

IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA

MARTINSBURG HIGHSCHOOL, and
TRENT SHERMAN,
Principal of Martinsburg High School,
Petitioners,

v.

Case No.: 13-C-689

THE WEST VIRGINIA SECONDARY SCHOOL ACTIVITIES
COMMISSION,

Respondent.

**ORDER GRANTING TEMPORARY INJUNCTION AND
HEARING FOR PERMANENT INJUNCTION**

BERKELEY COUNTY
CIRCUIT CLERK
2013 SEP 27 PM 2:33
VIRGINIA SINE CLERK

This Court upon review of the Petitioner's verified complaint and petition for preliminary and permanent injunction in the within matter and upon mature consideration finds and orders as follows.

A. FACTS

1. The Petitioners, Martinsburg High School and Trent Sherman, Principal of Martinsburg High School, filed the petition concerning the athletic eligibility of Malique Watkins, a senior football player at Martinsburg High School. On September 26, 2013, Malique was ruled ineligible to participate in high school sports by the Respondent (hereinafter SSAC) (see Exhibit A).
2. SSAC based its ruling upon W.V.C.S.R. 127-2-5.3.a, which states: "A student held back one year on sixth, seventh, or eighth grade without failing shall lose the fourth year of eligibility after entering ninth grade." This rule is commonly referred to among athletic

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personnel as the "Redshirt Rule." In other words, a student is not permitted to be held back in order that he or she gain an athletic advantage due to an extra year of physical maturity and athletic participation. A student under the rule may be held back, however, for academic failure.

3. In the 2008-2009 academic year, Malique was an eighth grader at North Middle School, in Berkeley County. His academic performance that year was poor, resulting in "C" and "D" grades.
4. At the end of the year, Malique's parents made a decision to transfer him to Saint James School in Hagerstown, Maryland. Malique's father is an alumnus of Saint James. Per their policy, Saint James performed placement testing and determined that Malique did not academically qualify for ninth grade. Accordingly, he was enrolled at Saint James as an eighth grader for the 2009-2010 school year (see Exhibit B).
5. Due to financial constraints, Malique returned to school in Berkeley County for the 2010-2011 academic year. He enrolled as a ninth grader at Hedgesville High School ("HHS"). HHS accepted Malique as a ninth grader, and he played freshman level sports there.
6. Thereafter, Malique and his family moved into the MHS district, where he continued on the same academic track in terms of his class year, and the same athletic status in terms of class year.

7. The week of Malique's first game as a senior quarterback of MHS football team, MHS was informed that Malique may be ineligible under the "Redshirt Rule." MHS Principal, Trent Sherman, contacted the SSAC for clarification on the issue. The SSAC then informed MHS that it was investigating the matter. On September 26, 2013, SSAC ruled Malique ineligible.
8. Malique is scheduled to start as quarterback in an SSAC sanctioned contest between MHS and Morgantown High School tonight, September 27, 2013.
9. SSAC has an arduous appeals process, which could extend well past the current football season. Thus, the petitioner's motion for preliminary, ex parte injunctive relief is sought to enjoin the enforcement of the ineligibility decision.

B. Petitioner Has Met Notice and Ex Parte Order Requirements

The Court may issue an ex parte temporary injunction if the specific showing requirements of W. Va. Civ. Pro. Rule 65(b) are met. Thus the temporary injunction may be granted where two conditions are met: 1) "First, it must clearly appear from specific facts shown by affidavit or by a verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the opposing side can be heard in opposition. Second, the applicant's attorney must certify to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required."

Both of the above requirements were met by counsel for the petitioner. The petition for permanent injunction and motion for preliminary injunction bore the official seal of a notary public, Amy N. Shell. Counsel for the petitioner also provided as Exhibit A the reply from SSAC with regard to the matter before the court and the petitioner's letter regarding the petition for relief.

C. Petition States Sufficient Grounds For Issuing Order

The standard under which this Court reviews a petition for a temporary injunction is detailed in W. Va. Civ. Pro. Rule 65(b). "The factors considered in determining whether to issue a temporary restraining order include:

1. Whether movant faces immediate and irreparable injury;
2. Whether an adequate legal remedy exists;
3. The likelihood of the movant's success on the merits;
4. Whether the balance of equities favor the movant or opposing side;
- and
5. The impact on the public interest.

Based on the above facts, the five factors of the test point strongly in favor of granting the temporary injunction.

1. Whether movant faces immediate and irreparable injury: Here, Malique personally faces irreparable injury. This is his last season playing high school football, as he is a senior, and the decision of SSAC does not only apply to tonight's game, but to the entire football season.
2. Whether an adequate legal remedy exists: Here, if SSAC's

decision is not enjoined, and Malique is forced to sit out the remaining games of the season until the appeals process of SSAC is finished, Malique's own record will be irreparably harmed as he cannot go back in time and play the games that were missed due to SSAC's ineligibility decision.

3. The likelihood of the movant's success on the merits;

Because Malique's reasons for repeating the eighth grade were in line with the spirit of the rule underlying SSAC's decision, petitioners are likely to succeed on the merits. Malique did not do well enough on the tests to gain entry into the ninth grade at Saint James. The reasons Malique switched schools to attend Saint James were for academic improvement, as he was a "C" and "D" grade student at North Middle School.

4. Whether the balance of equities favor the movant or opposing side;

The balance of equities favors petitioner as Malique will be irreparably harmed were the Court to allow the SSAC decision on eligibility to prevent his ability to play in tonight's game, and the remaining games of the season that would likely take place before the SSAC appeals process finds resolution in the matter.

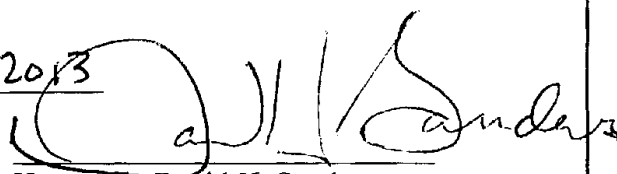
5. The impact on the public interest. The impact on the public interest is not negative, as tonight's opposing team has not even opposed Malique's participation in the game. Furthermore, as this is an eligibility ruling, SSAC, the respondent, is not irreparably harmed if Malique plays tonight or in any games within the next ten (10) days.

WHEREFORE, this Court doth **FIND** and **ORDER** that the Petitioner is

hereby awarded a temporary injunction. This Court further **ORDERS** that a hearing in this matter will be held before the Court at the Berkeley County Courthouse on Friday, October 4, 2013, commencing at 11:00 a.m., wherein the above and such related issues that are properly noticed will be heard. The Court further **ORDERS** that the Clerk of this Court provide a certified copy of the within Order to counsel of record and Respondents by regular mail.

Entered: _____

September 27, 2013



Honorable David H. Sanders

Jefferson County Circuit Court Judge

Submitted by:



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