



State of New Jersey
DEPARTMENT OF EDUCATION
PO Box 500
TRENTON, NJ 08625-0500

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

DAVID C. HESPE
Commissioner

December 28, 2015

Steven J. Timko
Executive Director
New Jersey State Interscholastic Athletic Association
1161 Route 130 North
P.O. Box 487
Robbinsville, NJ 08691-0487

Re: Proposed NJSIAA Rule and Bylaw Amendments

Dear Mr. Timko:

On December 9, 2015, the Department of Education received correspondence from the New Jersey State Interscholastic Athletic Association (NJSIAA) concerning four ballot proposals passed by NJSIAA at its annual meeting on December 7, 2015. I reviewed these proposals in accordance with *N.J.S.A. 18A:11-5* and, for the reasons set forth below, I disapprove Ballot Proposal No. 1 and disapprove Ballot Proposal No. 4.¹

Ensuring a competitive balance and equitable playing opportunities are critical components of NJSIAA's mission. However, longstanding and equally important goals of interscholastic sports relate to preparing students for life in a global society and maximizing the benefits of diversity among student athletes from different backgrounds and life experiences, including race, ethnicity and religion. A 1982 Commissioner of Education decision perhaps says it best: "A league and conference structure that provides opportunity for healthy athletic competition among urban, suburban, rural and parochial schools adds substantially to the benefits derived from such interaction and serves the interest of preparing our young people for future involvement with persons of diverse socioeconomic, regional, and religious backgrounds."² It is with this precedent in mind that I consider the proposed ballot amendments.

Ballot Proposal No. 1:

¹ The additional two Ballot Proposals, Proposal Nos. 2 and 3, are approved without comment.

² *In re New Jersey Interscholastic Athletic Association's Proposed Realignment of Athletic Leagues and Conferences*; OAL Docket No. EDU 2561-82.

Ballot Proposal No. 1 amends the NJSIAA Bylaws, Article VIII, to include a new section governing the individual State wrestling tournament. The proposed amendment realigns the district and regional tournaments into separate tournaments for public and non-public schools. The proposed amendment also expands the number of qualifiers to the State championship through wild cards, assigning a certain number of qualifiers to public and non-public schools.

NJSIAA submitted a similar proposal in December 2008 also seeking to separate public and non-public schools at the district and regional wrestling tournament levels. After reviewing the proposal that was submitted at that time, Commissioner Lucille Davy disapproved the proposed amendment on January 15, 2009, stating that the “unconditional separation of public school wrestling programs from non-public school programs at the district and regional levels is inconsistent with the principles articulated by the Commissioner – and upheld by the courts – in previous legal decisions concerning the administration of school athletics in New Jersey.” Further, Commissioner Davy stated that if NJSIAA determined to submit a future proposal regarding the organization of athletic competition, it should be supported by a fully developed record that demonstrates how the proposal would be consistent with past precedent, such as ensuring equal athletic opportunity.

Upon reviewing Ballot Proposal No. 1, I see no reason to depart from Commissioner Davy’s prior decision. Although this proposal is somewhat different from the one considered by Commissioner Davy, the current proposal again would unconditionally separate public school wrestling programs from non-public school programs and fails to include sufficient factual support exhibiting its consistency with past precedent and principles. For example, NJSIAA’s submission does not clearly demonstrate an unfair competitive disadvantage for public school participants at the individual State wrestling tournament. Even assuming NJSIAA were able to demonstrate that such an unfair competitive disadvantage exists, the submission fails to address how the proposal maintains equal athletic opportunity for non-public school students and will be implemented in a way to not disadvantage these non-public school students. As Ballot Proposal No. 1 is inconsistent with past precedent and the principles set forth therein, I am unable to approve the proposed amendment.

Ballot Proposal No. 4:

Ballot Proposal No. 4 states:

There shall be a non-public football conference, consisting of all non-public member-schools that participate in the sport of football. Non-conference play between public and non-public members shall be at the discretion of each school.

This NJSIAA Bylaw amendment proposes a league realignment in football that includes the complete separation of member public schools from member non-public schools that are mostly religiously affiliated. The rationale provided by the NJSIAA relates to anti-competitiveness concerns involving both fairness and safety. The NJSIAA argues that many non-public schools have used their expansive attendance zones and fundraising ability to create elite programs that make them uncompetitive with virtually all public schools in their region. For this reason, the

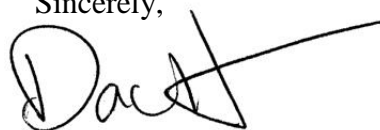
NJSIAA argues that no enrollment-based system for scheduling will be able to create a level playing field capable of accommodating these elite non-public school programs.

Even assuming that the NJSIAA has demonstrated that elite non-public schools must be separated due to competitiveness and fairness concerns, this proposal does not ensure that all other non-public schools will be able to continue to compete with appropriately matched public schools in their region. Completely excluding these non-public schools without a compelling rationale deprives them and the State of the benefits of diverse interscholastic athletic competition and equal athletic opportunity, and subjects those non-public schools to increased burdens in their attempt to provide for full schedules. Since the ballot proposal goes beyond league realignment and essentially requires mutual consent for public and non-public school competition, this proposal will take away the NJSIAA's ability to develop full schedules for non-elite non-public schools that are appropriately matched with public schools in their region. Therefore, it clearly violates the State's well-established policy of equal athletic opportunity. For all these reasons, I am unable to approve Ballot Proposal No. 4.

Further Study of Issues:

Upon reviewing the material submitted by the NJSIAA, it is clear that some NJSIAA member schools are frustrated by the non-competitive nature of playing elite non-public schools, raising both fairness and safety issues. However, non-public schools have also raised concerns about discrimination, equal athletic opportunity, and the ability to develop full schedules without increased burdens to the non-public schools. As such, I direct NJSIAA to conduct a study of these issues as soon as practicable. This study should focus on how to address the concerns with regard to competitiveness in wrestling and football, while taking into consideration how implementation of any proposed initiative will ensure equal athletic opportunity, such as the provision of full schedules without creating transportation hardships or a loss of instructional time.

Sincerely,

A handwritten signature in black ink, appearing to read "David C. Hespe", with a long horizontal stroke extending to the right.

David C. Hespe
Commissioner