

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter of S.B.,)	
Petitioner)	
And)	CAUSE NO. 090917-63
The Indiana High School Athletic Assoc. (IHSAA),)	
Respondent)	
)	
Review Conducted Pursuant to)	Open Hearing
I.C. 20-26-14 <i>et. seq.</i>)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Procedural History

Petitioner is a sophomore currently attending North Central High School, which is in the MSD Washington Township school district. She resides with her parents, whose home is located in the Hamilton Southeastern school district. Petitioner attended schools within the Hamilton Southeastern school district between the 4th grade and 9th grade. As a freshman at Hamilton Southeastern High School, Petitioner participated in junior varsity basketball and varsity soccer. In 2009, Petitioner decided to transfer to North Central High School beginning with her sophomore year. North Central High School accepted Petitioner for transfer.

On June 4, 2009, Hamilton Southeastern High School received the student's portion of the Indiana High School Athletic Association (IHSAA) Transfer Report. The Transfer Report demonstrated no corresponding move by Petitioner's family to a new district. The Transfer Report included a request for consideration of a Principal's hardship waiver for full eligibility. Hamilton Southeastern High School recommended that Petitioner have limited eligibility under IHSAA Rule 19-6.2.¹

On July 27, 2009, Petitioner through North Central High School submitted a request for full athletic eligibility. On July 28, 2009, IHSAA Assistant Commissioner Sandy Searcy informed North Central High School that she granted Petitioner limited eligibility beginning in the fall of 2009 for a period of 365 days from the date Petitioner last participated in interscholastic athletics at Hamilton Southeastern High School. Under limited eligibility status, Petitioner is eligible to play at the junior varsity level, but she is not eligible to play at the varsity level during the period specified.

On July 29, 2009, the Petitioner appealed the Commissioner's decision with the Respondent's Review Committee. The Review Committee conducted its review on August 27, 2009 and issued its decision on September 8, 2009, upholding the Commissioner's decision.

¹ Respondent has promulgated a series of by-laws as a part of its sanctioning procedures for interscholastic athletic competition. (All references are to the 2009-2010 by-laws of Respondent.)

APPEAL TO THE CASE REVIEW PANEL

Petitioner, without counsel, appealed to the Indiana Case Review Panel² on September 17, 2009. That same day, the parties were notified of their respective 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. Petitioner requested that the hearing be open to the public. The parties received timely notice of the proceedings.

On October 15, 2009, the CRP convened.³ Petitioner's parents appeared on behalf of Petitioner. Respondent appeared by counsel. 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 currently attends North Central High School. She resides with her parents within the Hamilton Southeastern school district.
2. Petitioner enrolled at North Central High School for her sophomore year (2009-2010). Prior to enrolling at North Central High School, Petitioner attended Hamilton Southeastern High School.
3. Petitioner transferred to North Central High School because (1) a math teacher did not allow her to redo an assignment after she lost the assignment; (2) the math teacher did not allow her to receive credit for an extra credit assignment because she filled a form out incorrectly; (3) the Petitioner believes racism exists at Hamilton Southeastern school district; and (4) North Central High School offers an established International Baccalaureate program for juniors and seniors.
4. On June 4, 2009, Petitioner's parents completed an Indiana High School Athletic Association (IHSAA) Transfer Report. The parents indicated in the report that the Petitioner lives with her family in the Hamilton Southeastern school district and had enrolled at North Central High School, which is in the MSD Washington Township school district. The parents request fully eligibility under Rule 17-8.5 through a hardship exception.
5. On June 4, 2009, Hamilton Southeastern High School completed its portion of the IHSAA Transfer Report indicating that Petitioner played junior varsity basketball and varsity soccer during Petitioner's freshman year. Hamilton Southeastern recommended that Petitioner have limited eligibility under IHSAA Rule 19-6.2. Hamilton Southeastern neither approved the hardship exception nor indicated that the transfer was in the best interest of the student.

² The Case Review Panel (CRP) is a nine-member adjudicatory body appointed by the Indiana State Superintendent of Public Instruction. The State Superintendent or his 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).

³ Six members were present: Mark Mason, Chair; Ed Baker; Christi Bastnagel, James Perkins, Jr.; Earl Smith; and Don Unruh. However, James Perkins, Jr. recused himself and did not participate in the deliberations or decision.

6. On July 27, 2009, North Central High School completed its portion of the IHSAA Transfer Report and requested fully eligibility for the Petitioner under Rule 17-8.5, the hardship exception to limited eligibility. The principal of North Central High School, C. E. Quandt, verified in the Transfer Report that the Petitioner resides with her parents, that the transfer is in the best interest of the Petitioner, and no athletically-related motives surround the transfer. The North Central High School athletic director provided on the Transfer Report the reason for the transfer as "Enrollment in [North Central's] International Baccalaureate program. Hamilton Southeastern does not have an IB program."
7. After an investigation, the IHSAA, through the Assistant Commissioner, granted limited eligibility to the Petitioner on July 28, 2009 pursuant to Rule 19-6.2. Petitioner sought reversal of the limited eligibility ruling under hardship rule 17-8.1. On September 8, 2009, the IHSAA Review Committee upheld the Commissioner's determination. On September 17, 2009, Petitioner appealed to the Indiana Case Review Panel.

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 ("CRP") 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 CRP has jurisdiction when a parent, guardian, or eligible student invokes the review function of the CRP. In the instant matter, the IHSAA has rendered a final determination of student-eligibility adverse to the student. Petitioner has timely sought review. The CRP has jurisdiction to review and determine this matter. The CRP is not limited by any by-law of Respondent and 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. Petitioner qualifies for limited eligibility under IHSAA Rule 19-6.2, a rule that provides 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." Rule 19 defines "limited eligibility" as eligibility that allows the student to be "eligible to participate immediately in all interschool athletics, provided, however, during the first 365 days from the date of last participation at a previous school, such student may not participate in interschool athletics as a member of a varsity athletic team." Because the evidence demonstrates that Petitioner lives within the Hamilton Southeastern School district and has transferred to North Central High School without a corresponding change of residence, the Petitioner qualifies for limited eligibility.
4. Petitioner does not qualify for full eligibility through IHSAA Rule 17-8.5 because the transfer to North Central High School was not in the best interest of the student. IHSAA Rule

17-8.5 allows full eligibility if “the student establishes, to . . . reasonable satisfaction . . . that the transfer is in the best interest of the student . . .” Although Petitioner’s teacher did not allow her to redo a lost assignment and the teacher disregarded Petitioner’s extra credit assignment because of Petitioner’s procedural error, evidence does not sufficiently demonstrate that these actions were based on racism. Additionally, evidence does not demonstrate that the International Baccalaureate program, the other proffered reason for the transfer, is essential to the level that justifies a best interest determination for the student.

5. Petitioner does not qualify for full eligibility through the hardship exception of IHSAA Rule 17-8.1 because a hardship does not exist for the student if Rule 19-6.2 is enforced. IHSAA Rule 17-8.1 allows the IHSAA to set aside the effect of any rule when an applicant demonstrates that an undue hardship would result from enforcement of the rule. No evidence exists that undue hardship would result from the enforcement of Rule 19-6.2, in this case requiring limited athletic eligibility over full athletic eligibility. Petitioner did not demonstrate that she would have to return to the perceived problems at Hamilton Southeastern, or that an undue hardship would occur if she were limited to only the junior varsity squad during her sophomore year. “Undue hardship” is not synonymous with “no hardship,” and Petitioner will still have two years of full eligibility after limited eligibility is applied during her sophomore year. Petitioner may still participate in the International Baccalaureate program, which is only available to students at North Central High School during their junior and senior years.

ORDER

Respondent’s determination that Petitioner has limited eligibility at North Central High School, for 365 days from the day of her last participation at Hamilton Southeastern High School is affirmed. This was determined by a 5-0 vote.

DATE: November 5, 2009

/s/ Mark Mason
Mark Mason, Chair
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.