

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter of A.S.,)	
Petitioner)	
)	
And)	
)	CAUSE NO. 120905-90
The Indiana High School Athletic Association,)	
Respondent)	
)	
Review Conducted Pursuant to Ind. Code ch. 20-26-14)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PROCEDURAL HISTORY

Petitioner completed the student portion of the Indiana High School Athletic Association (“IHSAA”) Athletic Transfer Report (“Transfer Report”) on or about June 12, 2012. The Transfer Report requested that Petitioner receive a Rule 19-6.2 waiver as a result of Petitioner’s transfer from Blue River Valley High School (“Blue River Valley”) to New Castle High School (“New Castle”) for the 2012–2013 school year. Blue River Valley completed its portion of the Transfer Report on May 31, 2012, while New Castle completed its portion on June 12, 2012.

On July 13, 2012, IHSAA Assistant Commissioner Sandy Searcy determined that Petitioner’s transfer was a transfer for primarily athletic reasons subject to Rule 19-4. Petitioner was deemed ineligible to participate in athletics at New Castle until August 2, 2013. Petitioner appealed Assistant Commissioner Searcy’s decision to the IHSAA Executive Committee (“Executive Committee”).

The IHSAA sent an email to Petitioner acknowledging the receipt of the request for appeal and set the matter for hearing before the Executive Committee for August 21, 2012. Based on the evidence and testimony presented at the August 21, 2012 hearing, the Executive Committee issued its ruling on August 31, 2012 upholding Assistant Commissioner Searcy’s decision.

On September 5, 2012, Petitioner appealed the Executive Committee’s decision to the Indiana Case Review Panel (“CRP”),¹ and the CRP notified the parties that it would review the

¹ According to Ind. Code § 20-26-14-6(c)(3), the CRP is a nine-member panel established by the IHSAA. The Superintendent of Public Instruction appoints the members and his designee serves as the Chairperson. The CRP reviews final student-eligibility decisions of the IHSAA when a parent or guardian so requests. The CRP may

decision during a CRP meeting. The CRP requested and received the record from the IHSAA. On September 20, 2012, the CRP held a meeting where a quorum of members was present.² Based on a review of the record and applicable rules and laws, the CRP made the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Petitioner lives with her mother within the Blue River Valley school district.
2. Petitioner attended Blue River Valley during her freshman and sophomore years (2010–2012) and played on the varsity volleyball team.
3. In January of 2011, Petitioner began participating in the Munciana volleyball program, a club program that includes players and coaches from various schools, including New Castle.
4. During Petitioner’s freshman year, her mother communicated via email with Blue River Valley’s Athletic Director and Assistant Principal, Jason Slopsema, regarding Petitioner’s eligibility to play volleyball if she transferred to New Castle. For example, in an email dated May 5, 2011, Petitioner’s mother wrote:

Hey, quick question... If [my daughter] transfers to New Castle this summer for volleyball, would she be eligible to play on the New Castle team in the fall? It breaks my heart to consider this born and raised in [Blue River Valley], but she has worked with the New Castle coach and threw [sic] the Munciana Program and he would push her to her full potential for a scholarship. If Angie was head coach, I wouldn’t pull her. I love Zoe as a person, but she doesn’t push and develop them as a coach [Petitioner] needs.

Mr. Slopsema responded that Petitioner would not be eligible to participate at New Castle. Tr. at 000113.

5. Petitioner’s mother responded to Mr. Slopsema in an email dated May 6, 2011 and stated, “Thanks for your response. I think we almost have everything worked out. From what we understand, [Petitioner] can play [Junior Varsity], but not Varsity till the following year. . . .” Tr. at 000114.

6. In an email dated September 25, 2011, Petitioner’s mother expressed her displeasure with certain coaching decisions to Blue River Valley’s volleyball coach, ZoeAnn Chernowsky. For example, Petitioner’s mother questioned the coach’s selection of a player to the all-tourney team, while Petitioner was not selected. Petitioner’s mother added, “I just hate the transfer card is

uphold, modify, or nullify any student eligibility decision made by the IHSAA.

² The following members were present at the meeting: Angela Rapp Weber (Chairperson), Ms. Dana Cristee, Ms. Cathy Ann Clink, Mr. Brett Daghe, and Mr. Mickey Golembeski. Mr. Chris Greisl attended the meeting as counsel to the CRP.

already coming up before the season is over.” Tr. at 000100.

7. On May 30, 2012, Sean Williams, Petitioner’s English teacher at Blue River Valley, sent an email to Ken Howell,³ Blue River Valley’s principal, which recounted a conversation Mr. Williams had with the Petitioner concerning her decision to transfer to New Castle. Petitioner stated that even though Wapahani High School’s coach wanted her to play volleyball for him, she decided to play at New Castle. Tr. at 000101.

8. Petitioner testified at the August 21, 2012 hearing that her treatment by other students was one reason she decided to transfer to New Castle. During Petitioner’s sophomore year, various incidents occurred between Petitioner, Petitioner’s former friend, and their respective groups of friends. The School Counselor intervened and resolved many of the issues between the parties. Petitioner also testified that a better academic environment at New Castle was another reason she decided to transfer.

9. Mr. Slopsema indicated in his Summary Statement of Testimony that a May 3, 2012 email from Petitioner’s mother was the only information he received concerning issues between Petitioner and other students. The incidents occurred shortly before the email was sent, were investigated, and were found to be isolated. No other incidents involving the Petitioner and other students were reported prior to the end of the school year. Tr. at 000102.

10. When Blue River Valley completed its portion of the Transfer Report, the school indicated that Petitioner’s transfer was athletically-motivated and did not sign the Rule 17-8.5 verification. Blue River Valley also indicated that Petitioner’s transfer may be the result of undue influence. Thus, Blue River Valley recommended that Petitioner be ineligible to participate in athletics at New Castle pursuant to Rule 19-4. New Castle also did not sign the Rule 17-8.5 verification but recommended that Petitioner be eligible to participate in athletics on a limited-basis at New Castle pursuant to Rule 19-6.2.

11. As a result of Assistant Commissioner Searcy’s ruling, which was upheld by the Executive Committee, Petitioner was deemed ineligible to participate in athletics at New Castle until August 2, 2013. Since neither school signed the verification required under Rule 17-8.5, Petitioner seeks a waiver pursuant to Rule 17-8.1.

CONCLUSIONS OF LAW

1. Any Finding of Fact that may be considered a Conclusion of Law shall be so considered. Any Conclusion of Law that may be considered a Finding of Fact may be considered as such.
2. Although the IHSAA is a voluntary not-for-profit corporation and is not a public entity, its decisions with respect to student eligibility to participate in interscholastic athletic

³ Mr. Howell is not currently the principal at Blue River Valley.

competition are considered a “state action” making the IHSAA analogous to a quasi-governmental entity. IHSAA v. Carlberg, 694 N.E.2d 222 (Ind. 1997), *reh. den.* (Ind. 1998).

3. The CRP has jurisdiction in this matter. The CRP is established by the IHSAA to review final student eligibility decisions with respect to interscholastic athletic competition. Ind. Code ch. 20-26-14. The CRP has jurisdiction when a student’s parent or guardian refers the case to the CRP not later than thirty days after the date of the IHSAA decision. Ind. Code § 20-26-14-6(b). In this matter, the Executive Committee rendered a final determination of student-eligibility adverse to the Petitioner on August 31, 2012, and Petitioner sought timely review on September 5, 2012.

4. The CRP may uphold, modify, or nullify the IHSAA Executive Committee’s decision. Ind. Code § 20-26-14-6(c)(3).

5. The CRP is not required to review the IHSAA determination *de novo*. The CRP review is similar to an appellate-level administrative review. If the CRP upholds the IHSAA decision, pursuant to Ind. Code § 20-26-14-7(c), a court of jurisdiction may consider the IHSAA decision as opposed to the CRP decision. The Executive Committee hearing process provides students with due process protection. Carlberg, 694 N.E.2d at 241.

6. The CRP reviews the IHSAA determination for arbitrariness or capriciousness. See Carlberg, 694 N.E.2d at 233. A rule or decision will be found to be arbitrary and capricious “only when it is willful and unreasonable, without consideration and in disregard of the facts or circumstances in the case, or without some basis which would lead a reasonable and honest person to the same conclusion.” Id. (citing Dep’t of Natural Resources v. Indiana Coal Council, Inc., 542 N.E.2d 1000, 1007 (Ind. 1989)).

7. According to Rule 19-4, “a student athlete who transfers from one school to a new school for primarily athletic reasons or as a result of undue influence will be ineligible at the new school for 365 days from the date the student enrolls at the new school. . . .”

8. Although Petitioner provided personal and academic reasons for her decision to transfer to New Castle, the evidence of record indicates that Petitioner’s decision was primarily for athletic reasons.

9. There are two waivers available to students under the IHSAA Rules: a Limited Eligibility Waiver pursuant to Rule 17-8.5 and a General Waiver of an IHSAA Rule, pursuant to Rule 17-8.1. The CRP agrees with the Executive Committee that because neither Blue River Valley nor New Castle signed the Rule 17-8.5 Verification Form, Petitioner does not qualify for a Limited Eligibility Waiver pursuant to Rule 17-8.5.

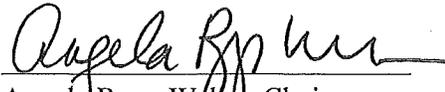
10. A student seeking a Rule 17-8.1 waiver must prove by clear and convincing evidence that, among other things, a hardship condition existed as defined in Rule 17-8.3. Rule 17-8.3(b)

provides that if the transfer is motivated even partially by athletic reasons, albeit not primarily, a student is ineligible for a general waiver. Because the CRP agrees with the Executive Committee's determination that the transfer was motivated primarily by athletic reasons, Petitioner is not eligible for a General Waiver pursuant to Rule 17-8.1.

ORDER

The CRP finds by a vote of 5-0 that Petitioner is ineligible to participate in athletics at New Castle until August 2, 2013. Petitioner is eligible to participate in athletics at New Castle on August 3, 2013.

DATE: 10/4/12


Angela Rapp Weber, Chairperson
Case Review Panel

APPEAL RIGHT

Any party aggrieved by the decision of the Case Review Panel has forty-five days from receipt of this written decision to seek judicial review in a civil court with jurisdiction, as provided by Ind. Code § 20-26-14-7.