



National Center for Youth Law

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January 27, 2015

VIA EMAIL AND FACSIMILE

Elizabeth Kyle
Commissioner
CIF Northern Section
2241 St. George Lane, Suite 2
Chico, CA 99592

Re: Athletic Eligibility of Brent Zachary Sanchez

Dear Ms. Kyle,

I am writing to follow up on my January 7, 2015 letter to Superintendent Barnett and you. To date, I have not received a response to this letter other than a brief phone call from Diane Marshall-Freeman letting me know that she has been looking into this matter. In violation of both federal and state law, Zach has now been waiting more than three months for a response from the California Interscholastic Federation-Northern Section (NSCIF) on his hardship waiver.

As you are aware, Zach moved to Weaverville after experiencing years of homelessness. Trinity Alps Unified School District designated Zach as meeting the definition of "homeless" pursuant to 42 U.S.C. § 11302, and enrolled him at Trinity High School in August 2014. Zach clearly qualifies for federal and state protections based on this designation.

Under McKinney Vento, Zach has the right to immediately enroll in school. For purposes of this law, Congress has defined "enroll" as "includ[ing] attending classes and participating fully in school activities." 42 U.S.C. § 11434a(1). McKinney Vento also requires state and local educational agencies to develop, review, and revise policies "to remove barriers to the enrollment and retention of homeless children and youths in schools." 42 U.S.C. § 11432(g)(1)(I). The California legislature has explicitly recognized that full participation in interscholastic and extracurricular events must be afforded to homeless youth. Education Code Section 48850(a)(1) states that educators and advocates "shall work together to maintain stable school placements and to ensure that each pupil [referring to foster youth and

homeless youth] . . . has access to the academic resources, services, and extracurricular and enrichment activities that are available to all pupils, including, but not necessarily limited to, interscholastic sports administered by the California Interscholastic Federation.”

On January 21, 2015, the Shasta Cascade League met and again discussed Zach’s hardship waiver. The League acknowledged the import of Zach’s homeless status and ruled: “The League cannot verify if the McKinney-Vento Act supersedes CIF bylaws, therefore, we cannot approve or deny the waiver.”

There is no question that federal and state statutes take precedence over CIF bylaws. The United States Supreme Court has explained that the preemption of federal law “may be either express or implied, and is compelled whether Congress’ command is explicitly stated in the statute’s language or implicitly contained in its structure and purpose.” *Fid. Fed. Sav. & Loan Ass’n v. de la Cuesta*, 458 U.S. 141, 152-53 (1982) (internal quotations omitted). Here, the case is even stronger where both federal and state law demand a different course than the one that the CIF has taken. Under McKinney-Vento, and as adopted by the California Legislature, NSCIF must remove barriers to a homeless youth’s participation in athletic activities.

To the contrary, the NSCIF has repeatedly placed barriers in the way of Zach’s access to extracurricular activities. As detailed in my earlier letter, Zach’s application for eligibility was initially received by the NSCIF on October 14, 2014. Zach’s application was presented to the Shasta Cascade League at their fall meeting on November 10, 2014, and approved 5-1. The initial application describes the challenges Zach faced after his mother died of cancer. Subsequently, the application was forwarded to your office. You raised questions about the exact date of death of Zach’s mother, and it came to light that the year of her death in the application was incorrect. Rather than afford Zach and his school the opportunity to explain the reason for this error in his application, you instead allowed his application to be unilaterally revoked by Superintendent Barnett. These actions not only violated CIF bylaws, but also violated federal and state law.

In light of the Shasta Cascade League’s January 21 decision, Zach’s application continues to await your approval. The facts underlying his hardship waiver have not changed, and you have been fully apprised of Zach’s circumstances for months. There is no legitimate basis for your delay in approving his application. As a state actor, the NSCIF is responsible for ensuring homeless youth have equal access to extracurricular activities, but instead Zach has been treated unfairly and marginalized due to his status as a homeless youth.

We respectfully urge you to approve Zach’s hardship waiver without further delay. If Zach’s waiver is not approved in time for Trinity High School’s basketball game on January 30, 2015, he will have no choice but to pursue all legal remedies to which he is entitled.

Please do not hesitate to contact me at (510) 835-8098 ext. 3023 if you would like to discuss this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Leecia Welch', with a long horizontal flourish extending to the right.

Leecia Welch
Senior Attorney

cc: Diane Marshall-Freeman