BEFORE THE INDIANACASE REVIEW PANEL

In The Matter of H. G. Petitioner	)	
And	)	**CAUSE NO. 100426-69**
The Indiana High School Athletic Assoc. (IHSAA), Respondent	)	
Review Conducted Pursuant to I.C. 20-26-14 *et seq.*	)	**Closed Hearing**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Procedural History

Petitioner is a freshman in high school and attended the first semester of the 2009-2010 school year at Castle High School, in the Warrick County School Corporation, and played on the junior varsity soccer team. At the beginning of the second semester of the 2009-2010 school year, Petitioner transferred to Evansville Reitz Memorial High School (Memorial).

On January 19, 2010, Petitioner requested a determination of Petitioner's athletic eligibility status for the second semester of the 2009-2010 school year. On January 25, 2010, the Assistant Commissioner of the Indiana High School Athletic Association (IHSAA) found Petitioner to have limited eligibility at Memorial from the date of her enrollment until October 19, 2010, after which date Petitioner would gain full eligibility.

Petitioner sought review of the Commissioner's decision by Respondent's Review Committee. The Review Committee conducted its review on March 25, 2010, and issued its decision on April 9, 2010, upholding the Assistant Commissioner's decision declaring Petitioner to have limited eligibility to participate in interscholastic athletics until October 19, 2010.

APPEAL TO THE CASE REVIEW PANEL

Petitioner appealed to the Indiana Case Review Panel[1] on April 26, 2010. On April 27, 2010, 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. Hearing was set for May 12, 2010, in the offices of the Indiana

[1] 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).

Department of Education, Indianapolis, Indiana. The parties received timely notice of the proceedings.

On May 12, 2009, the CRP convened.[2] Petitioner was represented by her parents and grandfather. Respondent appeared by counsel. Prior to the hearing, Petitioner submitted one exhibit: a letter dated May 11, 2010 from Brent E. Cochran, M.D., who is Petitioner's pediatrician. The CRP admitted the document over Respondent's objection that the letter from Dr. Cochran was not presented at the previous hearings on this matter.

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. H.G. is a fifteen year old freshman (d.o.b 01/31/1995) currently enrolled in Evansville Reitz Memorial High School (Memorial) for the second semester of her freshman year. H.G. resides with her parents in Newburgh, Indiana.

2. The first semester of her freshman year H.G. was enrolled in Castle High School (Castle) within the Warrick County School Corporation and played soccer on the freshman and reserve teams.

3. In January 2010, H.G. enrolled in Memorial, a private school.

4. On or about January 19, 2010, H.G.'s parents completed the Indiana High School Athletic Association's (IHSAA) Transfer Report.

5. The Transfer Report indicates that H.G.'s transfer to Evansville was pursuant to **Rule 19-6.2** which provides that limited eligibility is given to a student who transfers to a new school absent a corresponding change of address. A hardship was sought under **Rule 17-8.1** which provides that a hardship exists if the Petitioner can show that strict enforcement of the Rule in the particular case will not serve to accomplish the purpose of the Rule; the spirit of the Rule has not been violated; and there exists in the particular case circumstances showing an undue hardship that would result from enforcement of the Rule.

6. Castle completed its portion of the Transfer Report on or about January 19, 2010. Castle recommended that H.G. receive limited eligibility under **Rule 19-6.2**. Castle did not sign the Hardship Verification. Castle indicated that H.G. last participated in athletics on October 19, 2009.

7. Memorial completed its portion of the Transfer Report on or about January 19, 2010. Memorial recommended H.G. receive full eligibility under **Rule 17-8.5** which provides for granting full eligibility if the child continues to reside with her parents; the transfer was in the

[2] Six members were present: Dr. Thomas Huberty, Chair; Christi L. Bastnagel; Keith Pempek; James Perkins, Jr.; Earl H. Smith, Jr.; and Brenda Sebastian.

best interest of the child and there were no athletic motives associated with the transfer; and the principals of the sending and receiving schools each affirm in writing that the transfer was not athletically motivated and the was in the best interest of the child. Memorial indicated that the parents wanted H.G. to have a smaller environment.

8. On January 25, 2010, the IHSAA Assistant Commissioner Phil Gardner reviewed the transfer report and determined that H.G. was to receive limited eligibility for 365 days. H.G. was to receive full eligibility on October 20, 2010.

9. Petitioner sought reversal of the limited eligibility determination on April 26, 2010.

10. H.G. was diagnosed with learning difficulties associated with sleep dysfunction and ADHD since an early age.

11. Petitioner's parents, in anticipation of Petitioner moving to the larger high school setting, had toured Memorial prior to the start of the 2009-2010 school year. Petitioner's parents preferred the organization of the school day and smaller class size offered by Memorial. Petitioner, however, asked her parents for the opportunity to attend Castle and stay with her classmates.

12. H.G. was not successful at Castle as shown by her failing grade point average after the first semester. H.G. approached her parents and requested help. Her parents had consulted with her doctor, Dr. Cochran, about H.G.'s poor adjustment to the larger classroom setting. A smaller classroom setting and increased personal interaction was recommended by H.G.'s physician.

13. Petitioner transferred H.G. mid-year to Memorial because Memorial offered "block scheduling" and a smaller class size.

14. Due to H.G.'s attention deficit diagnosis, a highly structured environment that allowed additional time for H.G. to focus on a subject matter was needed. The block scheduling system implemented at Memorial allowed longer periods and fewer topics each day for H.G. After one semester at Memorial, H.G.'s grades improved quickly to an 87%.

15. H.G. was also provided access to the resource room at Memorial similar to the accommodations offered at Castle.

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 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. No evidence was presented to show that H.G.'s transfer from Castle to Memorial was athletically motivated.

4. **Rule 19-6.2** provides that limited eligibility is given to a student who transfers to a new school absent a corresponding change of address.

5. **Rule 17-8.1** provides that a hardship exists if the Petitioner can show that strict enforcement of the Rule in the particular case will not serve to accomplish the purpose of the Rule; the spirit of the Rule has not been violated; and there exists in the particular case circumstances showing an undue hardship that would result from enforcement of the Rule.

6. **Rule 17-10.4** provides that the CRP may uphold the IHSAA's decision; modify the IHSAA's decision; or nullify the IHSAA's decision.

7. The CRP finds that the Petitioner met her burden to show that the transfer was made for academic reasons and a desire to help H.G. achieve academic success. The CRP found that enforcement of the IHSAA's decision would violate the spirit of the rule and create an undue hardship. Therefore, the CRP finds that an evidentiary basis exists to nullify the IHSAA's decision to provide H.G. with limited eligibility for 365 days from October 19, 2009.

8. Based on the foregoing, the Petitioner's limited eligibility under Rule 19-6.2 is hereby **nullified**.

ORDER

The decision of the CRP to limit Petitioner's eligibility at Memorial is hereby **nullified** by the CRP by a vote of 5 -1. H.G. is to receive full eligibility status.

DATE: June 17, 2010

/s/Thomas Huberty
Dr. Thomas Huberty, 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.