

D.T., on behalf of minor child, M.T., :  
 PETITIONER, :  
 V. : COMMISSIONER OF EDUCATION  
 NEW JERSEY STATE : DECISION  
 INTERSCHOLASTIC :  
 ATHLETIC ASSOCIATION, :  
 RESPONDENT. :

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SYNOPSIS

Petitioner appealed the decision of the Eligibility Appeals Committee (EAC) of the New Jersey State Interscholastic Athletic Association (NJSIAA) which found that his son, M.T., transferred from St. Joseph’s High School to Hammonton High School for athletic advantage; the resulting ruling made M.T. ineligible to participate in football at Hammonton for the 2017-2018 school year. Petitioner contended, *inter alia*, that M.T. transferred because he had been bullied by the coaching staff at St. Joseph’s and felt unsafe; further, petitioner argued that the NJSIAA had denied him due process. Petitioner argued that the NJSIAA’s decision imposing a one-year period of ineligibility on M.T. should be reversed.

The NJSIAA contended, *inter alia*, that: the petitioner was provided with due process; the decision of the EAC was not arbitrary and capricious as there was sufficient evidence in the record that M.T. transferred for athletic advantage; the testimony of M.T.’s coaches and teammate was consistent and credible, and demonstrated a pattern of deteriorating conduct by M.T. toward the coaching staff; and the EAC found M.T.’s claims unsubstantiated, and the testimony provided by M.T. and his parents to be incredible and generally unreliable. The NJSIAA urged that it did not apply its rules in an arbitrary, capricious, or unreasonable manner with respect to the petitioner, and as such the Commissioner should affirm the decision of the EAC.

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. In so deciding, the Commissioner – who may not substitute her judgment for that of the NJSIAA on appeal – noted that the NJSIAA’s decision ruling that M.T. is ineligible to participate in football for the 2017-2018 school year was neither arbitrary nor 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.

September 27, 2017

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For Petitioner, Nancy A. Valentino, Esq.

For Respondent, Michael W. Herbert, Esq. (Parker McCay, P.A.)

In this matter, petitioner seeks review of a decision of the Eligibility Appeals Committee (EAC) of the New Jersey State Interscholastic Athletic Association (NJSIAA), finding that a high school student, M.T., transferred from St. Joseph High School (St. Joseph’s) to Hammonton High School (Hammonton) for athletic advantage, and ruling that M.T. is ineligible to participate in football at Hammonton for the 2017-2018 school year. The EAC found that M.T. transferred to Hammonton – in violation of Article V, Section (4)(K)(5) of NJSIAA’s Bylaws, Rules and Regulations – in order to seek relief due to a conflict with the philosophy of the coaching staff at St. Joseph’s.

On appeal, petitioner maintains that M.T. transferred because he was being bullied by the coaching staff at St. Joseph’s, he felt unsafe, and he no longer wanted to be subject to “retaliatory and violative conduct” by the school’s staff and administration. In support of petitioner’s claims, M.T. submitted statements and testified that the coaching staff verbally and physically abused him, engaged in hazing activities, and ostracized him from the team during the off-season. Petitioner further maintains that he was denied due process from the NJSIAA because he was not presented with the evidence until the morning of the hearing; he was not made aware of his rights; and he did

not have enough time to obtain an attorney, as he was notified of the hearing less than one week before the scheduled date. Petitioner argues that the decision of the NJSIAA imposing a one-year period of ineligibility on M.T. should be reversed.

In reply, respondent maintains that petitioner was provided with due process as the EAC issued its final decision after a hearing on notice to the parties and a full right to be heard. Respondent also argues that the decision of the EAC was not arbitrary, capricious or unreasonable, as there was sufficient evidence in the record that M.T. transferred for athletic advantage. Respondent submits that the testimony of M.T.'s coach and teammate was consistent and credible, and demonstrated a pattern of deteriorating conduct by M.T. towards the coaching staff. Additionally, respondent contends that the EAC found M.T.'s claims and accusations unsubstantiated, and that the testimony provided by M.T. and his parents was "incredible" and "generally unreliable." Respondent argues that the NJSIAA did not apply its rules in an arbitrary, capricious or unreasonable manner with respect to the petitioner; as such, the Commissioner should affirm its decision.

NJSIAA has promulgated rules and regulations imposing restrictions upon a transfer student's eligibility to participate in sports. *See* NJSIAA Bylaws, Rules and Regulations, Article V, Section 4(K)(2). Typically, when a student-athlete transfers from one school to another without a bona fide change of residence by the student's parent or guardian, the student is subject to a 30-day period of ineligibility for any sport in which the student has previously participated at the varsity level. *See* Article V, Section 4(K)(2)(a). However, if – following an eligibility determination by the EAC – a student is found to have transferred for athletic advantage, the student may be subject to an extended period of ineligibility beyond the 30-day period.<sup>1</sup>

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<sup>1</sup> A transfer for athletic advantage is defined as:

- a. Seeking a superior athletic team;
- b. Seeking relief due to a conflict with the philosophy or action of an administrator, teacher or coach relating to sports;
- c. Seeking a team consistent with the student's athletic abilities;
- d. Seeking a means to nullify punitive action by the previous school; or
- e. Seeking to be coached by the coach at the new school.

It is well-established that the Commissioner's scope of review in matters involving NJSIAA decisions, including determinations made by the EAC, 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. Moreover, petitioners seeking to overturn decisions of the NJSIAA bear a heavy burden of proof. Absent a demonstration by petitioner in this matter that the NJSIAA applied its rules in a patently arbitrary, capricious or unreasonable manner, the Commissioner may not overturn an action by the NJSIAA in applying its rules.<sup>2</sup> See *N.J.A.C.* 6A:3-7.5(a)(2); see also *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). Furthermore, "where there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration." *Bayshore*, 122 *N.J. Super.* at 199-200. As such, 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 his burden to prevail on appeal because his due process rights were not violated and the evidence in the record supports the NJSIAA's ruling. Petitioner's due process rights were not violated because D.T. was provided adequate notice of the hearing and an opportunity to review the record. The transcript of the hearing also reveals that petitioner fully participated in the process. The NJSIAA applied its rules in an appropriate and reasonable manner in light of its duty to ensure fairness and integrity in athletic competition statewide. M.T. – who had been on the St. Joseph's football team since his freshmen year of high school – did not make any allegations regarding the coaching staff until his junior year, and most of M.T.'s other claims also related to his junior year of high school. The EAC found that M.T.'s coach

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<sup>2</sup> 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).

and teammate provided credible testimony, and there is no basis to reject the EAC's determinations of witness credibility. Testimonies provided by M.T.'s coach and teammate contradicted M.T.'s accusations against the coaching staff, and revealed his previous declarations of intent to transfer to Hammonton for athletic advantage. It is undisputed that M.T. was dissatisfied with the coaching staff at St. Joseph's as evidenced by his various attempts to undermine the coaches during the course of his junior year. The evidence also does not support a finding that the coaching staff acted inappropriately towards M.T. Instead, the record establishes that M.T.'s decision to transfer to Hammonton was due to his disagreements with the philosophy and personal style of the coaching staff at St. Joseph's. As such, M.T.'s unsubstantiated accusations of inappropriate conduct by the coaching staff, coupled with his deteriorating performance on the team and his change in behavior towards the coaching staff, are dubious at best.

Accordingly – the Commissioner having found that petitioner was afforded due process and that M.T. transferred to Hammonton for athletic advantage – the NJSIAA's ruling that M.T. is ineligible to participate in football at Hammonton for a one-year period is upheld and the petition of appeal dismissed.

IT IS SO ORDERED.<sup>3</sup>

COMMISSIONER OF EDUCATION

Date of Decision: September 27, 2017  
Date of Mailing: September 28, 2017

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<sup>3</sup> 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.