

¶35 Scott argues that OSSAA's retroactive application of portions of its policies is arbitrary and capricious. We agree. Retroactive application of policies that did not exist for the majority of the alleged violations is inherently arbitrary and capricious because it has no basis in reason and is in complete disregard of the facts and circumstances. The OSSAA determined that Sequoyah paying the fees for various individual camps in which Scott participated violated OSSAA Policy X(D), which provides in pertinent part:

D. An individual student who is attending or who is enrolled and planning to attend a member school in grades 7-12:

....

2. may participate in individual camps and clinics in a particular activity, however:

....

(c) no fees or expenses for the camp or clinic may be paid by the school, or by school personnel, or by any booster club or organization associated with the school, or by any non-family member; any discount or waiver of fees or expenses must be based on financial need, and must be available to all participants based on the same standards;⁵⁰

Scott insists that this policy provision came into effect after he attended most of the individual camps at issue. The OSSAA contends that the specific provisions of policy X.D.2. had been in effect since the start of Scott's alleged violations in 2009.⁵¹ This is incorrect by the OSSAA's own admission. It is not disputed that the specific language on X.D.2. did not appear until the 2011-2012 policy. Application of this specific provision, then, to find Scott ineligible, was not appropriate prior to the effective date of this new language.⁵² In response, the OSSAA asserted that camp policy in effect before July 2011, in the form of Policy X.B., plainly stated that a student's attendance at an individual camp would be paid by the student or his/her family without concession.⁵³

¶36 A detailed examination of the record reveals that the OSSAA intended to, and did apply the then current version of Policy X, containing Section D.2., for all the alleged violations going back to 2009.⁵⁴ Even if the new Section D.2. took effect as early as the OSSAA asserts, on July 1, 2011, the OSSAA's attempt to

apply it retroactively to the 11 camp attendances by Scott which occurred prior to that date, without any justification and in disregard of the underlying facts, was arbitrary and capricious.

A. The Application of OSSAA Rule 9 Was Arbitrary and Capricious.

¶37 Both the final report drafted by the OSSAA staff and the Executive Director's November 3, 2012, letter making the initial determinations, concluded that Rule 9 of the OSSAA Rules prohibited payment by Sequoyah of fees for its students to attend individual camps.⁵⁵ Rule 9 is clearly and unambiguously directed towards recruitment of student-athletes, and Section 1 delineates this purpose. It provides:

Section 1. Statement of purpose.

OSSAA recognizes that permitting member schools to recruit students as athletes would place undue emphasis on secondary school athletic activities, and might cause competitive imbalances among member schools, misdirection of scarce educational resources, and threats to the continued amateur standing of students. Accordingly, no member school is permitted to recruit a student to select or transfer to that school, or to encourage or allow others to do so on its behalf, based on that student's skill, reputation, or experience in athletics.⁵⁶

The plain language of Section 1 indicates that the purpose of Rule 9 is to prohibit schools from offering special treatment to prospective student athletes. This is reinforced by Section 2, which also concerns recruitment.⁵⁷

¶38 When the Executive Director made his initial determination of forfeiture based on ineligibility by letter on November 3, 2012, his only explanation regarding the application of Rule 9 to Sequoyah's payment for Scott and others to attend individual camps was to state that "[t]he school's regular payment of expenses for certain student-athletes, particularly its most prominent and skilled football players, obviously could be viewed as an economic incentive for skilled student athletes to attend and remain at the school..." The same statement is repeated in the OSSAA's report on November 6, 2012.⁵⁸ The above hypothetical is the only real explanation given by the OSSAA as to how Sequoyah might have violated Rule 9. At no point did the OSSAA allege or attempt to prove that the payment of individual camp