SJC-13224

ABNER A.[1] & another[2] vs. MASSACHUSETTS INTERSCHOLASTIC ATHLETIC ASSOCIATION.

Middlesex. April 6, 2022. – August 29, 2022.

Present: Budd, C.J., Gaziano, Lowy, Cypher, Kafker, Wendlandt, & Georges, JJ.

Practice, Civil, Action in nature of certiorari, Preliminary injunction, Moot case. Injunction. Moot Question.

Civil action commenced in the Superior Court Department on September 10, 2021.

A motion for a preliminary injunction was heard by Michael P. Doolin, J.

The Supreme Judicial Court granted an application for direct appellate review.

Kay H. Hodge (John M. Simon also present) for the defendant.

Andrew R. Hamilton (Adam M. Hamel also present) for the plaintiffs.

[1] A pseudonym.

[2] The private school that Abner was attending.

GAZIANO, J. The Massachusetts Interscholastic Athletic Association (MIAA) declared a high school senior, who had repeated his junior year and had played a total of four prior years on his schools' interscholastic teams, ineligible to play a fifth year of interscholastic football and basketball, and denied his request for an exception, as permitted under MIAA rules. The student then challenged the MIAA's eligibility determination through a complaint in the Superior Court in the nature of certiorari, posing the novel question of the standard of review courts should apply in reviewing such claims. We conclude that a reviewing court should examine a challenge to an MIAA eligibility determination only to determine whether the decision was arbitrary and capricious. Applying that standard of review to the facts of this case, we conclude that the MIAA's decision not to grant the student his requested exception was not arbitrary and capricious.

1. Background. We recite the facts based on the evidence presented to the MIAA at a hearing on the student's request for an exception to the four-year rule for eligibility to participate in the school's interscholastic football and basketball programs.

The plaintiff student attended a public high school in the Commonwealth for three school years; the public school was a member of the MIAA. Each year, the student played on that

school's interscholastic football and basketball teams. During the football seasons, the football coach allegedly bullied him often and treated him unfairly. As a result of these interactions, the student developed anxiety and depression, challenges that were compounded by the circumstances of remote schooling during the COVID-19 pandemic. Having noticed their son's symptoms of emotional distress, his parents met with the school administration to express concerns about the coach's treatment, but the alleged bullying continued. The student and his parents then decided that it would be best for him to transfer to another school. When he enrolled in the new school at the age of seventeen, the student and his parents determined, based in part on the struggles he had had with learning at the public school, that the student should repeat his junior year at the new, private school. During his repeated junior year, the student played football and basketball on his new school's interscholastic teams. That school was at all relevant times a member of the MIAA. He also received treatment by a psychologist. The student's mental state and physical health improved, as did his grades.

As the student had participated in interscholastic team sports for four years, under MIAA Rule 59.1, which restricts student-athlete eligibility to four years, the student was ineligible to play a fifth year of interscholastic high school

sports. The school sought an eligibility waiver from the MIAA, according to the procedures the MIAA has established for submission of requests for waivers. The request for a waiver was accompanied by a letter from the student's therapist, as well as one from the school's director of athletics. The MIAA's assistant executive director denied the application. The school challenged the denial under MIAA Rule 87, which establishes the procedures by which a student may appeal from an adverse eligibility determination to the MIAA's eligibility appeal board (EAB).

In August of 2021, at the beginning of the student's senior year, the EAB held a hearing with five panelists present. Because one of the panelists left during the course of the hearing, the EAB no longer had a quorum. The EAB subsequently held a second hearing on September 7, 2021, with a board composed of five different panelists. At that hearing, the EAB heard testimony from the plaintiff school's athletic director and from the student's father. The EAB also reviewed notes taken by the panelists who had been present at the first hearing, and it considered documentary evidence that had been submitted with the school's application for an exception; these documents included a letter by the school's athletic director and a report by the student's therapist. On September 9, 2021,

the EAB unanimously voted to deny the waiver request, and it issued a decision briefly explaining its reasoning.

On September 10, 2021, hours before the school's first football game that season, the school and the student jointly commenced this action in the nature of certiorari in the Superior Court, pursuant to G. L. c. 249, § 4; in their complaint, they also requested injunctive relief enjoining the MIAA from enforcing its decision declaring the student ineligible to participate in interscholastic high school sports for a fifth academic year. The student argued that, if he were unable to play, he would experience substantial harm to his mental health and risk the loss of the progress he had made in his junior year at the school. Following a hearing that day, a Superior Court judge allowed the emergency motion, after he concluded that the plaintiffs had met their burden to demonstrate they were entitled to such an injunction. The judge issued a temporary restraining order, effective for ten days, stating that "[t]he MIAA shall be temporarily restrained from enforcing its decisions denying the eligibility waiver appeal of [the plaintiffs]," and "[the plaintiff student] shall be temporarily allowed to participate in all practices and compete in all interscholastic competitions for the [plaintiff school] football team." A second hearing was held on September 20, 2021, to determine whether a preliminary injunction should

issue; in advance of that hearing, the MIAA filed a motion for reconsideration of the issuance of the temporary restraining order. After the second hearing, the judge denied the MIAA's motion for reconsideration and allowed the motion for a preliminary injunction, permitting the temporary restraining order to remain in place. We allowed the MIAA's application for direct appellate review.

2. Discussion. a. Mootness. Because the student participated in his school's interscholastic team sports under the terms of the preliminary injunction while the MIAA's appeal was pending, and the student has now graduated from high school, the plaintiffs ask us to dismiss the matter as moot. Emphasizing a need for clarity concerning the proper standard of review for challenges pursuant to G. L. c. 249, § 4, of its eligibility determinations, the MIAA opposes the request for dismissal. As we do not agree that the matter is moot, and as mootness alone does not necessarily mean that a matter should be dismissed, because it may be "capable of repetition, yet evading review," Seney v. Morhy, 467 Mass. 58, 61 (2014), quoting Wolf v. Commissioner of Pub. Welfare, 367 Mass. 293, 298 (1975), we decline the request that the matter be dismissed as moot.

With respect to the school, MIAA rules allow the MIAA to impose retroactive penalties upon the school. Specifically, MIAA Rule 29.2 provides that "any contest in which an ineligible

student or coach participates under court order will be forfeited if the order is dissolved or the plaintiff ultimately fails to prevail." Because enforcement of this rule (which is prohibited under the terms of the preliminary injunction) would have an impact on the school's record of wins and losses for its football and basketball seasons, the school retains a personal stake in the outcome of this litigation. See, e.g., Wiley v. National Collegiate Athletic Ass'n, 612 F.2d 473, 475-476 (10th Cir. 1979), cert. denied 446 U.S. 943 (1980) (case was not moot where athletic association's rules allowed it to impose retroactive penalties on plaintiff); Indiana High Sch. Athletic Ass'n. v. Cade, 51 N.E.3d 1225, 1234-1235 (Ind. App. 2016) (schools retained personal stake in litigation where association could require forfeiture of team records).

With respect to the student, he has completed his senior year in high school and will not be participating further in high school athletics. The record does not indicate that he received any awards or anything else tangible that retroactive enforcement might place at risk of forfeiture. See, e.g., Johnson v. Florida High Sch. Activities Ass'n, 102 F.3d 1172, 1173 (11th Cir. 1997) (case was moot because "football season and wrestling season [had] concluded with [the student] having participated in football, and he intend[ed] no further participation in high school athletics"; prospect of penalties

for school were irrelevant because school was not party in case); Jordan v. Indiana High Sch. Athletic Ass'n, 16 F.3d 785, 787-789 (7th Cir. 1994) (case dismissed as moot where school was no longer party to litigation, and nothing in record suggested athletic association could take action which "would have any adverse effect of substantial significance" on student); Paige v. Ohio High Sch. Athletic Ass'n, 2013-Ohio-4713 ¶13 (Ohio App.) (case dismissed as moot as to student because there was "no indication in the record or the parties' briefs that [the student] set any records or won any awards while participating under the injunction").

Nonetheless, although this student will have no further participation in interscholastic high school sports,[3] similar requests for review of MIAA eligibility determinations have been made by other students, and are virtually certain to be filed in the future. See, e.g., Foskett vs. Massachusetts Interscholastic Athletic Ass'n, Mass. Sup. Ct., No. 2177CV00021B (Essex County Jan. 22, 2021). In addition to being capable of repetition, these claims are likely to evade review because, as evident in the circumstances here, the process of appellate review likely would extend well beyond the length of a high

[3] But see Sandison v. Michigan High Sch. Athletic Ass'n, 64 F.3d 1026, 1029-1030 (6th Cir. 1995) (students have interest in preventing athletic association from "erasing their teams' victories and their own performances").

school athletic season, which generally spans only a few months. See First Nat'l Bank of Boston v. Haufler, 377 Mass. 209, 211 (1979).

Accordingly, we turn to the Superior Court judge's decision to issue the preliminary injunction. An understanding of the rules governing the MIAA is essential to this analysis.

b. Structure of the MIAA and its rules. The MIAA is "an association that regulates competitive interschool athletic programs as the authorized representative of its member school committees." Mancuso v. Massachusetts Interscholastic Athletic Ass'n, 453 Mass. 116, 118-119 (2009). Its authority to do so stems from G. L. c. 71, § 47, which permits a school committee "directly or through an authorized representative [to] determine under what conditions [its school's athletic organizations] may compete with similar organizations in other schools." Although membership in the MIAA is voluntary, "[v]irtually all public secondary schools in the Commonwealth are members of MIAA." Mancuso, supra at 118 n.5, quoting Attorney Gen. v. Massachusetts Interscholastic Athletic Ass'n, 378 Mass. 342, 345 (1979). "Some private secondary schools are likewise members and enter into the same competition." Attorney Gen., supra. "All member schools undertake to submit to the rules promulgated by MIAA; they pay dues to MIAA in proportion to their student populations." Id.

The MIAA imposes limits on the eligibility of students at its member schools to compete in interscholastic athletic programs. For instance, MIAA Rule 59.1 provides that "[a] student shall be eligible for interscholastic competition for no more than four consecutive years after initially entering Grade 9. This limitation shall apply without regard to actual participation or attempt to participate."

A student who is ineligible to compete under MIAA Rule 59.1 may petition the MIAA for an "eligibility waiver," i.e., a decision by the MIAA to set aside the effect of any rule bearing on the student's eligibility to participate in interscholastic high school sports. MIAA Rule 87.2. The process for obtaining an eligibility waiver is governed by MIAA Rule 87. Any request for waiver of an eligibility rule must be made by a school principal on behalf of an individual student. MIAA Rule 87.1. Once such a request has been made,

> "[t]he MIAA Executive Director or his/her designee shall have the authority to set aside the effect of any eligibility rule upon an individual student if (1) the rule works an undue hardship on the student, (2) granting the waiver will not result in an unfair competitive advantage, (3) the waiver addresses how this waiver will impact the home school student body, and (4) the waiver would not be in conflict with the general well-being of MIAA interscholastic athletic objectives."

MIAA Rule 87.2. An adverse eligibility determination may be appealed to the EAB, which consists of five to nine representatives from MIAA member schools. See MIAA Rules 87.4,

87.5. In reviewing a student's appeal, the EAB weighs the four factors set forth in MIAA Rule 87.5: (1) that the four-year rule imposes an undue hardship on the student; (2) that waiver of the rule will not result in an unfair competitive advantage; (3) that the waiver application addresses the manner in which allowance of a waiver would affect the student body of the applicant's school; and (4) that a waiver would not be in conflict with the MIAA's general interscholastic objectives.

While it is a membership organization composed of both private and public members, the MIAA has been deemed a "State actor" for legal purposes. Mancuso, 453 Mass. at 123, 134. See id. at 123, citing Attorney Gen., 378 Mass. at 349 & n.18 ("[the MIAA's rules] must be viewed as 'State action' for legal purposes"). See Scott v. Oklahoma Secondary Sch. Activities Ass'n, 313 P.3d 891, 899 (Okla. 2013) ("The [athletic association] is not truly a voluntary association. . . . [M]ost public and private schools . . . are members of the [athletic association]").[4] Cf. Meyer v. Veolia Energy N. Am., 482 Mass.

[4] Some State courts, by contrast, have viewed State athletic associations similar to the MIAA as fundamentally private, voluntary associations and, on that ground, have applied a principle of judicial noninterference in the internal affairs of voluntary associations. See, e.g., Crane v. Indiana High Sch. Athletic Ass'n, 975 F.2d 1315, 1319-1320 (7th Cir. 1992); Hebert v. Ventetuolo, 480 A.2d 403, 407 (R.I. 1984); Anderson v. South Dakota High Sch. Activities Ass'n, 247 N.W.2d 481, 484 (S.D. 1976).

208, 222 n.13 (2019) (defining "quasi-public corporation" such as railway as "private corporation that has been given certain powers of a public nature, such as the power of eminent domain, in order to enable it to discharge its duties for the public benefit" [citation omitted]); Commonwealth v. Biagiotti, 451 Mass. 599, 607 (2008) (term "corporation" included "public or quasi-public corporation such as" Massachusetts Port Authority); Phillips v. Youth Dev. Program, Inc., 390 Mass. 652, 654 (1983), quoting Jackson v. Metropolitan Edison Co., 419 U.S. 345, 353 (1974) ("If a nominally private entity is performing a function that is 'traditionally the exclusive prerogative of the State,' then all the acts of that entity are State action"); Luke v. Massachusetts Turnpike Auth., 337 Mass. 304, 308 (1958) (Massachusetts Turnpike Authority "is not 'essentially a private company.' It is a 'public corporation'").

c. Preliminary injunction. The MIAA argues that the judge abused his discretion by allowing the motion for a preliminary injunction enjoining the MIAA from enforcing its decision declaring the student ineligible to play interscholastic football and basketball for a fifth year.

"We review the grant or denial of a preliminary injunction to determine whether the judge abused his discretion, that is, whether the judge applied proper legal standards and whether there was reasonable support for his evaluation of factual

questions." Commonwealth v. Fremont Inv. & Loan, 452 Mass. 733, 741 (2008). To be entitled to a preliminary injunction, the moving party must show "first, that success is likely on the merits; second, that if the injunction is denied, the moving party faces a substantial risk of irreparable harm; and third, that this risk of irreparable harm, considered in light of the moving party's chances of prevailing on the merits, outweighs the nonmoving party's probable harm." Foster v. Commissioner of Correction, 488 Mass. 643, 650 (2021), and cases cited. "Where a party seeks to enjoin government action, the judge also must determine that the requested order promotes the public interest, or, alternatively, that the equitable relief will not adversely affect the public" (quotation and citation omitted). Garcia v. Department of Hous. & Community Dev., 480 Mass. 736, 747 (2018).

"Among the factors the motion judge must consider to determine whether a preliminary injunction should issue, likelihood of success on the merits is especially important." Foster, 488 Mass. at 650. "[T]he preliminary injunction cannot survive if the plaintiffs are unlikely to succeed on the merits." Garcia, 480 Mass. at 754, quoting Fordyce v. Hanover, 457 Mass. 248, 266-267 (2010). Nonetheless, "[i]f the judge is convinced that failure to issue the injunction would subject the moving party to a substantial risk of irreparable harm, the judge must then balance this risk against any similar risk of

irreparable harm which granting the injunction would create for the opposing party. What matters as to each party is not the raw amount of irreparable harm the party might conceivably suffer, but rather the risk of such harm in light of the party's chance of success on the merits. Only where the balance between these risks cuts in favor of the moving party may a preliminary injunction properly issue" (footnote omitted). Packaging Indus. Group, Inc. v. Cheney, 380 Mass. 609, 617 (1980).

Here, assessing the likelihood of success on the merits first requires consideration of the proper standard of review.

i. Standard of review for challenge to MIAA eligibility determination. As stated, the plaintiffs challenged the MIAA's denial of their waiver request in a complaint in the nature of certiorari. See Mancuso, 453 Mass. at 134; G. L. c. 249, § 4. At the hearing on the motion for a preliminary injunction, the plaintiffs and the MIAA asserted, and the judge agreed, that the proper standard of review was "arbitrary and capricious," albeit that the MIAA suggested a unique interpretation of what that standard entailed.

"Certiorari is a 'limited procedure reserved for correction of substantial errors of law apparent on the record created before a judicial or quasi judicial tribunal." Langan v. Board of Registration in Med., 477 Mass. 1023, 1025 (2017), quoting Indeck v. Clients' Sec. Bd., 450 Mass 379, 385 (2008). See

School Comm. of Hudson v. Board of Educ., 448 Mass. 565, 575-576 (2007). The purpose of an action in the nature of certiorari is "to relieve aggrieved parties from the injustice arising from errors of law committed in proceedings affecting their justiciable rights when no other means of relief are open." Frawley v. Police Comm'r of Cambridge, 473 Mass. 716, 726 (2016), quoting Figgs v. Boston Hous. Auth., 469 Mass. 354, 361 (2014). Review of an action in the nature of certiorari "extends to the entire record of the proceedings that are the subject of the complaint for relief in the nature of certiorari, or to such portions of the record as the parties agree are necessary." State Bd. of Retirement v. Woodward, 446 Mass. 698, 704 (2006).

In an action in the nature of certiorari, "the standard of review may vary according to the nature of the action for which review is sought." Forsyth Sch. for Dental Hygienists v. Board of Registration in Dentistry, 404 Mass. 211, 217 (1989). See Pollard v. Conservation Comm'n of Norfolk, 73 Mass. App. Ct. 340, 348 (2008) (standard of review pursuant to certiorari statute "accommodates to the kind of administration decision involved" [citation omitted]). While "the proper standard of review under the certiorari statute is flexible and case specific, . . . as with review under G. L. c. 30A, § 14, the disposition . . . ultimately [must] turn on whether the agency's

decision was arbitrary and capricious, unsupported by substantial evidence, or otherwise an error of law" (alteration omitted). Langan, 477 Mass. at 1025, quoting Hoffer v. Board of Registration in Med., 461 Mass. 451, 458 n.9 (2012).

Where an agency decision implicates the exercise of administrative discretion, "[a]n appeal under G. L. c. 249, § 4, through an action in the nature of certiorari, is not generally available . . . except to determine whether the board acted arbitrarily and capriciously." Forsyth, 404 Mass. at 217. Given the MIAA's status as a quasi governmental agency, see Mancuso, 453 Mass. at 134, in determining whether to apply the arbitrary and capricious standard of review, we consider whether the issuance of an eligibility waiver is an exercise of administrative discretion. See Scott, 313 P.3d at 902 ("While the [athletic association] is not a [S]tate agency subject to the provisions of the [Administrative Procedures Act (APA)], it is similar enough in character and in reach that courts should apply the standard of review provided by the APA").

Although there is a constitutional right to a public education, see McDuffy v. Secretary of the Executive Office of Educ., 415 Mass. 545, 621 (1993), this right "is not synonymous with the right to participate in extracurricular activities, such as interscholastic athletics." Mancuso, 453 Mass. at 125. "[S]uch activities may serve as a beneficial supplement to

required physical education, [but] they are by their nature separate from that curriculum." Id. A student seeking eligibility to participate in a fifth year of high school interscholastic athletics "has no right to the protection of the due process clause of the Fourteenth Amendment [to the United States Constitution]." Id. at 127. Similarly, "[t]he provisions of G. L. c. 71 do not confer an individual right to participate in interscholastic athletics" and set forth no procedures to regulate the issuance of eligibility waivers. Id. at 125. Thus, a determination whether a student is eligible to participate in interscholastic sports for MIAA member schools is a matter that remains committed to the MIAA's discretion. See id. at 127 n.23 ("Once the period of eligibility had elapsed, it is clear that the MIAA possessed considerable discretion whether to grant a waiver").

Accordingly, the proper standard of review of an eligibility determination by the MIAA is, as the motion judge held, the arbitrary and capricious standard. See Indiana High Sch. Athletic Ass'n. v. Carlberg, 694 N.E.2d 222, 231 (Ind. 1997) ("we do find substantial justification for our long-standing use of the 'arbitrary and capricious' standard of review in the analogy between [a high school athletic association's] decisions and government agency action").

ii. Application. The plaintiffs argue that the judge was within his discretion to conclude that the MIAA acted arbitrarily and capriciously in rejecting their application for a waiver. The plaintiffs contend that the EAB failed to consider evidence of the student's mental health issues and the harm to his mental health that could result from being unable to play interscholastic football and basketball; in particular, the plaintiffs point to a report by the student's therapist in which the therapist discussed some of the student's interactions with the prior coach at his former school, the bullying and harassment the student experienced from the coach and other students, and the improvements in his mental health that the student has experienced in his role on his new team. The plaintiffs also asserted, in their verified complaint, that during the father's testimony at the EAB hearing, he explained that his "biggest fear" was that if his son "can't do sports, we will lose him again" due to mental health issues.

MIAA Rule 87.5 enumerates four factors that the MIAA must consider in determining whether to approve a request for a waiver on appeal: (1) whether "[t]he rule works an undue hardship on the student"; (2) whether "[g]ranting the waiver will not result in an unfair competitive advantage"; (3) "how this waiver will impact the home school student body"; and (4) whether "[t]he waiver would not be in conflict with the general

well-being of MIAA interscholastic athletic objectives." The EAB's decision after the second hearing on the student's and the school's request for a waiver cited MIAA Rule 87.5, and the decision addressed each of the four factors using evidence introduced at the hearing and documents submitted during the course of the appeal.

With respect to the first of the four factors, the EAB found that the denial of a waiver would "not result in an undue hardship to [the student]," because, the EAB reasoned, he "already had the opportunity to participate in four consecutive years of interscholastic competition, including four years of high school football and basketball." The decision acknowledged the evidence presented at the hearing regarding the student's mental health challenges stemming from his experiences on the football team at the public school,[5] but the decision also noted that "[a]t the Hearing, [the student] and his family stated that

[5] In discussing the student's experiences at his former school, the EAB's decision stated:

> "During the hearing, the [family] alleged that [the student] was bullied by the [public school's] football coach and his teammates. They further argued that this alleged bullying negatively impacted [the student's] mental health. In addition, the family cited the difficulty that remote learning caused [the student] as a result of the pandemic. A Confidential report of Emotional Assessment, . . . submitted by the family cited to the impact that the pandemic had on [the student] causing him to lose out on the full potential of his academic year."

he remained on the football team during the 2019 season, and the negative experience he had on the football team did not roll over into basketball."[6]

Addressing the second and third factors, whether an eligibility waiver would give the school an unfair competitive advantage over other schools, and how a potential waiver would impact the school's student body, the decision concluded that issuance of a waiver would

> "result in an unfair competitive advantage for [the school]. During the hearing, [the student] was identified as a projected starter and impact player, earning recognition last year . . . in both football and basketball. . . . Allowing him to participate in a fifth year of football and basketball, as an impact player, will give [the school] an unfair competitive advantage over its competition. The vast majority of the student athletes that [the student] will be competing against will not have the benefit of a fifth year of eligibility.
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> "The [EAB] also found that allowing a Rule 59 waiver would negatively impact the [school's] student body. As an impact player, [the student] will be taking playing time away from another student athlete. With regard to basketball, where only five players play at one time, this is especially true. As a result of this displacement, the [EAB] determined that a waiver would negatively impact the [school's] student body."

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[6] The EAB decision also noted that "[the student] described his basketball season in the 2019/2020 year as a breath of fresh air." In addition, the decision discussed and credited the negative impact of the COVID-19 pandemic on the student's mental health, but then went on to note that the student "is no different than most student-athletes across Massachusetts. The pandemic caused significant academic and general disruption to all students across Massachusetts." The decision also commented that the denial of the request for a waiver would "not prevent [the student] from practicing with his teammates at [the school]."

Lastly, the EAB decision considered the fourth factor under MIAA Rule 87.5, whether the waiver would conflict with the MIAA's interscholastic objectives. The decision emphasized that the MIAA is "primarily dedicated to all student-athletes across Massachusetts pursuing their education and providing those student-athletes with a level playing field." The EAB observed that the student's family "were aware of Rule 59 when [the student] transferred" schools, and the family "made the decision [that the student] repeat his junior year, despite the fact that [the student] passed all of his classes during his junior year at [the public school]." The decision not only acknowledged that "the impact of the COVID-19 pandemic on high school student-athletes across Massachusetts cannot be understated," but also discussed the EAB's concern with allowing a waiver for one student on any ground involving the pandemic, as it would set "a precedent that all student-athletes across Massachusetts should be granted a fifth year of eligibility because of the pandemic." Thus, the EAB concluded that allowing the student to play a fifth year of interscholastic athletics would conflict with the general well-being of the MIAA's interscholastic objectives.

As is clear from the language of the decision, the EAB considered each of the four factors enumerated in MIAA Rule 87.5

regarding whether a waiver should issue, and it anchored its analysis of each factor in the evidence presented at the second hearing and the documentary evidence submitted in advance of that hearing. As discussed, the decision did recognize and credit the evidence of the student's mental health difficulties, and the student's allegations concerning the bullying at his former school and its impact on his mental health. Nonetheless, the decision placed greater emphasis on other facts, such as the student's having played on interscholastic teams for four years in two different sports and the potential opportunities which, in the EAB's view, some other student likely would miss if the student were allowed to play. In this regard, while noting that the school had indicated that it would not cut anyone from either team if the student returned for a final senior year, the EAB emphasized that the student would likely take playing time that otherwise would have gone to other students, given his recognized athletic abilities.

The record contains adequate evidentiary support for the EAB's positions. It is clear from the testimony and the questions asked at the hearing that the EAB was extremely concerned and very focused on the concept of a "level playing field," and treating all "230,000" student athletes in Massachusetts equally. While the plaintiffs' attorney argued that the student's was a "unique" situation, and that playing on

the interscholastic teams was helping to heal the student's mental health issues still remaining from the trauma of the events at the public school, the EAB emphasized that it wanted each student athlete in the Commonwealth to be treated equally, and that many others have missed out on classes and sports as a result of the COVID-19 pandemic, but they were not seeking waivers. Because the EAB decision addressed and analyzed each of the factors in the MIAA rule on granting waivers, and reached conclusions based on the evidence at the hearings, the decision was not arbitrary and capricious. See Garrity, 462 Mass. at 792 ("A decision is not arbitrary and capricious unless there is no ground which reasonable [persons] might deem proper to support it" [quotation and citation omitted]). Accordingly, the Superior Court judge erred in deciding that the plaintiffs were likely to prevail in their complaint, and thus that the preliminary injunction should issue. See Fremont Inv. & Loan, 452 Mass. at 741 ("Before issuing a preliminary injunction, the judge must determine that the plaintiff has shown a likelihood of success on the merits of the case at trial").

3. Conclusion. The order allowing the preliminary injunction is vacated and set aside, and the matter is remanded to the Superior Court for further proceedings consistent with this decision.

So ordered.