IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

A.M., a minor, by and through JAMIE and RON McKALIP, his parents and natural guardians, et. al.,	:	
Plaintiffs,	:	
	:	NO. 1:20-cv-00290-RAL
v.	:	Electronically Filed
PENNSYLVANIA INTERSCHOLASTIC ATHLETIC ASSOCIATION, PIAA DISTRICT 10 COMMITTEE and MICHAEL FERRY,	:	
Defendants.	:	

BRIEF OF DEFENDANTS IN OPPOSITION
TO PETITION FOR PRELIMINARY INJUNCTION

INTRODUCTORY STATEMENT

In this civil action, Plaintiffs seek emergency injunctive relief compelling Defendants Pennsylvania Interscholastic Athletic Association, Inc. ("PIAA"), the PIAA District 10 Committee, and/or Michael Ferry (the PIAA District 10 Golf Tournament Director) to permit them to participate in the PIAA District X golf championship tournament on Friday, October 3, 2020, even though they have not qualified to so participate.

For the fall sports season in 2020, PIAA District X reduced the number of students who could participate in the tournament to reduce the risk of COVID-19 infection. While Plaintiffs would have qualified for the tournament last year, the revisions in qualifiers for the 2020 tournament leave them out of this year's tournament. The decision made by PIAA was not made lightly since PIAA seeks to provide opportunities to participate. However, it was made consistent with the recommendations of PIAA's Sports Medicine Advisory Committee, its Golf Steering Committee, and PIAA's concerns over permitting events likely to promote the spread of COVID-19. Under applicable law, the decision is not reversible unless it constituted arbitrary

and capricious discrimination, which it did not. Plaintiffs' Petition for Preliminary Injunction (the "Petition") should be denied as they are not likely to succeed on the merits of their claims.[1]

Moreover, on the critical issue of a likelihood of irreparable harm, this Court, as well as all other federal courts sitting in Pennsylvania, and Pennsylvania appellate courts, have held that the loss of athletic eligibility for even an entire season does not constitute irreparable harm justifying a grant of injunctive relief. *See Dziewa v. Pennsylvania Interscholastic Athletic Ass'n, Inc.*, 2009 WL 113419, 2009 U.S. Dist. LEXIS 3062 (E.D. Pa. 2009) ("This Court, as well as all other federal courts, have previously and consistently held that ineligibility for participation in interscholastic athletic competitions alone does not constitute irreparable harm."); *Revesz v. Pennsylvania Interscholastic Athletic Ass'n, Inc.*, 2002 Pa. Commw. LEXIS 419, *16, 798 A.2d 830, 837 (2002) ("the loss of an opportunity to play interscholastic athletics for one year does not constitute irreparable harm."). Thus, the loss of an opportunity to participate in a single tournament does not constitute irreparable harm.

I. PROCEDURAL BACKGROUND

On September 30, 2020, Plaintiffs filed a writ of summons and their Petition requesting injunctive relief in the Court of Common Pleas of Crawford County, Pennsylvania. On October 1, 2020, because the Petition averred violations of federal Constitutional law, the Defendants removed the case to this Court. This brief is submitted by the Defendants in opposition to Plaintiffs' request for preliminary injunction.

[1] Plaintiffs' claim of denial of equal protection is similarly flawed. The rule in question easily survives constitutional scrutiny and Plaintiffs cannot demonstrate discriminatory treatment.

II. FACTUAL BACKGROUND

It is anticipated that the following facts will be shown at the hearing on Plaintiffs' request for a preliminary injunction:

PIAA is a Pennsylvania nonprofit voluntary membership corporation composed of most public and private high schools in Pennsylvania, with the purpose and function of developing and enforcing rules regulating interscholastic athletic competition among and between its member schools. Pursuant to PIAA records, the organization was incorporated by high school principals in 1913 in an attempt to bring order to the growing phenomenon of interscholastic sports.

PIAA's membership currently consists of approximately 1,435 public and private high schools and junior highs/middle schools located within the Commonwealth that apply for, and are accepted for, membership. Annually, approximately 350,000 students participate in PIAA interscholastic competition.

PIAA is governed by a Constitution adopted and amended by its member schools, and by By-Laws adopted and amended by its Board of Directors. A copy of the current PIAA Constitution and By-Laws is posted on the PIAA website, at www.piaa.org. Pursuant to Article V, Section 1 of the Constitution, PIAA is, for administrative purposes, divided into twelve geographic Districts. This matter arises out of PIAA District X, which encompasses the counties of Crawford, Erie, Forest, Mercer, Venango and Warren.

Each PIAA District is governed by the member schools located in those counties. Under Article IX of the PIAA Constitution, within each District, a District Committee is elected by the local member schools to provide administrative support and to organize District Championship Contests. Most members of District Committees are experienced professional educators who also have extensive background and decades of experience in dealing with high school athletics.

Article IX, Section 3J, of the PIAA Constitution provides that the District Committees have control over District Championship Contests. Each District has subcommittees organized by sport, chaired by an individual who is designated to be the Tournament Director for that sport. The District Committee, with the advice of the sport sub-committee and/or Tournament Directors, has the authority to determine the number of teams and individuals who may participate in the District Championship Contests. The number of qualifiers may vary from sport to sport and from year to year, depending on the needs and resources of the District.

While PIAA desires to provide opportunities to participate in championship events for many students, it is also cognizant of the fact that, in 2020, many states have completely cancelled fall sports while others have moved them to the spring due to the COVID-19 pandemic. Efforts to hold fall championships have required PIAA to modify standard approaches to qualifiers and actual Contests to provide safe environments. Due to the COVID-19 epidemic, most PIAA districts have made significant changes to their district championship in many sports, with some even eliminating them in their entirety. Others have reduced participation to minimize the risk of exposure and infection to participants, officials, spectators and others.

In the sport of golf, the PIAA Board of Directors has established the format and number of qualifiers eligible to participate at the Inter-District Championship level. There are two classifications in golf, AA and AAA, for both boys and girls. Each PIAA District receives an allocation of the number of qualifiers (golfers) by gender, based upon a proportional representation of the number of member schools that participate in that sport.

This year, to address COVID-19 concerns, the PIAA Board of Directors reduced the number of qualifiers in all sports for this fall season. With a maximum number of golfers determined to be 48 per classification for this school year, District 10 has received an allocation,

based upon the number of schools that play golf, of 6 boy golfers and 3 girl golfers for AA, and 1 boy and 2 girls (regionalized with District 8 & 9) in AAA.

These numbers were reduced this year per recommendation of the PIAA Sports Medicine Advisory Committee (SMAC), which has urged safety protocols and limitations in many sports. Consistent with the SMAC recommendations, the Board of Directors made a direct effort to minimize the amount of time, the number of schools participating and limiting possible contacts to reduce and minimize exposure to the participants.

All golf tournament qualifying this year is done at the local District level, with regional play being eliminated. All golfers will be required to walk or use their own personal pull cart for competition. Local tournaments have also limited participation and taken additional steps to provide a safe environment for participants. Spectators will be limited to a reduced number to accommodate parents and guardians to reduce possible transmission factors. The District X decision to reduce qualifiers permitted to participate in its golf tournament is consistent with PIAA guidance and in line with the medical advice provided to the Board of Directors from SMAC.

III. ISSUES PRESENTED

A. WHETHER PLAINTIFFS' REQUEST FOR INJUNCTIVE RELIEF SHOULD BE DENIED BECAUSE THEY ARE NOT LIKELY TO SUFFER IMMEDIATE AND IRREPARABLE HARM?

B. WHETHER PLAINTIFFS' REQUEST FOR INJUNCTIVE RELIEF SHOULD BE DENIED SINCE THEY LACK A REASONABLE LIKELIHOOD OF SUCCESS ON THE MERITS OF THEIR CLAIMS?

IV. ARGUMENT

A. PREREQUISITES FOR ISSUANCE OF A PRELIMINARY INJUNCTION.

A preliminary injunction is an extraordinary remedy which should not be granted unless plaintiffs can prove that (1) they are likely to prevail on the merits of the claim; (2) they will be immediately and irreparably injured by denial of relief; (3) granting preliminary relief will not

result in even greater harm to the other party; and (4) granting preliminary relief will be in the public interest. *P.C. Yonkers, Inc. v. Celebrations the Party & Seasonal Superstore, LLC*, 428 F.3d 504, 508 (3d Cir. 2005); *Cottman Transmission Systems, Inc. v. Melody*, 851 F.Supp. 660, 670 (E.D. Pa. 1994).

The Third Circuit has recently clarified this standard to explain that the movant bears the burden of proof on the first two points (likelihood of success and irreparable harm) and, if they fail on either, the request should be denied. *Reilly v. City of Harrisburg*, 858 F.3d 173, 179 (3d Cir. 2017). If the movants meet their burden on these two elements, then the court is to consider and weigh the balancing of harms and public interest factors. *Id.* Here, Plaintiffs cannot meet their burden on the first two elements.

B. THERE IS NO RISK OF IRREPARABLE HARM TO PLAINTIFFS.

This Court, as well as all other federal courts, have previously and consistently held that ineligibility for participation in interscholastic athletic competitions alone does not constitute irreparable harm. Further, Pennsylvania courts have made similar determinations, finding that the loss of an opportunity to play interscholastic athletics for one year does not constitute irreparable harm. *Revesz*, 798 A.2d at 837 ("the loss of an opportunity to play interscholastic athletics for one year does not constitute irreparable harm."). The facts presently before this Court, while unfortunate, provide no reason to deviate from these previous determinations.

These decisions are consistent with a long line of federal and state court decisions considering the issue. Most note that an ineligible student does not suffer irreparable harm since he or she is still permitted to practice with the team and can participate in competition outside of PIAA. *See Dziewa*, at *7 ("while Joshua cannot compete, he may attend practices and workout with the CRS team, and compete in freestyle wrestling tournaments."); *Brownlee v. Pennsylvania Interscholastic Athletic Ass'n*, No. 2:07-CV-32 (W.D. Pa. Jan. 18, 2007) ("I mean, the facts show that Sam can continue to practice with the team, he can be coached, there are other wrestling

activities available that he can participate in."); *Cruz v. Pennsylvania Interscholastic Athletic Ass'n, Inc.*, 2000 WL 1781933, *1 (E.D. Pa. Nov. 20, 2000):

> ...Plaintiff is only limited in his participation in high school athletics rather than barred from it entirely. For instance, he is allowed to practice with the team, and dress in uniform and attend the competitions with the team. Not being able to play on game day is certainly a disappointment but does not in my judgment constitute the type of harm warranting the extraordinary remedy of injunctive relief.

Sahene v. Pennsylvania Interscholastic Athletic Ass'n, No. 99-902, at 5-6 (W.D. Pa. July 19, 1999):

> We also find that plaintiff will not suffer irreparable harm if he is not permitted to participate in interscholastic athletic competition during the 1999 or 2000 school year. Although Christopher Sahene is not eligible to play football, defendant does not bar him from practicing with Fox Chapel's teams or coaching in the sport in which he is interested. Plaintiff is also free to participate in intermural [sic] activities as well as non-school-related athletic events.

Pennsylvania Interscholastic Athletic Ass'n, Inc. v. Greater Johnstown School Dist., 76 Pa. Cmwth. 65, 73, 463 A.2d 1198, 1202 (1983) ("*Johnstown*") (holding that a basketball player ruled ineligible "suffered no immediate and irreparable harm by reason of P.I.A.A.'s actions."); *Larkin v. Pennsylvania Interscholastic Athletic Ass'n*, No. 1:CV-98-1295 (M.D. Pa. 1998) ("Wolf will not be irreparably harmed if the court denies his motion for preliminary injunction and thus allows PIAA's denial of Wolf's eligibility to participate in interscholastic athletics to remain in effect.").[2]

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[2] Many students, especially seniors, often argue that the inability to participate and display skills and talents will negatively impact on an opportunity for scholarships. However, courts have recognized that the inability to display such skills does not constitute irreparable harm. *See Revesz* 798 A.2d at 836-37 ("The fact that a student is determined ineligible to play interscholastic sports for one year does not necessarily translate into a loss of opportunity to attain college scholarships."); *Dziewa*, *7 (holding, in discussing the possible loss of scholarships: "Plaintiffs arguments consist of threatening possibilities, which are speculative, and not the kind of harm that preliminary injunctions were fashioned to address."); *Trofimuk v. Pennsylvania Interscholastic Athletic Ass'n*, 7 Pa. D & C.3d 712, 715-16 (C.C.P. Butler 1978) ("The claimed irreparable loss to Mark Trofimuk is that he will virtually lose the opportunity of securing a football scholarship and will suffer irreparable loss and harm to his opportunity to a college education. This court characterizes that claim as one of questionable urgency.");

Plaintiffs have not been barred from participating on their team or from practicing with them and receiving coaching. They are prevented only in not being able to participate in a single event. The Petition should be denied on this basis alone.

B. PLAINTIFFS CANNOT DEMONSTRATE THAT THEY ARE LIKELY TO PREVAIL ON THEIR CLAIMS.

If Plaintiffs fail to demonstrate a likelihood of prevailing on the merits of their claims, the motion must be denied. *Fres-Co Systems USA v. Hawkins*, 2017 U.S. App. LEXIS 9679 (3d Cir. 2017) ("We have long held that a showing of likelihood of success on the merits is a prerequisite to issuance of a preliminary injunction. *** In cases where the moving party has failed to demonstrate it is likely to succeed on the merits, we have denied injunctive relief, without regard for the party's showing as to the other three factors."). Here, Plaintiffs, proceeding under a writ of summons, do not even have a Complaint upon which they can obtain ultimate relief.[3]

1. Plaintiffs' Implied Federal Claim.

Plaintiffs' Petition alludes to a federal constitutional claim for violation of their equal protection rights under the 14th amendment. Such a claim is not likely to succeed on the merits.

"In evaluating an equal protection claim, a court must first determine the appropriate standard to be applied, specifically strict scrutiny, intermediate scrutiny, or rational basis."

Tancredi v. Pennsylvania Interscholastic Athletic Ass'n, No. 07-03812 (C.C.P. Montgomery Feb. 15, 2007), at 5-6:

> The area of getting into school or colleges is highly speculative, and it's a combination of not only athletic performance but SAT scores, grades, and a whole host of other matters. And for this court to venture in that area and to hypothecate that a failure to participate in sectionals would rob the plaintiff of a clear opportunity to attend a college and get admitted into the college would be extremely speculative. And I think that that's been made clear by the Revesz case.

[3] This matter was properly removed to this Court as Plaintiffs' Petition seeks a preliminary injunction expressly averred a violation of their equal protection rights under the 14th Amendment. This notice of a federal claim is adequate to support removal to federal court.

Dziewa, *5. Plaintiffs do not allege racial, gender or age discrimination and challenges to PIAA eligibility rules are otherwise generally reviewed under a "rational basis" standard. *Id.*; *Boyle v. Pennsylvania Interscholastic Athletic Ass'n, Inc.*, 676 A.2d 695, 702 (Pa. Cmwlth. 1996) ("P.I.A.A.'s rules and regulations must be reviewed under the 'rational basis' standard, since Boyle is not a member of a suspect class nor is a fundamental right involved" and "there is a presumption that P.I.A.A.'s rules and regulations are valid").

Here, the establishment of the number of qualifiers eligible to participate in the District X contest is facially neutral and rationally related to its purpose. In particular, there is no magic number for number of qualifiers eligible to participate in the golf outing. While last year's number was different than this year's, the number has varied over the years depending on the resources available at the applicable golf course, the number of teams and players participating generally in the district and the resources available to the District Committee.

This year, the COVID-19 pandemic mandated limitations on the number of participants that the District Committee felt it could host and still provide a reasonably safe environment. The Committee and its golf chair analyzed the event and determined how many students could participate. The decision was made after consultation with available resources, including guidelines issued by PIAA and its Sports Medicine Advisory Committee.

Moreover, while its decision is certainly subject to review and second guessing, it need not be perfect nor even narrowly tailored to the objectives. Rather, since there are no fundamental rights at issue (or even any right to participate in high school sports), the decision must be sustained so long as rationally related to its purpose. Here, the purpose was to reduce numbers of participants to make the spread of infection less likely. The purpose and means of achieving it were both appropriate.

3. Claims Under State Law.

Challenges to PIAA rules and actions have been addressed by a multitude of courts and the law is clear as to the applicable standard of review in considering such challenges under state law. PIAA decisions are governed by the standard set forth by the Pennsylvania Supreme Court in *Harrisburg School Dist. v. Pennsylvania Interscholastic Athletic Ass'n*, 453 Pa. 495, 309 A.2d 353 (1973). The court stated therein that:

> [T]he general rule with respect to high school athletic associations . . . is one of judicial non-interference unless the action complained of is fraudulent, an invasion of property or pecuniary rights, or capricious or arbitrary discrimination.

453 Pa. at 503, 309 A.2d at 357. *See also Revesz*, 798 A.2d at 835 ("The general rule and guiding legal principle with respect to high school athletic associations is one of judicial non-interference.").

Application of the *Harrisburg* standard mandates deference to action of PIAA decision-makers and mere disagreement with a Board of Appeal's findings will not support a requested injunction. As observed by a court in another Semester Rule case:

> That the Court might have a different opinion or judgment in regard to the action of the agency is not a sufficient ground for interference. Judicial discretion may not be substituted for administrative discretion.
>
> These rules seem reasonable and certainly relate to the purposes for which the P.I.A.A. was founded. These rules were adopted voluntarily by the member schools and they're governed by it. They're administered by representatives of schools, all of whom are professional educators, plus school board members and one representative of, I guess, officials.
>
> Since we find no bad faith or fraud or abuse of power in these regulations, we must deny the Plaintiff's prayer for a preliminary injunction. To hold otherwise would be to set up the Courts as a super P.I.A.A. board of control or W.P.I.A.L. committee, and we feel that the P.I.A.A. are better trained and equipped to devise rules and regulations regarding athletic competition than the Courts.

Cowell v. Pennsylvania Interscholastic Athletic Ass'n, No. G.D. 80-19925 (C.C.P. Allegheny 1980). *See also Hillard v. Steelton-Highspire High School Dist.*, No. 4502 Equity (C.C.P. Dauphin 1985) ("The issue is not what the Court would do if we heard the case, whether we

would declare him eligible or not, as long as the proper committees do not act arbitrarily and capriciously, the Court should not, and I don't feel, have any right to intervene."); *Fortson, supra*, at 9 ("we are not privileged to substitute our view for the decisions of the P.I.A.A., under the circumstances."); *Rottmann v. Pennsylvania Interscholastic Athletic Association, Inc.*, 349 F.Supp.2d 922, 933 (W.D. Pa. 2004) (citation omitted):

> As a general rule nationwide, courts will not interfere with the internal affairs of state scholastic athletic associations. In the absence of mistake, fraud, collusion or arbitrariness, the decisions of such associations will be accepted by the courts as conclusive. Such associations may adopt reasonable rules which will be deemed valid and binding upon the members of the association unless the rule violates some law or public policy. It is not the responsibility of the federal courts to inquire into the expediency, practicability, or wisdom of those regulations.

Here, Plaintiffs do not allege fraud. As discussed above, there exists no right to participate in interscholastic athletics and the decision made by the District Committee does not constitute arbitrary and capricious discrimination. Consequently, there is no cognizable claim under the *Harrisburg School Dist.* standard.

V. CONCLUSION

The Defendants respectfully submit that Plaintiffs cannot demonstrate that they are at risk of immediate and irreparable harm and that they are unlikely to prevail on the merits. The Petition should thus be denied.

Respectfully submitted,

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Dated: October 1, 2020

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a true and correct copy of the foregoing document was emailed and served via first class mail, postage prepaid and/or e-mail, upon the following:

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BUCHANAN INGERSOLL & ROONEY PC

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Brian H. Simmons

Dated: October 1, 2020