



FILED
ALAMEDA COUNTY

NOV 25 2008

CLERK OF THE SUPERIOR COURT

By Vicki Daybell

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

DALTON DYER, by and through his
guardian ad litem Murlene Spinks,

Petitioner,

vs.

CALIFORNIA INTERSCHOLASTIC
FEDERATION, CALIFORNIA
INTERSCHOLASTIC FEDERATION
SAC-JOQUIN SECTION,

Respondents.

RG08421517

ORDER AND JUDGMENT
GRANTING IN PART PETITION
FOR WRIT OF MANDATE
UNDER CCP §1085

The hearing on the merits of the Petition of Dalton Dyer (“Petitioner”), by and through his guardian ad litem Murlene Spinks, for Writ of Mandate came on for hearing on November 24, 2008, at 1:30 p.m. before the Honorable Judith D. Ford. Petitioner appeared by Leecia Welch and Bryn Martyna of the National Center for Youth Law. Respondents California Interscholastic Federation (“CIF”), and California Interscholastic Federation Sac-Joaquin Section (“CIF-

SJS”) appeared by Diane Marshall-Freeman of Kronick, Moskovitz, Tiedemann & Girard and J. Scott Donald of LaPlante, Spinelli, Donald & Nott.

The Court having considered the pleadings, papers, and admissible evidence¹ submitted in support of and in opposition to the Petition, hereby ORDERS that the Petition is GRANTED IN PART as set forth herein.

I. SUMMARY OF THE FACTS

The facts in this matter are undisputed. Petitioner is a 16-year-old youth in foster care. In July 2008, his foster care placement was changed from residence in Vallejo to residence in Auburn. Petitioner enrolled in Placer High School in Auburn at the beginning of the school year. Petitioner sought to play football for Placer High’s team. The Placer High athletic director reviewed the CIF Bylaws regarding change of residence, and determined that Petitioner’s move to Auburn was a “valid change of residence” under the Bylaws, and that he was otherwise eligible to play sports. Petitioner was permitted to join the team and played in several games.

On October 22, 2008, Placer High School was notified that CIF-SJS considered Petitioner’s move not to be a “valid change of residence” and that Petitioner was not eligible to play until the school submitted a request for hardship waiver, and CIF-SJS approved it. On October 23, 2008, the school submitted the

¹ Respondents’ Request for Judicial Notice, filed November 24, 2008, and unopposed by Petitioner is GRANTED. Respondents’ objection, raised at the hearing on this matter, to the Declaration of Mark Lee at paragraph 12 is SUSTAINED.

hardship waiver paperwork, and Petitioner was approved to play sports. However, CIF-SJS determined that, due to Petitioner's ineligibility prior to October 23, 2008, all prior games that Petitioner played for Placer High School were required to be forfeited by the school. As a result, Placer High School's win record was reduced, making the school ineligible for the Division IV playoffs.

II. VENUE

Respondents argue that this Court lacks "jurisdiction" over the action, by which they appear to mean venue is not proper in this Court.² Respondents offer no authority to support this argument, and no particular venue provision which they contend applies. The rules governing ordinary civil actions govern the venue of writ proceedings. (See CCP §1109; *Harris v. Alcoholic Beverage Control Appeals Board* (1961) 197 Cal.App.2d 759.) Respondent CIF is alleged to have its offices in Alameda. The Petition alleges Respondents are "organizations." Respondents refer to themselves as non-profit organizations in their opposition. (See Opposition filed November 24, 2008, at 1:17-20.) The Court finds no basis for a determination, based upon the evidence and authorities offered, that venue in Alameda County is improper.

III. PETITIONER IS ENTITLED TO WRIT RELIEF

Petitioner brings a petition for writ under Section 1085 of the California Code of Civil Procedure. To obtain such relief, Petitioner must show: (1) that an

² Respondents use the terms venue and jurisdiction interchangeably in their opposition brief.

“inferior tribunal, corporation, board, or person” has a clear and present duty to perform an act required by law; (2) that he has no plain, speedy and adequate alternative remedy; and (3) that he has a clear, present beneficial right to performance of that duty. (See Cal. Code Civ. Proc. §1085, 1086; *Kong v. City of Hawaiian Gardens Redevelopment Agency* (2002) 101 Cal.App.4th 1317, 1325.)

Petitioner contends that Respondents have a clear, present ministerial duty to comply with California law concerning foster children and with the State Constitution’s Equal Protection provisions. Petitioner also contends that he has no plain, speedy and adequate remedy at law for Respondents’ violation of California law.

A. Petitioner Has a Clear, Present Beneficial Interest

Respondents argue that Petitioner does not have standing to seek writ relief because he is not a beneficially interested party. They argue that he has not shown that he has suffered “an invasion of a legally protected interest that is (a) concrete and particularized and (b) actual or imminent.” (*California Assoc. for Health Services at Home v. Dept. of Health Services* (2007) 148 Cal.App.4th 696, 706-07 [internal citation omitted].) The Court disagrees.

While participation in interscholastic sports may not be a vested right for purposes of due process, Petitioner has shown that the challenged Bylaws have a direct, particular impact upon him. (See *Nowlin v. Department of Motor Vehicles* (1997) 53 Cal.App.4th 1529, 1537 [no beneficial interest because Petitioners did not show how they would be affected by the regulation in question].) Petitioner

has a legally protected interest in being determined eligible for sports participation under the CIF Bylaws. Further, the invasion of that interest is, under the facts here, actual and not merely hypothetical.

B. Respondents' Bylaws Violate a Clear, Present Duty Under California Law

1. The Bylaws Violate Requirements of the Welfare and Institutions Code and Education Code That Apply to Foster Children

Foster children are entitled to a number of specific protections under California law. Section 16001.9 of the Welfare and Institutions Code declares the rights of children in foster care, including the right to “attend school and participate in extracurricular, cultural, and personal enrichment activities, consistent with the child’s age and developmental level” and “[t]o have fair and equal access to all available services, placement, care, treatment and benefits.” (§16001.9, subdivs. (a)(13), (a) (23).) Several statutes are aimed specifically at reducing barriers to foster children’s immediate and full participation in educational and school-related activities. For instance, Education Code §48853.5(d)(4)(B) provides that a “new school shall immediately enroll the foster child even if the foster child is unable to produce records or clothing normally required for enrollment, such as previous academic records, medical records, proof of residency, other documentation, or school uniforms.” Welfare and Institutions Code §362.05 provides that “[e]very child adjudged a dependent child of the juvenile court shall be entitled to participate in age appropriate extracurricular

activities and school activities. No state or local regulation may prevent or create barriers to participate in those activities.”

Assembly Bill 490 (“AB 490”) was passed in 2003 and effected changes to many provisions of the Education Code and Welfare and Institutions Code concerning foster youth. The main purpose of AB 490 was to ensure that foster youth have the same access to educational and extracurricular opportunities as other pupils. (See, e.g., AB 490, Section 2 [amending Cal. Educ. Code § 48850(a)] and Section 15 [amending Cal. Welf & Inst. Code §16000(b)].) In furtherance of that right, AB 490 added requirements that the procedures for transferring foster youth from one school to another be expedited. (See AB 490, Section 7 [amending Cal. Educ. Code §49069.5(d); requiring school to shall transfer educational information and records to next school within two business days].)

The CIF Bylaws require that foster children who have transferred from one school to another due to placement in a new foster home must have their eligibility approved based upon a hardship waiver. A student who transfers from one school to another in a move *with his immediate family* is considered a valid change of address, based upon the determination of the school itself, and requiring no transfer/hardship paperwork and no waiting period for approval by the CIF Section. The transfer form itself indicates that students should “allow 20 business days for investigation and review; the student may miss some part of the season during the review and evaluation period.” (Declaration of J. Scott Donald, filed

November 24, 2008, Exhibit B [Athletic Transfer Eligibility Application].) A foster child who is transferred to a new foster home, by definition, cannot move with his immediate family. Thus, the CIF Bylaws, by compelling foster children who have had to transfer schools due to change in their foster care placement to go through the hardship waiver process in all instances, constitute a barrier to their participation in extracurricular sports activities.

2. The Bylaws Violate the Equal Protection Provisions of the California Constitution

In the absence of a showing that a petitioner belongs to a suspect class of persons or that a fundamental right is infringed, as here, the equal protection provisions of the California Constitution (Article I, Section 7, and Article IV, Section 16), prohibit the State and state actors from treating a petitioner differently from similarly situated groups unless the difference is rationally related to a legitimate public purpose. (See *Sneed v. Saenz* (2004) 120 Cal.App.4th 1220, 1248; *Steffes v. California Interscholastic Federation* (1986) 176 Cal.App.3d 739, 746-48.)³ “In determining the scope of the class singled out for special burdens or benefits, a court cannot confine its view to the terms of the specific statute under attack, but must judge the enactment’s operation against the background of other legislative, administrative and judicial directives which govern the legal rights of

³ The Court of Appeal in *Steffes* stated that CIF’s enforcement of its rules regarding interscholastic athletics constitutes state action for purposes of constitutional analysis. (*Steffes, supra*, 176 Cal.App.3d 746.)

similarly situated persons.” (*Brown v. Merlo* (1973) 8 Cal.3d 855, 862.) A rule may violate the equal protection provisions if it is

an impermissibly overinclusive classification scheme, that is, a scheme in which a [rule]’s classification ‘imposes a burden upon a wider range of individuals than are included in the class of those tainted with the mischief at which the law aims.’ Such a statute does not treat similarly situated individuals in like manner, but instead reaches out beyond the individuals ‘tainted with the mischief’ at which a [rule] is directed, and imposes its burden on innocent individuals who do not share the condemning characteristics.

(*Brown, supra*, 8 Cal.3d at 876 [internal citation omitted].)

Here, the CIF Bylaws treat foster youth moving on their own differently from non-foster youth moving with their immediate family for purposes of their eligibility. The salient purposes of Article 20 of the Bylaws, including Rule 207(A)(1), are to “[p]rotect the opportunities to participate for students who meet the established standards” and “[s]erve as a deterrent to students who transfer schools for athletic reasons and to individuals who recruit student-athletes.” (Declaration of Leecia Welch filed November 24, 2008, Exhibit D [CIF Bylaws, Article 20 Eligibility Requirements, Rule 200 (C) and (F)].) These purposes bear no rational relationship to a classification scheme which treats a foster child like a child who is not moving with his immediate family. Respondents have offered no evidence or argument suggesting that children in foster care are more likely than children moving with their immediate families to transfer schools for athletic reasons. As the Bylaws are applied here, they serve to erect a barrier to immediate participation for foster children who, by virtue of being sent to a new foster home,

must transfer to a new school. Thus, the Bylaws as applied to foster children violate equal protection.

C. There is No Plain, Speedy and Adequate Alternative Remedy

It is plain that, given the imminence of the CIF-SJS Division IV playoffs, and Placer High's disqualification from those playoffs based upon Respondents' impermissible decision to find him ineligible for the first five games this season, Petitioner has no plain, speedy and adequate alternative remedy. Respondents' argument that the Bylaws allow Petitioner or his school to request that they be amended simply does not substitute for the writ relief sought here, which will affect the current season playoffs. Moreover, the possibility of future amendment does not allow the Court to countenance the present impermissible application of the Bylaws to Petitioner.

CONCLUSION

Based upon the foregoing, the Court concludes that Petitioner is entitled to a writ of mandate as follows:

The determination that Petitioner was ineligible for the first five football games of the year was based upon Respondents' Bylaws that are in violation of state law and the state Constitution. Decisions based upon a determination that Petitioner was ineligible under these Bylaws must be set aside. The October 24, 2008 decision of the CIF-SJS Commissioner and the November 17, 2008 decision of CIF State Appeals Panel are both vacated.

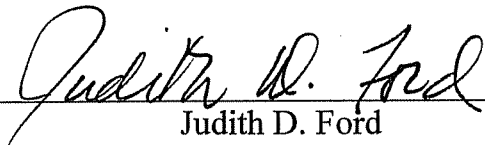
As a consequence, there is no basis for the declaration that Placer High School forfeited the games in which it permitted Petitioner to participate. As a further result, Placer High School is not disqualified from the CIF-SJS Division IV playoffs based upon the infirm prior decision that Petitioner was ineligible.

Petitioner has requested additional writ relief. The Court does not find such additional relief warranted on this record.

Petitioner shall forthwith submit, directly to Department 31, a proposed form of writ for issuance by the Clerk of the Court.

IT IS SO ORDERED.

DATED: November 25, 2008



Judith D. Ford
Judge of the Superior Court

CLERK'S DECLARATION OF MAILING

I certify that I am not a party to this cause and that on the date stated below I caused a true copy of the foregoing ORDER AND JUDGMENT GRANTING IN PART PETITION FOR WRIT OF MANDATE UNDER CCP SECTION 1085 to be mailed first class, postage pre paid, in a sealed envelope to the persons hereto, addressed as follows:

Leecia Welch, Esq.
Bryn Martyna, Esq.
NATIONAL CENTER FOR YOUTH LAW
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J. Scott Donald, Esq.
LA PLANTE, SPINELLI, DONALD & NOTT
815 S Street, Second Floor
Sacramento, CA 95811

I declare under penalty of perjury that the same is true and correct.
Executed on November 25, 2008.

By: *Vicki Daybell*
Vicki Daybell, Deputy Clerk
Department 31

The foregoing instrument is a true and correct copy of the original on file in this office.

ATTEST:



NOV 25 2008

Clerk of the Superior
Court of California, County of Alameda.

By *Vicki Daybell* Deputy