

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION

CASE NO.: 11-03355 CA 2

BRIAN DELANCY, GINA FLORIA,
as parent and guardian of Patrick George,
and LISA KARELL, as parent and guardian
of Dylan Karell,

Plaintiffs,

vs.

FLORIDA HIGH SCHOOL
ATHLETIC ASSOCIATION, INC.

Defendant.

**PLAINTIFFS' VERIFIED EMERGENCY PETITION FOR TEMPORARY
INJUNCTION**

Plaintiffs, BRIAN DELANCY, GINA FLORIA, as parent and guardian of Patrick George, and LISA KARELL, as parent and guardian of Dylan Karell, by and through undersigned counsel, hereby file this Emergency Petition for Injunction against Defendant, FLORIDA HIGH SCHOOL ATHLETIC ASSOCIATION, INC., pursuant to Fla. R. Civ. P. 1.610 and applicable law, and in support thereof, state as follows:

1. This is a Petition for Emergency Injunctive relief.
2. At all times material hereto, Plaintiff, BRIAN DELANCY, was and is a resident of Miami-Dade County, Florida, and otherwise *sui juris*.

3. At all times material hereto, Plaintiff, BRIAN DELANCY, was and is a native of the Bahamas.

4. At all times material hereto, Plaintiff, BRIAN DELANCY, was and is a student at Dr. Michael M. Krop Senior High School (hereinafter referred to as “KROP”) and a member of the men’s varsity basketball team.

5. At all times material hereto, Plaintiff, GINA FLORIA, as the parent and guardian of Patrick George, was and is a resident of Miami-Dade County, Florida, and otherwise *sui juris*.

6. At all times material hereto, Patrick George was and is a student at KROP and a member of the men’s varsity basketball team.

7. At all times material hereto, Plaintiff, LISA KARELL, as the parent and guardian of Dylan Karell, was and is a resident of Miami-Dade County, Florida, and otherwise *sui juris*.

8. At all times material hereto, Dylan Karell was and is a student at KROP and a member of the men’s varsity basketball team.

9. At all times material hereto, Defendant, FLORIDA HIGH SCHOOL ATHLETIC ASSOCIATION, INC. (hereinafter referred to as “FHSAA”), was and is a Florida non-profit corporation, which serves as the governing body for interscholastic athletics in Miami-Dade County and throughout the state of Florida.

10. The FHSAA controls all inter-scholastic athletics in Florida high schools.

11. FHSAA currently has 748 member schools throughout the State of Florida.

12. KROP is a member school of the FHSAA.

13. FHSAA oversees 23 boy’s and girl’s sports, including men’s basketball.

14. The FHSAA controls the Class 6 A, KROP men’s varsity basketball team.

15. As early as September 13, 2010, two months prior to the commencement of the season, the FHSAA knew that Plaintiff, BRIAN DELANCY, transferred to KROP to play on the men's varsity basketball team.

16. The FHSAA knew that Plaintiff, BRIAN DELANCY, was a native of the Bahamas.

17. Plaintiff, BRIAN DELANCY, signed an "Affidavit of Compliance with Policy on Athletic Recruiting."

18. The FHSAA never disputed Plaintiff, BRIAN DELANCY'S, eligibility to play on the men's varsity basketball team.

19. On or about November 21, 2010, the KROP varsity men's basketball team began their 2010-2011 season.

20. By January 28, 2011, the KROP varsity men's basketball team had amassed a record of 19 wins and 2 losses and was ranked Number 1 in the state in the Class 6A Classification.

21. Plaintiff, BRIAN DELANCY, played in 19 of these 21 games.

22. On or about January, 2011, after already playing 21 games, another high school contacted KROP and argued that Plaintiff, BRIAN DELANCY, was ineligible to play for the men's varsity team due to his immigration status.

23. Accordingly, on or about January 26, 2011, KROP contacted the FHSAA, to confirm that BRIAN DELANCY was eligible to play on the team.

24. In an abundance of caution, KROP prohibited BRIAN DELANCY from playing in the final three regular season games on January 25, 2011, January 27, 2011, and January 29, 2011.

25. On or about January 27, 2011, the FHSAA informed KROP that BRIAN DELANCY may be ineligible to play on the men's varsity basketball team.

26. The FHSAA never set a hearing on the matter nor requested information from BRIAN DELANCY.

27. The FHSAA failed to permit BRIAN DELANCY to be heard prior to making a decision on his eligibility.

28. On January 28, 2011, tournament officials removed the KROP men's basketball team from the Greater Miami Athletic Conference Tournament based on the FHSAA'S dispute regarding BRIAN DELANCY'S eligibility.

29. FHSAA indicated that it will unilaterally determine whether BRIAN DELANCY is eligible to play on the KROP men's varsity basketball team by January 31, 2011.

30. The FHSAA unilaterally determined that BRIAN DELANCY was and is ineligible to play on the men's varsity team.

31. KROP now has to forfeit its wins this season which makes the team ineligible for the District or State Championships. Thus, the team cannot compete for the state championships in its class.

32. This ends the season for the KROP Men's varsity basketball team.

33. The FHSAA deprived BRIAN DELANCY of his constitutional right to due process of the law by unilaterally determining that he was ineligible to play for the KROP basketball team.

34. Due Process requires fair notice along with a real opportunity to be heard and defend in an orderly procedure before judgment is rendered. *See U.S. Const. Amend. 14 and FL Const. Article 1, Section 9.*

35. The conduct of the affairs of FHSAA is deemed to be state action for purposes of the United States Constitution and the Florida Constitution. *See Lee v. Florida High School Activities Ass'n, Inc.*, 291 So. 2d 636, 639 (Fla. 3d DCA 1974).

36. This court has the power and the duty to determine whether the FHSAA has deprived Plaintiffs of their due process rights by unilaterally determining the eligibility of a team mate, thus potentially ending their season and causing the team irreparable harm. *See Id.*

37. FHSAA has denied the Plaintiffs an opportunity to be heard and to establish that Plaintiff, BRIAN DELANCY, is eligible to play on the team.

38. Further, the FHSAA has denied Plaintiffs an opportunity to be heard as mandated in their own bylaws.

39. FHSAA bylaw 10.8.1 reads, in pertinent part, as follows:

Procedures. When the Executive Director believes that his/her findings in any investigation into any violation of any rule of this Association warrants the expulsion of a member school or a restriction of its membership privileges, the following procedure must be followed:

- (a) Notice. The Executive Director will notify in writing the principal of the school of the date, time and site of the Board of Directors meeting at which a hearing on the school's membership status will be conducted. The notice must state the findings of the Executive Director and must advise the principal of his/her obligation to represent his/her school at the hearing. This notice must be received by the principal of the school not fewer than 10 business days in advance of the date of the hearing.
- (b) Hearings. During the hearing before the Board of Directors, the school may have an attorney present, may present witnesses, testimony and any other relevant evidence or information for consideration by the Board of Directors. The Executive Director may also present witnesses, testimony and any other relevant evidence or information for consideration by the Board of Directors.
- (c) Final Decision. Following the presentation of evidence and arguments, the Board of Directors will render its decision by majority vote. The Board of Directors is empowered to sustain, modify or reject the findings and recommendation of the Executive Director. The Decision of the Board of Directors will be final.

40. Further, FHSAA Administrative Policy 10.9.1 states:

Allegations and Protests. Allegations and/or protesting actions of another school received less than forty-five (45) days prior to the beginning of state series competition in a sport may not be concluded prior to the conclusion of the sport's championship series.

41. Despite the language of the bylaws, the FHSAA never properly and adequately noticed Plaintiffs of BRIAN DELANCY's ineligibility, nor gave an explanation of the disqualification.

42. Further, the FHSAA deprived the Plaintiffs of the right to be heard. Plaintiffs were unable to present evidence to the contrary, unable to present witnesses and testimony and unable to dispute the allegations.

43. Additionally, it appears that the allegations were made in bad faith. There was no dispute as to BRIAN DELANCY'S eligibility prior to the season or in the beginning of the season. On the contrary, this issue has suddenly come to light one week before the final tournament.

44. Due to this violation of Plaintiffs' Due Process rights, they will suffer irreparable injury, loss, and damage if the instant emergency injunction is not granted.

45. Plaintiffs will not have the ability to compete in the upcoming District or State Championships for the 2010-2011 season.

46. Further, Plaintiffs will be deprived of their right to contend for athletic scholarships and college athletic recruiting if they are unable to continue their 2010-2011 season.

47. Plaintiffs have no adequate remedy at law in the event the injunctive relief is denied.

48. Pursuant to Fla. R. Civ. P. 1.610, this Court can and should grant said motion without notice to the opposition. The statute reads, in pertinent part, as follows:

(1) A temporary injunction may be granted without written or oral notice to the adverse party only if:

(A) it appears from the specific facts shown by affidavit or verified pleading that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and

(B) the movant's attorney certifies in writing any efforts that have been made to give notice and the reasons why notice should not be required.

49. In the instant case, on or about January 27, 2011, Plaintiffs verify that correspondence was sent to the FHSAA. A copy of which is attached hereto and made a part herein.

50. Plaintiffs will suffer immediate and irreparable injury, loss, and/or damage if time is taken to notify the adverse party of the need for a hearing. Such time will cause KROP to miss out on post-season play.

51. Further, the FHSAA's unilateral determination that Plaintiff, BRIAN DELANCY, was and is ineligible to play on the KROP men's varsity basketball team violates Plaintiffs' equal protection rights under the law.

52. The FHSAA elected to single out Plaintiffs' team, the Number 1 ranked team, right before the finals.

53. Thus, the FHSAA's decision to target Plaintiffs' basketball team at the end of the season is capricious and arbitrary.

54. Moreover, the employee handbook for the Dade County School System prohibits an employee from inquiring about a particular student's immigration status.

55. Florida law mandates that all children have a Florida Constitutional right to education and thus, employees are prohibited from inquiring about a student's immigration status.

56. This constitutional right to education is particularly important for Miami-Dade County due to its high population of immigrants.

57. Given the strict guidelines relating to non-discrimination of immigrant children applicable to the public school system, it is absolutely arbitrary and capricious for the FHSAA to suddenly determine that the number 1 ranked team in the county has a player ineligible due to an immigration issue.

58. This is yet another demonstration of why the FHSAA should be enjoined.

59. As a matter of public policy, children who are non-native to the United States who are eligible to attend public schools should likewise be protected from discrimination in school-related activities. These children are also guaranteed equal protection under the law and should, at a minimum, be able to dispute allegations of ineligibility before an entire team of children are caused irreparable and permanent harm.

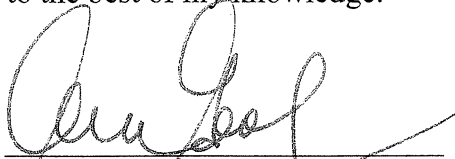
WHEREFORE, pursuant to Fla. R. Civ. P. 1.610, Plaintiffs hereby move this Honorable Court for an Emergency Injunction (1) mandating the FHSAA to cease and desist its investigation, or in the alternative, cease and desist its investigation until KROP's season is over; (2) mandating that the FHSAA provide the proper notice and opportunity to be heard to Plaintiffs if an investigation is to be done; (3) mandating that KROP be allowed to play in the District and State Championships; and (4) any other relief this Court deems just and proper.

STATEMENT OF VERIFICATION

I, Alan Goldfarb, as attorney for the Plaintiffs in this cause, do hereby verify that the

statements made above are true and accurate to the best of my knowledge.

Dated: 2/2/11



Alan Goldfarb, Esquire

I HEREBY CERTIFY that a valid attempt was made to contact the Executive Director of the FHSAA via telephone call and letter. No response was communicated to Plaintiffs.

ALAN GOLDFARB, P.A.

Co-Counsel for Plaintiffs

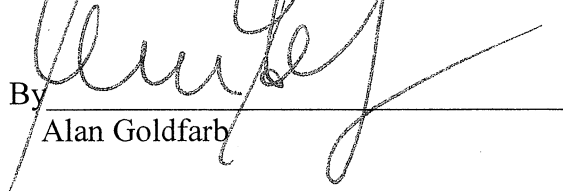
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