

**[J-33A-2023 and J-33B-2023] [MO: Mundy, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

PENNSYLVANIA INTERSCHOLASTIC
ATHLETIC ASSOCIATION, INC.,

Appellant

v.

SIMON CAMPBELL (OFFICE OF OPEN
RECORDS),

Appellee

PENNSYLVANIA INTERSCHOLASTIC
ATHLETIC ASSOCIATION, INC.,

Appellant

v.

SIMON CAMPBELL (OFFICE OF OPEN
RECORDS),

Appellee

: No. 71 MAP 2022
:
: Appeal from the Order of the
: Commonwealth Court dated
: November 30, 2021 at Nos. 25 CD
: 2021 & 107 CD 2021 Affirming and
: partially denying the January 13,
: 2021 Final Determination of the
: Office of Open Records at No. AP-
: 2020-2639

: ARGUED: May 24, 2023
:

: No. 72 MAP 2022
:
: Appeal from the Order of the
: Commonwealth Court dated
: November 30, 2021 at No. 170 CD
: 2021, Affirming the Office of Open
: Record's Order dated February 5,
: 2021 at No. AP-2020-2639 denying
: the Petition for Reconsideration.

: ARGUED: May 24, 2023
:
:

CONCURRING OPINION

JUSTICE WECHT

DECIDED: February 21, 2024

The objective of the Right-to-Know Law (“RTKL”)¹ “is to empower citizens by affording them access to information concerning the activities of their government.”² This

¹ 65 P.S. §§ 67.101-67.3104.

² *SWB Yankees LLC v. Wintermantel*, 45 A.3d 1029, 1042 (Pa. 2012).

case requires us to examine whether the General Assembly lawfully afforded citizens access to information concerning the activities of the Pennsylvania Interscholastic Athletic Association (“PIAA”), a private not-for-profit corporation. As the Majority Opinion explains, the General Assembly subjected PIAA to public disclosure obligations by including PIAA within the definition of “state-affiliated entity.”³ Section 102 of the RTKL defines “state-affiliated entity” as a “Commonwealth authority or Commonwealth entity” and declares that the “term includes” twelve expressly named organizations, “a community college,” and the “Pennsylvania Interscholastic Athletic Association.”⁴

PIAA argues that the General Assembly’s inclusion of it in this manner violates Article III, Section 32 of the Pennsylvania Constitution.⁵ “[B]ut for being expressly named,” PIAA insists, it does not fall “within the scope of the class.”⁶ PIAA premises its constitutional arguments upon its insistence that it does not meet the general definition of “state-affiliated entity,” *i.e.*, it is not a “Commonwealth authority” or “Commonwealth entity.”⁷ PIAA contends that the General Assembly’s decision to “single out” PIAA as a class of one is *per se* unconstitutional.⁸ PIAA also maintains that the General Assembly

³ Maj. Op. at 14.

⁴ 65 P.S. § 67.102.

⁵ PA. CONST. art. III, § 32 (“The General Assembly shall pass no local or special law in any case which has been or can be provided for by general law[.]”).

⁶ PIAA’s Br. at 10.

⁷ See *id.* (“The issue is not whether the General Assembly might have had valid reasons for wanting PIAA to be subject to the RTKL, but whether it accomplished such goal in an unconstitutional manner . . . [b]y including PIAA by name in a class for which no one has credibly argued that it meets the actual definition[.]”).

⁸ See *id.* at 10-12, 19-21; *Harrisburg Sch. Dist. v. Hickok*, 761 A.2d 1132, 1136 (“[A] classification is *per se* unconstitutional when the class consists of one member and it is impossible or highly unlikely that another can join the class.”).

lacked a rational basis to include PIAA in a list of state-affiliated entities inasmuch as PIAA did not meet the statutory definition of the class.⁹

These protestations notwithstanding, PIAA meets the general statutory definition. Although PIAA differs from the other named class members, the phrase “Commonwealth entity” encompasses PIAA, and the class remains open to any entity that is a “Commonwealth authority” or “Commonwealth entity.” Moreover, while PIAA may differ in some respects from the named entities within the definition of “state-affiliated entity,” PIAA also differs in genuine ways from other private non-profit organizations.¹⁰

As the Majority recognizes, the Commonwealth’s duty to provide public education for youth is a governmental function enshrined in Pennsylvania’s constitution.¹¹ Public education extends beyond academics in the classroom and encompasses interscholastic athletics.¹² In recognition of that fact, the General Assembly has delegated authority to local school boards to develop rules and regulations concerning extracurricular activities, including athletics.¹³ It also has permitted schools, with the approval of the school board,

⁹ See PIAA’s Reply Br. at 7; *Harrisburg Sch. Dist. v. Zogby*, 828 A.2d 1079, 1088-89 (Pa. 2003) (explaining that under Article III, Section 32, the General Assembly generally is free to classify or treat people differently, provided that the classifications bear a rational relationship to a legitimate state purpose).

¹⁰ See *Hickok*, 761 A.2d at 1136 (holding that the legislature does not violate the prohibition against special laws if the distinctions in classifications are “genuine” and not “artificial and irrelevant”).

¹¹ Maj. Op. at 25; PA. CONST. art. III, § 14 (requiring the General Assembly to “provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth”).

¹² See Maj. Op. at 25 (recognizing that interscholastic athletics are “an integral part of the education and development of young adults”).

¹³ Section 5-511(a) of the Public School Code provides:

The board of school directors in every school district shall prescribe, adopt, and enforce such reasonable rules and regulations as it may deem proper,
(continued...)

“to affiliate with any local, district, regional, [s]tate, or national organization whose purposes and activities are appropriate to and related to the school program”¹⁴—*i.e.*, organizations like PIAA.

Examination of PIAA’s scope and functions makes clear that, when a school board affiliates with PIAA, it effectively cedes much of its rulemaking and regulatory authority over athletics to that entity. The Majority Opinion highlights the multiple methods by which PIAA fulfills a governmental function, for all relevant intents and purposes, by exercising “statewide control over high school athletics.”¹⁵ I agree. I wish to underscore the point that what sets PIAA apart from other private entities that contract with schools is the scope of PIAA’s regulation and control. PIAA’s scope is wide and deep, both in the geographic sense (its governance spans our entire Commonwealth), and in the substantive sense (“it governs virtually all aspects of interscholastic middle- and high-school sports”).¹⁶ It is this scope of regulation that puts PIAA into “a gray nether zone of the law,” a zone that is “neither strictly private nor strictly public,” notwithstanding PIAA’s not-for-profit status and

regarding (1) the management, supervision, control, or prohibition of exercises, *athletics*, or games of any kind, school publications, debating, forensic, dramatic, musical, and other activities related to the school program, including raising and disbursing funds for any or all of such purposes and for scholarships, and (2) the organization, management, supervision, control, financing, or prohibition of organizations, clubs, societies and groups of the members of any class or school, and may provide for the suspension, dismissal, or other reasonable penalty in the case of any appointee, professional or other employee, or pupil who violates any of such rules or regulations.

24 P.S. § 5-511(a) (emphasis added).

¹⁴ *Id.* § 5-511(b).

¹⁵ See Maj. Op. at 22-27 (quoting *Campbell v. PIAA*, 268 A.3d 502, 513 (Cmwlth. Ct. 2021)).

¹⁶ *Id.* at 23.

its “degree of legal separation from [its] member schools.”¹⁷ Unlike a typical non-profit organization with a privately-identified mission, or a private organization that contracts with the government to perform a specific ancillary, service-oriented function, PIAA is a “*de facto* state-wide regulator of high school athletics.”¹⁸

If a public school district wants to compete in interscholastic athletics on any meaningful scale, it must join PIAA and must submit to its rules, regulations, and policies. A brief sampling of such rules, regulations, and policies illustrates that PIAA does far more than simply arrange interscholastic games and tournaments. In addition to controlling a student’s eligibility to participate in athletics, and in addition to the other examples provided by the Majority,¹⁹ PIAA regulates athlete safety. For example, PIAA requires districts to institute a heat acclimatization program that includes PIAA’s protocols regarding the timing and length of high school football practices and the equipment worn by the players.²⁰ PIAA even regulates student athletes’ use of eye shade.²¹ PIAA’s weight control program governs weight reduction, hydration, and body fat assessment of high school wrestlers.²² PIAA dictates how many pitches a high school baseball pitcher may throw in a calendar day.²³ PIAA’s policies affect inclusion and expression, such as participation of disabled students, religious headwear, display of United States flags

¹⁷ Frank D. LoMonte & Harrison O’Keeffe, *Show Us the Money: How Patchwork State Freedom-of-Information Laws Impede Accountability in High School Athletics*, 50 N.M. L. REV. 87, 88, 91 (2020).

¹⁸ Maj. Op. at 22 (quoting Campbell’s Br. at 14).

¹⁹ *Id.* at 22-23.

²⁰ PIAA Handbook, Section III, 2023-2024 Rules and Regulations, at 20-21 (available at <https://www.piaa.org/resources/handbook>) (last accessed Dec. 20, 2023).

²¹ *Id.* at 48.

²² *Id.* at 26.

²³ *Id.* at 43.

during contests, and spectator decorum.²⁴ PIAA prohibits member schools from permitting spectators to remove their shirts, use body paint, and use (or even possess) banners or balloons during basketball games.²⁵ PIAA requests that media outlets broadcasting inter-district championships refrain from making negative comments toward participants, coaches, or officials, and PIAA prohibits certain advertisements and announcements during broadcasts.²⁶ PIAA is the owner of the rights to, and the copyright holder of, the recording of all contests conducted under its jurisdiction, and schools must abide by broadcasting rules and pay rights fees to PIAA.²⁷

Despite its private, not-for-profit status, PIAA has become the functional equivalent of a government regulatory agency performing the public function of controlling or affecting nearly every aspect of athletics in public schools. Given school boards' delegation to PIAA of the boards' rulemaking and regulatory authority over athletics, and given the robust reach and pervasive scope of PIAA's functions, PIAA is a "Commonwealth entity" as defined by the RTKL. The class is open for others to join. The General Assembly's decision expressly to name PIAA merely makes its intent to cover PIAA clear.

Accordingly, I concur with the Majority Opinion affirming the Commonwealth Court's order.

²⁴ *Id.*, Section II, 2023-2024 Policies and Procedures, at 117, 123, 129, 137.

²⁵ *Id.*, Section III, 2023-2024 Rules and Regulations, at 33.

²⁶ *Id.* at 51.

²⁷ *Id.* at 50-53.