

**EFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter C.B.)
Petitioner,)
)
and)
) **CAUSE NO. 150105-128**
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 August 29, 2014, CB'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 Monrovia High School ("Monrovia") to Indianapolis Scecina High School ("Scecina"). On August 29, 2014, Monrovia, as the sending school, completed its portion of the Transfer Report. Scecina, as receiving school, completed its portion of the Transfer Report on August 29, 2014.

On October 24, 2014, the IHSAA Assistant Commissioner determined that Petitioner transfer was a Rule 19-6.2 and ruled Petitioner was entitled to limited eligibility at Scecina. 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 December 11, 2014. Following the evidence presented at the December 11, 2014 hearing, the Review Committee issued its ruling on December 22, 2014, upholding the decision of the Assistant Commissioner declaring Petitioner's transfer was a Rule 19-6.2 and Petitioner have limited or junior varsity eligibility at Scecina until June 7, 2015, and then on June 8, 2015, she would be fully eligible to participate in athletics at Scecina, provided she is academically eligible and meets all other eligibility rules.

On January 5, 2015, 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 January 16, 2015. On January 28, 2015, the Panel held a meeting,¹ 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 mother, father and brother. Petitioner attended Monrovia, a public school, her freshman year (2013-14). Over the summer, Petitioner withdrew from Monrovia and enrolled at Scecina, a parochial school in Marion County, Indiana. While at Monrovia, during her freshman (2013-14) year Petitioner was on the varsity softball and volleyball teams. She last participated athletically at Monrovia on June 7, 2014.
2. Petitioner transferred schools without a corresponding change of residence by her parents to a new district or territory. Petitioner's family home is located in Mooresville, Indiana (located in Morgan County) and is served by Monrovia. Last year, Petitioner attended Monrovia as a freshman and her brother Evan attended as a junior.
3. Last year, because of some issues they had with Petitioner's brother, her parents decided to look for a new school for him to attend for his senior (2014-15) year. Her parents decided to include Petitioner in the search for a new school as well. Eventually, Petitioner's brother decided not to transfer. Petitioner liked Scecina and decided to go there.
4. On August 29, 2014, Petitioner's parents completed the Transfer Report. On the Transfer Report, Petitioner indicated that the transfer to Scecina was for academic reasons, drug testing and strip search policies at Monrovia, and some discipline practices at the school.
5. Monrovia and Scecina signed the transfer verification forms. Monrovia and Scecina both recommended limited eligibility. Neither school recommended full eligibility under 17-8.5 nor did they sign the 17-8.5 *Verifications*.

¹ 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, and Ms. Dana Cristee. Ms. Kelly Bauder, staff attorney, was also present as legal counsel to the Panel.

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 December 22 2014, and Petitioner sought timely review on January 5, 2015.
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 signed the *verification*, so 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. The Transfer Rule is a prophylactic rule that limits the eligibility of all students without satisfaction of an exception listed in Rule 19-6.1. Petitioner's reasons for transfer are not significant, non-athletic events or conditions which, objectively, would compel a transfer. Petitioner's parents said there was a hardship due to having to drive her to the new school. This does not rise to the level of a hardship, rather a family decision regarding the Petitioners choice in schools. Therefore, it does not meet the conditions of a hardship under 17-8.3. The Petitioner fails to establish by clear and convincing evidence there was a hardship.

ORDER

The Panel finds by a vote of 8-0 that the decision of the IHSAA Review Committee is UPHELD. The Petitioner has limited eligibility under Rule 19-6.2 at Seccina until June 7, 2015, and then on June 8, 2015, she would be fully eligible to participate in athletics at Seccina, provided she is academically eligible and meets all other eligibility rules.

DATE: _____

1/30/2015



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.