

BOARD OF EDUCATION OF THE :
CUMBERLAND COUNTY TECHNICAL :
EDUCATION CENTER, :

PETITIONER, : COMMISSIONER OF EDUCATION

V. : DECISION

BOARD OF EDUCATION OF THE :
CUMBERLAND REGIONAL HIGH SCHOOL :
DISTRICT, CUMBERLAND COUNTY AND :
BOARD OF EDUCATION OF THE CITY OF :
MILLVILLE, CUMBERLAND COUNTY, :

RESPONDENTS. :

SYNOPSIS

Petitioner, the Board of Education of the Cumberland County Technical Education Center (CTech), sought to compel the respondent Boards of Education to permit its full-time students who reside within either the Cumberland Regional High School District or the Millville School District to participate in their home district's athletic programs. The respondent Boards denied CTech's request, citing financial and other concerns, and contending that they were not required to permit CTech students to join their athletic programs. CTech asserted that the respondent Boards' denials were arbitrary, capricious and unreasonable.

The ALJ found, *inter alia*, that: school districts have the discretion to determine whether they will allow technical/vocational school students to participate in their athletic programs, as long as the decision is based on legitimate considerations; the superintendents of the two respondent districts formulated the policy regarding technical/vocational students participating in school district athletics after meetings between the respective superintendents, principals and others; the decision not to allow CTech students to participate was based on financial, disciplinary and eligibility factors, all of which were reasonable; because the respondents did not adopt formal or written policies addressing the participation of vocational students in their athletic programs, the policies of the NJSIAA govern; and under NJSIAA rules, vocational/technical students may participate in sports in their home district upon agreement of the high school principals. The ALJ concluded that both respondents have demonstrated by a preponderance of credible evidence that they had legitimate concerns in reaching the decision to deny CTech's request for its students to participate in district athletic programs; further, CTech's allegations that the respondent Boards were deliberately trying to negatively impact the decisions of students considering enrollment at CTech are unfounded. Accordingly, the ALJ denied CTech's request to compel respondents to admit CTech students into district sports programs.

Upon review, the Commissioner, *inter alia*, concurred with the ALJ's determination as it pertained to the 2016-2017 school year. However, the Commissioner found that the parties' inability to reach an agreement to enable CTech students to play sports in their home Districts is unacceptable; accordingly, the parties were directed to meet within 20 days to address logistical concerns, etc., in this regard. If an agreement cannot be reached, CTech may file another petition with the Commissioner.

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.

June 7, 2018

OAL DKT. NO. EDU 12252-16
AGENCY DKT. NO. 214-8/16

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by the Cumberland County Technical Education Center Board of Education (CTech), and the reply exceptions filed by the Cumberland Regional High School District Board of Education (Cumberland) and the Millville Board of Education (Millville).¹ In this case, CTech is seeking an order that requires Cumberland and Millville to allow CTech students who reside in those districts to participate in their athletic programs because CTech does not offer its own athletic programs.

The Administrative Law Judge (ALJ) found that school districts have the discretion to determine whether they will allow technical/vocational school students to participate in their athletic programs as long as the decision is based on legitimate considerations. The ALJ also determined that both Cumberland and Millville demonstrated by a preponderance of the evidence that each District had “valid, legitimate, reasonable or practicable concerns when they determined to deny CTech students the ability to participate in their athletic programs.” Therefore, the ALJ found that Cumberland and Millville’s decision to deny CTech students the ability to participate in their athletic programs was not arbitrary, capricious or unreasonable.

¹ The record did not include a transcript from the hearing held at the OAL on September 20, 25 and 26, 2017.

In its exceptions, CTech reiterated the arguments advanced before the ALJ, contending that there was no legitimate reason for Cumberland and Millville to bar CTech students from participating in the Districts' sports programs. CTech maintains that the harsh policies of Cumberland and Millville, which were formulated by the superintendents, force a student to choose between attending a public vocational high school and reaping the benefits associated with participation in interscholastic sports. Moreover, the principals of both Cumberland and Millville have been deprived of the ability to enter into an agreement with the principal of CTech to allow participation in their sports programs, which is contrary to the applicable New Jersey Interscholastic Athletic Association (NJSIAA) rule. CTech also argues that Cumberland and Millville's decision disallowing CTech students from participation in district sports programs was not based on bona fide legitimate considerations. Instead, Cumberland and Millville are simply trying to discourage students from attending CTech in an effort to keep the students enrolled in their local school district. Thus, the Commissioner should reject the Initial Decision and direct both Cumberland and Millville to allow CTech students residing in their Districts to participate in their sports programs.²

The controlling NJSIAA rule in this case provides that where a sport is not offered at a vocational/technical school, a student attending the vocational/technical school may participate in that sport at the student's home district upon agreement of both principals. See, Article V, Section 4(G) of NJSIAA's Bylaws, Rules and Regulations. The principal of the home school district has discretion when determining whether or not to enter into an agreement with the vocational/technical school principal, however, that discretion is not unlimited. The decision to deny a student's ability to participate in interscholastic sports in his or her home district must be based on bona fide legitimate concerns. *G.W.S., on behalf of minor child, A.F.S. v. William Petrino, Superintendent and Rahway Board of Education, Union County*, Commissioner Decision No. 388-99, decided November 29, 1999.

Upon a comprehensive review of the record in this matter, the Commissioner concurs with the ALJ – for the reasons outlined in the Initial Decision – that Cumberland and Millville's decision barring CTech students from participating in the Districts' athletic programs for the 2016-2017 school

² In their reply exceptions, both Cumberland and Millville recast the arguments made below asserting that the Initial Decision should be adopted as the final decision in this matter.

year was not arbitrary, capricious or unreasonable. The evidence in the record indicates that both Cumberland and Millville had a sound rational basis for precluding CTech students from participating in their athletic programs based on the lack of sufficient information from CTech, coupled with financial, logistical and disciplinary concerns. *See, G.W.S., supra*, at 8.

Notably, in the Initial Decision, the ALJ directly addressed the petitioner's primary theory that Cumberland and Millville are simply furthering their own interests by creating a barrier to discourage students from attending CTech. The ALJ found that the "loss of students (and the financial loss) was at least one consideration expressed by [Cumberland] and Millville. But the overriding concerns of finances, logistics, eligibility, and discipline expressed by both CR and Millville were significant and outweighed the concern about loss of students." Initial Decision at 32. The ALJ further found that all of the witnesses testified credibly, and neither Cumberland nor Millville "engaged in deception about its motives for its determination." Initial Decision 26-27. Insofar as her opinion on this issue is a credibility determination, the Commissioner may not disturb such determination unless a review of the record discloses that it is arbitrary, capricious or unreasonable. *N.J.S.A. 52:14B-10c; D.L. and Z.Y., on behalf of minor children, T.L. and K.L. v. Board of Education of the Princeton Regional School District*, 366 *N.J. Super.* 269, 273 (App. Div. 2004). There is nothing in the record that suggests the ALJ's determination relating to her assessment of witness testimony and her findings regarding Cumberland and Millville's motivation for denying CTech student's the ability to participate in the Districts' athletic programs should be modified.

Although the Commissioner is in accord with the ALJ's determination for the 2016-2017 school year, the Commissioner finds that the failure of the Districts to reach an agreement to enable CTech students to participate in sports programs in their home Districts is unacceptable. It is evident from the record that all three of the Districts herein are at fault in this situation, as they bear responsibility for failing to cooperate in the development of an acceptable agreement that would allow CTech students to participate in athletic programs – to the detriment of the students. For example, it is clear that CTech has not provided Cumberland and Millville with sufficient information related to the number of students interested in participating in the sports programs, nor with a plan for handling disciplinary scenarios.

Likewise, Cumberland and Millville have expressed transportation concerns, yet it appears that CTech may be willing to provide transportation for its prospective student athletes. Initial Decision at 23. As the ALJ noted, there “are legitimate, rational concerns that can and should be resolved prior to permitting CTech students to participate in [Cumberland] and Millville’s sports programs ... [and] there is no reason to believe that they could not be.” Initial Decision at 27.

Therefore, the principals of Cumberland and Millville are directed to meet with the principal of CTech within 20 days after the date of this decision to address the logistical concerns and to develop an agreement that will enable the CTech students to participate in sports programs in their homes Districts during the 2018-2019 school year. During the negotiation process, Cumberland and Millville should be guided by the fact that a blanket ban barring CTech students from participating in the Districts’ athletic programs is absolutely impermissible. *See, G.W.S., supra*, at 7-8. Moreover, concerns regarding the impact on student enrollment at Cumberland and Millville and corresponding State funding do not equate to bona fide legitimate reasons for denying CTech students the opportunity to participate in sports programs. CTech, on the other hand, must provide Cumberland and Millville with all of the information necessary to facilitate meaningful discussions. If after an opportunity for such meaningful dialogue, an agreement cannot be reached – or one of the parties fails to participate in the process – CTech may file another petition of appeal.

IT IS SO ORDERED.³

ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 7, 2018

Date of Mailing: June 12, 2018

³ 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*).