

New Jersey Commissioner of Education

Final Decision

A.W.,

Petitioner,

v.

New Jersey State Interscholastic Athletic
Association,

Respondent.

For Petitioner, Roshan D. Shah, Esq. (Anderson & Shah, LLC)

For Respondent, Steven P. Goodell, Esq. (Parker McCay)

This case involves an appeal of a decision of the New Jersey State Interscholastic Athletic Association (NJSIAA) denying petitioner A.W.'s request for a waiver of the Eight Semester Rule to allow him to participate in sports during his senior year at Ramapo High School (Ramapo).

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. A.W. attended Bergen Catholic High School (Bergen Catholic) as a freshman. Due to the COVID-19 pandemic, he attended Bergen Catholic virtually for his sophomore year. A.W. earned passing grades but, because of concerns about his grasp of the subject matter, A.W.’s mother sought to have him repeat his sophomore year. When Bergen Catholic did not permit A.W. to reclassify as a sophomore, he transferred to St. Peter’s Prep, where he repeated his sophomore year and played on the junior varsity basketball team. He began his junior year at St. Peter’s Prep but transferred to Ramapo in October 2022. As a junior at Ramapo, A.W. played on the varsity basketball team. A.W. began his senior year at Ramapo in September 2023.

Because A.W. has already had four years of athletic eligibility, on April 24, 2023, 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 A.W. can participate in high school athletics during his senior year. On May 2, 2023, the NJSIAA Eligibility Committee voted 7-0 to deny the waiver request, finding that A.W. did not meet the standards for granting 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 May 31, 2023, at which sworn testimony was taken from Ramapo's athletic director, A.W., and A.W.'s mother, the EAC denied the request for a waiver of the Eight Semester Rule. The EAC found that A.W. did well during his sophomore year at Bergen Catholic, passing all his courses with good grades and earning enough credits to advance to his junior year. The EAC determined that the family's choice to have A.W. repeat sophomore year was voluntary and not compelled by circumstances beyond their control. Although A.W. argued that COVID-19 and the need for virtual learning were circumstances beyond their control, the EAC found that remote instruction was common in 2020-2021 and does not distinguish A.W. from other students across the State who learned remotely during the pandemic. The EAC concluded that A.W.'s voluntary reclassification as a sophomore when he transferred to St. Peter's Prep was "effectively an academic redshirt" and granting him a waiver would give him an opportunity – a fifth year of eligibility – that other students do not get. (Eligibility Appeal Committee decision letter dated June 26, 2023). The EAC found that A.W.'s participation as a fifth-year senior would provide Ramapo an athletic advantage because he would be a player with "great potential" playing for a State Championship-winning team. *Ibid.* Finally, the EAC concluded that allowing A.W. a fifth year of eligibility would be unfair to other students because there are a limited number of positions

available on the varsity basketball team and if A.W. made the team, he would displace another student who only had four years of eligibility.

On July 26, 2023, the petitioner filed an appeal with the Commissioner of Education challenging the decision of the NJSIAA. On April 23, 2012, the NJSIAA filed its answer to the petition. On May 2, 2012, the petitioner filed his brief in support of the requested relief and on May 15, 2012, the NJSIAA filed its reply brief.

In his brief, the petitioner argues that the NJSIAA should have granted the waiver request because the impact of the COVID-19 pandemic and his need to address his academics constitute circumstances beyond his control. According to the petitioner, the NJSIAA improperly counted the year he attended Bergen Catholic virtually against him because he was “forced” to forego in-person attendance and his opportunity to participate in athletics during that year.

The petitioner also contends that the NJSIAA made factual misstatements in its decision. Regarding the NJSIAA’s finding that A.W. would take the place of another student on the team, he points out that the team only cuts players if there are at least three players more than necessary. Regarding the NJSIAA’s finding that Ramapo would receive an athletic advance from A.W.’s participation, he argues that he is a reserve player who Ramapo can replace “without much effort.”

In reply, the NJSIAA asserts that it provided the petitioner with rigorous 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. The NJSIAA points to case law holding that the Eight Semester Rule applies to semesters of attendance, rather than semesters of competition. The NJSIAA contends that it was, therefore, appropriate to count the year that A.W. attended Bergen Catholic virtually, because he had the opportunity to participate in basketball during that year, even if he did not do so. The NJSIAA also emphasizes that the family's decision to have A.W. repeat this sophomore year was entirely voluntary: he had passed his courses and would have been enrolled as a junior at Bergen Catholic in the following year had his family not decided to have him repeat his sophomore year for their own purposes. Accordingly, the NJSIAA maintains that the petitioner's ineligibility is not due to circumstances beyond his control, but instead constitutes "academic red shirting" and that any waiver would contradict the express intent of the Eight Semester Rule.

Additionally, the NJSIAA argues that the record supports its conclusion that Ramapo would receive an advantage if A.W. were granted a waiver. The NJSIAA notes that Ramapo's athletic director testified that A.W. would "be counted on to defend, rebound, don't turn the ball over and play hard." Additionally, the waiver request states that A.W. "is a slightly above average varsity level high school basketball player with great potential" who played on a State Championship-winning team. According to the NJSIAA, the record also supports its conclusion that A.W.'s participation would displace another student who only had four years of eligibility for basketball, as the team does make cuts; at the very least, A.W. would take playing time away from another student.

Upon careful review and consideration, the Commissioner determines to uphold the decision of the NJSIAA and dismiss the 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. Ramapo 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 her 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

unreasonable 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 his burden so as to entitle him to prevail on appeal.

More specifically, considering its duty to ensure fairness and integrity in athletic competition statewide, the Commissioner cannot find that the NJSIAA applied its rules in a patently arbitrary or unreasonable manner. A.W. has already had the opportunity to participate in four years of high school athletics – including the year when he attended Bergen Catholic virtually – as envisioned by the eligibility rules. Moreover, the Commissioner is in accord with the NJSIAA's finding that the family's decision to have A.W. repeat tenth grade was voluntary and does not amount to circumstances beyond their control. The record demonstrates that, despite the COVID-19 pandemic, A.W. earned good grades as well as sufficient credit during his sophomore year at Bergen Catholic to enroll as a junior the following year, but his family chose to have him repeat the year for their own reasons. The Commissioner finds that the record supports the NJSIAA's conclusions that A.W.'s participation would affect the ability of another student to play and would give Ramapo an athletic advantage. Finally, the NJSIAA's conclusion that the circumstances in this case are effectively "red shirting" is not arbitrary, capricious, or unreasonable.

Accordingly, the Commissioner – having found that the petitioner was afforded the due process to which he 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: September 29, 2023

Date of Mailing: October 2, 2023

¹ 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.

New Jersey Commissioner of Education

Final Decision

A.W.,

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v.

New Jersey State Interscholastic Athletic
Association,

Respondent.

Synopsis

Petitioner sought reversal of the final decision of the New Jersey State Interscholastic Athletic Association (NJSIAA) denying his 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 A.W. to play basketball during his senior year at Ramapo High School (Ramapo). A.W. attended Bergen Catholic High School (Bergen Catholic) as a freshman. Due to the COVID-19 pandemic, he attended Bergen Catholic virtually for his sophomore year. A.W. earned passing grades but, because of concerns about his grasp of the subject matter, a decision was made to have him repeat his sophomore year at St. Peter’s Prep, where he played on the junior varsity basketball team. A.W. began his junior year at St. Peter’s Prep but transferred to Ramapo in October 2022, where he played as a junior on the varsity basketball team. A.W. filed an Eligibility Waiver Request with the NJSIAA prior to the start of his senior year at Ramapo in September 2023, requesting a waiver from the strict application of the Eight Semester Rule so that he could participate in high school athletics during his senior year. The NJSIAA Eligibility Committee denied the waiver request, finding that A.W. did not meet the standards for granting a waiver of the Eight Semester Rule. An appeal to the NJSIAA Eligibility Committee followed thereafter.

The Eligibility Appeals Committee (EAC) determined not to grant a waiver of the Eight Semester Rule because, *inter alia*: the family’s decision to have petitioner repeat his sophomore year was voluntary and not compelled by circumstances beyond their control; granting of a waiver would give A.W. a fifth year of eligibility to play sports, contradicting the intent of the Eight Semester Rule as well as the intent behind waivers of eligibility requirements; petitioner’s voluntary reclassification when he transferred to St. Peter’s Prep was effectively an academic redshirt; A.W.’s participation as a fifth year senior would provide Ramapo an athletic advantage, and would displace another student who only had four years to play high school basketball. The waiver was denied.

The Commissioner upheld the NJSIAA’s decision and dismissed the petition, finding that petitioner did not meet his burden 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 to deny the request for waiver was not arbitrary, capricious, or 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.