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March 8, 2024

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**VIA ELECTRONIC MAIL**

**(AppellateEmergent.Mailbox@NJCourts.gov)**

Richard J. Hughes Justice Complex  
25 Market Street  
Trenton, New Jersey 08625  
**New Jersey Superior Court, Appellate Division—Emergent  
Application**

**Re: Manasquan Board of Education v. NJSIAA, et al.**  
**Docket Number: OCN-C-48-24**  
**Agency Docket No.: 59-3/24**

Dear Emergent Duty Appellant Division Judge:

Enclosed, with Co-Counsel Michael J. Gross, Esq. of Kenney, Gross,  
Kovats & Parton, please find our joint Application for Permission to File  
Emergent Appeal, and accompanying materials.

Thank you for your attention to this matter.

Respectfully,



**GERALD H. CLARK**  
For the Firm

Enclosures

cc: Hon Mark A. Troncone, P.J. Ch. (Via Electronic Filing)  
All Counsel (Via Electronic Filing)

Cover Letter3.wpd



New Jersey Judiciary  
Superior Court – Appellate Division  
**Application for Permission to File Emergent Motion**

**To:** Appellate Division Emergent Judge                      **Date:** 3/8/2024  
**From:** Gerald H. Clark, Esq. and Michael J. Gross, Esq.      **Telephone:** (7<sup>^</sup>                      x.

The following questions are to be answered by the attorney or self-represented litigant requesting permission to file an emergent motion. This questionnaire is designed to assist the court's determination respecting its further instructions. **Completion of This Application Does Not in Any Sense Constitute the Filing of an Appeal or Motion.** There is no right to be heard orally on an emergency application. Further instructions will come from the court.

Except by permission of the court, the only documents you may submit with this application are: a copy of the decision being appealed, any opinion or statement of reasons given by the trial judge or agency, and any order or decision denying or granting a stay. A copy of this application must be served simultaneously on both your adversary and the trial judge or agency. No answer shall be filed unless directed by the court.

If the court grants you permission to file an emergent motion and you have not previously filed a motion for leave to appeal or notice of appeal (whichever is applicable), you must simultaneously file one. See njcourts.com for notice of appeal and Court Rules. You must also pay the applicable filing fee (\$50 for a motion for leave to appeal; \$250 for a notice of appeal), direct the charging of an attorney's account with the Superior Court, or file a motion to proceed as an indigent and supporting certification.

Case Name: Manasquan Board of Ed. v. New Jersey Interscholastic Athletic Assoc. et al.

Appellate Division Docket Number: (if available): \_\_\_\_\_

Trial Court or Agency Docket Number: DCN-C-48-24/ Agency Dict. No. 59-3/24

1. What is the vicinage of the matter? (i.e., what judge, in what county or what agency entered the decision?)  
  
Please see attached supplemental responses.

**MANASQUAN BOARD OF EDUCATION,  
v.  
NEW JERSEY STATE INTERSCHOLASTIC ATHLETIC ASSOCIATION (NJSIAA)**

**Emergent Appeal Questions and Answers**

**1. What is the vicinage of the matter? (i.e., what judge, in what county or what agency entered the decision?)**

- i. The Honorable Mark A. Troncone, P.J. Ch. in Ocean County.
- ii. Kevin Dehmer, Acting Commissioner, State of New Jersey Department of Education

**2. a) What is your name, address, including any e-mail address, phone number and fax number?**

Gerald H. Clark, Esq.  
811 Sixteenth Ave.,  
Belmar, NJ 07719  
[REDACTED]  
[REDACTED] 732-894-9647 (F)

Michael J. Gross, Esq.  
214 Park Ave.  
Manalapan, NJ 07726  
[REDACTED]  
[REDACTED]

**2. b) Who do you represent? (i.e., client, yourself)**

Manasquan Board of Education

**3. List the names of all other parties and name, address, including any known e-mail address, phone number and fax number of attorney for each.**

Camden City Board of Education  
Louis Cappelli Jr., Esq.  
Florio Perrucci Steinhardt Cappelli & Tipton, LLC  
1010 Kings Highway, Building 1, 2nd Floor  
Cherry Hill, NJ 08034.

LCappelli@floriolaw.com

[REDACTED]  
[REDACTED]

New Jersey State Interscholastic Athletic Association and Colleen Maguire  
Steven P. Goodell, Esq.  
Parker McCary  
3840 Quakerbridge Road, Suite 200  
Hamilton, NJ 08619

[REDACTED]  
[REDACTED] ary con  
[REDACTED] 2024-01-20 (1)

#### 4. What is the nature of the emergency?

We represent the Manasquan Board of Education in this matter which originated Wednesday evening when we filed an Order to Show Cause with the Chancery Division seeking to temporarily enjoin the New Jersey State Interscholastic Athletic Association (“NJSIAA” or “Association”) from conducting the Boy’s Varsity Group 2 State Championship Game currently scheduled to take place this Saturday at noon, March 9, 2024 between Camden High School and Arts High School (Newark).

On March 5, Manasquan High School played Camden High School in the semifinal game. Manasquan won the game by one point on a buzzer beater. The official with the clearest view properly called the shot good, the game concluded, and at least two of the three game officials left the court. Moments after, because of apparent improper involvement/interference by the coach of Camden and/or an on site representative of the NJSIAA, Derrick Sellers, referees were apparently cajoled back onto the court, with one referee improperly overturning the referee who got the call right. The basket was declared no good for time expiring and Camden High School was improperly declared the winner.

The next day, on March 6, the game officials and the NJSIAA issued statements that the original call was correct and Manasquan High School should have been declared the winner. Despite Manasquan having filed an immediate appeal with the NJSIAA, it refused to enforce its own ByLaws and Rules and properly declare Manasquan the winner of the game and advance to the championship. Instead it has scheduled the championship game for Saturday, March 9 between Camden High School (the in fact loser of the semifinal game) and Arts High School (Newark).

**5. What is the irreparable harm, and when do you expect this harm to occur?**

If the championship game is not put on hold pending this Court's review of this matter, irreparable harm and injustice will result because Manasquan High School will not get the opportunity to play in the championship game, having rightfully won the semifinal game. This travesty continues to cause immense heartbreak to the players, coaches, fans and indeed much of the broader community. Beyond that, there is further harm to the players because playing in a state championship game can have a substantial impact on their recruiting and scholarship prospects.

**6. What relief do you seek?**

Temporarily enjoining tomorrow's championship game until the Court makes the final decision in this matter. Under *N.J.S.A.* 18A:11-3 this Court has explicit Authority to pass on issues involving the NJSIAA and Department of Education, including for NJSIAA's failure to adhere to its own Bylaws, Constitution and Rules.

**7. Do you have a written order or judgment entered by the trial judge or a written agency decision? You must attach a copy of the order, judgment or decision.**

Yes. Please see attached.

**8. a) Have you filed for a stay before the trial court or agency?**

Yes.

**8. b) If so, do you have a court order or agency decision denying or granting same? Attach a copy of any such order or decision. Before you seek a stay from the Appellate Division, you must first apply to the trial court or agency for a stay and obtain a signed order or decision or other evidence of the ruling on your stay application. (Court Rules 2:9-5 and 2:9-7)**

We filed an Order to Show Cause to stay the championship game which is to proceed tomorrow. The application was denied for lack of jurisdiction.

A separate appeal was filed with the Department of Education through their internal appeal process, which was denied as of 12:23 pm today. A stay was requested with the Commissioner in our original application and is being reiterated concurrent with this appeal.

**9. If you did not immediately seek a stay from the trial court or agency, or if you did not immediately file this application with the Appellate Division after the trial court or agency denied your stay application, explain the reasons for the delay.**

N/A

**10. Are there any claims against any party below, either in this or a consolidated action, which have not been disposed of, including counterclaims, cross-claims, third-party claims and applications for counsel fees? If so, the decision is not final, but rather interlocutory, and leave to appeal must be sought. (Court Rules 2:2-4 and 2:5-6)**

No.

**11. If the order or agency decision is interlocutory (i.e., not final), are you filing a motion for leave to appeal?**

The order dismissing the Chancery matter on the basis of no jurisdiction is final. Similarly, the Acting Commissioner's decision is final for purposes of agency determination.

**12. If interlocutory, are you filing a motion to stay the trial court or agency proceeding?**

N/A

**13. If the order, judgment or agency decision is final, have you filed a notice of appeal?**

Not at this time. The championship game is set to take place tomorrow.

**14. What is the essence of the order, judgment or agency decision?**

It is twofold. First, the Ocean County Chancery Division declined to exercise jurisdiction in this matter under *N.J. Court Rule 2:2-3(a)(2)*, despite that application not having been any kind of appeal of an agency decision. As clarified at oral argument before Judge Troncone yesterday, that application was limited to putting the championship game on hold pending appeal of the NJSIAA's decision to the Department of Education. As such the Chancery Court did not reach our request for temporary restraints and dismissed the matter.

Second, the Commissioner concluded he was without authority to consider the NJSIAA's determination. However, State Agencies, including the NJSIAA, must not act in an arbitrary, capricious or unreasonable fashion. *Brady v. Bd. of Review*, 152 N.J. 197, 210 (1997) (A final

decision of an administrative agency should not be disturbed unless it is arbitrary, capricious, or unreasonable.). *See also Henry v. Rahway State Prison*, 81 N.J. 571, 580 (1980). Here it is clear that the NJSIAA acted in an arbitrary and capricious fashion, and the Acting Commissioner failed and/or refused to consider same. Moreover, the case relied upon by the Acting Commissioner, *Hazlet BOE v. NJSIAA*, Commissioner Decision 399-94E (1999) is readily distinguishable from the instant matter.

Specifically, this matter does not question a referee's call of balls and strikes. Rather, it was highly unusual for what everyone agrees was the correct call made by the referee with the clearest angle, to be overturned after interference from a coach and/or NJSIAA representative in a state tournament. Under these circumstances the ByLaws and Constitution of the NJSIAA, read in *pari materia* with the National Federation of State High School Association ("NFHS") Rules, which the NJSIAA is bound to follow, compel the Association to utilize its own undisputed video to declare Manasquan the rightful winner.

This case does not question a judgment call of a referee. It seeks review of an arbitrary and capricious failure of the Acting Commissioner of Education to enforce the ByLaws, Constitution and Rules of the NJSIAA.

**15.a) Has any aspect of this matter been presented to or considered by another judge or part of the Appellate Division by emergent application or prior appeal proceedings? If so, which judge or part?**

No

**15. b) Have the merits briefs been filed in this matter? If so, has the matter been calendared to a part of the Appellate Division?**

No

**16. a) Have you served simultaneously a copy of this application on both your adversary and the trial judge or agency?**

Yes

**16. b) If so, specify method of service.**

Electronically

**17. a) Have any transcripts been ordered (particularly of the trial judge's challenged ruling)?**

Yes

**17. b) If so, when will the transcript(s) be available?**

The transcript has been requested on an expedited basis.

**18. Please give a brief summary of the facts of your case.**

Please see #4 above.

**19. What legal citation (i.e., statute, regulation, court case) is most important for the proposition that you are likely to prevail on appeal?**

With regard to the Acting Commissioner's determination, *Brady v. Bd. of Review*, 152 N.J. 197, 210 (1997) (A final decision of an administrative agency should not be disturbed unless it is arbitrary, capricious, or unreasonable.) *See also Henry v. Rahway State Prison*, 81 N.J. 571, 580 (1980); *Bd. of Educ. v. N.J. State Interscholastic Ath. Ass'n*, 2015 N.J. Super. Unpub. LEXIS 811 (App. Div. Apr. 10, 2015) (In reviewing decisions made by the NJSIAA, the court's overriding concern is determining what is fair.) The Acting Commissioner of Education's decision failed to analyze or even consider whether the NJSIAA acted arbitrarily, capriciously or unreasonably. Further, the *Hazlet* decision relied upon by the Acting Commissioner is distinguishable from this matter in that, in *Hazlet*, the errors at issue were deemed egregious by the losing party; here, the manifest errors have been deemed egregious by the NJSIAA, and the referees, themselves, through their subsequent statements. Further, video review was not available in 1999, whereas here, it is the NJSIAA's own video footage that captured this plain error.



19. What legal citation (i.e., statute, regulation, court case) is most important for the proposition that you are likely to prevail on appeal?

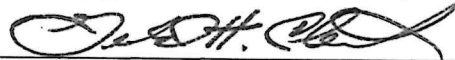
Please see attached supplemental responses.

By signing below, I certify that this application is made in good faith, and not for any improper purpose such as to harass or to cause unnecessary delay or expense. I further certify that the factual statements contained in this application are true to the best of my knowledge.

Date: 3/8/2024

Gerald H. Clark, Esq.

Print/Type Name of Attorney or Self-Represented Litigant



Signature of Attorney or Self-Represented Litigant

Manasquan Board of Ed. v. New Jersey  
Interscholastic Athletic Assoc. et al.

\_\_\_\_\_ Case Name

**Superior Court of New Jersey  
Appellate Division**

Appellate Division

Docket Number

(if available) \_\_\_\_\_

Trial Court or

Agency Below: Ocean County / Dept. of Ed.

Trial Court or

Agency Docket

Number: OCN-C-48-24/Agency P/Clk.  
Vo. 54-31

**Disposition on Application for  
Permission to File  
Emergent Motion - Denied**

**Do Not Fill in This Section – For Court Use Only**

The application of \_\_\_\_\_ for leave to file an emergent motion on short notice is **Denied** for the following reasons:

- The application on its face does not concern a threat of irreparable injury, or a situation in which the interests of justice otherwise require adjudication on short notice. The applicant may file a motion with the Clerk's Office in the ordinary course.
- The threatened harm or event is not scheduled to occur prior to the time in which a motion could be filed in the Clerk's Office and decided by the court. If the applicant promptly files a motion with the Clerk's Office it shall be forwarded to a Panel for decision as soon as the opposition is filed.
- The applicant did not apply to the trial court or agency for a stay, and obtain a signed court order, agency decision or other evidence of the ruling before seeking a stay from the Appellate Division.
- The application concerns an order entered during trial or on the eve of trial as to which there is no prima facie showing that the proposed motion would satisfy the standards for granting leave to appeal.
- The timing of the application suggests that the emergency is self-generated, given that no good explanation has been offered for the delay in seeking appellate relief. Due to the delay, we cannot consider a short-notice motion within the time frame the applicant

seeks, without depriving the other party of a reasonable time to submit opposition. And the magnitude of the threatened harm does not otherwise warrant adjudicating this matter on short notice despite the delay. If the applicant promptly files a motion with the Clerk's Office it shall be forwarded to a Panel for decision as soon as the opposition is filed.

Other reasons:

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, J.A.D.

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Date

Manasquan Board of Ed. v. New Jersey Interscholastic Athletic Assoc. et al.

\_\_\_\_\_ Case Name

**Superior Court of New Jersey  
Appellate Division**

Appellate Division

Docket Number

(if available) \_\_\_\_\_

Trial Court or

Agency Below: Ocean County / Dept. of Ed.

Trial Court or

Agency Docket

Number: OCN-C-48-24 / Agency Dkt. No. 59-3/24

**Disposition on Application for  
Permission to File  
Emergent Motion - Granted**

**Do Not Fill in This Section – For Court Use Only**

The application of \_\_\_\_\_ for leave to file an emergent motion on short notice is **Granted** on the following terms:

A. By no later than \_\_\_\_\_, one copy of the motion for emergent relief must be delivered to the chambers of Judges \_\_\_\_\_ and \_\_\_\_\_, and to all counsel/self-represented litigants. Copies must also be sent to the trial judge or agency whose decision is being appealed. If this is a newly-filed appeal, one copy each of the notice of appeal or motion for leave to appeal, and any application for a fee waiver, must also be delivered to the judges and all counsel/self-represented parties.

If the applicant is a self-represented litigant, the applicant must file the original and one copy of the motion for emergent relief with the Clerk of the Appellate Division in Trenton, by no later than the day after those papers are due to the judges' chambers, \_\_\_\_\_. If the matter is not yet pending in the Appellate Division, the applicant must, on that same schedule, file with the Clerk's Office, attention Emergent Applications Unit, the original and one copy of a notice of appeal or motion for leave to appeal, together with the required fees or an application for a fee waiver. Failure to overnight mail or hand deliver papers to the Clerk's Office or to submit the required fees may result in dismissal of the appeal and vacating of any stays granted.

If the applicant is a licensed, practicing New Jersey attorney, the emergent motion papers shall be electronically filed with the Clerk of the Appellate Division

through the eCourts Appellate e-filing system. If the matter is not yet pending in the Appellate Division, the applicant must also electronically file a notice of appeal or motion for leave to appeal through the eCourts Appellate system along with the emergent motion. Failure to electronically file papers through the eCourts Appellate e-filing system may result in dismissal of the appeal and vacating of any stays granted.

- B. Any opposition must be served and filed/e-filed by no later than \_\_\_\_\_.
- C. No reply submissions will be allowed.
- D. A copy of all papers shall be emailed to **AppellateJudge.Mailbox@njcourts.gov**. That email will suffice as service on the Judges' Chambers.
- E. Pending the court's disposition of the emergent motion, a temporary stay/other relief pursuant to Rule 2:9-8 is:
  - Denied**
  - Granted**

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F. Other terms:

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, J.A.D.

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Date

**FILED**  
MAR - 7 2024  
JUDGE TRONCONE'S CHAMBERS

Prepared by the Court

MANASQUAN BOARD OF  
EDUCATION,

SUPERIOR COURT OF NEW JERSEY  
OCEAN COUNTY  
CHANCERY DIVISION

Plaintiffs,

DOCKET NO. OCN-C-48-24

v.

**ORDER**

NJSIAA, et al.,

Defendants,

THIS MATTER being opened to the Court by Plaintiff's Order to Show Cause seeking temporary restraints pursuant to R. 4:52, and the Court having considered the papers submitted, and oral argument, for the reasons set forth on the record:

IT IS on this 7th day of March, 2024;

ORDERED, Plaintiff's Order to Show Cause and Verified Complaint is dismissed for lack of jurisdiction.

ORDERED, that a copy of this order shall be served on all parties within five (5) days hereof.

  
Mark A. Troncone, P.J.Ch.P.



State of New Jersey

DEPARTMENT OF EDUCATION

PO Box 500

TRENTON, NJ 08625-0500

PHILIP D. MURPHY  
Governor

TAHESHA L. WAY  
Lt. Governor

KEVIN DEHMER  
Acting Commissioner

March 8, 2024

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Florio Perrucci Steinhardt Cappelli & Tipton LLC  
1010 Kings Highway South, Building 1  
Cherry Hill, NJ 08034

**Re: Board of Education of the Borough of Manasquan, Monmouth County v. New Jersey State Interscholastic Athletic Association and State-Operated School District of Camden City, Camden County, Agency Dkt. No. 59-3/24**

Dear Counsel:

The petition of appeal and motion for emergent relief submitted by the Manasquan Board of Education (Manasquan) on March 7, 2024, and respondents' replies thereto, have been reviewed. Manasquan alleges that during a basketball game between Manasquan and Camden on March 5, 2024, New Jersey State Interscholastic Athletic Association (NJSIAA) officials made an erroneous call that a basket at the end of the game was made after time expired, resulting in Manasquan losing the game. Manasquan protested the determination to the NJSIAA, which denied the appeal, and now seeks to have the officials' call and the NJSIAA's determination overturned by the Commissioner.

Upon careful consideration of this matter and granting every inference to Manasquan for purposes of this proceeding, the Commissioner is unable to grant the relief requested.

Article VII, Section 1 of the NJSIAA's bylaws states:

Protests based upon an official's judgement or misinterpretation (*misapplication*) of the playing rules will not be honored.

CL 2: "Protests based upon an official's judgement or misinterpretation (*misapplication*) of the playing rules will not be honored" does not preclude a League or Conference from addressing same; however, the NJSIAA will not honor such protests for non-conference games/meets, neither will the NJSIAA hear appeals to a League or Conference decision based upon an official's judgement or misinterpretation (*misapplication*) of the playing rules.

Further, under *N.J.A.C. 6A:3-7.1(c)*, the Commissioner shall decline to hear an appeal of a "determination of the NJSIAA in an area that is expressly designated as not appealable by the NJSIAA constitution, bylaws or rules and regulations as adopted by member schools pursuant to law."

The Commissioner cannot find that the officials' decision regarding the basket was anything other than a judgment call, and the NJSIAA rules clearly state that once an official has made a judgement call, no appeals will be honored. Even if the officials' decision was not correct, under the clear and explicit bylaws of the NJSIAA, it is not reviewable. The NJSIAA's bylaws are adopted as controlling policy by boards of education when they elect to join the NJSIAA, which is a fully voluntary organization. *N.J.S.A. 18A:11-13*. Therefore, Manasquan – and every other member district – is aware that game officials will make judgment calls and applications of rule which cannot be challenged on the basis of error, and that there is no allowance for exception, even in the case of those errors which are deemed egregious by the affected party. *Bd. of Educ. of the Twp. of Hazlet, Monmouth Co. v. NJSIAA*, Commissioner Decision No. 399-94E (decided Dec. 3, 1999).

Accordingly, the Commissioner finds that the officials' decision is not reviewable, and the NJSIAA's determination not to honor Manasquan's protest was consistent with its own bylaws. The motion for emergent relief is denied, and the petition of appeal is hereby dismissed.

Sincerely,



Kevin Dehmer  
Acting Commissioner

KD/JS  
c: State Law Library

128-24