

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF TRINITY

FILED

FEB - 5 2015

SUPERIOR COURT OF CALIFORNIA
COUNTY OF TRINITY

BY:  DEPUTY CLERK

)
 Brent Zachery Sanchez,)
)
 Petitioner/Plaintiff)
)
 vs.)
)
 Northern Section California)
 Interscholastic Federation,)
 California Interscholastic Federation)
 Respondent/Defendants)

Case No. 15CV016

**Ruling on Petitioner's Ex Parte Request
for Temporary Restraining Order**

The hearing on the Ex Parte Request for a Temporary Restraining Order came on in Department 1 at 11:00 A.M., Judge Elizabeth W. Johnson, presiding. Petitioner was represented by Leecia Welch, Erin Liotta and Stephanie Krol, of the National Center for Youth Law. Respondents were represented by Scott Donald, of Spinelli, Donald & Nott. After hearing legal arguments, the court took the matter under submission and now finds and rules as follows:

Petitioner Brent Zachary (Zach) Sanchez is a fifth year senior at Trinity High School who is, by all reports, an outstanding athlete. He is also homeless. He has experienced several years of personal tragedy and trauma, all combining to disrupt and destroy his academic performance. However, since coming to Weaverville in the fall of 2014, and being taken in by a family there, he has brought his grades up and as a consequence, is on track to graduate in this, his fifth year of high school. He also applied for a waiver of the general rule that a student is restricted to playing sports in only four years of school. This waiver would be based on his documented personal hardships.

Respondents, the Northern Section California Interscholastic Federation (NSCIF) and California Interscholastic Federation (CIF) (hereinafter "respondents"), are the governing bodies responsible for administering the

organized athletics in the league that Trinity High School is part of, and for applying their organizations' rules to particular situations such as petitioner's application for a hardship waiver for athletic eligibility. This application of the rules has engendered the controversy that is now before the court.

Petitioner filed his complaint for writ of mandate and declaratory relief, asking the court to determine that the respondents' handling of his application was a failure of their duty to grant him athletic eligibility, and a violation of his right to be treated similarly to other students without regard to his homeless status. Petitioner also asked for an ex parte temporary restraining order, as an interim measure, to prevent the loss of his opportunity to participate in Trinity High School athletics. Respondents timely filed their opposition and the court heard the arguments and has read and considered the papers filed by each party.¹

Respondent, in opposition, argues first that the interim remedy is unavailable to petitioner because he has not exhausted his administrative remedies by appealing the denial of his application to the CIF. The court disagrees. There is authority for dispensing with the requirement for exhaustion when to require exhaustion before seeking judicial relief will result in irreparable harm to the petitioner. (*City of San Jose v. Operating Engineers Local Union No. 3* (2010) 49 Cal.4th 597, 609.) Irreparable harm is evident in the declarations of petitioner and others showing that athletics are the highlight of petitioner's experience and the central focus of his future plans, such that a loss of the current opportunity would be a substantial detriment to him. Moreover, if the respondents' actions were determined to be in derogation of petitioner's constitutional right to equal protection of the laws, this in itself is an injury that is substantial, immediate, and irreparable.

¹ The Court grants the requests and takes judicial notice of all the documents constituting applicable CIF rules and authority.

With the Trinity High School basketball schedule almost two-thirds finished already, and the football season long since passed, petitioner has suffered substantial harm from the failure to grant his application; further delay for the purpose of exhaustion would render any judicial review virtually meaningless to him. Respondent asserts that an appeal could be heard as soon as February 9, and a decision as early as the 15th. However, there are only five or six games left, and the further delay even under that shortened appeal process will sacrifice most – if not all – of even those few opportunities. Therefore, the court will in these circumstances find that petitioner will suffer immediate and irreparable harm should the delay necessitated by exhaustion of remedies be required. Therefore, the court dispenses with the requirement for petitioner to exhaust his administrative appeal remedies, and the court will proceed to consider whether to grant the interim relief of a restraining order.

To obtain this *ex parte* interim relief, the petitioner must demonstrate (a) that he will suffer immediate and irreparable injury if the restraining order were not granted, (b) the likelihood that he will prevail on the merits of his writ petition, and (c) when balancing the harm to be suffered by respondent if the order were granted against that to be suffered by petitioner if denied, that the equities favor granting interim relief.

The court has identified and set forth above the grounds for finding the existence of immediate and irreparable harm that would be faced by petitioner if interim relief were to be denied.

As to the next analytical prong of this test, the court must determine whether the underlying complaint and petition for writ of mandate is likely to be resolved in petitioner's favor. That requires a strong showing that respondent has (a) a clear ministerial duty to approve petitioner's application for hardship waiver, thus enabling him to play sports at Trinity High School, because he has (b) the right to this waiver the same as any other student who is academically eligible. Counsel for petitioner has made the required initial showing. Whereas

counsel for respondent argued, correctly, that petitioner has no "right" to play sports in high school, and therefore the writ will not lie, in fact the right that is at stake here is different: it is the right to equal protection of the laws, not the right to play sports. The declarations supplied by petitioner show unequivocally that he is academically eligible in the current year; that petitioner, together with the faculty and administration of Trinity High School, devoted early and sustained efforts to have his hardship waiver approved; and that these efforts to obtain a waiver were foiled repeatedly by respondent's actions presenting obstacles in the way of such approval, all engendering delay, and all based on its varying interpretation of the CIF rules in a manner that relates peculiarly to petitioner's homeless status prior to enrolling at Trinity High School. Respondent has argued, but not presented any evidence, to the contrary. In this initial stage of the proceedings, without any contradictory evidence, the court concludes for purposes of granting interim relief that there is a substantial likelihood that petitioner will prevail on the merits.

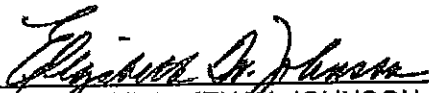
As to the final prong of the test, sometimes referred to as "balancing the hardships," the analysis is a little more complex. Petitioner has asked for either of two alternative remedies. If the court chose the first alternative proposed remedy, i.e., to postpone further league basketball games until the court has a chance to rule on the merits of the writ of mandate, then the hardship to the respondents would be substantial, but the injury to petitioner is minimized. Freezing the basketball schedule for a half-dozen high schools would have far-reaching consequences for numerous people who have no direct stake in these proceedings, with potential costs and likely - but unanticipated - hardships to them, while petitioner would still have his chance to play ball if the court's ruling were in his favor ultimately. However, if the court selected the second alternative proposed remedy, that is, to allow Trinity High School to play out the remainder of its season as already scheduled - with petitioner on the active player roster - this would create no appreciable hardship on respondents that the

court can discern. Further, it will place him on an equal footing with other students in the league who are academically eligible and not homeless. Selecting that alternative, the court finds that balancing the equities comes out in favor of granting the restraining order.

Accordingly, the court will order that the temporary restraining order be granted. Respondent shall be restrained from taking any action preventing petitioner from playing basketball on Trinity High School's team for the remainder of the season consistent with the schedule already in place, unless or until a final ruling on the merits is reached in respondents' favor.

The court, by separate order, has previously granted the request for order shortening time to hear the petition for writ of mandate, and briefs shall be due in accordance with the dates set forth in that order.

Dated: 2/5/15



HON. ELIZABETH W. JOHNSON
Judge of the Superior Court

CERTIFICATE OF MAILING
State of California, County of Trinity

I, the undersigned, certify under penalty of perjury under the laws of the State of California that I am a Deputy Court Clerk of the above-entitled court and not a party to the within action; that I mailed a true and correct copy of the above to each person listed below, by depositing same in the United States Post Office in Weaverville, California, enclosed in sealed envelopes with postage prepaid or via Inter-Office Mail.

Scott Donald, Attorney at Law, 815 S. Street, Second Floor, Sacramento, Ca. 95811 and Fax
LeeCIA Welch, Erin Liotta and Stephanie Krol, Attorneys' at Law, 405 14th Street, 15th Floor
Oakland, Ca. 94612-2701 and Fax

Dated: 2/5/15


Michele Hubbard-Richer
Judicial Clerk II