

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter E.M.)	
Petitioner,)	
)	
and)	
)	CAUSE NO. 160328-148
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 November 16, 2015, E.M.'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 November 17, 2015 Centerville High School ("Centerville"), the sending school, completed its portion of the Transfer Report. The receiving school, Hagerstown High School ("Hagerstown") completed its portion of the Transfer Report on November 17, 2015.

On November 17, 2015, the IHSAA Commissioner determined that Petitioner's transfer was a Rule 19-6.2 and ruled Petitioner had limited eligibility at the receiving school. The Petitioner appealed the 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 February 19, 2016. Following the evidence presented at the February 19, 2016 hearing, the Review Committee issued its ruling on March 4, 2016, upholding the decision of the Commissioner declaring that according to Rule 19-6.2, Petitioner have limited eligibility until October 24, 2016, and then on October 25, 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 March 28, 2016, 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 a partial unofficial record from the IHSAA on April 6, 2016. On April 14, 2016, 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 and father in Wayne County, Indiana. Petitioner attended Centerville for her freshman year and part of her sophomore year. While at Centerville, during her freshman year (2014-15) and sophomore year (2015-16) she played varsity volleyball. She last participated athletically at Centerville on October 24, 2015.
2. The Petitioner lived in the Hagerstown district during her freshman and sophomore years. The school district has open enrollment and the Petitioner and her family chose to go to Centerville. On November 2, 2016, the Petitioner began attending Hagerstown, another public school in Wayne County, Indiana.
3. Petitioner transferred without a corresponding change of residence by her parents to a new district or territory.
4. On November 16, 2015, Petitioner's parents completed the Transfer Report; the Petitioner indicated that the transfer to Hagerstown was because the Petitioner "is interested in dentistry" and "Hagerstown's vocational school has dentistry", while Centerville does not.
5. The Petitioners' parents were also concerned about the conduct of a Centerville school board member and how she had handled a situation involving their daughter while in her care. The Petitioner and her parents were also concerned about the volleyball coach's behavior; which included not having practice and sharing inappropriate details about her sexual relationship with her husband.

¹ The following members participated in the meeting: Dr. George Frampton (Chairperson), Mr. Bret Daghe, Mr. Mickey Gombleski, Mr. Rick Donovan, and Mr. Glen Johnson. Ms. Kelly Bauder, staff attorney, was also present as legal counsel to the Panel.

6. The Petitioner eventually met with Centerville officials, who were conducting an investigation into the behavior of the volleyball coach and during that meeting with the assistant principal of Centerville, the Petitioner explained that playing volleyball at Hagerstown played a role in the decision to transfer schools.
7. Centerville recommended Petitioner have limited eligibility under rule 19-6.2 and neither recommended full eligibility under rule 17-8.5 nor signed the *Verification*. Hagerstown recommended Petitioner have full eligibility under rule 17-8.5 and 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 March 4, 2016, and Petitioner sought timely review on March 28, 2016.
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 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's decision to transfer schools was a choice and she was not compelled to transfer. The Petitioner's parents believed she could benefit from the dentistry program at Hagerstown and they could potentially save a significant amount of money due to paying a lesser amount for a college credit. The treatment of the Petitioner by a school board member and the inappropriate actions by the volleyball coach did not create a hardship condition. Centerville did conduct an investigation regarding the volleyball coach and that coach will not be the Centerville volleyball coach next fall. 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 5-0 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 the receiving school until October 23, 2016, and then on October 24, 2016 (consideration was given that 2016 is a leap year) she would be fully eligible to participate in athletics at the receiving school provided she is academically eligible and meets all other eligibility rules.

DATE: 4-19-16



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.