

**IN THE CIRCUIT COURT OF GREENE COUNTY, MISSOURI
DIVISION 1**

CHRISTIAN KIRK,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 1031-CV18512
)	
MISSOURI STATE HIGH SCHOOL)	
ACTIVITIES ASSOCIATION,)	
)	
Defendant.)	

**JUDGMENT
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The above entitled case came before the Court for trial on January 6, 2011. Plaintiff Christian Kirk was present in person and by counsel, David Vaughn and John Kizer. Defendant Missouri State High School Activities Association was present by its Executive Director, Kerwin Urhahn, and by counsel, Mallory Mayse. The School District of Springfield, R-12 and its Board of Education did not appear, having been earlier dismissed from the case by Plaintiff. Defendant consented to both subject matter jurisdiction and venue in this Court so as to facilitate the prompt resolution of this dispute.

Plaintiff previously made application to this Court for a Temporary Restraining Order, which was denied by the Court's order of December 22, 2010. At that time the Court ordered that the trial of this action on the merits be advanced and consolidated with the trial on Plaintiff's Application for Preliminary Injunction.

The Court has considered the testimony of witnesses and written evidence and has made judgments as to the credibility of each witness and item of evidence. The Court's

Judgment is consistent with its determination of the credibility of the evidence and of the witnesses.

The parties have an understandable interest in a prompt decision by the Court. That interest cannot, and has not, infringed on this Court's obligation to carefully weigh and consider all the facts presented, and apply the law of the State of Missouri and of the United States to those facts. All findings of fact and conclusions of law that are not specifically stated herein are consistent with the determination made in the Judgment. The Court hereby makes the following findings.

FINDINGS OF FACT

1. Plaintiff Christian Kirk, now a senior in high school, is by all accounts an accomplished young man having excelled both academically and athletically. His parents are rightfully proud of him.
2. Defendant Missouri State High School Activities Association (hereinafter referred to as the MSHSAA or the Association) is an unincorporated, not-for-profit, voluntary association of public, private, and parochial schools. The Association was formed in 1926 for the purpose of setting standards for the regulation and supervision of interscholastic activities in Missouri schools. The activities regulated include speech, debate, music and athletics. There are approximately 800 member schools in the Association, which include all of the senior high schools and 80% of the junior high schools in Missouri.
3. All fifty states have an organization similar to the MSHSAA.
4. The controversy in this case concerns the application by the Association of its By-Law 238 (hereinafter sometimes referred to as the "transfer ineligibility rule"),

which governs the student's activity eligibility upon the transfer and enrollment of students of member schools. Specifically at issue is the determination by the Association that Plaintiff was eligible to participate in varsity sports, but was subject to a constraint, therefore ineligible to participate in varsity level basketball or varsity level track and field on or before August 24, 2011.

5. The purpose of the transfer ineligibility rule includes, among other things, (1) promoting and protecting competitive equity; (2) avoiding conflicts in coaching philosophy and scheduling; and (3) encouraging students not to overemphasize athletic competition. The rule is also to prevent recruitment of student activity participants by one school from another. The school members of the Association agree to these rules, and also commit to making all students who may be affected aware of the rules.

6. The bare chronology of events relevant to this dispute includes the following:

- a. 2007 Plaintiff lived in Springfield, MO., attended his freshman year at Kickapoo High School (KHS), and participated in sports.

- b. 2008-2009 Plaintiff established residence with his mother in St. Charles, MO., and made application to the MSHSAA for a hardship or waiver exception to the transfer ineligibility rule. The hardship exception was granted. Plaintiff participated in sports at St. Charles West High School (SCW) his sophomore and junior years.

- c. June 2010 Plaintiff moved to Springfield to live with his father.

- d. June 2010 Plaintiff and his parents met with KHS athletic director and discussed the transfer ineligibility rule and requirements. Plaintiff was not able to formally enroll at KHS due to a computer problem.

- e. Summer 2010 Plaintiff attended basketball camp at KHS in Springfield and Kansas City, MO, and attended a fitness class at KHS.

- f. July 2010 Plaintiff played on an AAU traveling basketball team and was away from Springfield the entire month of July 2010.

- g. August 2010 Plaintiff enrolled at KHS on August 23, 2010, and attended class beginning August 24, 2010.

- h. August 23, 2010 KHS initiated the MSHSAA transfer form for Plaintiff seeking a hardship exception to the transfer ineligibility rule.

- i. September 7, 2010 SCW responds to the transfer form provided to them by the MSHSAA.

- j. September 8, 2010 Plaintiff verbally committed his intention to attend and play basketball for Missouri State University beginning the fall of 2011.

- k. September 9, 2010 The Executive Director of the MSHSAA issued his determination that, due to the transfer for athletic reasons, Plaintiff was not eligible for athletic participation at KHS until August 24, 2011. Schools and Plaintiff were notified of appeal rights and procedure.

- l. November 10, 2010 Plaintiff signed a National Letter of Intent with Missouri State University.

- m. November 16, 2010 Plaintiff appealed to the MSHSAA Appeals Committee. All parties were present. Testimony and evidence was presented. There was an open committee vote. The decision announced that Plaintiff's transfer was for athletic reasons, and therefore Plaintiff was not eligible for athletic participation at KHS until August 24, 2011. Schools and Plaintiff were notified of appeal rights and procedure.

- n. December 1, 2010 Plaintiff appealed to the MSHSAA Board of Directors. All parties were present. Testimony and evidence was presented. There was an open board vote. The decision was to rescind the finding that

Plaintiff's transfer was for athletic reasons, but determined the evidence was insufficient to support a hardship exception to the transfer ineligibility rule. The Board therefore granted Plaintiff athletic eligibility with constraints as to varsity level basketball and track to August 24, 2011.

- o. December 16, 2010 Plaintiff filed his Petition in the Greene County Circuit Court seeking injunctive and declaratory relief.

7. Plaintiff's father, Joe Kirk, lives and works in Springfield, and Plaintiff's mother, Karen Kirk, maintains an apartment and works in St. Charles. This living arrangement is for economic reasons personal to the family, and no other.

8. Joe Kirk is afflicted with diabetes and has been suffering from the disease since at least 1995. The disease has progressed with a variety of related symptoms, primarily affecting his lower extremities. Joe Kirk still works a full-time job and works full days. Joe Kirk would like to have his son in the home "to assist with things, mow the grass, etc."

9. Plaintiff desires to live with his father and assist him in dealing with his diabetic condition "in any way he can, help around the house, cut grass, do laundry"

10. Joe Kirk has a history of seizures for which a circumstance could arise where he may need assistance. However, that condition has been controlled with diet and medication and his most recent seizure was in 1995.

11. After learning Plaintiff was considering moving from St. Charles to Springfield, Joe Kirk and Karen Kirk each advised Plaintiff against the move warning that it may render him ineligible to participate in athletics under the MSHSAA rules.

12. Plaintiff acknowledged that his father told him [if he transferred] "he would not be able to play."

13. After learning Plaintiff was considering moving from St. Charles to Springfield, Plaintiff's coach at SCW, who was retiring, cautioned Plaintiff that such a move could put his eligibility in jeopardy. Plaintiff acknowledged that risk.

14. Plaintiff decided to, and did move to Springfield to live with his father. This decision was supported by his parents.

15. After moving to Springfield in June 2010 to live with his father, Plaintiff spent the entire month of July out of town traveling with his AAU basketball team and two to four additional days away from home with KHS basketball camp.

16. SCW made no effort to assert itself into Plaintiff's athletic eligibility status until requested by the Association to fill out the "Transferring School" form upon the application for hardship exception submitted by KHS.

17. The statement suggesting Plaintiff's transfer was for athletic reasons, made by SCW in response to the Association request, and signed by the Athletic Director of SCW, was a statement of opinion only and was accepted as such by the MSHSAA Appeals Committee and the Board of Directors as reflected in the transcript of the hearing of each proceeding.

18. No evidence was presented suggesting that the Athletic Director of SCW "objected" to Plaintiff's transfer from SCW to KHS beyond completing the requested form and providing testimony at the two earlier hearings.

19. The MSHSAA Board of Directors has ten members. Eight directors are selected from regional districts throughout the state, and two are selected statewide at-large. Two of the ten members represent districts in the St. Louis area. One other member represents a district from a location approximately fifty miles from St. Louis.

20. At the earlier Board proceeding, a board member representing a district in extreme northwest Missouri made the formal motion to determine the evidence of Plaintiff's hardship insufficient to support an exception to the ineligibility rule. The two, or perhaps three, St. Louis area board members were joined by three other board members from other regions of the state in passing the motion, thereby denying Plaintiff's application for a hardship exception as defined in the By-Laws.

21. The MSHSAA By-Law 238.1 defines residence as:

“[T]he place where the student and his/her parents have established their permanent home. This means that the family regularly eats and sleeps in a specific place of lodging. It is a place where the student and his parents are habitually present and to which when departing they intend to return.”

The By-Law further provides:

“The permanent home of a student whose parents are divorced or separated shall be the dwelling place where a student has resided with one of his parents for a majority of the overnight periods during the 365 consecutive days immediately prior to enrollment.”

22. Plaintiff's parents are not divorced, but are separated by physical location for their living arrangements. The Court makes no finding or suggestion that Joe and Karen Kirk were separated in any sense other than where they lived. Plaintiff resided with his mother in St. Charles for a majority of the overnight periods during the 365 days immediately prior to his enrollment at KHS.

23. In application of the definition of residence in By-Law 238, Plaintiff's “permanent home,” and therefore his “residence” for the applicable period was St. Charles, MO.

24. Plaintiff and his parents have long been aware of the definition of “residence” and “permanent home” under the Association By-Laws. In 2008, when

Plaintiff moved from Springfield to St. Charles, and transferred from KHS to SCW, he necessarily established residence with his mother in St. Charles. Thereafter Plaintiff applied for, and was granted a hardship exception to the transfer ineligibility rule which would have otherwise applied.

25. The Association By-Laws provide ten potential exceptions to the transfer ineligibility rule, the only one of which KHS pursued on behalf of Plaintiff was exception Number 8, Hardship. The Hardship exception reads as follows:

The Board of Directors may grant eligibility to a transfer student who does not meet the Transfer Standards when sufficient evidence is provided to show that it was **necessary** for the student to transfer because of unforeseen, unavoidable, or unusual circumstances provided the transfer was not for athletic reasons and there was not undue influence. (emphasis in original).

26. The Association, acting through its Board of Directors, has the authority to interpret the rules and provisions of the Constitution and By-Laws of the Association. *MSHSAA Constitution*, article IV, §6, and *Plaintiff's First Amended Petition*, para.15.

27. The Association rules of procedure provided all interested parties, Plaintiff included, with a forum to be heard, and to be reheard, including:

- a. Upon receipt of the transfer eligibility application from KHS, the Association sent out a standard questionnaire and collected information from SCW, the only other member school likely to have information relevant to the application. Based upon a review of the written information received, the Executive Director made the initial decision. Following the decision by the Executive Director, notice of the avenue for appeal was properly given to all parties, Plaintiff included.

b. Thereafter, the Appeals Committee heard testimony from all interested parties, which included two athletic directors, both parents and Plaintiff. In addition, the committee reviewed written evidence including medical reports and photographs. The hearing was open, the discussion was open, the hearing was recorded and the proceedings transcribed. Following the committee's decision, the avenue for further appeal was properly given to all parties, Plaintiff included.

c. Thereafter the Board of Directors similarly heard testimony from all interested persons, and reviewed the evidence anew. That hearing was likewise open, the discussion was open and the proceedings were recorded and transcribed.

28. The written transcripts of the proceeding before the Appeals Committee, and the proceeding before the Board of Directors reflect that both forums provided all parties, Plaintiff included, the opportunity to be heard and present all evidence, testimony or statements they desired. The transcripts from each proceeding also reflect that there was an open discussion of the issues presented, and consideration by the members. Finally, the transcripts reveal that in both proceedings the vote was open, not secret, and was recorded.

29. During the board proceedings, certain directors used the word "choice" when referring to Plaintiff's decision to move to Springfield and transfer to KHS. The Court has carefully reviewed the transcript of the proceedings and observes that the directors also discussed the term "necessary" in consideration of the transfer, and used the terms "unavoidable" and "unforeseen" when considering Plaintiff's transfer, and the application of the hardship exception.

CONCLUSIONS OF LAW

1. The power of a court to review the quasi-judicial actions of a voluntary association is limited to determining: (1) whether there are inconsistencies between the association's charter and by-laws and any action taken in respect to them; (2) whether the member has been treated unfairly, i.e., denied notice, hearing, or an opportunity to defend; (3) whether the association's undertakings were prompted by malice, fraud, or collusion; and (4) whether the charter or by-laws contravene public policy or law. *State ex rel., Missouri State High School Activities Ass'n v. Romines*, 37 S.W. 3d 421, 422 (Mo.App. 2001); *see also State ex rel., Missouri State High School Activities Ass'n v. Schoenlaub*, 507 S.W.2d 354, 357 (Mo. banc 1974).

2. There is no fundamental right to play high school athletics. *In re United States v. Missouri State High School Activities Ass'n*, 682 F.2d 147, 151 (8th Cir. 1982). The Supreme Court of Missouri has held that participation in Missouri interscholastic high school athletics is not a protected and legally enforceable "property right," but a "privilege." In *Schoenlaub*, the Court held:

Further, it is the opinion of the Court, that the participation in interscholastic athletics is not a property right at all, but is a privilege which the school, or a voluntary association whose rules a school agrees to follow, may withdraw if the student fails to qualify for the privilege.

507 S.W.2d at 359.

3. The Court's inquiry is confined to whether there is a "rational relationship" between By-Law 238 and any legitimate interest of the MSHSAA. *In re United States*, 682 F.2d at 152, citing *Dandridge v. Williams*, 397 U.S. 471 (1970).

4. The Eighth Circuit has addressed the constitutionality of the transfer ineligibility rule based on an equal protection analysis. In *In re United States*, three students alleged the MSHSAA transfer rule violated the Equal Protection Clause because it did not apply to “non-athletic activities.” *Id.* at 152. The transfer rule prohibited students who transferred from participating in interscholastic athletics for 365 days, but imposed no restriction on non-athletic activities. *Id.* at 149. The court held that the transfer rule was a reasonable and neutral regulation that did not burden the choice of private education, but merely attached a restriction to all transfers, except those falling into a specific exception. *Id.* at 153. The court found no violations of the federal constitution, concluding that:

A rational basis clearly exists for believing that the danger of incurring the harms involved in [the rule’s subject matter] is greater than the danger of parallel harms in other areas. . . . **Once a rational relationship exists, and it exists here, judicial scrutiny must cease. Whether the rule is wise or creates undue individual hardship are policy decisions better left to legislative administrative bodies. Schools themselves are by far the better agencies to devise rules and restrictions governing their extracurricular activities.** (emphasis added).

Id. at 152.

5. This Court is persuaded that the Association has a basis for its By-Law 238 and the basis is rational. For the reasons set forth in the Court’s findings of fact the basis includes: (1) promoting and protecting competitive equity; (2) avoiding conflicts in coaching philosophy and scheduling; and (3) encouraging students not to overemphasize athletic competition. A rule of a quasi-judicial voluntary association “will not be set aside if any state of facts reasonably may be conceived to justify it.” *McGowan v. Maryland*, 366 U.S. 420, 426 (1961).

6. The Supreme Court of Missouri has adopted a test for reasonableness:

[T]he court must determine if the board's action is so willful and unreasoning, without consideration of the facts and circumstances, and in such disregard of them as to be arbitrary and capricious. Where there is room for two opinions on the matter, such action is not "arbitrary and capricious," even though it may be believed that an erroneous conclusion has been reached.

Schoenlaub, 507 S.W.2d at 359.

7. The Court concludes that there are reasonable grounds for the manner in which the Association applied By-Law 238 because a reasonable person could believe that a legitimate goal of the Association is furthered by the application of the By-law.

8. Plaintiff has suggested that By-Law 238 is unconstitutional or violates the public interest, or otherwise not enforceable because the manner in which it is applied to him violates his parents' fundamental right to the care, custody and control of their child which is protected by the United States Constitution. Plaintiff further suggests that because his parents' fundamental right is at stake, the Court must re-examine the rule applying either a strict scrutiny standard, or a balancing of interests test. Citing *Weigand v. Edwards*, 296 S.W.3d 453 (Mo. banc 2009).

9. Inasmuch as the participation in high school athletics is only a privilege, and is not accorded the status of a "right," whether considered fundamental or otherwise, this Court is not persuaded that the actions of the Association in enforcing its transfer ineligibility rule impinges on Plaintiff's parents' right to the care, custody and control of their child. Plaintiff was free to remain under the care, custody and control of his mother in St. Charles, or free to move to Springfield under the care, custody and control of his father. Simply put, Plaintiff was free to stay in St. Charles and [presumably] play basketball at SCW, or free to move to Springfield, enroll at KHS, and endeavor to

persuade the MSHSAA that he should be granted an exception to the transfer ineligibility rule. Either way, the right of Plaintiff's parents to the care, custody or control of their child was never put at issue. Neither Plaintiff, nor his parents, were ever presented by the Association with a decision affecting their personal family relationship.

10. Plaintiff has suggested, "This case is about more than basketball or track eligibility. This case is about the right of a parent or student to make reasonable choices, where the student will live and go to school." The Court finds that this case is about basketball and track eligibility, and is not about the right of a parent or student to make reasonable choices. The student and parents were, and are, free to make choices about where the student will live and go to school as they desire.

11. Plaintiff has further suggested that By-Law 238 does not apply to his situation in that his parents are not divorced or separated. Plaintiff apparently presumes that the term "separated" necessarily means something akin to preparing to get divorced. The Court accepts the term "separated" to mean simply that Plaintiff's two parents are not living in the same location (school district). With that interpretation, the rule as to Plaintiff's residence is applied without difficulty, and in the manner in which the Association applied it. This interpretation of the rule is further consistent with the manner in which KHS interpreted it in acknowledging Plaintiff would be ineligible for athletics absent an exception, and therefore making the initial application for Plaintiff's eligibility under the "hardship" exception. Finally, this interpretation of the rule is also consistent with the manner in which Plaintiff himself interpreted it in 2008 when seeking an eligibility exception upon his change of residence to St. Charles.

12. Plaintiff has further suggested that he has been treated unfairly by the actions of the Association, and therefore the Court should intervene. The Court's authority to intervene in the quasi-judicial action of a voluntary association based on the member having been treated unfairly is related to the procedure afforded the member, as opposed to the fairness of the decision itself. *See generally Letendre v. Missouri State High School Activities Association*, 86 S.W.3d 63 (Mo.App. 2002). In *Letendre*, the court narrowed the fairness inquiry to consider whether "the member has been treated unfairly, i.e., denied notice, hearing or an opportunity to defend."

13. In examining the process from a fairness perspective, the Court finds Plaintiff, and indeed KHS and SCW, were each provided an initial review, by the Executive Director, of KHS's application for a hardship exception. Thereafter they were provided notice and opportunity to be heard at each of two more reviews. The first review was by the Appeals Committee, and the second by the Board of Directors. At each review proceeding Plaintiff was entitled to, and did, present evidence and testimony pertinent to the facts and issues of his case. This Court's review of the transcript of the proceedings before each the Appeals Committee and the Board of Directors revealed a controlled and cordial atmosphere at which all parties were given an opportunity, without interruption, to present all information they chose relevant to the inquiry at hand. The Committee/Board members asked questions, in a respectful and non-threatening manner and appropriate to the issues. Thereafter the deliberations, decision-making, and vote were open and non-secretive. The Court concludes that the procedure provided Plaintiff a meaningful opportunity to be heard, and therefore the process itself did not treat him unfairly.

14. Plaintiff has suggested that he was treated unfairly by the Board because the board members may have applied the wrong definition of “hardship” when evaluating his transfer. This inference comes from the use of the term “choice” by certain board members when discussing Plaintiff’s decision to transfer to KHS. Indeed the word “choice” is used in a hardship definition found in the MSHSAA handbook, but not applicable to the analysis of Plaintiff’s request for a hardship exception. In reviewing the transcript of the Board proceeding, the Court finds the board members also used the words “necessary,” unforeseen” and “unavoidable,” all of which are terms specifically used in the hardship definition properly applied to Plaintiff’s request. In addition, the board members had before them the transfer application documents which included documents specifically relevant to the proper hardship definition and decision. The Court concludes, upon review of the transcript as a whole, that the board members’ use of the term “choice” merely allowed them to discuss Plaintiff’s decision to move and transfer, and did not imply any misunderstanding about the appropriate hardship definition they were to apply. The Court’s review of the transcript of the Board hearing does reveal the board members generally determined Plaintiff had a choice in his decision to transfer, and may reveal many board members considered the decision Plaintiff made was reasonable.

However, as evidenced by their vote, a majority of the board members did not conclude Plaintiff’s transfer was a result of a hardship as the term is defined in the appropriate By-Law. Therefore, the Court finds Plaintiff was not treated unfairly by the Board of Directors who did not apply the wrong definition in its consideration of the facts pertinent to Plaintiff’s request for a hardship.

15. Plaintiff has further suggested that the decision of the Board of Directors was the product of “malice, fraud or collusion.” In support:

a. Plaintiff refers the Court to the questionnaire answer provided by SCW in responding to the Association transfer form. SCW marked “yes” in response to the inquiry, “Do you believe the transfer was made for athletic reasons?” Indeed, that apparently was the opinion of SCW and was presumably considered by the Association in conjunction with all other evidence. However, in the end, the Board of Directors abrogated the finding of ‘athletic reasons’ and made their decision accordingly.

b. Plaintiff refers the Court to the fact that two, and perhaps three, of ten members of the Board of Directors represent geographic regions of the state from the general St. Louis area. There is no suggestion but that the members of the Board were selected from across the state in accordance with other applicable By-laws. The voting being open and non-secretive reveals that the members did not cast their votes solely along geographic lines, and in fact the formal Board motion to find the evidence insufficient to support a hardship exception was made by a director whose regional representation was far removed from St. Louis.

Therefore, this Court draws no inference that the voting was based on anything other than each individual member’s view and analysis of the facts in light of the By-Law at issue.

c. Plaintiff refers the Court to the Student Handbook of SCW asserting that it is inadequate or that SCW did not follow it. The Court finds that Plaintiff was a student at KHS at the time his application for a hardship exception was made, and

therefore the SCW Student Handbook, whether adequate or not, is not relevant to any issue in the pending case.

d. Plaintiff refers the Court to a statement allegedly made by a board member at the hearing and directed to Karen Kirk to the effect that “Why don’t you move home and have a normal family?” Plaintiff suggests this statement demonstrates the Board’s prejudice toward his family. Such a statement is not contained in the transcript of the Board’s proceeding and only Karen Kirk testified to having heard a board member make the statement. Four other persons, each of whom were present at the board meeting, testified in the trial. None were asked, and none testified to having heard such a statement made. The reference to “a normal family” was made by Karen Kirk several times when she was addressing the Board at the earlier proceeding, and only then to explain her current living arrangement. The Court is not persuaded that such a statement was made by a board member, but in any event the open deliberations and open vote do not support an inference of the board members having been personally prejudiced against Plaintiff or his family.

e. Plaintiff refers the Court to the fact that his attorney was not permitted certain participation in the earlier proceedings in that the attorney was not allowed to make argument or to cross-examine witnesses. The attorney was permitted, although he declined, to attend the hearings with Plaintiff and consult with him as they desired. Plaintiff was entitled to a “meaningful opportunity to be heard,” and that opportunity does not require that attorneys be involved, or that arguments are made, or that witnesses be cross-examined. *See Wooten v. Pleasant Hope R-VI*

School District, 270 F.3d 549 (8th Cir. 2001). To suggest that Plaintiff must have a right to counsel, would be to suggest that no student could be suspended from a game, or removed from a team, or otherwise denied a privilege without first allowing lawyers to argue matters and cross-examine the participants be they student, teacher, referee, coach, athletic director or administrator. Such is not the law.

16. The law supports the authority of the Court to review the action of the Association if the Court finds the action was the product of “malice, fraud or collusion.” *See Letendre*, 86 S.W.3d at 66; *Romines*, 37 S.W.3d at 422; *Schoenlaub*, 507 S.W.2d at 357. However, in each of those cases involving the MSHSAA, this Court finds no indication the member or applicant ever suggested that the challenged decision was the product of such nefarious conduct. In the case at hand, while Plaintiff has made the allegation, the Court finds the allegation unsupported by fact, and therefore may not intervene in the Association decision on that basis.

17. Plaintiff suggests that the hardship exception granted upon his transfer from KHS to SCW in 2008 should be compared to the hardship exception having been denied upon his transfer from SCW to KHS in 2010. Plaintiff asserts that because both hardship requests were based on “family circumstances,” the 2010 hardship denial decision was necessarily arbitrary and capricious therefore permitting the Court to reverse the MSHSAA Board’s action. This Court cannot adopt that logic as compelling in that it ignores the reasonable expectation that the Association will consider and evaluate each member or student’s application for hardship exception individually. To do otherwise would in itself be arbitrary and capricious.

In 2008, Plaintiff presented facts and circumstances supporting his request for a hardship exception generally based on family circumstances. Those circumstances included, inter alia, that absent his transfer Plaintiff would be, at age 15, home alone in Springfield much of each week. In granting the hardship exception, thus permitting Plaintiff's athletic eligibility at SCW, the Association determined that Plaintiff's transfer was necessary, and otherwise met the requirements of the definition of hardship under the By-Laws.

In 2010, the facts and circumstances supporting Plaintiff's request for a hardship exception, although also based on family circumstances, were entirely different. Those circumstances included, inter alia, that Plaintiff desired to live with his father in Springfield to assist with matters related to his father's medical condition. In denying the hardship exception, thus restricting Plaintiff's athletic eligibility at KHS, the Association, determined that Plaintiff's transfer was not necessary, or otherwise did not meet the requirements of the definition of hardship under the By-Laws.

The Court concludes the Board's action in denying Plaintiff a hardship exception was not arbitrary and capricious based on the differing outcomes to his requests for hardship exception made based on differing circumstances.

18. Finally, Plaintiff has suggested that the evidence of a hardship necessitating his transfer from SCW to KHS was uncontroverted, and therefore mandates a decision consistent with a finding of hardship. Plaintiff's argument suggests that the Association, through its Appeals Committee, and later its Board of Directors, does not have discretion to determine the facts and apply those facts to the By-Laws at issue. Plaintiff is mistaken in this argument. In all cases cited, the function of the MSHSAA

decision-making authority is considered “quasi-judicial.” See *Lentendere, Romines*, and *Schoenlaub*. As such the board members, as decision-makers, must necessarily determine the true facts for themselves and thereafter vote accordingly. This Court cannot know the individual minds of the board members, or what facts those members found credible, and what facts otherwise. However, there was evidence that, if considered persuasive, may belie the genuineness of Plaintiff’s claim of hardship as that term is defined in the By-Laws.

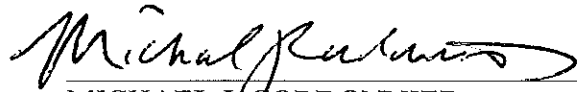
19. Judicial intervention in school policy should always be reduced to a minimum. *In re United States*, 682 F.2d at 153. Schools, as opposed to Courts, are by far the better agencies to devise rules and restrictions governing extracurricular activities. The Missouri Court of Appeals’ eloquent statement in a 1973 dispute over the MSHSAA’s summer camp rule is strong evidence that the Missouri state courts adhere to the same view. The court in *Art Gaines Baseball Camp, Inc. v. Houston*, 500 S.W.2d 735, 740-41 (Mo.App. 1973), stated:

Along with entrusting the education of our children to teachers and administrators, we also entrust the control and supervision of the extracurricular activities incident to that education. Implicit in the responsibility for these activities is the power to make reasonable rules and regulations. We are dealing here with numerous schools who have voluntarily joined an association. As members of this association, they may, by majority vote, enact rules to govern their interaction. It is obvious that chaos would result without such rules. It is also obvious that the members are in the most advantageous position to appreciate the regulations under which they must act to achieve desired goals. A court should not interfere with the enactment of those regulations as long as they are reasonable and do not infringe on public policy or law. (footnotes omitted).

JUDGMENT

It is hereby ORDERED, ADJUDGED and DECREED that Judgment be entered in favor of Defendant Missouri State High School Activities Association and against Plaintiff Christian Kirk on all claims set forth in Plaintiff's First Amended Petition. Taxable costs are assessed in favor of Defendant and against Plaintiff.

Entered this 10th day of January 2011.



MICHAEL J. CORDONNIER
Judge of the Circuit Court, Division 1
Greene County, Missouri