

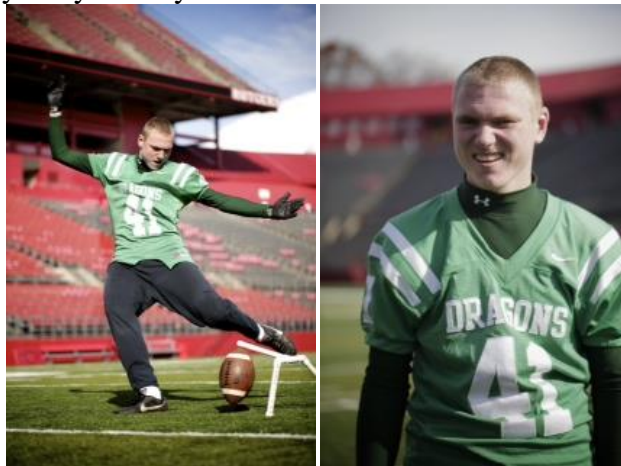
**FOR IMMEDIATE RELEASE--September 27, 2013**

**ANTHONY STAREGO, 19-YEAR-OLD HIGH SCHOOL VARSITY “STARTING” PLACEKICKER WITH AUTISM, GRANTED EXCEPTION BY NJSIAA<sup>1</sup> TO PLAY FOR UNPRECEDENTED FIFTH SEASON—IN DOING SO, NJSIAA REVERSES ITS EARLIER RULING BARRING ANTHONY FROM FURTHER INTERSCHOLASTIC COMPETITION**

**PARTIES REACH SETTLEMENT AS TO ALL PENDING CLAIMS IN FEDERAL AND STATE COURT—PARENTS PRAISE NJSIAA FOR DOING THE RIGHT THING**

**ANTHONY, WHO PREVIOUSLY WAS RESTRICTED BY THE NJSIAA TO PRACTICES AND SCRIMMAGES, MAY NOW PARTICIPATE FULLY IN INTERSCHOLASTIC COMPETITION DURING BALANCE OF 2013 SEASON**

By Gary S. Mayerson<sup>2</sup>



Midway through the 2012 football season, Brick Township, New Jersey “senior” Anthony Starego, then 18, finally was made a starting placekicker for the Dragons, Brick’s varsity football team. During the previous three seasons, particularly during his freshman year, Anthony had spent much of his time warming the bench. Although Brick finished its 2012 season with a lackluster 3-7 record, the national media converged on Anthony and his game winning kick against rival Toms River North as if Brick had won a national title. ESPN covered that moment in its video, *Kick of Hope*.

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<sup>1</sup> New Jersey Interscholastic Athletic Association.

<sup>2</sup> Gary Mayerson, the Starego family’s lead attorney, serves on the Board of Autism Speaks and is the founder of Mayerson & Associates, a Manhattan-based law firm founded in 2000 as the very first law firm in the nation dedicated to the representation of individuals with autism. Mayerson, who has testified before Congress and who has more than sixty reported federal decisions to his name, is the author of the book *How to Compromise With Your School District Without Compromising Your Child* (DRL Books 2004). To date, Mayerson & Associates has represented more than a thousand affected families in more than 30 states, including Alaska.

Making a game winning kick at the high school level normally will not attract ESPN and national network coverage. It does, however, when the kicker has autism. In Anthony's case, being diagnosed with autism, a "pervasive developmental disorder," undoubtedly is what prevented Anthony from achieving starter status in any position during his freshman, sophomore or junior years. In light of the physical contact that is inherent in the game of football, it also did not help that Anthony has a history of being "tactile defensive," studiously *avoiding* physical touch and contact. To say the least, the odds were entirely stacked against Anthony making it as a varsity starter. Looking at all the many hurdles Anthony was facing, it would take a miracle, and then some.

During his freshman and sophomore years, Brick tried Anthony out as a wide receiver. Anthony's physical size was not the problem. Anthony certainly had the size to play most any position. However, because of special safety concerns that arose because of Anthony's autism (principally his processing and reaction time, avoidance of physical touch and contact, and his inability to follow multi-step directions), Anthony was never in possession of the football during a football game.

Anthony's freshman coach acknowledged at trial that if Brick's quarterback ever were to throw to Anthony during a game, Anthony would be subject to being hit or tackled. (48-49). Accordingly, in order to keep Anthony safe, Brick's coaching staff intentionally ran plays on the *opposite* side of the field where Anthony was playing.

Anthony was suited up in uniform and physically present on the football field, but no one ever threw to Anthony during competitive play. Anthony's freshman football coach, Dominick Marino, acknowledged that if Anthony was in a game, he (Marino) never once called a play that involved Anthony. (51). Coach Marino explained the strategy that he and the other Brick coaches had adopted to keep Anthony safe in the face of his autism, slower processing time and inability to follow multi-step directions: "We put him somewhere on the field that was not going to be directly involved with the play." (38-39, 49-50)

Even during team practices, Anthony was treated with kid gloves. By design, Anthony experienced less "force" than other players. Anthony was matched up with "lesser aggressive" individuals who "knew of Anthony's condition." (41-42) Anthony's freshman coach explained that sometimes, the boys on Anthony's team would be given a "refresher," telling them to "remember it's Anthony in front of you." (43)

There were many positions that Anthony, by reason of his disabilities, could not play. Anthony was not suitable to be a quarterback, running back, linesman, kickoff kicker or punter. (52-57) By default and through the process of elimination, Anthony's father and the Brick coaching staff narrowed their focus during Anthony's sophomore year. They selected a relatively safe position that would involve only incidental contact—the limited role of placekicker.

Anthony's father, Ray, located a private kicking coach and summer camp to help Anthony with his mechanics and timing, to help Anthony "pull it all together." Ray Starego

worked tirelessly with Anthony during the off-season, giving Anthony the opportunity to practice and hone his placekicking kick thousands of times.

Anthony's persistence finally paid off. By the middle of his senior year, when Anthony was first made a varsity starter, Anthony was placekicking as well as 38% of other New Jersey high school placekickers. In other words, Anthony was genuinely and effectively competing in every sense of the word. According to Anthony's father, it was as if a light went on. Anthony was bristling with self esteem, self-confidence and heightened communication. But then, just a few short games later, Brick's 2012 football season was over.

### **THE NJSIAA'S ADMINISTRATIVE HEARING AND THE SUBSEQUENT FEDERAL DISTRICT COURT LITIGATION**

In the Spring of 2013, Brick High School filed and supported an application with the NJSIAA (the state athletic association regulating play at the high school level) to secure a limited exception from its "four year" and "eight semester" rules in order to allow Anthony *one* further season of competitive play. That exception was requested because, despite the fact that Anthony was *continuing* on at Brick as an IEP student,<sup>3</sup> according to the NJSIAA's "four season" and "eight semester" rules, Anthony would be barred from playing competitively during the 2013 football season.

Not a single coach or team publicly opposed Brick's application. Nor did any student playing for Brick or any other team. As Anthony's father explained, he supported Brick's application for only a "one season" waiver rather than a longer waiver that would cover Anthony until he turned 21 because it was fair—a one season waiver and exception would make up for Anthony's "lost" freshman year experience. (156)

In March of 2013, after a hearing where Anthony and his parents were not represented by counsel, the NJSIAA's board unanimously denied Brick's request for a "one further season" waiver. The NJSIAA ruled that Anthony was too old to continue to play, would "displace" other players, would create an undue safety risk, and would give Brick an "unfair competitive advantage." In July, after the Starego family had retained counsel, New Jersey's Education Commissioner, Christopher Cerf, affirmed the NJSIAA's ruling.

In July, just days after the Commissioner affirmed the NJSIAA's ruling, Anthony's attorneys, Gary Mayerson and Jacqueline DeVore, moved for a preliminary injunction against the NJSIAA, alleging that the NJSIAA, by refusing Anthony's request for the "one further season" waiver and exception, had violated federal law. For the next several weeks, Anthony attended team practices, not knowing if he could ever be allowed to again placekick in a competitive game situation.

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<sup>3</sup> Anthony, who has a measurable I.Q. of 53, is not going on to college. He is entitled under the federal Individuals with Disabilities Education Act (IDEA) to stay on at Brick until he turns 21.

On Monday, September 9, 2013, just five days before Brick was scheduled to play its season opener against Brick Memorial, the federal district court (Hon. Freda Wolfson) denied Anthony's motion for a preliminary injunction. While the district court denied Anthony's request for an injunction, the district court nevertheless rejected each and every one of the reasons that the NJSIAA had given for denying Anthony a waiver of its "four year" and "eight semester" rules.

On Friday, September 27, 2013, just hours before Brick was to play its third game of the season, the NJSIAA's counsel, Steven Goodell, called Anthony's attorneys with welcome news. The NJSIAA, after consultation with the high schools that Brick plays against, had reconsidered its earlier ruling and decided that Anthony would be *permitted* to play out the remaining 8 games of the season.<sup>4</sup> To say the least, Anthony and his parents were elated to hear the news. As Anthony's father, Ray Starego, testified at the trial, Anthony told his parents that he wanted to continue to placekick and make points for his team so that he could "hold my head up high."

Anthony's father praised the NJSIAA for its change of heart: "We have nothing but our profound thanks for the Association. Anthony, who loves the game of football and being a valued and respected member of the team, gets to play. Nothing could be more important."

### WHY THE STAREGO CASE IS SO IMPORTANT

- ✓ The *Starego* case reflects the next frontier for "inclusion." In the past, inclusion in the context of public school sports meant, at best, warming the bench or serving as the team's statistician or equipment manager. We have for years been comfortable including people with autism and other disabilities so long as they have remained on the periphery. Now, however, we must anticipate that there are likely to be many more Anthonys in the years to come, offering genuine competition where the outcome is going to "count." This is going to happen on the playing field, as well as in competing for higher education and employment opportunities. It is a miracle that Anthony managed to achieve varsity "starter" status. However, in ten years, that miracle is likely to become more commonplace. In other words, real progress.
- ✓ Most reported decisions pertaining to a student with a disability involve the situation where the student is at odds with the student's school district. Here, Anthony and his school district agreed that Anthony would be staying on at Brick as an IEP student. Here, Anthony's school district did the right thing and fully *supported* Anthony's application for a "one further season" waiver. Brick Township had the courage and integrity to stand up for what was right from the outset. And ultimately, even the NJSIAA had the courage to reconsider its earlier ruling so as to do the right thing.
- ✓ Even with his father's tireless support, the help of a private kicking coach, and the support of Brick's coaching staff, it still took Anthony until the *middle* of the 2012 football season, when Anthony was already a senior, to "pull it all together." This

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<sup>4</sup> The NJSIAA apparently had never before granted a "one further season" waiver to any varsity athlete to allow that athlete to play in interscholastic competition for a fifth year.

demonstrates that there are many things that people with autism can achieve, provided that they have the right teaching support and sufficient practice opportunities. We need to have high expectations and be persistent. Vince Lombardi was right: “Winners never quit and quitters never win.”

- ✓ The fact that Anthony was not suitable to play certain positions (e.g. quarterback, running back, linesman, punter, wide receiver) did not disqualify Anthony from becoming a valuable member of his team. For students with autism, it is essential to focus the investigation on what the student *can* or be taught to do, rather on the things the student ostensibly cannot do. To their credit, Brick’s coaching staff and Anthony’s father worked with Anthony until they found a niche skill set that Anthony could develop with demonstrable efficacy, ultimately allowing Anthony to become a valuable and respected member of his varsity team as a “starter.”
- ✓ The outcome of the litigation shows that “winning” does not have to entail humiliating or destroying your adversary. Here, all of the parties (and the court) can take credit for working together to achieve a noble and uplifting result.

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