

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter of B.B.,)
Petitioner,)
)
and)
) **CAUSE NO. 121115-95**
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

On or about March 28, 2012, B.B. (“Petitioner”) initiated an Indiana High School Athletic Association (“IHSAA”) Athletic Transfer Report (“Transfer Report”). The Transfer Report requested that the IHSAA make an athletic eligibility determination for the 2012–2013 school year relating to Petitioner’s transfer from Columbus North High School (“Columbus North”) to Columbus East High School (“Columbus East”). Columbus East, as the receiving school, completed its portion of the Transfer Report on July 23, 2012. On July 14, 2012, Columbus North, as the sending school, completed its portion of the Transfer Report.

On July 24, 2012, IHSAA Assistant Commissioner Phil Gardner determined that Petitioner’s transfer was subject to Rule 19-6.2, Limited Eligibility When Transfer Without Change of Residence by Parent(s)/Guardian(s). Thus, Petitioner was entitled to limited eligibility until February 2, 2013. Petitioner appealed Assistant Commissioner Gardner’s determination to the IHSAA Executive Committee (“Executive Committee”).

The IHSAA sent a letter to Petitioner acknowledging receipt of Petitioner’s request for appeal and set the matter for a hearing before the Executive Committee for October 25, 2012. Based on the evidence presented at the hearing, the Executive Committee issued its ruling on November 2, 2012, upholding Assistant Commissioner Gardner’s ruling.

On or about November 15, 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 decision during a CRP meeting. The CRP requested and received the record from the IHSAA. On December 19, 2012, the CRP held a meeting where a quorum of members was

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.

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 parents in Columbus, Indiana. Petitioner attended Columbus North during her freshman year, 2011–2012. During the summer of 2012, she enrolled at Columbus East without a change of residence.

2. Petitioner played basketball at Columbus North and last participated in athletics at Columbus North on February 2, 2012.

3. Petitioner provided several reasons for her transfer to Columbus East. Petitioner stated she always wanted to attend Columbus East, but because of transportation issues, which have now been resolved, Petitioner had to attend Columbus North. She doesn't feel as if she fits in at Columbus North, and all of her friends attend Columbus East. Petitioner also mentioned bullying at Columbus North, although she was not the target. Finally, Petitioner's mother stated that Petitioner's older sisters attended Columbus North, struggled, and withdrew from school during their senior years. Petitioner's parents want to address any issues Petitioner is having at Columbus North now, which is why Petitioner is transferring to Columbus East.

4. As a result of Assistant Commissioner Gardner's ruling, which the Executive Committee upheld, Petitioner has limited athletic eligibility and gains full athletic eligibility on February 3, 2013. As indicated above, Petitioner appealed the Executive Committee's determination to the CRP. Since Columbus North did not sign the verification required under Rule 17-8.5, Petitioner seeks a General 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 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

² The following members were present at the meeting: Ms. Angela Rapp Weber (Chairperson), Ms. Dana Cristee, Mr. Keith Pempek, Mr. Chuck Weisenbach, and Mr. Bret Daghe. Mr. Chris Greisl attended the meeting as counsel to the CRP.

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 October 25, 2012, and Petitioner sought timely review on November 15, 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 or 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 is athletically ineligible if his or her transfer was for primarily athletic reasons or the result of undue influence. The CRP agrees with the Executive Committee's determination that Petitioner's transfer to Columbus East was not primarily for athletic reasons or the result of undue influence. Thus, Petitioner is not athletically ineligible pursuant to Rule 19-4.

8. The Executive Committee determined that because Petitioner's transfer to Columbus East was without a corresponding change of residence by her parents, she qualified for limited athletic eligibility pursuant to Rule 19-6.2. Rule 19-6.2 provides that transfers which are not motivated primarily by athletics and do not correspond to a change in residence qualify a student for limited athletic eligibility.

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 17-8.1. The CRP agrees with the Executive Committee that because Columbus East and Columbus North recommended limited eligibility, Petitioner does not qualify for a Limited Eligibility Waiver pursuant to Rule 17-8.5.

10. Generally, a student seeking a Rule 17-8.1 waiver must prove by clear and convincing evidence that the primary purpose of the Rule will still be accomplished if the Rule is not strictly enforced; a waiver will not harm or diminish the Rule's purpose or spirit; the student will suffer

or be harmed if a waiver of the Rule is not granted; and a hardship condition exists as defined in Rule 17-8.3.

11. Rule 17-8.3, defines a hardship condition as:

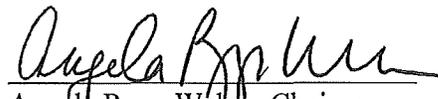
an extremely negative non-athletic condition peculiar to the student, which is caused by unforeseen, unavoidable and uncorrectable events, which is beyond the election, control or creation of the student, the student's family, the student's supporters, the student's coaches and the student's school, and which causes the student to be ineligible or not fully eligible, or which objectively compels some action which results in the student being ineligible or not fully eligible, or which objectively compels some action which results in the student being or results in the student not having full eligibility.

Based on the facts presented, the circumstances surrounding Petitioner's transfer to Columbus East do not constitute a hardship as defined by Rule 17-18.1. Thus, the CRP affirms the Executive Committee's decision to deny Petitioner a General Waiver pursuant to Rule 17-18.1.

ORDER

The CRP finds by a vote of 5-0 that Petitioner is able to participate in athletics at Columbus East on a limited-basis until February 2, 2013. She will be fully eligible to participate in athletics at Columbus East on February 3, 2013.

DATE: 1/7/13


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.