

**BEFORE THE INDIANA  
CASE REVIEW PANEL**

**In The Matter M.R.** )  
**Petitioner,** )  
 )  
**and** )  
 ) **CAUSE NO. 170307-166**  
**The Indiana High School Athletic Association,** )  
**Respondent.** )  
 )  
**Review Conducted Pursuant to Ind. Code** )  
**§ 20-26-14 et seq.** )

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

**PROCEDURAL HISTORY**

On or about January 11, 2017, M.R.’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 2016–2017 school year relating to the Petitioner’s transfer. On January 23, 2017, Cowan High School (“Cowan”), the sending school, completed its portion of the Transfer Report. The receiving school, Yorktown High School (“Yorktown”) completed its portion of the Transfer Report on January 23, 2017.

On January 23, 2017, the IHSAA Commissioner determined that Petitioner’s transfer was a Rule 19-4 violation and ruled Petitioner had no eligibility for 365 days from enrollment 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 17, 2017. Following the evidence presented at the February 17, 2017 hearing, the Review Committee issued its ruling on March 1, 2017 upholding the decision of the Commissioner declaring that according to Rule 19-4, Petitioner was athletically ineligible for 365 days following her enrollment at Yorktown.

On March 7, 2017, 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 the record from the IHSAA on March 13, 2017. On March 14, 2017, the Panel held a meeting<sup>1</sup>, 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, a senior, lived with her father in Delaware County, Indiana. She attended Cowan, the public school that served her father's residence. While at Cowan, the Petitioner played varsity softball. She last participated athletically at Cowan on May 25, 2016.
2. The Petitioner eventually moved in with her mother to an apartment and began attending Yorktown, which is another public school that serves Delaware County and her mother's residence. The Petitioner was enrolled in Yorktown on January 12, 2017.
3. On January 11, 2017, Petitioner's parents completed the Transfer Report and the Petitioner indicated that her "mother has [a] restraining order against ex-husband and he showed up at [M.R.'s] work." Additionally, the Petitioner's parents said, "they have moved [their] daughter from her previous residence and school to try and protect her privacy."
4. On December 19, 2016, the Petitioner and her mother, who are under the protection of a restraining order, filed a complaint with Muncie Police Department when the Petitioner's ex-step father showed up at her work and approached and looked at the Petitioner. This person was later arrested for invasion of privacy for this incident.
5. On January 8, 2017, the Petitioner's mother signed a five month lease for a one bedroom apartment in the town of Yorktown. The Petitioner and her mother intended to move into this residence, which was across the street from the Yorktown Police Department. The Petitioner's mother owns a home in the Cowan district and had not listed the home for sale as of the date of the Review Committee Hearing.

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<sup>1</sup>The following members participated in the meeting: Kelly Wittman (Chairperson), Mr. Keith Pempek, Mr. Rick Donovan, Mr. Mickey Golembeski, Mr. Bret Daghe and Mr. Chuck Weisenbach, and Ms. Mary Quinn. Ms. Kelly Bauder, staff attorney, was also present as legal counsel to the Panel.

6. The Petitioner is an accomplished softball player and was a three year varsity letter winner and team captain on the Cowan softball team. Her younger sister is also a member of the Cowan softball team. The Petitioner's father was the varsity softball coach at Cowan until he verbally resigned his position in August, 2016 which was then made official with the board in November, 2016. Prior to his resignation, the Petitioner appeared to be planning on playing softball in the spring as she received a senior parking spot and painted it with school colors and her softball number. After their father's resignation, the Petitioner and her sister had informed the school, neither of them would be playing softball at Cowan in the spring of 2017. In January 4, 2017, the Petitioner's father inquired with the Athletic Director at the Cowan if the Petitioner would be fully eligible to play softball if she moved out on her own or if he moved her to the Yorktown school district.
7. Cowman recommended Petitioner have no eligibility for 365 days under Rule 19-4. Yorktown recommended Petitioner have no eligibility for 365 days under Rule 19-4.

#### 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 1, 2017, and Petitioner sought timely review on March 7, 2017.

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 and receiving schools 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. The Panel finds there is not a hardship condition that exists that would allow for full or limited eligibility. The Panel believes the Petitioner may have moved in an effort to have less accessibility to harassment by her ex – step father, but she also continued to work at a place this man had knowledge she frequented. The restraining order did not rise to the level of a hardship condition as the Petitioner stayed in the same county and continued working at a location where the perpetrator of the crime knew she would continue to return to. Additionally, the apartment was only rented for several months and neither her father nor mother's homes were listed for sale. This arrangement was only meant to be temporary to finish out the school year. There was also testimony that the apartment rented by the Petitioner's mother was not used exclusively by herself and the Petitioner, they continued to spend some nights at the mother's home.
9. The Petitioner had played for the Cowan team her entire high school career. At the beginning of the 2016-17 school year, it appeared she would continue to play with that team in the spring. At some point her father resigned as coach and both the Petitioner and her sister said they would no longer be playing for the Cowan softball team. In January, only two months after his resignation of the softball coach became official with

the board, the Petitioner's father inquired what her eligibility would be if she transferred schools. There were no allegations that academics were a consideration for the move from Cowan to Yorktown, nor any indication that Cowan would not make every effort to ensure the restraining order would be enforced on school property. Both Cowan and Yorktown both believed the transfer was primarily for athletic reasons and the Panel is not convinced there is evidence in the record that disputes that assertion by both the sending and receiving schools.

### **ORDER**

The Panel finds by a vote of 7-0 that the decision of the IHSAA Review Committee, upholding the decision of the Commissioner is UPHELD. The Petitioner has no eligibility for 365 days from January 12, 2017 at the receiving school.

DATE: March 16, 2017



Kelly Wittman, 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.