

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter B.D.)	
Petitioner,)	
)	
and)	
)	CAUSE NO. 150925-136
The Indiana High School Athletic Association,)	
Respondent.)	
)	
Review Conducted Pursuant to Ind. Code)	
§ 20-26-14 <i>et seq.</i>)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PROCEDURAL HISTORY

On or about August 7, 2015, B.D.'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 August 6, 2015 Crown Point High School ("Crown Point"), the sending school, completed its portion of the Transfer Report. The receiving school, Munster High School ("Munster") completed its portion of the Transfer Report on August 7, 2015.

On August 10, 2015, the IHSAA Assistant Commissioner determined that Petitioner's transfer was a Rule 20-2 and ruled Petitioner was ineligible for 365 days from her enrollment at Munster. 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 10, 2015. Following the evidence presented at the September 10, 2015 hearing, the Review Committee issued its ruling on September 22, 2015, upholding the decision of the Assistant Commissioner declaring that according to Rule 20-2 the Petitioner was ineligible for 365 days from her enrollment at Munster.¹

¹On October 6, 2015 the IHSAA submitted to the Case Review Panel an amended Review Committee decision. The Amended Review Committee decision had been back-dated to September 22, 2015 but it was believed to have been amended on September 29, 2015 and sent to all parties. As of October 6, 2015, the Petitioner's counsel had never received an Amended decision and was never notified by the IHSAA that the decision needed to be corrected. Petitioner's counsel was not invited to participate in any discussions about the amended decision or offer corrections on behalf of his client. In the future should the IHSAA need to amend a decision, the best practice is to notify all

On September 25, 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 October 6, 2015.² On October 7, 2015, the Panel held a meeting,³ 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, now a sophomore, lived with her mother and father and attended Crown Point, a public school serving her residence in Crown Point, Indiana. On July 1, 2015, the Petitioner moved with her family to Munster, Indiana. The Petitioner enrolled at Munster, a public school serving her parents' new residence on August 3, 2015.
2. Petitioner attended Crown Point her freshman year. While at Crown Point, during her freshman year (2014-15) she played varsity volleyball.
3. The Petitioner is a stellar academic student receiving a 4.2 gpa on a 4 point scale. When her parents were considering a location to move that was in closer proximity to the Petitioner's fathers' work, they sought a high-quality school system.
4. On August 7, 2015, after enrolling the Petitioner at Munster, her mother initiated the Transfer Report and completed the student's portion of the form. The Petitioner's mother indicated that the Petitioner was now living in a new home with her parents and younger

parties and date the amended decision on the day it is actually amended as it would likely re-start the deadline for appealing to the Case Review Panel.

²The Panel received an incomplete record from the IHSAA. The transcript was only partially complete and too full of inaccuracies to be relied on for information. According to the IHSAA, they requested the transcript from the hearing to be prepared on September 25, 2015. Counsel for the Petitioner contacted the Court Reporter on multiple occasions prior to October 6, 2015, and was told the transcript had not been requested by the IHSAA. 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. The Panel suggests the IHSAA sends copies of the Review Committee decisions electronically to parties as well as via US Mail as this would also help speed up the process.

³The 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.

sibling in Munster, Indiana and the move was necessitated by Petitioner's father getting a new job.

5. The Petitioner, who transferred schools with a corresponding change of residence by her parents to a new district or territory, was qualified for full athletic eligibility at Munster under Rule 19-5.
6. The Petitioner played club volleyball and was on an Epic United club team (16 Epic) whose head coach was Coach Ryan Summers, who was an owner of the Epic United Volleyball Club, along with his wife, Tracy. Tracy Summers is also the coach of the Munster varsity volleyball team. There was no evidence Tracy Summers was the coach, manager or trainer of the Petitioner during the time she participated in the club volleyball team.
7. There was testimony from the Crown Point coach, Coach Duncan that Tracy Summers was a coach of the Petitioner's and participated in evaluation of the Petitioner and offered her advice on dealing with other players. This was an assertion made by Coach Duncan, but there was no actual evidence any of this was true or occurred.
8. Coach Duncan had met with Petitioner's parents in June, 2015 to discuss volleyball and the Petitioner's parents expressed concern about the Petitioner's complaint another volleyball member was bullying her. Coach Duncan's solution was to put both girls in a room until they worked it out. Petitioner and her parents were concerned this was not the proper way to handle the situation.
9. Crown Point recommended ineligibility for the Petitioner under Rule 20-2, the Past Link Rule. Crown Point did not recommend full eligibility under 17-8.5 nor signed the *Verification*. Munster recommended Petitioner have full eligibility under rule 19-5 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 22, 2015, and Petitioner sought timely review on September 25, 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. This case appears to be the first challenge of the Past Link Rule 20-2 before the Panel. In order to establish a Past Link, the Panel would require more evidence than speculation or hearsay in order to determine a violation of this Rule. There was no clear evidence that established that Tracy Summers, the Munster volleyball coach and part owner of the club volleyball team, had any duties related to being a coach, manager or trainer of the Petitioner. Further, there was no evidence that Tracy Summers talked to the Petitioner or used any means to recruit the Petitioner or encourage her to come to Munster to play. In fact, Tracy Summers was very surprised when she heard the Petitioner had enrolled at Munster.
7. The Panel finds that the Petitioner had a bona fide change of address and pursuant to Rule 19-5 she has full eligibility at Munster.

ORDER

The Panel finds by a vote of 8-0 that the decision of the IHSAA Review Committee, upholding the decision of the Commissioner is NULLIFIED. The Petitioner has full eligibility as of October 7, 2015, provided she is academically eligible and meets all other eligibility rules.

DATE: 10/9/2015



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.