

C.S.A. on behalf of his minor child, D.A., :  
 PETITIONER, :  
 V. : COMMISSIONER OF EDUCATION  
 NEW JERSEY STATE INTERSCHOLASTIC : DECISION  
 ATHLETIC ASSOCIATION, :  
 RESPONDENT. :  
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SYNOPSIS

Petitioner challenged the determination of the eligibility Appeals Committee of the New Jersey State Interscholastic Athletic Association (NJSIAA) rejecting his application for a waiver of the credit requirement for participation in athletics pursuant to NJSIAA rules. Petitioner’s request was based on the fact that D.A.’s treatment for substance abuse, which he proclaimed to have resulted from depression for which D.A. had been receiving treatment, caused D.A. to drop two classes in the Spring 2001 Semester, thereby falling short of the required 27.5 credits.

Although NJSIAA rules permit grants of waivers of the academic credit rule when a student demonstrates that noncompliance was caused by circumstances beyond his control, the rules specifically provide that treatment for substance abuse is not a circumstance beyond a student’s control, and preclude waivers in such circumstances. Thus, NJSIAA denied petitioner’s request for a waiver because his son’s failure to comply with the academic credit rule was the result of substance abuse treatment. NJSIAA also rejected petitioner’s assertion that a circumstance beyond the student’s control -- his therapeutic-based decision to attend summer camp rather than summer school -- caused him to miss summer school and, thus, earn the needed credits, and that misrepresentations from his school caused him to fail to comply with the academic credit rule, specifically noting that a lack of understanding of the rules does not constitute a basis for waiver of the same.

The Commissioner, while recognizing that the record before him could support a different result, determined that NJSIAA’s determination to deny a waiver of the academic credit rule was not arbitrary, capricious or unreasonable, and affirmed NJSIAA’s decision. In so holding, the Commissioner rejected petitioner’s assertion that procedural irregularities during the NJSIAA hearing warrant a reversal.

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.

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For Petitioner, Lynn M. Matits, Esq. (Tunick, Kupferman & Creadore)

For Respondent, Michael J. Herbert, Esq., (Herbert, Van Ness, Cayci & Goodell)

This matter has come before the Commissioner of Education by way of a Motion for Emergent Relief, filed by petitioner, *pro se*, on September 10, 2001, followed by a Petition of Appeal filed by counsel for petitioner on October 5, 2001, seeking a reversal of the determination by the New Jersey State Interscholastic Athletic Association (NJSIAA) that D.A. is ineligible to participate in football for his senior year, by application of Article V, Section 4E, the Academic Credit Rule.

Respondent NJSIAA submitted its Answer on October 12, 2001, which included a Statement of Items and transcript of the hearing before the NJSIAA Eligibility Appeals Committee (EAC) held on September 5, 2001. Thereafter, in accordance with an abbreviated briefing schedule, the petitioner and the NJSIAA filed briefs. On October 22, 2001, the Summit Board of Education filed a Motion to Intervene or to Participate; on October 23, 2001, petitioner filed an objection to this motion. However, for the reasons

set forth below, the Commissioner herein **DENIES** the Board's motion for intervention or participation. The record closed on October 23, 2001; whereupon, the Commissioner determined to consider the merits of this matter on an accelerated schedule, thereby obviating the need to decide the Motion for Emergent Relief.

The facts in this matter are largely recorded in the decision of the EAC, issued on September 12, 2001, which is excerpted below. D.A. is currently a senior in Summit High School (SHS), in the Summit School District. During his sophomore and junior years at Summit High School, he played football on the SHS varsity football team.

Based upon letters provided to the Committee from a treating psychiatrist, Dr. Michael Cannella, this student has been under treatment for depression for nearly two years. In a letter addressed to Summit High School on July 5, 2001, Dr. Cannella writes in part:

...During January of this year, his depressive symptoms worsened *which was soon followed by the onset of substance abuse. [D.] was agreeable to substance abuse treatment* and was admitted to an outpatient program, however, due to a relapse, he was then admitted to an inpatient rehabilitation program for three weeks. Upon his discharge from the rehab program, he resumed treatment with me and has remained in treatment up until this time. ...

Since the student was taken out of school in February for rehabilitation, a decision was made to withdraw from two courses since he missed a substantial part of the work. As a result, this student only achieved 22.5 credits or 5 credits less than what is required to participate in sports this year, as set forth in Article V, Section 4.E of the NJSIAA Bylaws. According to correspondence from the Summit principal's office, the school recommended that [D.] be able to attend summer school, but it was decided by his parents to send him to a "structured camp experience," at the advice of his physician. Therefore, the 5 credits were never made up over the summer based on a

parental decision. (emphasis in text) (EAC Decision, September 12, 2001 at 2)

Also before the EAC were two letters from Dr. Cannella, which affirmed, in pertinent part, that

The decision not to attend summer school was a psychotherapeutic one: it allowed him to attend a specialized camp that has further helped his emotional growth. The decision not to allow [D.] to participate in a sport program is counter-therapeutic and not helpful in maintaining his progress. \*\*\* (Dr. Cannella's Letter dated August 20, 2001)

[D.] does have a prior psychiatric history of depression. Although [D.] has had other issues during this past academic year, the primary goal of treatment has been mood stabilization. In fact, many if not all, of his recent problems are related to his depression. Thus, the treatment plan included a modification of his academic pursuits, including [foregoing] summer classes, to decrease psychosocial stresses so to enhance his recovery from his depression. [D.] is currently in remission of his depressive symptoms.\*\*\* (Dr. Cannella's Letter dated September 4, 2001)

The EAC denied petitioner's request for a waiver of the Academic Credit Rule, noting that its decision was based upon its strong policy of discouraging substance abuse, that D.A.'s failure to obtain 27.5 credits was not beyond his control, and that, therefore, a waiver was not warranted. EAC Decision, September 12, 2001 at 3)

#### PETITIONER'S POSITION

Initially, petitioner argues that, although D.A. admittedly did not earn 27.5 credits last semester, as a result of his decision to earn extra credits during his freshman and sophomore years, he has, in fact, earned eleven academic credits *more* than the minimum required by the rules to have been earned by the end of his junior year. Thus,

the NJSIAA's decision with respect to D.A.'s academic ineligibility exalts form over substance. (Petitioner's Brief at 4-5)

Petitioner further asserts that the record establishes an identifiable "circumstance beyond the control" of D.A. that forms the basis of a waiver of denial of eligibility. (*Id.* at 4) Based on the letters submitted by Dr. Cannella, petitioner argues that D.A.'s failure to make up the missed credits was based on circumstances beyond his control, in that his decision to attend camp, rather than summer school, was a psychotherapeutic one. (*Id.* at 5) Petitioner continues:

The [EAC's] denial was based strictly on [D.'s] brief history of substance abuse, and ignored the therapeutic recommendations prescribed by his treating psychiatrist, as well as petitioners [sic] decision to send him to a religious camp rather than summer school. Without explanation, the September 12, 2001 decision only mentions Dr. Cannella's letter dated July 5, 2001, notwithstanding the meaningful opinions and determinations that were expressed by Dr. Cannella in the two subsequent letters (August 20, 2001 and September 4, 2001) that were issued by him in his capacity as a licensed medical care provider. Importantly, the record in this matter contains no reports or opinions, expert or otherwise, refuting any of the determinations or opinions expressed by Dr. Cannella. (*Id.* at 6)

Petitioner next contends that irregularities have prejudiced him to the point that, in the interest of justice, a reversal of the EAC's decision is warranted. (*Id.* at 7) In this connection, petitioner first notes that staff from SHS repeatedly reassured him that D.A.'s eligibility would remain intact, and petitioner and D.A. relied upon these representations. Additionally, petitioner contends that "[o]nly recently" did he discover that he was entitled to appear before the EAC with legal counsel. (*Ibid.*) That is, on September 10, 2001, five days *after* the hearing, petitioner obtained a copy of a letter prepared by James C. Loper, NJSIAA Associate Director, which was dated

August 22, 2001, addressed to the principal of SHS and copied to SHS's Athletic Director. Therein, Mr. Loper expressly advised the recipient of her responsibility to keep the parties informed concerning all aspects of the hearing, and additionally referred to the rules governing appeals, which provide an unconditional right to appear at the hearing with legal counsel. (*Id.* at 8)<sup>1</sup> Petitioner concludes, therefore, that his "right to counsel was denied, without explanation and without cause." (*Ibid.*)

Moreover, petitioners allege that, at the hearing on September 5, 2001, counsel for the EAC "transgressed traditional notions of fair play and justice," when he appeared, at times, to be testifying himself, thereby placing his position firmly into the record, notwithstanding that he is not a voting member, which position "completely ignores all of the testimony that suggests that depression was the primary cause and that substance abuse followed long afterwards." (*Id.* at 9-10) Petitioner further alleges that counsel took "undue advantage" of the fact that D.A. was not represented by counsel, and maintains that if he had been aware of his right to counsel, petitioner would have appeared before the committee with same. (*Id.* at 10)

Accordingly, petitioner urges the Commissioner to find that the EAC's decision was arbitrary, capricious and unreasonable, and to reverse the denial of D.A.'s request for waiver of the eligibility rules.

#### NJSIAA'S POSITION

In support of its decision denying petitioner's request for a waiver, the

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<sup>1</sup>Petitioner notes that Article XIII, Section 2(5) states, in pertinent part: "[i]f an eligibility appeal proceeds to hearing, any party *shall* be entitled to be represented by counsel \*\*\*." (emphasis in text) (Petitioner's Brief at 8)

NJSIAA points to the Academic Credit Rule set forth at Article V, Section 4E of its Bylaws and Regulations, which states, in part:

To be eligible for athletic competition during the first semester (September 1 to January 31) of the 10<sup>th</sup> grade or higher, or the second year of attendance in the secondary school or beyond, a pupil must have passed 25% of the credits (27.5) required by the State of New Jersey for graduation (110) during the immediately preceding academic year. (NJSIAA's Brief at 2, *citing to 2001-2002 NJSIAA Handbook* at 45)

The NJSIAA explains that, generally, waivers of the above rule will be granted "where the student can demonstrate compliance was not possible because of circumstances beyond the student's control." (NJSIAA's Brief at 3) As to such requests for waivers, the rules further provide that, "[a] student who is involved in substance abuse is not considered to be so involved because of 'circumstances beyond his or her control'; this position constitutes an inducement for students not to involve themselves in drugs or other unacceptable behavior." (*Id.* at 4, *citing to 2001-2002 NJSIAA Handbook* at 77, *emphasis in original*)

The NJSIAA restates the facts in this matter, as found by the EAC, and counters petitioner's assertion that D.A. has exceeded the number of course credits he needs, arguing that petitioner's contention is contrary to the rules. NJSIAA argues:

Since the adoption of the Academic Credit Rule in 1984, the NJSIAA has promulgated Clarification 3 ("CL 3") to make it clear that a student could not circumvent the 27.5 credits per year requirement for eligibility during the first three and one-half years of his or her high school career by accelerating an academic course load in the period preceding the senior year. \*\*\* The text of that rule from 1984 until the present time reads as follows:

*CL 3 It is recognized that students may accelerate their academic programs during*

*their first three years of secondary schooling. Consequently, such students may be eligible in the second semester of their senior year even when they carry less than 12 ½ % of the State minimum (13.75 credits) during the first semester provided they are meeting their school district's graduation requirements and are passing all courses in which they are enrolled at the start of the first semester. (NJSIAA's Brief at 19, citing 2000-2001 NJSIAA Handbook at 46, emphasis in original)*

The NJSIAA further contends that, contrary to petitioner's assertion, there were no procedural irregularities that would warrant granting a notes that the record shows that the SHS staff "did everything imaginable to assist" D.A. both in his academic program and to obtain a waiver from the NJSIAA. (*Id.* at 20) "According to the testimony of Principal Schwartz, [the District] allowed for [D.A.'s withdrawal from two courses and a special schedule to complete his other subjects] in the expectation that the student would go to summer school (and thereby not jeopardize any athletic eligibility)." (*Ibid.*, citing to Transcript at 186)

Additionally, the NJSIAA notes that, even if petitioner's allegation that the District did not advise him of his right to counsel at the hearing is true, it could not grant a waiver on such grounds. To do so, NJSIAA reasons, would reward the failure of a member district to communicate every detail of its regulations and procedures. The NJSIAA notes, in this regard, that its *Handbook* specifically provides that

Misinterpretation of NJSIAA eligibility regulations or the failure by the schools staff to properly advise a Student-Athlete will not be considered grounds for waiver of the eligibility regulations. (*Id.* at 22, citing to *NJSIAA Handbook* at 69)

Moreover, the NJSIAA argues that there is no constitutional right to a hearing in the first place,<sup>2</sup> and, therefore, petitioner has no basis to allege that a fundamental legal right has been violated.

As to petitioner's claim that the NJSIAA's Hearing Officer's conduct was inappropriate, the NJSIAA notes that its attorney was, instead, attempting "to give appropriate notice to the participants at the hearing as to what the controlling standards were and to focus the testimony and proofs to that issue." (*Id.* at 23) A full review of the record, NJSIAA avers, demonstrates that both SHS and the NJSIAA fulfilled their obligations to petitioner, and extended to him every opportunity to justify a case for waiver. (*Ibid.*)

#### DETERMINATION

Having carefully reviewed the record of proceedings before the NJSIAA, as well as the legal arguments presented by the parties, the Commissioner must initially underscore that the scope of his review is appellate, *see N.J.S.A.* 18A:11-3; *N.J.A.C.* 6A:3-7.4; *Board of Education of the City of Camden v. NJSIAA*, 92 *N.J.A.R.2d* (EDU)182, 188 and, therefore:

1. If the NJSIAA has granted a petitioner due process and its decision is supported by sufficient credible evidence in the record as a whole, the Commissioner shall not substitute his \*\*\* judgment for that of the NJSIAA, even if the Commissioner might judge otherwise in a *de novo* review.
2. The Commissioner shall not overturn NJSIAA's

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<sup>2</sup> Participation in high school athletics is a privilege, not a right, and the privilege may be circumscribed by reasonable rules governing eligibility. *Burnside v. NJSIAA*, unpublished decision of the New Jersey Superior Court, Appellate Division, November 15, 1984 (Dkt. No. A-625-84T7), *cert. denied*, 101 *N.J.* 236 (1985).

application of its own rules absent a demonstration by the petitioner that such rules were applied in an arbitrary, capricious, or unreasonable manner. *N.J.A.C. 6A:3-7.4(a)*.

Further, the burden of proof that an action was so deficient rests with the person challenging the decision. *Kopera v. West Orange Bd. of Education*, 60 *N.J. Super.* 288, 297 (App. Div. 1960).

In the instant matter, even accepting as true for the purposes of this proceeding petitioner's claims against the Summit Board of Education with respect to specific staff members' failure to share pertinent information about the parameters of the EAC hearing, and assuming, *arguendo*, that such claims could be considered by the Commissioner within the context of an appeal of a decision issued by the NJSIAA, the Commissioner cannot accord petitioner the relief he seeks on this basis, where the *NJSIAA Handbook* specifically provides that the failure by schools to properly advise student-athletes will not be considered grounds for waiver of the eligibility regulations. (*NJSIAA Handbook* at 69) The Commissioner, therefore, determines that the Board's involvement in this matter cannot add "measurably or constructively" to the resolution herein, so as to warrant its intervention or participation, *N.J.A.C. 6A:3-1.8*; *N.J.A.C. 1:1-16.3*; *N.J.A.C. 1:1-16.6*, and, concomitantly, supplementation of the Record on Appeal, pursuant to *N.J.A.C. 6A:3-7.2(d)*.

Additionally, the Commissioner cannot find that the NJSIAA violated petitioner's due process rights. Here, two separate committees convened to consider D.A.'s request for a waiver of the NJSIAA's Academic Credit Rule. The EAC held a hearing at which Principal Schwartz, Mr. Sandor, the high school Athletic Director, and petitioner testified on D.A.'s behalf, bringing to the record a number of documents,

including Dr. Cannella's opinions and recommendations.<sup>3</sup> Upon review and "considerable discussion" of this matter (EAC Transcript at 209), by a vote of four to one, the EAC fairly determined

that the student's placement in an outpatient, and then an inpatient, rehabilitation program was directly attributable to his substance abuse. His father acknowledged that those programs were intended to deal with substance abuse cases. In point of fact, prior to being directed to a rehabilitation program, the student was under the psychiatric care of Dr. Cannella for over a year. During that period, the student participated in football and achieved success with his studies. During that period of time, he was not required to miss school or to reduce his course work because of any condition pre-dating his substance abuse. To the Committee there was no question that his absence from Summit High School during the spring of 2001 was related to substance abuse, which was being addressed in a rehabilitation program.

Additionally, [D.] did not attend summer school, but instead his family, after consulting a physician, elected to have him attend summer camp. (EAC Decision, September 12, 2001 at 2-3)

Neither can the Commissioner find that NJSIAA's Hearing Officer "transgressed traditional notions of fair play and justice," (Petitioner's Brief at 9) by setting forth on the record the NJSIAA's position with respect to a student's involvement in a substance abuse rehabilitation program, and the committee's inability to grant waivers where a student does not complete coursework as a result of his involvement in

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<sup>3</sup> In this connection, the NJSIAA indicates that it waived its timelines for submission of documents to the record, thereby allowing petitioner to enter additional letters of support to the record, notwithstanding that such documents were to be filed 10 days in advance of the hearing. (NJSIAA's Brief at 5, footnote 2)

such a rehabilitation program. (EAC Hearing Transcript at 196-198)<sup>4</sup>

Finally, although the Commissioner recognizes that the record herein *could* support a different result, he is constrained by the scope of his review to acknowledge that there *is* sufficient, credible evidence on the record to support the determination of the NJSIAA. In so doing, the Commissioner underscores that,

In the law, “arbitrary” and “capricious” means having no rational basis. \*\*\* Arbitrary and capricious action of administrative bodies means willful and unreasoning 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., N.J.*, 122 *N.J. Super.* 184, 199-200 (Ch. Div. 1973), *aff’d* 131 *N.J. Super.* 37 (App. Div. 1974).

Consequently, the Commissioner cannot find that the NJSIAA’s decision to deny D.A.’s request for waiver of the Academic Credit Rule was arbitrary, capricious or unreasonable.<sup>5</sup>

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<sup>4</sup> Counsel for NJSIAA made the following statement: “It’s a provision in the rule book of the NJSIAA, not a statute. Let me just give you background. It’s talking about waivers and when waivers are granted. One of the issues that came up many years ago was whether or not waivers ought to be granted when a youngster goes into rehabilitation. Arguments being made that this is a waiver encouraging youngsters to seek help, proactive, as Dr. Cannella mentioned earlier. There’s a lot of debate about it. There was a determination made to place in the rules that if a youngster goes into rehabilitation, while commendable, it can’t be used as an excuse or a basis of granting a waiver from the various eligibility rules including credit rule, eight semester rule, some of our provisions. The theory which people can argue about, the theory is that if students and educators know about this early, up-front that hopefully it would be an inducement for youngsters who were interested in participating in sports from getting involved in substance abuse in the first place. \*\*\* That’s a provision while I can’t speak for the committee -- I’m only the Hearing Officer. I don’t vote. That’s a provision we cannot change. We can’t alter that. We’re bound by that provision. The committee can grant waivers of the minimum credit rule in this case, but when it comes to the issue of a youngster being out of school, therefore not completing course work because of their – the youngster was involved in rehabilitation because of substance abuse, waivers won’t be granted.” (EAC Hearing Transcript at 196-198)

<sup>5</sup> This includes the NJSIAA’s refusal to allow petitioner, based on its rules, to circumvent the 27.5 credit requirement where a student-athlete has accelerated his academic course load.

Accordingly, the decision of the EAC is sustained, and the Petition of Appeal is hereby dismissed.

IT IS SO ORDERED.<sup>6</sup>

COMMISSIONER OF EDUCATION

Date of Decision: 10/30/01

Date of Mailing: 10/30/01

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<sup>6</sup> Pursuant to *N.J.S.A.* 18A:11-3, this decision shall constitute the final decision of the State administrative agency and may be appealed to the Superior Court. *N.J.A.C.* 6A:3-7.5.