

**New Jersey Commissioner of Education**  
**Final Decision**

Alan Maloney,

Petitioner,

v.

New Jersey State Interscholastic Athletic Association,

Respondent.

For Petitioner, Alan Maloney, Ralph A. Paolone, Esq.

For Respondent, New Jersey State Interscholastic Athletic Association, Steve P. Goodell, Esq.  
and Scott T. Miccio, Esq.

This case involves an appeal of a decision of the New Jersey State Interscholastic Athletic Association (NJSIAA), suspending petitioner Alan Maloney from officiating any wrestling matches for the 2019-2020 and 2020-2021 seasons. On appeal, petitioner argues that the NJSIAA's decision was arbitrary, capricious, and unreasonable because the NJSIAA did not have jurisdiction to suspend him and the decision was not supported by the record. Petitioner also argues that he did not receive due process before the NJSIAA.

Athletic competition in New Jersey's public schools is overseen by the NJSIAA, a voluntary, non-profit organization which promulgates the rules and regulations governing high school athletics. *See, e.g., B.C. v. Cumberland Reg. Sch. Dist.*, 220 N.J. Super. 214, 234 (App. Div. 1987). One of these rules is the Sportsmanship Rule, which, among other things, provides for disciplinary action for any person who "engages in harassing verbal or physical conduct related to race, gender, ethnicity, disability, sexual orientation or religion at an interscholastic event." NJSIAA Bylaws, Article IX,

Sec. 3(D). The NJSIAA has the authority to “investigate and take appropriate action on any reported flagrant violation of the sportsmanship rule.” NJSIAA Bylaws, Article IX, Sec. 5(A). Violations “shall be resolved in a manner sufficient to correct the problem,” which can range from written findings to disciplinary action. NJSIAA Bylaws, Article IX, Sec. 5(C).

On December 18, 2018, petitioner officiated a wrestling match between Buena Regional High School and Oakcrest High School. Student-athlete A.J.’s hair was styled in locs, a traditionally Black hairstyle in which the hair is rolled. According to the wrestling rules at the time,<sup>1</sup> he was required to wrestle using a hair cover, but he came to the mat at the beginning of his bout with a hair cover that did not meet the requirements of the rules because it did not attach to his ear guards. After petitioner informed A.J. and his coach that the hair cover did not meet the requirements, a trainer from A.J.’s school cut his hair on the side of the mat so that A.J. would not have to forfeit the match. The incident was widely reported in the media. Following the incident, the NJSIAA convened a task to investigate the incident. The NJSIAA also referred the incident to the New Jersey Division on Civil Rights (DCR) as a potential bias incident. The joint effort resulted in a Memorandum of Agreement (MOA), issued on September 18, 2019, in which the NJSIAA and the DCR agreed that the NJSIAA would suspend petitioner from officiating any matches for the 2019-2020 and 2020-2021 seasons and require petitioner to undergo training prior to reinstatement as an official.

On October 10, 2019, the NJSIAA issued a written decision supplementing the MOA and formally suspending petitioner. The NJSIAA found that petitioner was not credible when questioned, offering inconsistent explanations and making statements that were not supported by the evidence. The NJSIAA noted that petitioner was required to inspect students’ hair covers upon arriving at the site, but failed to follow the protocol; had he done so, the later problems would have been avoided. The NJSIAA

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<sup>1</sup> The wrestling rules have subsequently been changed. Additionally, with the passage of the Crown Act, P.L. 2019, c. 272, New Jersey law now explicitly prohibits discrimination based on hairstyles associated with race.

found that petitioner permitted A.J. to wrestle after the haircut, even though A.J.'s hair was still not in its "natural state," which was inconsistent with petitioner's own alleged rationale as to why A.J. needed the hair cover. A 2016 incident, in which the New Jersey Wrestling Officials Association (NJWOA) Ethics Committee suspended petitioner for using a racial slur and getting in a physical altercation with a fellow official at a social event following a youth wrestling tournament, was found to be an aggravating factor. Finally, due to the widespread attention the incident received, the NJSIAA found that petitioner's presence at events would be disruptive and would not ensure "a safe and healthy playing environment" for all students.

On January 7, 2020, petitioner filed a petition with the Commissioner of Education challenging the decision of the NJSIAA. On appeal, petitioner notes that Section 1, Article VII of the NJSIAA's Officials Handbook (Handbook) provides that protests based on an official's misapplication of the playing rules will not be honored. According to petitioner, this provision prohibits the NJSIAA from taking action against him based on the discrepancy of his allowing the student to wrestle after his haircut even though the hair was not in its natural state, rendering its decision arbitrary, capricious, and unreasonable. Petitioner contends that the NJSIAA's sportsmanship rule does not apply to officials or referees because the definition of "any person" who is subject to the rule is "athletic department, staff member, Student Athlete or a fan or spectator associated with a member school," with no reference to officials or referees. Petitioner argues this exclusion was intentional, because officials and referees are independent contractors and not subject to control or discipline by the NJSIAA directly. In fact, petitioner contends that the Handbook states that all complaints against officials who are members of the Officials' Association "shall" be handled through the internal processes of the Officials' Association; "shall" is a mandatory term and does not afford the NJSIAA discretion. According to petitioner, the NJSIAA erred in determining that the NJWOA had disqualified itself by prejudging the issue.

Petitioner also argues that the NJSIAA's decision to suspend him deprived petitioner of his income, constituting discipline that mandates a formal hearing with the opportunity to present evidence, call witnesses, cross-examine witnesses, and receive a transcribed record. According to petitioner, the NJSIAA's failure to provide him with these due process rights renders its decision arbitrary, capricious, and unreasonable. Petitioner notes that the NJSIAA conducted witness interviews but did not provide petitioner with notice or the opportunity to question the witnesses, or a transcript of the statements; moreover, the witnesses were not placed under oath. Petitioner contends that if the NJSIAA wanted to discipline an official who was a member of the Officials' Association, the NJSIAA was required to conduct a full hearing before the Controversies Committee to ensure his due process rights. Petitioner also argues that there were flaws in the NJSIAA's investigation, including failing to interview critical witnesses and instead relying on interviews conducted by the DCR, even though the task force did not participate in the interviewing of those witnesses and could not judge their credibility without seeing their appearance, demeanor, and body language. According to petitioner, the NSIAA did not acknowledge alleged inconsistencies between the interviews and written statements.

Finally, petitioner argues that there was no bias incident because he enforced the rules of wrestling as per the National Federation of State High School Associations (NFHS) Rule Book and as interpreted by all officials in New Jersey. According to petitioner, the record is devoid of any witness testimony stating that he acted in a biased manner toward the student, and the NJSIAA's decision does not make any determination that he acted with bias. Petitioner notes that no one – not the coaches, the student, his parents, or anyone involved – complained about petitioner's behavior. Instead, petitioner argues that the record confirms that he applied the rule appropriately as interpreted. Petitioner claims that other officials have required wrestlers to cut their hair before wrestling, but he is the only official disciplined by the NJSIAA for doing so. Petitioner argues that other individuals, including the coach and the student, were at fault for the incident, but were not disciplined.

In reply, the NJSIAA argues that the Commissioner may not overturn a decision of the NJSIAA if due process has been granted, the decision is supported by sufficient, credible evidence in the record, and the NJSIAA's actions were not arbitrary, capricious, or unreasonable. According to the NJSIAA, there is no requirement in its Constitution, Bylaws, or Rules and Regulations that a member school must file a complaint in order for the NJSIAA to initiate an investigation;<sup>22</sup> in fact, the NJSIAA claims that it has a fundamental obligation to its member schools and student-athletes to investigate bias claims – regardless of how it learned of the incident – and to report them to the DCR. The NJSIAA argues that it was permitted to investigate pursuant to its Sportsmanship Rule, which provides authority to “investigate and take appropriate action on any reported flagrant violation of the sportsmanship rule.” NJSIAA Bylaws, Article IX, Sec. 5(A). According to the NJSIAA, the rule does not limit who may be investigated, and the broad wording and intent of the rule demonstrates that it is designed to be applied liberally, such that it includes the conduct of officials. The NJSIAA notes that the definition of unsportsmanlike conduct “shall include but not be limited to” conduct by athletic departments, staff members, student athletes, fans, and spectators, and that the list of categories of individuals is meant to be exemplary, not exhaustive. NJSIAA Bylaws, Article IX, Sec. 3. The NJSIAA contends that it would be unreasonable not to investigate bias incidents. According to the NJSIAA, the use of the phrase “any person” in the Sportsmanship Rule cannot be ignored or reduced to “mere surplusage,” citing *DKM v. Residential Props. Corp. v. Twp. of Montgomery*, 182 N.J. 296, 307 (2005). Furthermore, the NJSIAA points to case law concluding that when a statute is ambiguous, the reviewing court may adopt the agency's interpretation if it is based upon a permissible construction of the statute. *Thomas v. Frank*, 791 F. Supp. 470, 473 (D. N.J. 1992).

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<sup>22</sup> The NJSIAA also notes that it received a letter from the student's attorney seeking an investigation, as well as a tort claim notice that it was obligated to investigate.

The NJSIAA argues that the NJWOA disqualified itself from reviewing this matter when it sent a letter from its officers and members in support of petitioner weeks before the task force had conducted its first interview, even though it knew the NJSIAA was in the process of investigating. Moreover, the NJSIAA contends that by filing a letter in support of petitioner and attempting to aid the investigation, the NJWOA tacitly acknowledged that the NJSIAA had the authority to investigate one of its officials.

The NJSIAA contends that petitioner received due process. The NJSIAA argues that there is no fundamental right under the Fifth Amendment to appear on a list of certified officials or to be employed to referee a high school wrestling match; moreover, the decision was limited to a two-year period and did not impact petitioner's membership in the NJWOA or his ability to officiate non NJSIAA-events. On the other hand, the NJSIAA has a fundamental obligation to protect its member schools and their students. According to the NJSIAA, petitioner appeared before the task force, with counsel, and had every opportunity to provide his side of the story. Finally, the NJSIAA claims that there were no additional or substitute safeguards that were available or appropriate. The NJSIAA notes that the Sportsmanship Rule does not require that a hearing take place or that the matter be referred to the Controversies Committee.

The NJSIAA argues that its decision is narrowly tailored, supported by sufficient credible evidence in the record, and consistent with its fundamental obligation to protect its member schools and student-athletes. According to the NJSIAA, all of the conclusions supporting petitioner's suspension are based solely on statements that petitioner himself made and uncontroverted evidence in the record. The NJSIAA alleges that considering the widespread attention the incident received, the inconsistencies in petitioner's explanations, petitioner's prior race-based incident, and the need to protect schools and student-athletes, the two-year suspension was more than justified.

It is well-established that the Commissioner's scope of review in matters involving NJSIAA decisions 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. 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 in applying its rules, absent a demonstration by the petitioner that it applied such rules in a patently arbitrary, capricious or unreasonable manner.<sup>3</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). 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 provided and where there is sufficient credible evidence in the record 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.

Upon consideration of the record and in light of the prescribed standard of review, the Commissioner finds that the petitioner has not met his burden on appeal. As a threshold matter, the petitioner was afforded adequate due process before the NJSIAA, having been given notice of the proceedings and an opportunity to present his case, with the assistance of counsel. The Sportsmanship Rule does not require the NJSIAA to hold a hearing in order to impose disciplinary action and, affording the NJSIAA the deference which it is due to interpret its own Bylaws, the Commissioner declines to expand the rule to include such a provision.<sup>4</sup>

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<sup>3</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) (citations omitted).

<sup>4</sup> Given that no hearing is required, the Commissioner cannot conclude that the NJSIAA violated petitioner's due process rights by not adhering to the hearing procedures outlined in the Bylaws for other controversies that do require hearings.

Further, the Commissioner cannot find that the NJSIAA applied its rules in a patently arbitrary or unreasonable manner. The NJSIAA applied a broad interpretation of the phrase “any person” subject to the Sportsmanship Rule to include officials, but a broad interpretation is not *per se* an unreasonable one. Indeed, the plain language of the phrase demands a broad interpretation. Moreover, the Commissioner accepts the NJSIAA’s interpretation of the phrase that follows – “athletic department, staff member, Student-Athlete or a fan or spectator associated with a member school” – to be in the nature of an example, rather than an exhaustive list. In the absence of any precedent narrowly defining “any person” to include only those persons named, there is nothing to demonstrate that the NJSIAA interpreted and applied the phrase arbitrarily in this case. Additionally, the Affiliation Agreement between the NJSIAA and the NJWOA-Southern Chapter provides that officials agree to comply with all provisions of the NJSIAA’s Bylaws, and the Commissioner finds it well within the realm of reason for the NJSIAA to determine that that agreement includes officials abiding by the Sportsmanship Rule. The Affiliation Agreement also provides that it does “not in any way impair” the NJSIAA’s authority to deal with controversies or impose discipline, and the Bylaws provide that the NJSIAA’s President and Executive Director have the authority to investigate violations of the Sportsmanship Rule.

Having concluded that petitioner may be subject to disciplinary action for violating the Sportsmanship Rule, the Commissioner must next determine whether petitioner did violate the Rule. While petitioner argues that the NJSIAA could not discipline him for his misinterpretation or misapplication of the playing rules, that is not what occurred. The NJSIAA disciplined petitioner because his conduct resulted in a student-athlete with a traditionally Black hairstyle being placed in the untenable position of choosing between forfeiting an important match and having his hair cut in front of his teammates, opponents, coaches, and spectators. The Commissioner concurs with the NJSIAA that video of the incident gives the impression that A.J. was publicly humiliated as a result of his hairstyle. Moreover, the Commissioner cannot conclude that the NJSIAA was arbitrary, capricious, or



unreasonable in finding that petitioner was not credible and contradicted himself, and that he failed to take action earlier in the event to prevent the incident.

Likewise, the penalty imposed on petitioner for violation of the NJSIAA's rules was not arbitrary, capricious, or unreasonable, nor were the NJSIAA's conclusions that petitioner had engaged in prior misconduct that served as an aggravating factor for purposes of determining the penalty and that petitioner's suspension was necessary to protect schools and student-athletes from the disruption his presence at events would cause. The NJSIAA applied its rules in an appropriate and reasonable manner in light of its duty to ensure a safe and healthy playing environment for student athletes.

Accordingly, the NJSIAA's decision is upheld and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.<sup>5</sup>

ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 26, 2021  
Date of Mailing: January 26, 2021

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<sup>5</sup> This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A.* 18A:6-9.1. Under *N.J.Ct.R.* 2:4-1(b), a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.