

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

SIMON CAMPBELL,

Petitioner

v.

PENNSYLVANIA INTERSCHOLASTIC
ATHELETIC ASSOCIATION,

Respondent

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Case No. 25 C.D. 2021

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**RESPONSE OF SIMON CAMPBELL, PETITIONER, IN OPPOSITION TO
THE APPLICATION OF THE PENNSYLVANIA INTERSCHOLASTIC
ATHLETIC ASSOCIATION, RESPONDENT, TO FILE AN ANSWER TO
PETITION FOR REVIEW UNDER PA.R.A.P. 123**

AND NOW comes, Simon Campbell, Petitioner, (Campbell) by his attorneys, Nauman, Smith, Shissler & Hall LLP, and files this Response in Opposition to the Application Pursuant to Pa.R.C.P. 123 of the Pennsylvania Interscholastic Athletic Association (PIAA), Respondent, For Permission to File an Answer to Campbell's Petition for Review:

1. Admitted in part and denied in part. It is admitted that PIAA has filed an Application For Permission to File an Answer to Campbell's Petition for Review filed January 15, 2021. It is denied that under the applicable appellate rules or law PIAA is permitted to do so.

2. Denied. To the contrary, Pa.R.C.P. 1516(a) expressly forbids the filing of an answer to a Petition for Review except in limited cases involving Legislative Reapportionment which this case does not involve.

3. Denied as the averments of paragraph 3 refer to the language of a Rule of Appellate procedure which speaks for itself. By way of further response, it is denied that PIAA is permitted to file an answer under the provisions of Pa.R.A.P. 1516(b) as its provisions do not apply to the nature of the Petition for Review here.

4. Denied. The averments of paragraph 4 refer to the contents of the Petition for Review filed in this matter which speaks for itself. It is further denied that the provisions of Pa.R.A.P. 1516(b) are applicable here.

5. The averments of paragraph 5 are denied as legal conclusions. It is further denied that the provisions of Pa.R.A.P. 1516(b) are applicable here. By way of additional response, Campbell's Petition for Review was filed under Chapter 13 of the Right-to-Know Law, 65 P.S. §67.1301-1310, and, more specifically, pursuant to 65 P.S. §1301(a) to the appellate jurisdiction of this Court. The provisions of Chapter 13, relating to Campbell's asserted error as to the failure for the OOR to make a finding of bad faith and his prayer for relief to award fees and statutory penalties asserted as part of the judicial review of this Court, goes to the appellate jurisdiction of this Court as well. Although the Court may make

findings of fact, it may also choose not to do so and render its decision based on the record presented to it. Pennsylvania Dept. of Education v. Bagwell, 114 A.3d 1113, 1118 (Pa. Cmwlth. 2015). This is why this Court has consistently held that agencies are to raise and to defend any claimed exemptions before the initial fact-finder, and a lack of evidence on its part, when a full opportunity to develop the record was afforded, is not a valid reason to attempt to supplement the record.

Mission Pennsylvania, LLC v. McKelvey, 212 A.3d 119 (Pa. Cmwlth. 2019).

PIAA here is attempting to supplement its failure to develop an adequate record before the OOR by asserting its original jurisdiction argument as a means to avoid the unequivocal prohibition of Pa.R.A.P. 1516(a) so as to allow it to file an Answer in direct contravention of the Rule. Furthermore, PIAA argues for what amounts to a bifurcation of the appeal for which there is no statutory authority.

Pennsylvania Dept. of Education v. Bagwell, 131 A.3d 638, 660 (Pa. Cmwlth.

2015). Additionally, Campbell's request for statutory penalties and attorneys' fees

is not addressed to the 'original jurisdiction' of this court, but is part of the

requested review on appeal and is a remedy available under Chapter 13 of the

RTKL, "Judicial Review," and is ancillary to the instant appeal. Pennsylvania

Dep't of Aging v. Lindberg, 469 A.2d 1012, 1019 (Pa. 1983) (plurality) ("...all

matters involving statutory review of final adjudications of state agencies including

agency adjudications finally denying an aggrieved person a hearing and all process

issued pursuant or ancillary to that review is within Commonwealth Court's appellate, not its original, jurisdiction..."). See also, Capinski v. Upper Pottsgrove Twp., 164 A.3d 601, 609–10 (Pa. Cmwlth. 2017) ("Commonwealth Court may enforce its order as a matter of ancillary jurisdiction whenever it hears an appeal of an agency's adjudication.")

6. The averments of paragraph 6 are denied as legal conclusions. It is further denied that the provisions of Pa.R.A.P. 1516(b) are applicable here. By way of additional response, the response set forth in paragraph 5 above is herein incorporated by reference.

7. Denied. It is denied that the Petition for Review filed by Campbell involves the original jurisdiction of this Court in any manner such that the express provisions of Pa.R.A.P. 1516(a) which would not permit the filing of an Answer here would not apply.

8. The contents of paragraph 8 contain no averments of fact to which a response is required. To the extent a response may be determined to be required, it is denied that any aspect of Campbell's Petition for Review involves the original jurisdiction of this Court which would permit the filing of an Answer thereto under Pa.R.A.P. 1516(b).

WHEREFORE, Simon Campbell, Petitioner, respectfully requests that the Application of Respondent, Pennsylvania Interscholastic Athletic Association, for Permission to File an Answer to the pending Petition for Review be denied.

NAUMAN, SMITH, SHISSLER & HALL, LLP

By: /s/Craig J. Staudenmaier

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Date: February 11, 2021

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Craig J. Staudenmaier, Esquire

Signature: /s/Craig J. Staudenmaier

Name: Craig J. Staudenmaier, Esquire

Attorney No. (if applicable): 34996

CERTIFICATE OF SERVICE

I, Karen L. Gagne, hereby certify that I am this day, in conformance with Pa.R.A.P. 121, serving the foregoing "Response of Simon Campbell, Petitioner, in Opposition to the Application of The Pennsylvania Interscholastic Athletic Association, Respondent, to File an Answer to Petition for Review Under Pa.R.A.P. 123" upon the persons listed below as follows:

Via First Class Mail

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/s/Karen L. Gagne
Karen L. Gagne

Date: February 11, 2021

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

25 CD 2021

PROOF OF SERVICE

I hereby certify that this 11th day of February, 2021, I have served the attached document(s) to the persons on the date(s) and in the manner(s) stated below, which service satisfies the requirements of Pa.R.A.P. 121:

Service

Served: Alan R. Boynton Jr.
Service Method: eService
Email: aboynton@mcneeslaw.com
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/s/ Craig James Staudenmaier

(Signature of Person Serving)

Person Serving: Staudenmaier, Craig James
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