

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter of M.W.,)	
Petitioner)	
And)	CAUSE NO. 071019-54
The Indiana High School Athletic Assoc. (IHSAA),)	
Respondent)	
)	
Review Conducted Pursuant to)	Closed Hearing
I.C. 20-26-14 <i>et seq.</i>)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Procedural History

M.W., (hereafter, “Petitioner”) attends Hamilton Southeastern High School (hereafter, “Hamilton Southeastern”), a public school located in Fishers, Indiana. Since August, 2006, Petitioner has attended Hamilton Southeastern, and is currently attending this school for the 2007-2008 school year.

In August, 2007, Petitioner requested a determination of her eligibility status for the 2007-2008 school year. The Respondent, by its Commissioner, in September 2007, found Petitioner was athletically ineligible beginning the fall 2007 semester, and thereafter pursuant to Respondent’s **Rule C-12-2**.¹ **Rule 12** addresses Enrollment and Attendance. **Rule C-12-2** states as follows:

After enrollment in the 9th grade for 15 or more school days, students shall be eligible for no more than four (4) consecutive years, or the equivalent. (e.g. 12 semesters in a trimester plan, etc.)

Petitioner, by her mother, F.W., requested a review of the Commissioner’s decision.² The Respondent’s Review Committee conducted its review on October 4, 2007. The Review Committee upheld the decision of the Commissioner declaring that M.W. had four (4) years (eight (8) semesters) of athletic eligibility available to her since her fall 2003 enrollment in high

¹Respondent has promulgated a series of by-laws as a part of its sanctioning procedures for interscholastic athletic competition. Some by-laws apply to specific genders, but many of the by-laws are “common” to all potential athletes and, hence, begin with “C.” **Rule C-12-2** is “common” to both genders. (All references are to the 2007-2008 by-laws of Respondent.)

²Letter dated September 13, 2007.

school, and had used all her athletic eligibility as of the end of the spring 2007 semester; therefore, M.W. is a fifth-year senior who has already competed as a high school swimmer for five years, and is ineligible to participate in interscholastic athletic competition at Hamilton Southeastern beginning in the fall 2007. The Review Committee also determined that: it will not grant eligibility under **Rule C-12-3** or **Rule 17-9**, since no evidence was presented which would allow M.W. to qualify under such rules; it had not considered eligibility under the general hardship rule, **Rule 17-8.1**, because that hardship rule does not apply to the eight semester rule; and had the Review Committee considered the case under any such rules, it would have denied relief because there was no proof entitling M.W. to more than eight (8) semesters. The Review Committee issued its written decision on October 15, 2007.

APPEAL TO THE CASE REVIEW PANEL

Petitioner appealed to the Indiana Case Review Panel³ on October 18, 2007. On October 19, 2007, the parties were notified of their hearing rights. The record from the investigation and review by Respondent was requested and received. The record was copied and provided to each participating member of the CRP. On November 2, 2007, the CRP issued a Notice of Hearing which indicated that a hearing would be conducted on November 13, 2007, at the Indiana Department of Education, 151 West Ohio Street, James Whitcomb Riley Conference Room, Indianapolis, Indiana. The parties received timely notice of the proceedings. On November 2, 2007, the Petitioner filed the Consent to Disclose Student Information Form, and elected to not disclose student information, so the proceedings in the matter are closed to the public.

On November 13, 2007, the CRP convened.⁴ Petitioner was not present, but was represented by her parents. The Respondent appeared by counsel. Prior to the hearing a brief pre-hearing conference was conducted. Petitioner submitted seventeen (17) additional exhibits marked P-1 through P-18.⁵ Respondent objected to exhibits P-2, P-3, P-4, P-5, P-6, P-8, P-13, P-14, P-15, and P-16. The CRP noted the objections, but admitted all of Petitioner's exhibits into the record except for exhibit P-15. The CRP sustained the objection as to exhibit P-15 because the IHSAA's Commissioner Ress could be questioned at the hearing. Respondent submitted Respondent's exhibit A at the pre-hearing conference. The CRP noted Petitioner's objection to Respondent's exhibit A, but ruled that it was admissible if Respondent decided to offer it during the hearing.

³The Case Review Panel (CRP) is a nine-member adjudicatory body appointed by the Indiana State Superintendent of Public Instruction. The State Superintendent or her designee serves as the chair. The CRP is a public entity and not a private one. Its function is to review final student-eligibility decisions of the IHSAA when a parent or guardian so requests. Its decision does not affect any By-Law of the IHSAA but is student-specific. In like manner, no by-law of the IHSAA is binding on the CRP. The CRP, by statute, is authorized to uphold, modify, or nullify any student eligibility decision by the Respondent. I.C. 20-26-14-6(c)(3).

⁴Seven members were present: Joan L. Keller, Chair; Christi L. Bastnagel; Scott F. Eales; James Perkins, Jr.; Stephen Sipes; and Earl H. Smith, Jr.; Melissa B. Starry.

⁵P-17 was withdrawn.

Testimony was provided under oath or by affirmation.

In consideration of the testimony and record, the following Findings of Fact and Conclusions of Law are determined.

FINDINGS OF FACT

1. Petitioner (M.W.) is an 18-year-old (d/o/b August 27, 1989). Petitioner lived with her parents and attended Williamsville North High School in New York prior to August, 2006. In August 2006, Petitioner was enrolled at Hamilton Southeastern High School, a public school located in Fishers, Indiana.
2. The *IHSAA Athletic Transfer Report*, dated November 2006, indicated that Petitioner was in the 11th grade. The Sending School indicated that Petitioner had participated in swimming in 9th grade, 10th grade, and 11th grade at the Varsity level. The “No” box was checked to question 7 “Did student transfer for athletic reasons?” The “No” box was checked to question 8 “Did student transfer as a result of undue influence?” The Sending School indicated the student withdrew because of a relocation by the family. Hamilton Southeastern, the Receiving School, indicated that Petitioner did not transfer for athletic reasons and did not transfer as a result of undue influence. The action taken by the IHSAA’s Commissioner in November, 1996 was that M.W. was eligible under Rule 19.5⁶.
3. Petitioner repeated the 11th grade in the 2006-2007 school year because of a decision made by Petitioner and Petitioner’s parents.
4. In a letter to the IHSAA’s Commissioner, dated August 30, 2007, Petitioner’s mother requested a waiver of the four-year rule to allow her daughter to swim her senior year at Hamilton Southeastern. The letter referenced **Rule C-12-1**, **Rule C-12-3**⁷ and/or **Rule C-3-8**. Petitioner’s mother indicated that: Petitioner swam 50 freestyle events individually and in the 200 relays when needed; Petitioner has an Attention Deficit/Hyperactivity Disorder and has a 504 plan. Repeating the junior year allowed Petitioner the opportunity to take honors Anatomy and an AP Science class.
5. In a letter to the IHSAA’s Commissioner, dated September 13, 2007, Petitioner’s mother requested a hardship waiver under **Rule C-17-8**.
6. A letter was also submitted to IHSAA’s Commissioner from Petitioner which indicated that she was a senior at Hamilton Southeastern and had competed in three years of varsity swimming in New York State and one year in Indiana. Petitioner asked that she be allowed to swim her senior year because of her special circumstances. Petitioner indicated that: in the fall of 2005, she tested positive for mononucleosis; she was diagnosed on the day of the first away meet; and her coach continually entered her in events because she was viewed as one of their top performers; she struggled with Chemistry and Math but was able to achieve decent grades in her other primary classes; in the early spring of 2006 she had the

⁶The correct reference is **Rule C-19-5**.

⁷**Rule C-3-8** indicates that “A student who becomes ineligible under the rules of another state cannot remove that ineligibility by transferring to an Indiana high school.”

- flu; missed about twenty (20) full days of school; her grades for the second semester of the 2006-2007 school year included an A- in Chemistry and a B in Algebra II.
7. In 2002 Petitioner was diagnosed with a mild Attention-Deficit/Hyperactivity Disorder. It was recommended that she obtain a 504 Plan (preferential seating, more time on tests and increased communication with teachers).
 8. In 2003 Petitioner was re-evaluated, and at that time the diagnosis was that the Attention-Deficit/Hyperactivity Disorder fell more in a moderate range.
 9. Petitioner had a Section 504⁸ Plan at Williamsville North High School in New York starting in 2003-2004 school year. Petitioner's 504 Plan for 10th grade provided for the following accommodations: Preferential seating (front and center); biweekly feed back on student progress via signed agenda mate; extended time (1.5 times) for quizzes, tests and exams; with 5 week progress reports sent by all teachers every quarter.
 10. In September, 2007, the IHSAA's Commissioner, found Petitioner was athletically ineligible beginning the fall 2007 semester, and thereafter pursuant to IHSAA **Rule C-12-2**.
 11. On October 15, 2007, the IHSAA's Review Committee upheld the decision of the IHSAA Commissioner declaring that M.W. had four (4) years (eight (8) semesters) of athletic eligibility available to her since her fall 2003 enrollment in high school, and had used all her athletic eligibility as of the end of the spring 2007 semester; therefore, M.W. is a fifth-year senior who has already competed as a high school swimmer for five years, and is ineligible to participate in interscholastic athletic competition at Hamilton Southeastern beginning in the fall of 2007. The Review Committee also determined that: it will not grant eligibility under **Rule C-12-3** or **Rule 17-9**, since no evidence was presented which would allow M.W. to qualify under such rules; it had not considered eligibility under the general hardship rule, **Rule 17-8.1**, because that hardship rule does not apply to the eight semester rule; and had the Review Committee considered the case under any such rules, it would have denied relief because there was no proof entitling M.W. to more than eight (8) semesters.
 12. By the end of the 2006-2007 school year M.W. had four years of high school athletics.
 13. M.W. has a Section 504 Plan at Hamilton Southeastern.

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 has been created by the Indiana General Assembly 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

⁸Section 504 of the Rehabilitation Act of 1973.

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 either 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. By the end of the 2006-2007 school year, Petitioner had four years of high school athletic eligibility.
4. Respondent's denial of athletic eligibility for a fifth high school year for the 2007-2008 school year is upheld.

ORDER

1. The Case Review Panel upheld the IHSAA's decision that M.W. had four (4) years (eight (8) semesters) of athletic eligibility available to her since her fall 2003 enrollment in high school and had used all her athletic eligibility by the end of the 2006-2007 school year. This was determined by a unanimous vote of 7-0.

DATE: November 30, 2007

/s/ Joan L. Keller, Chair
Indiana Case Review Panel

APPEAL RIGHT

Any party aggrieved by the decision of the Case Review Panel has thirty (30) calendar days from receipt of this written decision to seek judicial review in a civil court with jurisdiction, as provided by I.C. 4-21.5-5-5.