

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
CIVIL DIVISION

BOARD OF EDUCATION FOR DAYTON
PUBLIC SCHOOLS,

Plaintiff(s),

-VS-

OHIO HIGH SCHOOL ATHLETIC
ASSOCIATION,

Defendant(s).

CASE NO.: 2018 CV 00983

JUDGE MICHAEL W. KRUMHOLTZ

**DECISION, ORDER AND ENTRY
GRANTING PLAINTIFF'S MOTION
FOR A PRELIMINARY INJUNCTION**

An evidentiary hearing was held by the Court on March 6, 2018, following Plaintiff's filing of a Complaint for Injunctive Relief and a Motion for Preliminary Injunction/Temporary Restraining Order on March 2, 2018. The Court has reviewed and considered Plaintiff's Complaint and Motion, Defendant's Memorandum in Opposition (filed March 5, 2018), the testimony presented during the March 6, 2018 hearing and the hearing exhibits, which include a video of the brawl that occurred during the Dunbar-Thurgood Marshall junior varsity basketball game on January 10, 2018. The Court spent a considerable amount of time reviewing that video.

For the following reasons, the Court hereby **GRANTS** Plaintiff's Motion for Preliminary Injunction. As such, the Ohio High School Athletic Association ("OHSAA") is enjoined and precluded from enforcing its February 28, 2018 Decision, which held that the Dunbar High School Boys' Varsity Basketball team had forfeited its participation in the ongoing OHSAA state basketball tournament. Further, the Dunbar High School Boys' Varsity Basketball team is entitled

to participate, and shall be permitted to participate, in the 2018 OHSAA state boys' basketball tournament, beginning with a game tomorrow.

I. FACTS AND PROCEDURAL HISTORY

The flashpoint for this filing by Plaintiff, the Board of Education for Dayton Public Schools ("DPS"), was the February 28, 2018 Decision of Defendant, OHSAA, to remove Dunbar High School from the 2018 OHSAA Boys' Basketball Tournament. *Motion*, p. 2; *Pl. Ex. 7*; *Def. Ex. K*. According to that Decision, OHSAA removed the Dunbar basketball team from the tournament due to violations of Bylaw 10-2-1 and 11. *Feb. 28, 2018 Decision*. These violations centered on an ineligible Dunbar basketball player ("John Doe," whose name was revealed during the hearing) being permitted to play approximately three minutes of a tournament game against West Carrollton High School. *Id.*; *Motion*, p. 2. OHSAA alleges that John Doe, who plays for Dunbar's junior varsity and varsity basketball teams, was ineligible as a result of a January 10, 2018 bench-clearing brawl which occurred at the end of the junior varsity game between Dunbar and Thurgood Marshall High School. *Feb. 28, 2018 Decision*. OHSAA claims there were thirteen¹ Dunbar players, including John Doe, who should have been suspended for the next two games, pursuant to OHSAA General Sports Regulation 14.1 and the national playing rules for basketball, but were never suspended. *Id.* There is no dispute that the OHSAA Decision, though, related only to John Doe's participation. Additionally, OHSAA noted that the matter was exacerbated by the failure of Dunbar's administration and coaches to respond to any of OHSAA's seven attempts to communicate with Dunbar regarding the January 10, 2018 incident in order to identify which players improperly left the "bench area to engage in this brawl " which, under the national basketball rules, would require those players to be automatically rejected. *Id.* OHSAA's decision to penalize Dunbar by removing it from the tournament meant that Dunbar's last opponent in the

¹ This number is somewhat of a "moving target" since OHSAA's Decision of suspension sent to Dunbar's principal references seven (not eight) bench players, along with the five players on the floor at the time of the fight.

tournament, Thurgood Marshall, would advance to the next round to face Bishop Fenwick High School. *Id.*

On January 11, 2018, the day after the bench-clearing junior varsity basketball game brawl, OHSAA emailed Quiona Boffman (“Ms. Boffman”), the Dunbar Athletic Director since December 2016, the referee report of the brawl. *Pl. Ex. 4.* A nearly identical email was sent January 12, 2018, which directed Ms. Boffman to respond to the report by January 19, 2018, using a link at the bottom of the email. *Id.* Ms. Boffman testified that after receiving the January 12, 2018 email, she called OHSAA in order to correct the player identified in the ejection report. Ms. Boffman spoke with Jackie Wenden, an OHSAA employee, per the testimony of Dr. Daniel Ross (“Dr. Ross”), the executive director for OHSAA. Ms. Boffman stated she was directed to the voicemail of Ben Ferree (“Mr. Ferree”), the Assistant Director of Officiating and Sport Management for OHSAA, and that she left a message. After having received no response, on January 26, 2018, Ms. Boffman attempted to reply to the January 12, 2018 report via email, stating that the information regarding which players were involved in the January 10, 2018 brawl “may be incorrect.” *Id.* Mr. Ferree testified that he did not receive any communications from Ms. Boffman, or anyone from Dunbar, and so emailed Ms. Boffman on February 9, 2018, inquiring as to whether Ms. Boffman received the emails of the reports since OHSAA had not received any response from Dunbar regarding the ejection report from the January 10, 2018 brawl. *Id.* Ms. Boffman responded to Mr. Ferree that same day, again noting that the ejection report contained incorrect information on which player was involved in the brawl. *Id.* According to Mr. Ferree, he never received Ms. Boffman’s reply, and OHSAA’s IT confirmed Ms. Boffman’s email was never delivered. Mr. Ferree sent a similar email on February 22, 2018, in which he stated that he needed to “know the number of students identified as participating in the fight or coming off the bench during the fight and the dates of the contests they served their suspensions.” *Id.* In his last email, sent February 26, 2018, Mr. Ferree stated that OHSAA still needed the names of the players Dunbar “identified as coming off the bench to

participate in the fight.” *Id.* He summarized that if the students did not serve the mandatory two game suspension and

have continued to participate, possibly even at the varsity level, ... your boys basketball team would have to forfeit their wins and be out of the tournament. I sincerely hope that isn’t the case, and doubt it is, but have absolutely no way of knowing since no one at the school has found it necessary to respond to my many emails and letters.

Id. Ms. Boffman responded that evening, reiterating the issue of the player identification. *Id.*

According to Dr. Ross, he met with Mr. Ferree (among others) the morning of February 27, 2018 to determine what information was needed to, in essence, determine Dunbar’s tournament fate. OHSAA determined that it would ask attorney Stan Evans to collect video footage from the January 10, 2018 brawl, as well as the scorebooks from the junior varsity and varsity games from that night forward, as well as the scorebook from the OHSAA sectional basketball tournament. *Pl. Ex. 2; Def. Exs. H-J.* On February 28, 2018, Dr. Ross, Mr. Ferree, Jerry Snodgrass (“Mr. Snodgrass”), the Director of Sports Management for OHSAA, (and others) reviewed the video footage from January 10, 2018 and compared that footage to the number of players slated to play in the junior varsity game as shown in the scorebook. *Def. Exs. H & I.* At the conclusion of the review, Mr. Ferree testified that OHSAA saw five players on the floor at the time the brawl broke out. A total of thirteen players were listed in the scorebook, and Mr. Ferree stated that eight Dunbar players were seen on and then leaving the bench. OHSAA thus concluded that all of the junior varsity bench players should have been suspended for at least two games. Coach Chuck Taylor, the head coach for the Dunbar High School Varsity Boys’ Basketball team, said none of these players were suspended. Coach Donovan Brown, the head coach for the Dunbar High School Junior Varsity Boys’ Basketball team, confirmed that none of the bench players served the suspension, and that instead two Dunbar players who instigated the fight served a six-game suspension.

In its Motion, DPS asserts OHSAA’s decision to remove Dunbar from the basketball tournament was “based upon a mistaken and incomplete investigation and for other arbitrary and

capricious reasons.” *Motion*, p. 1. DPS also asserts, in its Complaint, that OHSAA “released its ruling improvidently and without either factual or legal basis.” *Cmpl.*, ¶ 5. It claims that OHSAA’s “conclusions are arbitrary, capricious, and motivated by spite, ill will, and/or a desire to do harm to DPS and Dunbar High School students.” *Id.* DPS argues that OHSAA’s acts are arbitrary and capricious since OHSAA’s past practice regarding suspensions for players leaving the bench area is for a game official to issue a report which specifies players ejected and/or disqualified for “leaving the bench area” and to then instruct the school district that those players serve a two-game suspension. *Motion*, p. 5. According to DPS, a review of video footage from the January 10, 2018 junior varsity game shows that John Doe did not participate in the bench clearing brawl and so he was not suspended. *Brown Aff.*, ¶ 6-7. Coach Taylor testified that John Doe was not involved in the brawl. Coach Taylor was in the varsity locker room when he heard the noise from the brawl on the court. As he was leaving the locker room to head to the basketball court, he passed John Doe in the locker room hallway. John Doe was in the hallway after being instructed to leave the junior varsity game because he (John Doe) was complaining about the jersey number he was wearing as a varsity player.

II. LAW AND ANALYSIS

A. Legal Standards

A preliminary injunction is “an extraordinary remedy; therefore the moving party has a substantial burden in order to be entitled to the injunction.” *Connor Group. v. Raney*, 2d Dist. Montgomery No. 26653, 2016-Ohio-2959, ¶ 17, citing *KLN Logistics Corp. v. Norton*, 174 Ohio App.3d 712, 2008-Ohio-212, 884 N.E.2d 631, ¶ 11 (8th Dist.). In order to obtain the equitable remedy of a preliminary injunction, the movant must establish, by clear and convincing evidence, “(1) a substantial likelihood of success on the merits, (2) the existence of irreparable harm if an injunction is not issued, (3) that third-parties will not be unjustifiably harmed if an injunction is issued, and (4) that granting an injunction will serve the public interest.” *Raney* at ¶ 19, 20, citing

Protector & Gamble Co. v. Stoneham, 140 Ohio App.3d 260, 267, 747 N.E.2d 268 (1st Dist. 2000). “In determining whether to grant injunctive relief, the factors must be balanced; no one factor is dispositive.” *Raney* at ¶ 19 (citations omitted).

B. Analysis

Initially, the Court notes that while it is a reluctant intervener in this high school version of March Madness, it is doing so under the auspices of *State ex rel. Ohio High School Athletic Assn. v. Judges of Court of Common Pleas of Stark Cty.*, 173 Ohio St. 239, 181 N.E.2d 261 (1962). The February 28, 2018 Decision of OHSAA, disciplining Dunbar, is of a quasi-judicial nature. *Ulliman, v. Ohio High School Athletic Assn.*, 184 Ohio App.3d 52, 2009-Ohio-3756, 919 N.E.2d 763, ¶ 45 (2d Dist.), citing *Stark Cty.* at 248. As such, this Court may intervene to “ascertain whether or not the proceeding was pursuant to the rules and laws of the society, whether or not the proceeding was in good faith, and whether or not there was anything in the proceeding in violation of the laws of the land” *Id.* OHSAA’s Decision must be accepted “in the absence of mistake, fraud, collusion or arbitrariness.” *Ulliman* at ¶ 42, citing *Stark Cty.* at paragraph three of the syllabus. There was no evidence produced in the hearing that OHSAA’s Decision was the result of fraud, collusion or arbitrariness. Rather, the evidence establishes a mistake.

In reviewing the record upon which OHSAA based its Decision, the Court finds that OHSAA’s Decision is not supported by reliable, probative and substantial evidence. *See, e.g., Scott v. Ohio High School Athletic Assn.*, 5th Dist. Stark No. 1999CA00269, 2000 Ohio App. LEXIS 3193, * 24 (July 10, 2000), quoting *Massillon City School Dist. Bd. of Edn. v. Ohio High School Athletic Assn.*, 5th Dist. Stark No. 7247, 1987 Ohio App. LEXIS 9541 (Nov. 5, 1987). Upon a thorough review of the video from the January 10, 2018 brawl, the Court counts five players on the court, and at most, seven on the Dunbar bench at the time the fight broke out. At no point did the Court see another Dunbar player come onto the basketball court or appear in the video. Thus, at most, twelve players can be seen from the moment the “hard foul” was committed and the melee

commenced until the conclusion of the ensuing brawl. Coach Taylor provides the unrefuted explanation for the presence of this thirteenth player, John Doe, whose name was in the scorebook as a game participant. Coach Taylor testified that as he was heading out from the locker room to the basketball court in order to diffuse the melee, he saw John Doe in the locker room hallway. Coach Taylor can be seen in the videos exiting the Dunbar locker room area. The Court did not observe any player head into the locker room from the beginning of the video, which starts shortly before the commission of the “hard foul,” until Coach Taylor appears. Thus, as Coach Taylor testified, John Doe was already in the locker room hallway before the fight broke out. As such, John Doe was not in violation of Rule 10-5-5 of the National Playing Rules for Basketball, which provides that bench personnel shall not “[l]eave the confines of the bench during a fight or when a fight may occur.” *Def. Ex. A*, p. 64, Rule 10-5-5. Without this violation, which the parties agree is the only violation at issue, John Doe was an eligible player when he played in the OHSAA 2018 state boys’ basketball tournament.

Since John Doe was an eligible player, OHSAA’s Decision to remove Dunbar from the basketball tournament was a mistake. The Court acknowledges that OHSAA’s role in high school sports is of the utmost importance and that it does not have an easy road. In this situation, there was a failure of communication from both Dunbar and OHSAA. Dunbar could, and should, have been more aggressive in ensuring OHSAA was provided with the appropriate information from the January 10, 2018 brawl and at recognizing the gravity of the situation before the end of February 2018. OHSAA failed to respond to Ms. Boffman’s call, which the Court finds was made to OHSAA as Ms. Boffman provided the name of Jackie Wenden, to whom Ms. Boffman initially spoke. Issues also apparently existed with OHSAA’s email service. However, these miscommunications ultimately did not affect OHSAA’s review of the videos, upon which it based its Decision. Again, after having undertaken the same review and investigation as OHSAA, the Court does not find that the video shows eight Dunbar junior varsity bench players at the time of the

brawl. Instead, only seven players (at most) can be seen. Thus, OHSAA's Decision regarding Dunbar's removal from the 2018 state boys' basketball tournament, based on the ineligibility of John Doe, was a mistake. As such, the Court does not accept OHSAA's February 28, 2018 Decision.

Based upon the foregoing, the Court finds that DPS established by clear and convincing evidence that it has a substantial likelihood of success on the merits, that irreparable harm to the Dunbar basketball players exists if the injunction is not issued, that no third-parties will be unjustifiably harmed by the issuance of the injunction, and that the injunction serves the public interest.

III. CONCLUSION

The fate of the Dunbar Varsity Boys' Basketball team in this year's OHSAA state tournament should be decided on the court and not in the courthouse.

Accordingly, the Court hereby **GRANTS** Plaintiff's Motion for Preliminary Injunction. The Ohio High School Athletic Association ("OHSAA") is enjoined and precluded from enforcing its February 28, 2018 Decision, which held that the Dunbar High School Boys' Varsity Basketball team had forfeited its participation in the ongoing OHSAA state basketball tournament. Further, the Dunbar High School Boys' Varsity Basketball team is entitled to participate, and shall be permitted to participate, in the 2018 OHSAA state boys' basketball tournament beginning with tomorrow's game against Bishop Fenwick.

SO ORDERED:

JUDGE MICHAEL W. KRUMHOLTZ

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General Division
Montgomery County Common Pleas Court
41 N. Perry Street, Dayton, Ohio 45422

Type: Decision
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So Ordered