

**BEFORE THE INDIANA
CASE REVIEW PANEL**

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| In The Matter of A.D. |) | |
| Petitioner |) | |
| |) | |
| And |) | CAUSE NO. 101005-70 |
| |) | |
| The Indiana High School Athletic Assoc. (IHSAA), |) | |
| Respondent |) | |
| |) | |
| Review Conducted Pursuant to |) | |
| I.C. 20-26-14 <i>et seq.</i> |) | |

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Procedural History

On July 6, 2010, Petitioner, A.D. and her parents, filed a transfer request with the Indiana High School Athletic Association (IHSAA) and requested the IHSAA make an athletic eligibility determination for the 2010-2011 school year. On July 29, 2010, the Assistant Commissioner of the IHSAA determined Petitioner to have limited eligibility until October 24, 2010, after which date Petitioner maintains full eligibility.

On August 19, 2010, Petitioner sought review by the IHSAA Review Committee of the Commissioner's determination. The Review Committee conducted its hearing on September 17, 2010, and issued its decision on September 27, 2010. The decision upheld the Commissioner's determination of limited eligibility.

APPEAL TO THE CASE REVIEW PANEL

Petitioner appealed to the Indiana Case Review Panel¹ on October 5, 2010. On October 7, 2010, the Panel notified the parties that the Panel would review the IHSAA Review Committee decision during a Panel meeting. The Panel requested and received the record from the IHSAA. The record was copied and provided to each participating member of the CRP. On October 14, 2010, the CRP held a meeting where a quorum of members was present.² In consideration of the record, the following Findings of Fact and Conclusions of Law were determined.

¹ The Case Review Panel (CRP) is a nine-member panel established by the IHSAA. The Superintendent appoints the members and his designee serves as the chairperson. The Panel reviews final student-eligibility decisions of the IHSAA when a parent or guardian so requests. The CRP, by statute, is authorized to uphold, modify, or nullify any student eligibility decision made by the IHSAA. I.C. § 20-26-14-6(c)(3).

² Eight members were present at the meeting, including Mr. Matt Tusing (chairperson), Mr. Ed Baker, Mr. Michael Golembeski, Ms. Cathy Ann Klink, Mr. Matthew Rager, Mr. Marcus Robinson, Ms. Dana Cristee, and Mr. Earl

FINDINGS OF FACT

1. Petitioner lives with her parents in Elkhart, Indiana, which is within the Elkhart Central school district.
2. Petitioner attended Elkhart Central High School (Elkhart Central) her freshman (2008-2009) year and played on the varsity tennis and volleyball teams. Petitioner attended Elkhart Central during her sophomore (2009-2010) year and played on the varsity volleyball team. She last participated in athletics at Elkhart Central on October 24, 2009.
3. Petitioner's parents are employed as teachers at Elkhart Central. Petitioner's siblings attended and graduated from Elkhart Central.
4. In June 2010, Petitioner enrolled at Penn High School (Penn) for her junior (2010-2011) year.
5. On June 23, 2010, Petitioner completed the student portion of the IHSAA Transfer Report (Transfer Report) and claimed that Hardship Rules 17-8.1 and 17-8.5 apply in this matter.
6. On June 28, 2010, Elkhart Central, the sending school, completed its portion of the Transfer Report and claimed that Petitioner should not be eligible because Elkhart Central believed the transfer was athletically motivated.
7. On July 6, 2010, Penn, the receiving school, completed the Transfer Report and recommended that a hardship exception should apply because Petitioner's physical and emotional well-being is negatively impacted by the parents being in the same building, as well as the history of the Petitioner's sibling.
8. On July 29, 2010, IHSAA Assistant Commissioner Bobby Cox determined that Petitioner had limited eligibility under Rule 19-6.2 because Petitioner did not have a corresponding

change of residence. Cox determined that that Petitioner did not meet the requirements of the General Hardship Rule 17-8.1 because Petitioner failed to provide evidence that the conditions of Rule 17-8.1 were met. Cox also determined that Petitioner did not meet the requirements of Transfer Hardship Rule 17-8.5 because both school principals did not approve of full eligibility. Finally, Cox determined that the transfer was not for primarily athletic reasons.

9. On August 10, 2010, Assistant Commissioner Cox conducted an on-site investigation. Cox collected evidence and met separately with Petitioner and representatives from Elkhart Central, including the principal, athletic director, and volleyball coach.
10. During October of 2009, Petitioner was witness to a bullying incident and completed a school incident report about the event. An Elkhart Central teacher required Petitioner to attend a mediation session between Petitioner and the student accused of bullying. After the mediation, Petitioner began receiving text messages that read “I hate you” as a joke from other students. Petitioner did not report the texts to administration officials.
11. During the spring of 2010, two male students stopped Petitioner in the school hallway, physically touched her in a suggestive manner, and demanded her phone number. When she refused and walked away, one of the students called her a “damned bitch.” Petitioner did not file a report with administration officials regarding the incident.
12. Petitioner attended Elkhart Central as a student in the honors program during her freshman and sophomore years. She made mostly A’s and B’s in her classes, but she scored 23 on an ACT exam when she expected to score 25 or 26 points.
13. Student discipline problems increased at Elkhart Central over the 2009-2010 school year, including fights and physical incidents involving students toward teachers. Gang-related activity occurred in close proximity to the school.

14. Petitioner's parent had a continual conflict with another teacher and the Elkhart Central administration could not ensure that Petitioner would not be assigned to this teacher in the future.
15. Petitioner's sibling, while attending Elkhart Central, experienced extreme stress, which led to physical pain, including severe headaches. Petitioner's sibling explored transfer at the request of a doctor. The sibling elected not to transfer schools.
16. On May 7, 2010, Petitioner's doctor recommended that Petitioner transfer to another school because Petitioner is afraid that students will retaliate against her for discipline imposed at the school by Petitioner's parents. The doctor bases this recommendation on the anxiety and stress history of Petitioner's sibling.

CONCLUSIONS OF LAW

1. Although the IHSAA, the Respondent herein, 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 "state action" and for this purpose makes the IHSAA analogous to a quasi-governmental entity. IHSAA v. Carlberg, 694 N.E.2d 222 (Ind. 1997), *reh. den.* (Ind. 1998). The Case Review Panel is established by the IHSAA to review final student eligibility decisions with respect to interscholastic athletic competition. I.C. 20-26-14 *et seq.* The Case Review Panel has jurisdiction when a parent, guardian, or eligible student invokes the review function of the Case Review Panel. In the instant matter, the IHSAA has rendered a final determination of student-eligibility adverse to the student. Petitioner has timely sought review. The Case Review Panel has jurisdiction to review and determine this matter. The Case Review Panel is not limited by any by-law of Respondent. The Case Review Panel is authorized by statute to uphold, modify, or nullify the Respondent's adverse eligibility determination.

2. 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.

3. The IHSAA Review Committee determination that Petitioner failed to establish an undue hardship under IHSAA Rule 17-8.1 is modified, but remains adverse to Petitioner.³ An undue hardship exists when “conditions cause a violation of a Rule . . . [that are] beyond the control of . . . the student.”⁴ Petitioner claims that the safety of the environment and level of academic performance at Elkhart Central caused a transfer to Penn with full athletic eligibility, even though full eligibility would otherwise violate the transfer rule.⁵ Petitioner offers a gang-related incident near the school, a bullying incident, general student discipline concerns, experiences of the Petitioner’s sibling, and confrontations between Petitioner’s parents and other teachers as evidence of “conditions . . . beyond the control of . . . the student.”⁶ These conditions may be beyond the Petitioner’s control, but these conditions are not sufficiently linked to the Petitioner’s academic performance or Petitioner’s safety. While the evidence demonstrates that the environment at Elkhart Central is far from superlative, the evidence is of general concern to all students and parents, and not alone sufficient to create an undue hardship for all students at Elkhart Central.

Petitioner offers conditions specific to the Petitioner’s safety and academic environment, but the conditions do not constitute an undue hardship. Petitioner cites a harassment incident and text messages from fellow students. No student harassment is ever acceptable, either in person or through text messages. But, the incidents cited were not

³ General Hardship exemptions must be demonstrated by clear and convincing evidence. IHSAA Rule 17-8.4(e).

⁴ IHSAA Rule 17-8.4.

⁵ The IHSAA argues that enforcement of limited eligibility creates no undue hardship because the limitation only affects the Petitioner for another few weeks after the hearing occurred. This logic is circular. The determination of Petitioner’s eligibility is yet final; therefore, the effect of a determination cannot itself be used as support in favor of a determination.

Rather, the Case Review Panel applies the IHSAA’s analysis in Proposed Decision Conclusions 6(a) and (b). There, the IHSAA argued that *conditions leading to the Transfer Report* met the “purpose of the rule” and the “spirit of the rule.” Now, Petitioner claims that a hardship led to full eligibility at Penn in violation of the transfer rule. This claim marries the preceding IHSAA analysis perfectly, and such analysis is applied herein: did *conditions leading to the Transfer Report* constitute “conditions which cause a violation of a Rule” necessary to establish the General Hardship, Rule 17-8.2.

⁶ IHSAA Rule 17-8.4.

sufficient enough to constitute a hardship, as evidenced by the Petitioner referring to the texts as a “joke” and failing to report the harassment to the school administration. Petitioner cites a doctor’s recommendation that Petitioner transfer schools. The letter is not sufficient to constitute a hardship because it was not the Petitioner’s stress-related physical symptoms that led to the recommendation, but rather the sibling’s past symptoms. Petitioner cites her ACT test score of 23 when she was expecting 25 or 26. The score is not sufficient to constitute an undue hardship because the differential is only 2-points on one ACT test.

The evidence neither jointly nor severely establishes an undue hardship. Therefore, the IHSAA Review Committee determination under Rule 17-8.1 is modified in accordance with the preceding application of the association’s rule.⁷ Because Petitioner failed to establish an undue hardship, the Case Review Panel need not review whether Petitioner established conditions under Rule 17-8.1(a) or (b) (whether “[s]trict enforcement of the Rule in the particular case will not serve to accomplish the purpose of the Rule” or whether “[t]he spirit of the Rule has not been violated”). Thus, the Panel does not affirm, modify, or nullify the IHSAA Review Committee’s Conclusions of Law in relation to Rule 17-8.1(a) or (b).

4. The IHSAA Review Committee determination that Petitioner failed to establish a Transfer Hardship exemption under IHSAA Rule 17-8.5 is upheld. The IHSAA Review Committee may grant full eligibility under Rule 17-8.5 if, among other requirements, “the principals of the sending and receiving schools each affirm in writing that the transfer is in the best interest of the student and there are no athletic related motives surrounding the transfer.” Petitioner provided no evidence that the principal of the sending school provided the written affirmation required under Rule 17-8.5. Therefore, the IHSAA Review Committee determination under IHSAA Rule 17-8.5 is upheld.
5. The IHSAA Review Committee determination that Petitioner did not transfer as a result of primarily athletic purposes under IHSAA Rule 19-4 is upheld. Assistant Commissioner

⁷ See IC § 20-26-14-7(c).

Bobby Cox held that the transfer was not for primarily athletic purposes. Neither party disputed Cox's holding during the IHSAA Review Committee appeal.

6. The IHSAA Review Committee determination that Petitioner did not establish eligibility under IHSAA Rule 19-6.1 is upheld because Petitioner did not claim eligibility under Rule 19-6.1.

7. The IHSAA Review Committee determination that Petitioner has limited eligibility under IHSAA Rule 19-6.2 is upheld. IHSAA Rule 19-6.2 states that "a student who transfers without a corresponding change of residence to a new district or territory by the student's parent(s)/guardian(s) may be declared to have limited eligibility." Petitioner did not transfer schools with a corresponding change of address. Therefore, the IHSAA decision to declare Petitioner has limited eligibility was not arbitrary, capricious or an abuse of discretion, or otherwise not in accordance with law, and the decision was supported by substantial evidence.

ORDER

The IHSAA Review Committee order is hereby affirmed by a vote of 5-3.

DATE: October 22, 2010

Matthew Tusing, Chair
Case Review Panel

APPEAL RIGHT

Any party aggrieved by the decision of the Case Review Panel has forty-five (45) days from receipt of this written decision to seek judicial review in a civil court with jurisdiction, as provided by I.C. 20-26-14-7.