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WEST WINDSOR-PLAINSBORO
REGIONAL SCHOOL DISTRICT
BOARD OF EDUCATION,

Petitioner,

v.

NEW JERSEY STATE
INTERSCHOLASTIC ATHLETIC
ASSOCIATION,

Respondent.

BEFORE THE COMMISSIONER OF
EDUCATION OF NEW JERSEY

DOCKET No.: _____

CERTIFICATION OF DAVID ADERHOLD

I, David Aderhold, Ed.D., of full age, hereby certify and state as follows:

1. I am the Superintendent for the West Windsor-Plainsboro Regional School District Board of Education ("WW-P" or the "Board") and have held this position at all relevant times herein.

2. I submit this Certification in support of the Board's Petition for Emergent Relief and supporting Motion for Emergent Relief, seeking an Order compelling Respondent New Jersey State Interscholastic Athletics Association ("NJSIAA") to allow WW-P to enact its May 23, 2017 adopted Board Resolution in order to allow WW-P student equal opportunity and access to full co-curricular athletic activities and programs.

Statement of Facts Demonstrating Exhaustion of NJSIAA Internal Appeal Procedures

3. WW-P Regional School District ("District") currently has a diverse enrollment of

approximately nine thousand, seven hundred twenty-three students (9,723) students, with the following demographic breakdown: 68.4% of students identify as Asian; 24% of students identify as Caucasian; 5.5% of students identify as Black; and 4.4% of students identify as Hispanic.¹

4. The District is comprised of the following ten (10) schools: Dutch Neck Elementary School, Maurice Hawk Elementary School, Millstrone River School, Town Center Elementary School at Plainsboro, J.V.B. Wicoff Elementary School, Village School, Community Middle School, Grover Middle School and West Windsor-Plainsboro High School North (“HSN”) and West Windsor-Plainsboro High School South (“HSS”).

5. Based on the NJSIAA’s General Public Classifications for the 2016-2017 School year, which pursuant to the NJSIAA’s website are based on student enrollment, the District’s HSN is classified as Group III and HSS is classified as a Group IV.²

6. During the 2016-2017 school year, concerns were raised in the District regarding the viability of maintaining two separate football programs at HSN and HSS. Those concerns resulted from a combination of factors, including the lack of a robust feeder program, decreasing enrollment, decreasing student interest, fear of sports injury and concussions, and the District’s inability to run sub-varsity programs.

7. In addition, due to the District’s demographic breakdown indicated above, the number of student athletes who choose to participate in football and other athletic programs is minimal in relation to the actual student body count at both high schools.

8. By way of example, for the 2016-2017 school year, despite the size of both HSN and HSS, the District’s football program was only comprised of the following student athletes: a

¹ The total percentage of 102.3% is due to those students that identify as more than one demographic.

² See also <http://www.njsiaa.org/sites/default/files/document/General%20Public%20Classifications%20%2716-%2717%20-%2010.24.16.pdf>.

total of fifteen (15) rising seniors - 11 at HSS and 4 at HSN and a total of eleven (11) rising juniors; -- six (6) at HSS and five (5) at HSN.

9. The impact of WW-P's demographic make-up on its athletic programs, in particular football, is revealed in the following excerpts from a number of District parents' letters submitted to the Board in response to concerns over the viability of its high school football programs:

At the high school level, I have been working with Coach Jeff Reilly over the past two years to recruit freshmen and upperclassmen. We were successful last year in recruiting 22 freshmen for WWP HS North. Given our community's unique demographic, it is imperative to educate many of our Asian families about football, which may be foreign to them. Given that I am Chinese, I have been serving as an example by promoting football through my boys' and husband's dedication to the sport.

I have thought over and over about what I can say, but no matter what I have started to write, it has never seemed sufficient to express the myriad of emotions I am feeling over this. The fact that we are facing the elimination of football at North is just incomprehensible to me. Whenever I have told people who don't live in WWP about the number of students in our 2 high schools but the low numbers we have had in football over the last few years, no one can understand it.

Unless you live in the largely international community like we do, it is hard to understand how that can be. But then, after I explain the demographics of our town, most people ask me why don't they just combine the two high school football teams? That is the logical thing to do. It simply defies logic that we can live in the same town and our kids can go to high schools in the same school district, but yet we are being prohibited from doing the logical thing to keep football alive in WWP.

Recently the participation of the students in athletic programs within the district has declined steadily due to a number of factors that face not only our district but which is endemic nationally. While I recognize that the district needs to respond in a manner that promotes participation within its population, clearly the demographic situation cannot be ignored.

Since the student demographics of the WW-P school district is heavily slanted towards families of Asian heritage with little past exposure to American sports particularly football, an exception should be made to allow students who have experienced this sport in the past & would like to participate on a level, safe playing field; be allowed to field a properly sized competitive team without fear of injury and have a real opportunity to fairly compete.

See a true and correct copy of Community Responses, attached hereto as "Exhibit 1."

10. As result of the above-referenced concerns, the Board and the District began to question whether it could safely field a football team at HSN for the 2017 Season, and expressed concern that it was within a season or two of possibility eliminating the HSS program as well.

11. In January 2017, the head football coaches for both HSN and HSS wrote to the West Jersey Football League ("WJFL"), outlining their concerns over the ability of their teams to safely play against other teams, and the impact that was having on their students' morale. The HSN coach also requested that the WJFL permit WW-P to have a Co-op program in order to allow both HSN and HSN to form one team in order to be able to play safely. See: a true and correct copy of the Letter from Skip Edwards to the WJFL, dated January 25, 2017 and attached hereto as "Exhibit 2;" and a true and correct copy of the Letter from Jeff Reilly to WJFL, attached hereto as "Exhibit 3."

12. To make matters more troubling, the Board and the District's concerns about being able to safely field a team and have sufficient participation numbers have also extended to baseball, softball, wrestling and lacrosse and hockey. In fact, in the foreseeable future, it is entirely conceivable that the District will also be unable to maintain two separate programs in these sports at HSN and HSS.

13. The Board and the District have long believed that the educational goals and objectives of the District are best achieved by a diversity of learning experiences and opportunities, including those that take place outside the regular classroom environment and program. In that respect, both the Board and District recognize and appreciate the educational, social and emotional value of a program of athletic competition for both boys and girls as an integral part of the total school experience and programs of athletic competition, both intrascholastic and interscholastic, offer students the opportunity to exercise and test their

athletic abilities in a context greater and more varied than that offered by the class or school or school district alone, as well as provide an opportunity for career and educational development.

14. On February 24, 2017, the Board wrote to the NJSIAA, informing Respondent that without immediate remedy, WW-P would be forced to dismantle its football program at HSN and expressed concern over the viability of the football program at HSS as well. To save its football program, the Board requested that the NJSIAA immediately consider allowing HSN and HSS to enter into a cooperative agreement for football for the 2017-2018 school year. See a true and correct copy of the Letter from David Aderhold to the NJSIAA, dated February 24, 2017 and attached hereto as "Exhibit 4."

15. On March 7, 2017, the District Superintendent and other Board representatives met with the NJSIAA. At that meeting, a two-pronged approach was proposed to sustain the viability of WW-P's football program, which consisted of either (1) an exemption from the NJSIAA's Executive Committee of its current cooperative sport guidelines in order to allow HSN and HSS to play as a single team for the 2017-2018 season; or (2) proposed changes to the NJSIAA's constitution and bylaws to allow cooperative teams in Groups II, IV, and V to exist under specific circumstances.

16. On April 5, 2017, District administrators appeared before both the NJSIAA Executive Committee and the NJSIAA Advisory Committee. At the NJSIAA Executive Committee meeting, the request for HSN and HSS to enter into a cooperative agreement was postponed and returned to the WJFL for their review and approval. At the NJSIAA Advisory Committee meeting, the District presented proposed changes to the NJSIAA Bylaws. This proposal was scheduled to be presented to the NJSIAA Executive Committee on May 3, 2017.

17. On April 5, 2017, per the decision of the NJSIAA Executive Committee earlier that day, the Board submitted a letter to the WJFL to formally request the approval and support

of a cooperative agreement between HSN and HSS for football. The Board explained that granting relief of schedule would not suffice, as the District lacked enough student-athletes to safely sustain two football programs. The Board also reiterated that this request was based entirely on a desire to allow students the opportunity to safely participate in interscholastic sports and that should its request be granted, any sanctions towards playoff or post season participation would be accepted. See a true and correct copy of the Letter from David Aderhold to Bud Kowal, WJFL President, dated April 5, 2017 and attached hereto as "Exhibit 5."

18. On April 28, 2017, the Board submitted a request for an appeal to the NJSIAA League and Conference Committee in connection with the WJFL's rejection of WWP's request for permission to enter in a cooperative agreement between HSN and HSS for football the 2017-2018 school year. Shortly, thereafter the Board received copy of the opposition submitted by the WJFL to the NSJIAA. See a true and correct copy of the Letter from Bud Kowal, WJFL President, to Members of the Executive Committee League and Conference Committee, attached hereto as "Exhibit 6."

19. On May 3, 2017, the Board appeared before the Executive Committee of the NJSIAA to present its request to advance proposed legislation regarding a formal change to the NJSIAA's Constitution and Bylaws to allow Groups III, IV, and V to enter into a cooperative agreement for football under specific provisions. See a true and correct copy of the Legislative Proposal, attached hereto as "Exhibit 7;" and a true and correct copy of the Rationale for the Legislative Proposal, attached here to as "Exhibit 8."

20. On May 12, 2017, the Board wrote to the NJSIAA League and Conference Committee submitting information in connection with the Board's requested appeal of the WJFL's decision to deny permission to enter in a cooperative agreement between HSN and HSS

for football the 2017-2018 school year . See a true and correct copy of the Letter from David Aderhold, dated May 12, 2017 and attached hereto as “Exhibit 9.”

21. In response, the League and Conference Committee set a Hearing date for May 23, 2017.

22. On May 16, 2017, representatives of WW-P met with members of the NJSIAA to discuss the upcoming League and Conference Committee Hearing, as well as the upcoming June 7th Executive Committee meeting. At this meeting, the parties discussed the concept of the WW-P Board adopting a Board Resolution that would allow students within WW-P to participate on another co-curricular or athletic program if that program were not available at their school of residence. The parties further discussed that such a concept was not a novel one, as the NJSIAA Constitution and Bylaws already allows for same for students attending Vocational-Technical High Schools and Public Academies.

23. In addition, it was also discussed at the May 16th meeting that should the WW-P Board elect to adopt such a Board Resolution, then the current pending requests for its football program could be foregone, since the Board Resolution would solve other anticipated athletic concerns facing WW-P in the future. Finally, it was discussed that if the Board adopted such a resolution, there would be no need for the May 23, 2017 League and Conference Committee Hearing or the June 7, 2017 Executive Committee Hearing. Furthermore, the parties agreed that the adoption of a Board Resolution would also eliminate the need for the proposed changes to the NJSIAA Constitution and Bylaws to be voted upon on the December 2017 ballot.

24. Later that same date, the Board prepared a proposed Resolution and shared it with the Board Committee members, all of whom shared their support for the adoption of same.

25. On May 24, 2017, the Board forwarded the proposed Resolution to the NJSIAA. See a true and correct copy of the Letter from David Aderhold to Steve Timko, dated May 24, 2017 and attached hereto as "Exhibit 10." In response, the NJSIAA stated:

I have reviewed the resolution and it does what we want it to do...I'm reaching out to our legal team to make sure that what we propose is allowed. I'm banking on the comparison to this section [of the NJSIAA Constitution and Bylaws]:

CL 8 Vo-Tech/Public Academy-Full Time-when a student-athlete elects to transfer to or from a Vocational-Technical High School to or from the district school where the student resides the student is subject to the transfer restrictions contained in Article V, Section 4.K(1) and (2). If a Vocational-Technical High School Public Academy does not offer the particular sport in which one of its full-time students demonstrates a desire to participate, that student may participate in that sport at his/her sending school upon agreement of both Principals, regardless of sports programs offered at the Vocational-Technical High School Public Academy.

Additionally, I am referencing the arrangement with the urban schools we have which allows the student to participate at their "home" school if the academy/charter/magnet school does not have a team in that sport.

See a true and correct copy of the Email from Mike Zapicchi, NJSIAA Project Mnager, to David Aderhold, dated May 17, 2017 (8:54 AM) and attached hereto as "Exhibit 11."

26. On May 19, 2017, the Board wrote to the NJSIAA, summarizing the discussions had between the parties on March 16, 2017, and informing it of the May 16, 2017 support of the proposed Board Resolution and the intent to have that Resolution formally adopted at the upcoming scheduled May 23, 2017 WW-P Board Meeting. See a true and correct copy of the Letter from David Aderhold to Steve Timko, NJSIAA Executive Director, dated May 19, 2017 and attached hereto as "Exhibit 12."

27. On May 23, 2017, District representatives appeared before the NJSIAA League and Conference for the Hearing to appeal the denial from the WJFL. After more than two hours of testimony by WW-P and WJFL representatives, the NJSIAA League and Conference

Committee voted 3-2 against the Board, thereby denying WW-P the opportunity to seek a Cooperative Agreement for HSS and HSN football.

28. Later that day, the Board unanimously adopted the Resolution allowing for participation in co-curricular and/or athletic programs at another District high school when such programs are not offered at their school of residence. See Resolution of the West Windsor-Plainsboro Regional School District Concerning Participation and Programmatic Efficiencies for Athletics and Co-Curricular Activities, attached hereto as "Exhibit 13."

29. On May 24, 2017, the Board informed the NJSIAA's Executive Committee of the Board Resolution's adoption, and requested a Hearing before the Executive Committee on June 7, 2017, pursuant to the NJSIAA's Bylaws, on the Resolution's immediate enactment. Specifically, the Board pointed to Article III, Section 6, which states:

In emergent circumstances where time will not permit a controversy to be heard by the Controversies Committee. [sic] The Executive Committee may hear such a controversy and render a decision thereon in an informal manner after all involved parties are provided with notice and an opportunity to present their positions before the Executive Committee.

See Letter from David Aderhold to Steve Timko, NJSIAA Executive Director, dated May 24, 2017 and attached hereto as "Exhibit 14."

30. On June 2, 2017, the Board received a response from the NJSIAA to its May 24, 2017 correspondence. The NJSIAA's response was puzzling, as it failed to address the Board's request to be granted a Hearing before the Executive Committee on the May 23, 2017 Board Resolution's immediate enactment and instead stated, "[a]s you know, the NJSIAA League and Conference Subcommittee has denied your request for a one-year waiver of the Co-operative Sports Program regulation. Although you have requested a platform and a hearing before the Executive Committee on 6/7/17, such a remedy is not available on this instance." See a true and

correct copy of the Letter from Steven J. Timko, NJISAA Executive Director, dated June 2, 2017 and attached hereto as "Exhibit 15."

31. This response completely failed to respond to actual underlying basis for the Board's request to appear before the Executive Committee on June 7, 2017, and failed entirely to account for the fact that on May 16, 2017, the NJISAA had agreed that the enactment of the Board's Resolution would negate the need for any other remedy proposed to the NJISAA, such as changes to the NJISAA Constitution and Bylaws or a waiver of the Co-operative Sports Program regulation for the 2017-2018 school year.

32. Accordingly, the Board requested that the NJISAA address the actual request before it, and either confirm or deny WW-P's request for a Hearing on the enactment of the May 23, 2017 Board Resolution before the Executive Committee on June 7, 2017. See a true and correct copy of the Email from David Aderhold to Steve Timko, dated June 2, 2017 (1:10 PM) and attached hereto as "Exhibit 16."

33. To date, the NJISAA has not responded or otherwise provided due process to the Board's request for a hearing on the enactment of the May 23, 2017 Board Resolution. However, the Board anticipates that a forthcoming response, if any, would be rooted in the same logic and manner as the NJISAA's June 2, 2017 response and the WJFL's April 28, 2017 letter.

34. In light of the nature of WW-P's matter of concern, the Board cannot wait any longer for a response, as football program staffing decisions for the Fall 2017 Sports Season must be made no later than the Board's meeting on June 27, 2017. Without a decision promulgated prior to that date, the Board will lose the opportunity to hire coaches and other necessary personnel; a delayed ruling, even if in the Board's favor, will prove ineffective for the 2017 football season if the Board does not have the necessary hired staff to run its football program.

35. As such, the Board has no choice but to file the herein Petition and Motion for Emergent Relief, in order to obtain the requested relief in a timely manner.

36. A true and correct copy of the NJSIAA's Constitution and Bylaws is attached hereto as "Exhibit 17."

37. A true and correct copy of the September 6, 2016 Op-Ed: The True Meaning of High School Sports, by Steve Timko, Executive Director, NJSIAA is attached hereto as "Exhibit 18."

38. A true and correct copy of the United States Government Accountability Office February 2102 Report to Congressional Requesters on K-12 Education, School-Based Physical Education and Sports Programs is attached hereto as "Exhibit 19."


39. A true and correct copy of the EXCERPTS FROM LEAGUE/CONFERENCE POSITION STATEMENT, Adopted by NJSIAA Executive Committee on April 11, 1983 and Amended on June 6, 2002 is attached hereto as "Exhibit 20."

40. A true and correct copy of the Newark Public Schools Policy 6145 on Extracurricular Activities is attached hereto as "Exhibit 21."

41. A true and correct copy of the NJISAA Report on the Rise of High School-level athletics participation is attached hereto as "Exhibit 22."

42. A true and correct audio copy of the May 23, 2017 WJFL and NJSIAA Committee Hearing is attached hereto as "Exhibit 23."

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false I am subject to punishment.



DAVID ADERHOLD

Dated: June 7, 2017