BEFORE THE INDIANA
CASE REVIEW PANEL

In The Matter of E.S.	)	
Petitioner,	)	
	)	
and	)	
	)	**CAUSE NO. 150217-132**
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 18, 2014, ES'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. On November 20, 2014 the sending school, LaVille High School ("LaVille") completed its portion of the Transfer Report. The receiving school, Bremen High School ("Bremen") completed its portion of the Transfer Report on November 20, 2014.

On November 20, 2014, the IHSAA Assistant Commissioner determined that Petitioner transfer was a Rule 19-6.2 and ruled Petitioner had limited eligibility at Bremen. 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 January 15, 2015. Following the evidence presented at the January 15, 2015 hearing, the Review Committee issued its ruling on January 28, 2015, upholding the decision of the Assistant Commissioner declaring that according to Rule 19-6.2, Petitioner have limited eligibility until November 17, 2015, and then on November 18, 2015, she would be fully eligible to participate in athletics at Bremen, provided she is academically eligible and meets all other eligibility rules.

On February 17, 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 March 10, 2015. On March 18, 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 mom, dad and brother in Bremen, Indiana. Petitioner attended LaVille her seventh grade, eighth, and freshman years. Before the end of the trimester, Petitioner transferred to Bremen and was enrolled on November 17, 2014. While at LaVille, during her freshman (2014-15) year she played junior varsity soccer. She last participated athletically at LaVille on October 11, 2014.

2. On November 18, 2014, Petitioner's parents completed the Transfer Report. On the Transfer Report, Petitioner indicated that the transfer to the receiving school was because she wanted "a different school/social environment."

3. Petitioner is very successful academically, consistently receiving awards from school for her achievements and it appears her classmates were most likely jealous and made comments that hurt her feelings. There was an incident in 8th grade when Petitioner was locked out of the locker-room and she felt it was the work of some of her classmates. Petitioner believed this was bullying. Petitioner's parents considered sending her to a new school prior to her freshman year because she was unhappy with her treatment by her friends and LaVille classmates, however, they thought maybe she could infiltrate a different social group or perhaps could make friends with upper classman at LaVille.

4. During her freshman year, Petitioner continued to be unhappy at school. Her mother stated that, beginning in September 2014, Petitioner came home crying because of a "couple of things at school, a couple different issues at soccer practice, a couple issues at games." Petitioner's mother said there was a "big night" when Petitioner's best friend betrayed her (Petitioner had confided in her friend about some issues with some upper-class teammates and her friend told those teammates), and an upper-class teammate confronted her at a game and told her to "shut up because nobody wants to hear your voice." This incident was reported to the coach. There was no evidence LaVille took action to intervene and assist the Petitioner with the harassment.

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[1] The following members participated in the meeting: Dr. George Frampton (Chairperson), Mr. Michael Golembeski, Mr. Glenn Johnson, Mr. Chuck Weisenbach, Mr. Keith Pempek, Mr. Rick Donovan, and Ms. Dana Cristee. Ms. Kelly Bauder, staff attorney, was also present as legal counsel to the Panel.

5. While at LaVille, Petitioner reported incidents of harassment/bullying by other students to a coach and teaching staff. Despite reporting these incidents to school officials, the conduct of other students continued. This harassment against the Petitioner was compounded by the fact that LaVille is a small school and avoiding the offenders would be particularly difficult for the Petitioner.

6. LaVille, the sending school, recommended Petitioner have limited eligibility under rule 19.62 and neither recommended full eligibility under rule 17-8.5 nor signed the *Verification*. Bremen, 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 January 28, 2015, and Petitioner sought timely review on February 17, 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. The sending school and the receiving school did not sign the *Verification,* so Petitioner did not qualify for a limited eligibility waiver pursuant to Rule 17-8.5.

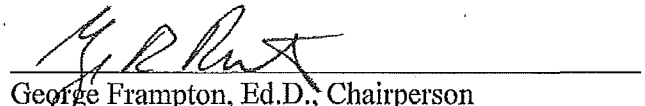
7. Generally, a student seeking a Rule 17-8.1 waiver must prove by clear and convincing evidence that: the primary purpose of the Rule will still be accomplished if the Rule is not strictly enforced (Rule 17-8.1(a)); a waiver will not harm or diminish the Rule's purpose or spirit (Rule 17-8.1(b)); the 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. The Panel finds that the Petitioner was a victim of bullying/harassment while at LaVille. The Panel finds that the Petitioner did seek assistance from the school to intervene in the situation and attempt to resolve the matter between all students. If the sending school does not take action or the bullying continues, at that point a hardship exists. The bullying continued despite attempts to report it by the Petitioner. The primary purpose of the Rule is still accomplished and there is no harm or diminishment of the purpose or spirit of the IHSAA Rule. Therefore, all of the requirements of Rule 17-8.1 were met.

ORDER

The Panel finds by a vote of 6-1 that the decision of the IHSAA Review Committee, upholding the decision of the Commissioner is NULLIFIED. The Petitioner has full eligibility effective March 18, 2015 to participate in athletics at Bremen provided she is academically eligible and meets all other eligibility rules.

DATE: March 18, 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.