

441-25

Agency Dkt. No. 299-9/25

New Jersey Commissioner of Education

Order on Emergent Relief

M.B. and K.B., on behalf of minor child, M.B.,

Petitioner,

v.

New Jersey State Interscholastic Athletic
Association, Jefferson Township Board of
Education, Morris County, Paul Popadiuk, and
William Koch,

Respondent.

The motion for emergent relief filed by petitioners M.B. and K.B., the opposition thereto filed by the New Jersey State Interscholastic Athletic Association and Paul Popadiuk (collectively, the NJSIAA), and the opposition filed by the Jefferson Township Board of Education and William Koch, have been reviewed and considered.

This matter involves the NJSIAA's determination that petitioners' son, M.B., must sit out the first four games of the football season following his August 2025 transfer from Pope John XXIII Regional High School (Pope John) to Jefferson Township High School (Jefferson). Petitioners seek to enjoin enforcement of the NJSIAA's determination so that M.B. may play football for Jefferson pending a determination by the NJSIAA Eligibility Committee after a hearing.

The record establishes that M.B.'s recent transfer to Jefferson is the third of his high school career. M.B. enrolled as a freshman at Pope John in 2023, played the first football game of the year

there, and then transferred to Jefferson. He transferred back to Pope John for his sophomore year, and has now returned to Jefferson for his junior year. None of the transfers involved a change in petitioners' residence. Petitioners argue that the recent transfer back to Jefferson was due to a medical emergency and ongoing health issues suffered by M.B.'s mother, and they contend that it was not done in an attempt to gain an athletic advantage.

The NJSIAA provision at issue herein, NJSIAA Bylaws, Article V, Section 4.K(2) (Transfer Rule), states:

A "transfer" occurs when a student who has previously enrolled in a secondary school leaves that school and enrolls in a new one. . . . Students are entitled to one penalty-free transfer during the first six semesters after their initial high school enrollment, provided that the transfer occurs on or before the Start of Practice Date of the sports season in which the transfer occurs. . . . Students who transfer a second or subsequent time will be subject to a 30-day period of ineligibility (or ½ the Maximum Number of Contests, whichever is less) for all NJSIAA sanctioned sports in which the student participated during the 12 months preceding the transfer.

The bylaws further state, "Because the periods of ineligibility set forth in this rule are among the shortest in the nation, and the purpose of the rule is designed to deter inappropriate transfers, there shall be no waivers of this rule." NJSIAA Bylaws, Article V, Section 4.K(1).¹

The Commissioner notes that the precise relief requested by petitioners – a stay pending a decision by the NJSIAA Eligibility Committee – is not available to them. The NJSIAA's Policies and Procedures² indicate that since period of ineligibility is "intended by the member schools to serve as a deterrent for students transferring from one school to another school and is recognized as one of the most lenient transfer penalties in the United States, appeals will not be heard, regardless of

¹ Available at https://www.njsiaa.org/sites/default/files/documents/2025-08/njsiaa-constitution-25-26-final_0.pdf (last visited September 10, 2025).

² Available at <https://www.njsiaa.org/sites/default/files/documents/2024-08/njsiaa-policies-and-procedures-24-25-.pdf> (last visited September 10, 2025).

reason.” Accordingly, there will be no hearing before the Eligibility Committee, and the Commissioner cannot stay the NJSIAA’s decision until the time of a hearing that will not occur.

Nonetheless, the Commissioner has reviewed the motion for emergent relief to determine whether any stay of the NJSIAA’s decision should be entered, and has concluded that it should not, and that the motion must be denied. The standards enunciated in *Crowe v. DeGioia*, 90 N.J. 126 (1982), and codified at N.J.A.C. 6A:3-1.6, require a petitioner to demonstrate that:

1. The petitioner will suffer irreparable harm if the requested relief is not granted;
2. The legal right underlying petitioner’s claim is settled.
3. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and
4. When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.

Here, petitioners have failed to demonstrate a likelihood of success on the merits of their claim. There is no dispute that M.B.’s recent transfer is the third of his high school career, putting his circumstances squarely within the provision of the Transfer Rule regarding second or subsequent transfers.³ While there are certain exceptions under NJSIAA Bylaws, Article V, Section 4.K(2)(9), for transfers resulting from placement by the Department of Children and Families; transfers made pursuant to the laws regarding harassment, intimidation, and bullying; and military transfers, petitioners do not contend that any of these exceptions apply to M.B. Furthermore, the bylaws are clear that there are no waivers of the Transfer Rule. As such, the reason for M.B.’s transfer is irrelevant.

³ The Commissioner notes that petitioners allege that M.B.’s first transfer was improperly penalized, apparently to suggest that the current transfer should not be penalized to make up for the earlier penalty. First, even if the NJSIAA’s earlier penalty had been incorrectly imposed, and there would be no basis to relieve M.B. of a penalty that is otherwise proper simply because an error had occurred in the past. Moreover, the record reflects that the first transfer occurred after the Start of Practice Date for the season in which it occurred, meaning that M.B. was not entitled to a penalty-free transfer. NJSIAA Bylaws, Article V, Section 4.K(3). Finally, M.B. should have been subject to a period of ineligibility when he transferred to Pope John in his sophomore year, but was not because school staff mistakenly marked his transfer form to indicate that it was his first transfer, rather than his second. Therefore, M.B. has, in fact, received one penalty-free transfer during his high school career.

The Transfer Rule has been duly adopted by NJSIAA's member schools, approved pursuant to the Commissioner's oversight authority under *N.J.S.A. 18A:11-5*, and applied routinely by the NJSIAA. The Rule is also clear on its face, as well as in its underlying reasoning, in precluding waiver of the ineligibility period resulting from transfers for any reason other than change in residence or the limited listed exceptions. Additionally, it is well-established that participation in interscholastic sports is not a right, but, rather, a privilege, subject to established eligibility requirements and preconditions. *Burnside et al. v. NJSIAA et al.*, 1984 S.L.D. 1965 (App. Div. 1984), *cert. denied*, 101 N.J. 236 (1985); *Board of Education of the City of Camden v. NJSIAA*, 92 N.J.A.R. 2d (EDU) 182 (1992). For all of these reasons, petitioners' claim must fail on its merits.

Because a petitioner must demonstrate all four factors of the *Crowe* criteria in order to be awarded emergent relief, there is no need to address the remaining factors.

Accordingly, petitioners' motion for emergent relief is denied, and the period of ineligibility imposed by the NJSIAA shall stand. Additionally, because petitioner did not file a verified petition as required by *N.J.A.C. 6A:3-7.1*,⁴ there is nothing remaining for the Commissioner to address, and this matter is hereby dismissed.

IT IS SO ORDERED.⁵



COMMISSIONER OF EDUCATION

Date of Decision: September 11, 2025
Date of Mailing: September 11, 2025

⁴ Despite the lack of a verified petition, the Commissioner determined to address the motion for emergent relief pursuant to his discretion under *N.J.A.C. 6A:3-1.16*.

⁵ 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.