

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter of S.S.)
Petitioner,)
)
and)
) **CAUSE NO. 131230-110**
The Indiana High School Athletic Association,)
Respondent.)
)
Review Conducted Pursuant to Ind. Code)
§ 20-26-14 et seq.)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PROCEDURAL HISTORY

On or about November 8, 2013, S.S.'s ("Petitioner") mother completed the student portion of 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 2013–2014 school year relating to the Petitioner's transfer from Tri High School ("Tri") to Knightstown High School ("Knightstown"). On November 11, Tri, as the sending school, completed its portion of the Transfer Report. Knightstown, as receiving school, completed its portion of the Transfer Report on November 25, 2013.

On December 2, 2013, the IHSAA Assistant Commissioner determined that Petitioner was ineligible under Rule 19-4 "Transfer for Primarily Athletic Reasons of the Result of Undue Influence". The Assistant Commissioner further determined that the Petitioner would be ineligible for a period 365 days from the date Petitioner last participated in interscholastic athletics at Tri, which was on November 7, 2013. The Petitioner appealed the Assistant Commissioner'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 January 16, 2014. The hearing was later moved, at the request of Petitioner, to December 11, 2013. Following the evidence presented at the December 11, 2013 hearing, the Executive Committee issued its ruling on December 23, 2013, upholding the decision of the Assistant Commissioner declaring Petitioner would be ineligible to participate in athletics at Tri for the remainder of the 2013-2014 academic year.

On December 30, 2013, the Petitioner appealed the Executive Committee's decision to the Indiana Case Review Panel ("Panel"),¹ and the Panel notified the parties that it would review the decision during a Panel meeting. The Panel requested and received the record from the

¹ According to Ind. Code § 20-26-14-6(c)(3), the Panel is a nine-member panel whose members are appointed by the Superintendent of Public Instruction, and his or her designee serves as the Chairperson.

IHSAA. On January 16, 2014, the Panel held a meeting,² and based on a review of the record and applicable rules and laws, the Panel made the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

The Panel finds the following facts to be true and relevant to its decision.

1. Petitioner lived with her parents in Lewisville, Indiana. Petitioner attended Tri her freshman, sophomore, and beginning of her junior year.
2. At Tri, Petitioner participated in basketball on the junior varsity level her freshman year, then varsity level her sophomore, and junior year. Petitioner also participated in golf as well as track and field while at Tri.
3. On or about October 31, 2013 Petitioner was informed by the Tri basketball coach she would not be starting. Petitioner and her mother had a meeting with the Tri basketball coach and principal on November 1 to discuss the decision.
4. Petitioner withdrew from Tri on or around November 4, 2013 and enrolled at Knightstown on November 6, 2013
5. On November 8, 2013, Petitioner's mother completed the Transfer Report. On the Transfer Report, Petitioner indicated the transfer was due to academic classes and FFA program.
6. On the Transfer Report, Petitioner acknowledged that it was a Rule 19-6.2 Limited Eligibility transfer but sought a waiver under Rule 17-8.5 allowing full eligibility. Under this waiver, IHSAA had the authority to set aside the effect of the Transfer Rule and grant Petitioner full eligibility if certain conditions were shown.
7. At hearing, testimony was offered that Petitioner had taken advantage of academic help offered at Knightstown. Testimony was also offered that staff at Tri also offered academic help to students. Petitioner testified she did not take full advantage of the help offered at Tri.
8. Petitioner testified that after receiving the news of the loss of starting position she felt grades were more important and would have not have continued to play at Tri to concentrate on her grades.
9. Knightstown, the receiving school, signed the Rule 17-8.5 *Verification* portion of the Transfer Report and recommended that Petitioner receive full eligibility.

² The following members participated in the meeting: Dr. George Frampton (Chairperson), Mr. Bret Daghe, Mr. Keith Pempek, Mr. Chuck Weisenbach, Mr. Michael Golembeski, Mr. Scott Reske and Mr. Chris Lancaster. Ms. Amelia Hilliker, certified legal intern, was also present as legal counsel to the Panel, supervised by Mr. Michael Moore.

10. Tri, as sending school, did not sign the Rule 17-8.5 *Verification*. Tri recommended ineligibility per Rule 19-4, as an explanation Tri offered Petitioner was upset she would not be a starter. Tri did not indicate any undue influence from the coaching staff at Knightstown.

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 Panel has jurisdiction in this matter. The Panel was established to review final student eligibility decisions with respect to interscholastic athletic competition. Ind. Code § 20-26-14. The Panel has jurisdiction when a student's parent or guardian refers the case to the Panel 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 December 23, 2013, and Petitioner sought timely review on December 30, 2013.

4. The Panel may uphold, modify, or nullify the IHSAA Executive Committee's decision. (Ind. Code § 20-26-14-6(c)(3)). The Panel is not required to review the IHSAA determination *de novo*. The Panel review is similar to an appellate-level administrative review. A full hearing to recreate the record is not required.

5. The Panel 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).

6. 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.

7. Although the Petitioner provided academic reasons for the decision to transfer, the Panel agrees with the Executive Committee there is evidence that athletic motivation was a primary reason for the transfer. Thus, Petitioner is ineligible pursuant to Rule 19-4.

8. 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. Tri did not sign the *verification* on the Transfer Report, so Petitioner did not qualify for a limited eligibility waiver pursuant to Rule 17-8.5.

9. Generally, 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 Case Review Panel finds by a vote of 7-0 that Petitioner is ineligible to participate in athletics at Tri until November 7, 2014. Petitioner would be eligible to participate in athletics at Tri on November 8, 2014³.

DATE: _____


George Prampton, Ed.D., 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.

³ The Panel notes the date of eligibility is past Petitioner's date of anticipated graduation.