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Filed **OCT 31 2007**
ROSA JUNQUEIRO, CLERK
By *Monica D. Jones*
DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

STOCKTON UNIFIED SCHOOL DISTRICT,)	Case No.: CV033763
)	
Plaintiff,)	RULING ON APPLICATION FOR PRELIMINARY
)	INJUNCTION
vs.)	
)	
CALIFORNIA INTERSCHOLASTIC FEDERATION,)	
THE SAC-JOAQUIN SECTION OF THE)	
CALIFORNIA INTERSCHOLASTIC FEDERATION,)	
PETER SACO, and DOES 1-10, inclusive,)	
Defendants.)	

The Motion of Plaintiff Stockton Unified School District for a Preliminary Injunction herein came on regularly for hearing on October 31, 2007, in Department 13 of the above court, before Judge Lesley D. Holland. Celia M. Ruiz and David E. Lyon of Ruiz & Sperow, LLP, appeared on behalf of Plaintiff Stockton Unified School District ("SUSD"); Michael Babitzke appeared on behalf of Intervenor Gwendolyn Seumaala; J. Scott Donald of LaPlante, Spinelli, Donald & Nott appeared on behalf of Defendants California Interscholastic Federation-Sac-Joaquin Section ("CIF-SJS") and Pete Saco

1 ("Saco"); and Scott K. Holbrook of Atkinson, Anderson, Loya, Ruud, & Romo
 2 appeared on behalf of Defendant California Interscholastic Federation ("CIF").

3 The court has read and considered the written points and authorities and
 4 sworn declarations submitted in support of and in opposition to SUSD's motion,
 5 and has heard and considered the arguments of counsel. Being fully advised,
 6 the court makes the following ruling: **SUSD's motion for preliminary injunction**
 7 **is hereby denied.** A statement of the court's reasoning follows.

8

9 A. INTRODUCTION

10 Plaintiff is a public school district and seeks a preliminary injunction
 11 to stay or suspend enforcement of penalties imposed on October 16, 2007, by
 12 Defendants against Franklin High School's football program. The Intervenor,
 13 Gwendolyn Seumaala, joins SUSD's motion.

14 CIF/CIF-SJS's most recent sanctions-- issued yesterday, October 30-- are
 15 not at issue in this motion although counsel and the court have commented on
 16 them. This ruling is also not a final determination of the merits of
 17 Plaintiff's lawsuit; a final determination must await either a trial or a
 18 dispositive motion. The question of whether the sanctions imposed by CIF/CIF-
 19 SJS are too harsh is also not before the court at this time.

20 Notably, Plaintiff so far has not directly denied the specific factual
 21 allegations contained in the "CIF Sac-Joaquin Section Eligibility Decision in
 22 the Matter of Franklin High School" which declared three current Franklin
 23 players to be ineligible in addition to other sanctions. Rather, SUSD raises
 24 three technical challenges-- two procedural and one legal-- to Defendants'
 25 authority:

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- 1. That CIF violated its bylaws by the procedures it used to reach its findings and impose disciplinary action upon Franklin High School (FHS);
- 2. That CIF denied SUSD due process by denying them adequate time to prepare a defense, a pre-penalty hearing, and an impartial hearing officer; and
- 3. That CIF's action infringed upon fundamental rights of SUSD students to equal protection, travel and privacy.

For their part, Defendants contend that they have followed the rules and bylaws governing CIF and CIF-SJS. Defendants further contend injunctive relief should be denied because SUSD has failed to exhaust administrative remedies, has failed to identify a fundamental right that would support Plaintiff's due process claims, and has itself been guilty of failing to follow established rules.

B. THERE IS NO FUNDAMENTAL RIGHT TO PARTICIPATE IN EXTRA-CURRICULAR ACTIVITIES. THEREFORE, SUSD'S DUE PROCESS, EQUAL PROTECTION, TRAVEL AND PRIVACY CLAIMS ALL FAIL.

The right to a *public education* is a fundamental right under California's Constitution¹. However, no California case has extended or construed this right to include participation in interscholastic athletics. Quite the opposite: California courts have repeatedly held that there is no protected interest under either the United States or California Constitutions to participate in public school extracurricular activities including, specifically, interscholastic sports. Steffes v. C.I.F. (1986) 176 Cal.App.3d 739; Jones v. C.I.F. (1988) 197 Cal.App.3d 751; Ryan v. CIF (2001) 94 Cal.App.4th 1048. See also, Hartzell v. Connell (1984) 35 Cal.3d 899, wherein the California Supreme Court held that the right to public education was fundamental under the California Constitution. The court in Steffes noted that

¹ Interestingly, a public education is not a fundamental right under the United States Constitution.

1 despite the opportunity to include participation in extracurricular activities
2 within the scope of this fundamental right, the Supreme Court declined to do
3 so.²

4 This means that no equal protection argument can be based on a denial of
5 eligibility. It also means that there is no federal claim to due process
6 guarantees. A claim of due process violation can still be made under the state
7 constitution but requires that the claimant identify a benefit or interest
8 conveyed under the state constitution or under a state statute. Here, no such
9 qualifying benefit or interest is identified.

10 Absent a fundamental right, a trial court must apply a "rational basis"
11 test to determine whether Defendants' actions were lawful. As noted in the
12 cases cited above, California applies a "two-tier test" of equal protection to
13 review discriminatory legislative classifications. "The applicable test
14 depends on the nature of the right infringed. When the state³ regulates
15 economic or social relations, and no fundamental right is in issue, there must
16 be a rational relationship between the law and the state goal. The strict
17 scrutiny test for which Steffes argues applies only in cases involving 'suspect
18 classifications' or touching on 'fundamental rights.'" Steffes, *supra*. p. 746,
19 (citations omitted). "Once a rational relationship exists...judicial scrutiny
20 must cease. Whether the rule is wise or creates undue individual hardship are
21

22 _____
23 ² The Steffes court specifically noted that Chief Justice Bird, the author of the Hartzell opinion, wrote a separate
24 concurring opinion in which she stated that extra-curricular activities "are encompassed within the concept of
25 education as a fundamental interest," but noted that this was not a position taken by the majority. (see Hartzell, *supra*,
at p. 923, as cited in Steffes, *supra*, at 747, fn. 3.)

³ CIF is a voluntary organization that consists of school and school related personnel with responsibility for
administering interscholastic athletic activities in California's secondary schools. Pursuant to Education Code
sections 33353 and 35179, CIF is granted legislative discretion in such matters. Therefore, CIF and the Sac-Joaquin
Section are deemed state actors for purposes of constitutional analysis.



1 policy decisions better left to the legislative and administrative bodies..."

2 Steffes, supra, at p. 749, (fn omitted).

3 Cases cited by Plaintiff-- California State University, Hayward v.
4 National Collegiate Athletic Association (1975) 47 Cal.App.3d 533, and Trustees
5 of the California State University and Colleges v. National Collegiate Athletic
6 Association (1978) 82 Cal.App.3d 461-- are inapposite.

7

8 C. SUSD MUST EXHAUST ADMINISTRATIVE REMEDIES BEFORE SEEKING EQUITABLE
9 RELIEF IN THE COURTS.

10 CIF is charged by the Legislature to implement a variety of policies,
11 including "Establish[ment of] a neutral final appeals body to hear complaints
12 related to interscholastic athletic policies." Education Code section
13 33353(a)(3). SUSD'S points and authorities are silent concerning its failure
14 to pursue administrative remedies through CIF's appeals procedures.
15 Plaintiff's counsel admitted at the today's hearing that SUSD has still not
16 filed an administrative appeal.

17 SUSD must certainly be aware of its obligation to pursue administrative
18 remedies. Not only did this court cite the failure to file an appeal with the
19 CIF and/or CIF-SJS as one of several reasons for denying SUSD's application for
20 a temporary restraining order, SUSD's own papers cite the case of California
21 State University v. NCAA, supra, in which the court acknowledged that the
22 exhaustion doctrine applies within a voluntary association. Moreover, in both
23 Ryan v. C.I.F. and Jones v. C.I.F., both supra, the reviewing courts noted that
24 the students in question had appealed the determinations of ineligibility
25 through the CIF appeals process.

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1 In Westlake Community Hospital v. Superior Court of Los Angeles County

2 (1976) 17 Cal.3d 465, the California Supreme Court explained:

3 "It is the general and well established jurisdictional rule
 4 that a plaintiff who seeks judicial relief against an organization
 5 of which he is a member must first invoke and exhaust the remedies
 6 provided by that organization applicable to his grievance. This
 7 rule is analogous to the rule requiring the exhaustion of
 8 administrative remedies as a condition precedent to resorting to
 9 the courts and to the rule requiring the parties to a contract for
 10 arbitration or disputes to exhaust those remedies before seeking
 11 judicial relief. Such rules . . . make possible the settlement of
 12 such matters by simple, expeditious and inexpensive procedures, and
 13 by such persons who, generally, are familiar therewith. Such
 14 internal remedies are designed not only to promote the settlement
 15 of grievances but also to promote more harmonious relationships and
 16 the courts look with favor upon them." Westlake, at p. 474-475,
 17 (citations and internal quotations omitted.)

18 There are exceptions to the exhaustion doctrine, but it is the burden of
 19 the party claiming the benefit of the exception to argue for its application
 20 and SUSD has failed to do so. CIF has appeal procedures that can result in a
 21 reasonably quick review of any disciplinary action or determination of
 22 eligibility. If SUSD had promptly-- within a day or two after October 16--
 23 pursued its administrative remedies, its appeal could have been heard about the
 24 same time as today's court hearing. The failure to exhaust administrative
 25 remedies, alone, is fatal to SUSD's motion.

26 D. SUSD HAS NOT SHOWN THAT CIF OR CIF-SJS VIOLATED THE BY-LAWS OR THAT THE
 27 COMMISSIONER EXCEEDED HIS AUTHORITY UNDER THE BY-LAWS.

28 SUSD also argues that Defendants have failed to follow the by-laws of CIF
 29 and CIF-SJS. In particular, SUSD points to CIF-SJS rules 500.3, 500.4, 500.5,
 30 and 500.6, all of which are contained in Article 5, General Rules, of the CIF-
 31 SJS bylaws. Rules 500.3-500.5 deal plainly concern procedures to be followed

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1 when a member school suspects another member school of a violation of CIF
2 rules. These rules include Rule 500.6, which reads:

3 "The Section Commissioner has the authority to contact a
4 school regarding a possible bylaw infraction, especially when
5 a potential infraction could be currently taking place. This
6 action can supersede the use of bylaws 500.3 through
7 500.5. The Section Commissioner can forward any findings to a
8 league and request that the league hold a hearing regarding
9 any possible violations and implementation of Bylaw 500.6.
10 All student eligibility cases or inquiries regarding possible
11 violations of recruiting (Bylaw 510) must follow the
12 procedures outlined in bylaws 500.3 through 500.5"

13 SUSD relies particularly on the last sentence of the rule. However,
14 bylaws 500.3 through 500.5 are inapplicable if a violation is not suspected by
15 a member school or if the school itself is complicit in the violation. Rule
16 500 and its subparts must be read in context-- procedures to be followed when a
17 member school suspects another member school of a violation-- and in
18 conjunction with the bylaws as a whole. Rule 500.6 could have better drafted,
19 but SUSD's interpretation ignores context and is nonsensical if applied to the
20 present situation.

21 Although the question of whether Defendants correctly interpreted the by-
22 laws governing eligibility is not directly before the court at this time, the
23 court does note:

- 24
- 25 • Bylaw 207.B reads (in relevant part): "A student who transfers from a school located in the U.S., a U.S. Territory, a U.S. Military Base, or Canada (to be referred to as School A) to school B, without a change of residence on the part of his/her parents, legal guardians, or caregiver with whom the student was living when the student established residential eligibility, from school attendance area A to school attendance area B, shall be residentially eligible for all athletic competition EXCEPT varsity level competition in sports in which the student has competed in any level of interscholastic competition during the 12 calendar months preceding the date of such transfer. (defined as LIMITED ELIGIBILITY)."

- 1
- 2 • Bylaw 207.B continues: "Based on the conditions below, the student shall be ineligible for all sports for one calendar year unless otherwise noted."
 - 3 • A condition listed includes: "There is evidence of the use of undue influence by someone associated with either school in order to retain or secure this student's enrollment."
- 4

5 CIF-SJS's 'Definition of Terms' explains that students establish their
6 "Initial Residential Eligibility" at their school of choice entering the ninth
7 grade, or the 10th grade of a three-year high school. This would mean that the
8 students in question established their Initial Residential Eligibility in
9 Samoa. If the players relocated to Stockton, while their respective caregivers
10 at the time of their Initial Residential Eligibility stayed in Samoa (as
11 appears to be the case here), they would fall under bylaw 207.B. Under bylaw
12 207.B, such players would be ineligible to play varsity level competition in
13 sports in which they had competed at any level during the preceding 12 calendar
14 months. They also would be ineligible if there was evidence of undue influence
15 by someone associated with either school to secure their enrollment. Thus, it
16 appears that the Defendants acted within the rules and by-laws, and that SUSD's
17 charge that the Section Commissioner made an unlawful order or exceeded his
18 authority is not supported.

19

20 E. SUSD HAS NOT FOLLOWED THE RULES REQUIRED OF MEMBER SCHOOLS.

21 As noted in CIF's written Opposition, and by interested news
22 organizations, SUSD allowed the three student-athletes in question to play
23 football with the Franklin team on October 26, 2007. This court, of course,
24 had previously denied SUSD's motion for a temporary restraining order. SUSD
25 did not violate any order of this court. However, given denial of the TRO,

1 SUSD was bound to comply with CIF/CIF-SJS's order determining the three players
2 to be ineligible. Such was the status quo.

3 "One who seeks equity must do equity." Dickson, Carlson & Campill v.
4 Pole (2000) 83 Cal.4th 436, 444-446, citing 2 Pomeroy, Equity Jurisprudence (5th
5 ed., 1941) section 385, pp. 51-53.

6 Plaintiff proclaims that it is acting only in the best interests of its
7 student-athletes-- not just the three players immediately impacted by CIF's
8 decision, but also for future Franklin teams and individual players. Yet, by
9 permitting three ineligible players to participate in one high school football
10 game, SUSD-- a public school district, no less-- has shown an appalling and
11 reckless disregard for the interests of Franklin's other current players as
12 well as the entire Franklin community.

13 F. PLAINTIFF HAS FAILED TO SHOW A REASONABLE LIKLIHOOD OF SUCCESS ON THE
14 MERITS.

15 In order to prevail in a request for preliminary injunctive relief, SUSD
16 must show a likelihood that it will prevail on the merits. For the reasons set
17 forth above, based on the evidence presented so far, success on the merits
18 seems unlikely. Moreover, Plaintiff and the Intervenor cannot show irreparable
19 injury in light of the California cases cited hereinabove. Plaintiff has been
20 dilatory in pursuing the administrative remedies that are available to all
21 member schools. Plaintiff's evidence is insufficient to show that Defendants
22 failed to follow CIF or CIF-SJS bylaws, or that the Commissioner exceeded his
23 authority.

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