuant to *N.J.S.A.* 18A:11-3. However, it is well-established that the Commissioner's scope of review in matters involving NJSIAA decisions, including determinations made by the Executive Committee, is appellate in nature. *See Bd. of Educ. of the City of Camden v. NJSIAA*, 92 *N.J.A.R.* 2d (EDU) 182 (Feb. 10, 1992). A petitioner seeking to overturn a decision of the NJSIAA bears the burden of proof. *Id.* As such, the Commissioner may not overturn an action by the NJSIAA absent a demonstration by petitioner that the NJSIAA applied its rules in a patently arbitrary, capricious or unreasonable manner.¹ *See N.J.A.C.* 6A:3-7.5(a)(2); *see also B.C. v. Cumberland Reg'l Sch. Dist.*, 220 *N.J. Super.* 214, 231-232 (App. Div. 1987); *Kopera v. West Orange Bd. of Educ.*,

¹ Arbitrary and capricious means “willful and unreasoning action, without consideration and in disregard of circumstances.” *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).

60 *N.J. Super.* 288, 297 (App. Div. 1960). Moreover, “where there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration.” *Bayshore, supra*, at 199-200. Therefore, the Commissioner may not substitute her own judgment for that of the NJSIAA where due process has been afforded and where exists sufficient credible evidence in the record to serve as a basis for the decision rendered by the NJSIAA. *See N.J.A.C. 6A:3-7.5(a)(1); Dam Jin Koh and Hong Jun Kim v. NJSIAA, 1987 S.L.D. 259.*

Upon careful review and consideration, the Commissioner upholds the decision of the NJSIAA. The Commissioner finds that petitioner has not met its burden to prevail on appeal, as the petitioner’s due process rights were not violated; further, the evidence in the record supports the Commissioner’s finding that the NJSIAA decision in this matter was not arbitrary, capricious or unreasonable.² As noted above, petitioner disagrees with the penalty imposed, specifically, the District’s two-year disqualification from the state tournament for 2017 and 2018.³ Petitioner’s basis for seeking reversal of the penalty is the alleged “disproportionate impact” the penalty has on the students, including “the potentially far reaching consequences of depriving student athletes of life changing opportunities.” Petitioner’s Brief at 20. The Commissioner is unpersuaded by petitioner’s arguments.

As a preliminary matter, the standard of review is not whether the “punishment is so disproportionate to the offense” that it is “shocking to one’s sense of fairness[,]” *Id.* at 12; rather, the Commissioner will uphold a penalty so long as it is reasonable and proper based on the record. In this matter, petitioner was found – as amply supported by the evidence in the

² Although petitioner does not allege violation of its due process rights, Commissioner’s scrutiny of same is to reiterate her full consideration of the matter and her limited scope of review of NJSIAA appeals.

³ Petitioner has argued that the District “voluntarily” withdrew from the 2017 tournament; however, such *voluntary* withdrawal is irrelevant for the purposes of this appeal as forfeiture of games and subsequent disqualification from the 2017 tournament was inevitable and mandatory – *without a right of appeal* – pursuant to *NJSIAA Bylaws*, Article X and Article V.

record – to have violated several rules of the NJSIAA. Such violations – *without exception* – result in the consequences outlined in the Bylaws, including forfeiture of games, probation, and/or disqualification from tournaments. *See NJSIAA Bylaws*, Article V. The Controversies Committee may also impose additional penalties on the offending school district. *See id.* at Article X. The Controversies Committee was, therefore, within its authority to deem the District’s basketball teams ineligible for the 2018 tournament as a result of petitioner’s violations.

With regard to petitioner’s arguments as to the purported impact on the student athletes and the greater school community, the District has not provided tangible support for such assertions.⁴ Specifically, the Commissioner is not convinced that the student athletes of the basketball teams would lose the opportunity to go to college or be deprived of scholarships because of the teams’ disqualification from a tournament; particularly when the teams are not barred for playing basketball against other schools during its regular season, which allows the District’s student athletes to participate and compete in the sport, and showcase their skills and abilities as they otherwise would. Therefore, petitioner’s arguments are speculative, at best. Petitioner also fails to acknowledge that the NJSIAA rules clearly set forth the range of penalties that may be imposed on a school district and an *entire team*. Notably, when a team has been unjustly enriched via a rule violation, such as participation in games by ineligible players, the resulting penalty will affect the entire team. Consequently, the penalty imposed on the District in this matter is certainly not unique, nor is it contrary to the rules. Of note is petitioner’s contention that the “values associated with interscholastic athletics include fair play, integrity, and good faith sportsmanship” and the goals of interscholastic athletics is to “prepare its student

⁴ The Commissioner notes that the District represents its interests in this matter, not the students; therefore, arguments on behalf of the students, in support of petitioner’s appeal, lack candor.

athlete participants for life, by instilling within them overriding notions of teamwork, fair play and discipline.” Petitioner’s Brief at 15. The Commissioner finds that the NJSIAA’s decision to disqualify the District from participating in the 2018 tournament for egregious violations of NJSIAA rules and regulations is aligned with those goals and values.

Accordingly – the Commissioner having found that a two-year ineligibility from the state tournament is not arbitrary, capricious or unreasonable – the NJSIAA’s ruling is upheld and the petition of appeal dismissed.

IT IS SO ORDERED.⁵

COMMISSIONER OF EDUCATION

Date of Decision: December 18, 2017

Date of Mailing: December 18, 2017

⁵ 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.