

**BEFORE THE INDIANA  
CASE REVIEW PANEL**

<b>In The Matter O.V.</b>	)	
<b>Petitioner,</b>	)	
	)	
<b>And</b>	)	
	)	<b>CAUSE NO. 141006-124</b>
<b>The Indiana High School Athletic Association</b>	)	
<b>Respondent,</b>	)	
	)	
<b>Review Conducted Pursuant to Ind. Code</b>	)	
<b>§ 20-26-14 et seq.</b>	)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

**PROCEDURAL HISTORY**

On or about August 11, 2014, O.V.'s ("Petitioner") parents 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 2014-2015 school year relating to the Petitioner's transfer from Milan High School ("Milan") to Jac-Cen-Del High School ("Jac-Cen-Del"). On August 11, 2014, Milan, as the sending school, completed its portion of the Transfer Report. Jac-Cen-Del, as receiving school, completed its portion of the Transfer Report on August 14, 2014.

On August 14, 2014, the IHSAA Assistant Commissioner determined that Petitioner transfer was a Rule 19-6.2 and ruled Petitioner had limited eligibility at Jac-Cen-Del. The Petitioner appealed the Assistant Commissioner's determination to the IHSAA Review Committee ("Review 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 Review Committee for September 11, 2014. Following the evidence presented at the September 11, 2014 hearing, the Review Committee issued its ruling on September 24, 2014, upholding the decision of the Assistant Commissioner declaring that according to Rule 19-6.2, Petitioner have limited eligibility until May 24, 2015, and then on May 25, 2014, she would be fully eligible to participate in athletics at Jac-Cen-Del, provided she is academically eligible and meets all other eligibility rules.

On October 6, 2014, the Petitioner appealed the Review Committee's decision to the Indiana Case Review Panel ("Panel"), 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 IHSAA

on November 10, 2014. On November 19, 2014, the Panel held a meeting,<sup>1</sup> 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 lives with her parents in Milan, Indiana. Petitioner attended Milan her freshman year. Over the summer, Petitioner transferred to Pendleton and was enrolled on August 11, 2014. While at Milan, during her freshman year (2013-14) she played varsity tennis and volleyball. She last participated athletically at Milan on May 24, 2014.

2. On August 11, 2014, Petitioner's parents completed the Transfer Report. On the Transfer Report, Petitioner indicated that the transfer to Jac-Cen-Del was to "enhance her curriculum and academic schedule."

3. Petitioner is from a family which has long ties to Ripley County and to Milan. Petitioner, her father, and her two older sisters attended Milan Schools. Petitioner was a basketball player, however, because her father had a disagreement with the philosophy of the Milan's girls basketball coach last year (2013-14), she did not play basketball.

4. Petitioner indicated that her transfer was to enhance her 'curriculum and academic schedule', there was no indication that Petitioner or her parents had any issue with Milan's academics or its academic schedules generally, or about Petitioner's academics or her academic schedule in particular. Petitioner, much like her two older sisters, enjoyed an exceptional academic career at Milan, having already accumulated a 3.965 g.p.a.

5. Petitioner's only academic issue at Milan occurred at the beginning of this school year, her sophomore year, and revolved around her academic course schedule. Apparently Petitioner completed her own schedule and signed up for an art class, choir class and Tech Tribe, all non-academic courses. Petitioner's schedule was sent home and her mother signed off on the schedule on March 17, 2014.

6. On August 6, 2014, Petitioner's parents decided her course work was not strong enough and they contacted the Principal to change make a change. The Milan Principal

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<sup>1</sup> The following members participated in the meeting: Dr. George Frampton (Chairperson), Mr. Bret Daghe, Mr. Michael Golembeski, Mr. Glenn Johnson, Mr. Chris Lancaster, Mr. Keith Pempek, Mr. Rick Donovan, Mr. Chuck Welsenbach, and Ms. Dana Cristee. Ms. Kelly Bauder, staff attorney, was also present as legal counsel to the Panel.

denied the request as it was after the deadline for making course changes. Petitioner then transferred to Jac-Cen-Del.

7. Milan and Jac-Cen-Del signed the transfer verification forms. Milan recommended Petitioner have limited eligibility under rule 19.62 and neither recommended full eligibility under rule 17-8.5 nor signed the *Verification*. Jac-Cen-Del, the receiving school, recommended Petitioner have limited eligibility under rule 19.62 and neither recommended full eligibility under rule 17-8.5 nor signed the *Verification*.

#### CONCLUSIONS OF LAW

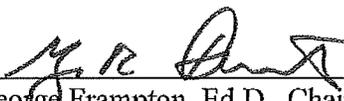
1. Any Finding of Fact that may be considered a Conclusion of Law shall be so considered. Any Conclusion of Law that may be considered a Finding of Fact may be considered as such.
2. Although the IHSAA is a voluntary not-for-profit corporation and is not a public entity, its decisions with respect to 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 Review Committee rendered a final determination of student-eligibility adverse to the Petitioner on September 24, 2014, and Petitioner sought timely review on October 6, 2014.
4. The Panel may uphold, modify, or nullify the IHSAA Review 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. 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. Neither school recommended Rule 17-8.1 or 17-8.5 and both did not sign the Rule 17-8.5 *Verification*. Therefore, Petitioner did not qualify for a limited eligibility waiver pursuant to Rule 17-8.5.
7. 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 (Rule 17-8.1(a)); a waiver will not harm or diminish the Rule's purpose or spirit (Rule 17-8.1(b)); the student will suffer or be harmed if a waiver of the Rule is not granted (Rule 17-8.1(c)); and a hardship condition exists as defined in Rule 17-8.3 (Rule 17-8.1(d)).
8. Petitioner failed to establish that the primary and secondary purposes of the rule would still be accomplished if the Rule is not strictly enforced. The rule's principle purpose is to deter athletically motivated transfers as well as promote the family unit. The secondary purpose of strict application of the transfer rule is to protect the opportunities of *bona fide* student-athletes.
9. The Panel finds that Petitioner did not establish through clear and convincing evidence that the transfer rule would not be offended or compromised by a waiver. Petitioner's reasons for transfer are not significant, non-athletic events or conditions which, objectively, would compel a transfer. Petitioner's decision to transfer schools was a choice and was not compelled to transfer for any reason. The Panel finds this was a choice by her family and did not rise to the level of a hardship. Therefore, the requirements for Rule 17-8.1 were not met.

#### ORDER

The Panel finds by a vote of 9-0 that the decision of the IHSAA Review Committee, upholding the decision of the Commissioner is UPHELD. The Petitioner has limited eligibility under Rule 19-6.2 at Jac-Cen-Del until May 24, 2015, and then on May 25, 2015 she would be fully eligible to participate in athletics at Jac-Cen-Del, provided she is academically eligible and meets all other eligibility rules.

DATE: 11-21-2014

  
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George Frampton, 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.