

**BEFORE THE INDIANA  
CASE REVIEW PANEL**

**In The Matter M.W.** )  
**Petitioner,** )  
 )  
**and** )  
 ) **CAUSE NO. 150901-133**  
**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 April 29, 2015, M.W.'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 2015–2016 school year relating to the Petitioner's transfer. On April 29, 2015 Floyd Central High School ("Floyd Central"), the sending school, completed its portion of the Transfer Report. The receiving school, New Albany High School ("New Albany") completed its portion of the Transfer Report on April 30, 2015.

On April 30, 2015, the IHSAA Assistant Commissioner determined that Petitioner transfer was a Rule 19-6.2 and ruled Petitioner had limited eligibility at the receiving school. 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 August 6, 2015. Following the evidence presented at the August 6, 2015 hearing, the Review Committee issued its ruling on September 1, 2015, upholding the decision of the Assistant Commissioner declaring that according to Rule 19-6.2, Petitioner have limited eligibility until November 1, 2015, and then on November 2, 2015, she would be fully eligible to participate in athletics at the receiving school, provided she is academically eligible and meets all other eligibility rules.

On September 1, 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 September 24, 2015<sup>1</sup>. On October 7, 2015, the Panel held a meeting,<sup>2</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 mom and dad in Indiana. Petitioner attended Floyd Central her freshman and sophomore years. Petitioner transferred to New Albany in March 2015 and was enrolled on March 30, 2015. While at Floyd Central, during her freshman year (2013-14) and sophomore year (2014-15) she played varsity volleyball. She last participated athletically at Floyd Central on November 1, 2014.

2. Petitioner transferred without a corresponding change of residence by her parents to a new district or territory.

3. On April 29, 2015, Petitioner's parents completed the Transfer Report; however the Petitioner's parents reported they never filled out the Transfer Report themselves. This is supported by footnotes attached that are clearly not the words of her parents. The Petitioner indicated that the transfer to New Albany was because students at Floyd Central were mean to her; which lead to anxiety and depression.

4. Petitioner attended parochial schools through 5<sup>th</sup> grade and then attended Highland Hills, a Floyd Central middle school, through 8<sup>th</sup> grade. While at Highland Hills, she played volleyball and had significant contact with the Floyd Central volleyball program through the Floyd Central varsity volleyball coach.

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<sup>1</sup> The Panel is increasingly concerned about the amount of time it takes for transcripts to be completed by the IHSAA. The Petitioner's parents were frustrated with the amount of time it took to produce the record and their hope was a decision could have been made at the scheduled September 16, 2015 Case Review Panel meeting. The Petitioner's parents went out of their way to ensure the Panel received information and the record as quickly as possible. Pursuant to Rule 17-10.3 the Panel must call a meeting within five business days, or as soon as a quorum can be assembled, after the Panel receives a case in which time is a factor. The Panel will move forward cases according to this Rule even without a record from the IHSAA, if one cannot be produced in a timely manner in accordance with the IHSAA's own rules. If the IHSAA does not produce a record pursuant to its own rules, the Panel will rely on materials submitted by the student and render a decision according to the IHSAA rules and Indiana law. As expressed in previous orders from the Case Review Panel, the IHSAA requires parents and students to follow all of the IHSAA rules and by-laws, but often does not comply with their own rules involving transfer cases.. This will not be tolerated by the Panel.

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

5. Volleyball has been a primary focus for the Petitioner. Outside of school, she has participated in KIVA (Kentucky Indiana Volleyball Academy) and its high-level volleyball club teams. In school, volleyball has been the Petitioner's only extracurricular activity.

6. Petitioner had complained about being unhappy socially at Floyd Central. She reported some students were mean to her and had posted mean things on social media. The Petitioner reported that she mostly had only male friends and this had caused a problem with the girlfriend of one of those male friends. At the Hearing, the Petitioner said she did not think she had been bullied. Floyd Central did have bullying policy, yet the Petitioner did not seek assistance from the school nor did they ask the school to intervene in the conflict.

7. The Petitioner did have a conflict with the Floyd Central volleyball coach. The Petitioner reported the coach was harder on her than other members of the team. Petitioner's mother complained to the Floyd Central principal, when talking about her reason for transferring, that they were frustrated with the Floyd Central volleyball coach because he did not allow the Petitioner to promptly come back to play after she was injured.

8. Floyd Central recommended Petitioner have limited eligibility under rule 19-6.2 and neither recommended full eligibility under rule 17-8.5 nor signed the *Verification*. New Albany recommended Petitioner have limited eligibility under rule 19-6.2 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 1, 2015, and Petitioner sought timely review on September 1, 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. Petitioner failed to establish that the primary and secondary purposes of the rule would still be accomplished if the Rule is not strictly enforced.
9. The Panel finds that the Petitioner very well could have been a victim of mean students while at Floyd Central, but she never sought the assistance of the school to intervene in the situation and attempt to resolve the matter between all students. The Panel finds that students must bring to the attention of the sending school allegations of bullying and threats. If the sending school does not take action or the bullying continues, at that point a hardship may exist. Petitioner's decision to transfer schools was a choice and she was not compelled to transfer. The Panel finds this was a choice by her family and did not rise to the level of a hardship. Therefore, all of the requirements of Rule 17-8.1 were not 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 UPHOLD. The Petitioner has limited eligibility under Rule 19-6.2 at the receiving school until November 1, 2015, and then on November 2, 2015 he would be fully eligible to participate in athletics at the receiving school provided she is academically eligible and meets all other eligibility rules.

DATE: 10/9/2015

  
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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.