

STATE OF INDIANA)
)
ST. JOSEPH COUNTY)

IN THE ST. JOSEPH CIRCUIT COURT
SITTING AT SOUTH BEND, INDIANA

ERIC WOODS, individually, and)
by and through his mother and natural)
guardian,)
ANGEL PRICE,)

Plaintiff,)

v.)

INDIANA HIGH SCHOOL ATHLETIC)
ASSOCIATION, INC.,)

Defendant.)

CAUSE NO. 71C01-0910-PL-00222

- FILED -
OCT 23 2009
Clerk
St. Joseph Circuit Court

**FINDINGS OF FACTS, CONCLUSIONS OF LAW, AND
ORDER GRANTING PRELIMINARY INJUNCTION**

This matter came on for hearing before this Court upon the *Verified Complaint for Injunctive Relief, for Temporary and for Permanent Injunction and for Declaratory Judgment* of the Plaintiff Eric Woods, individually, and by and through his mother, Angel Price, which seeks preliminary injunctive relief against the Indiana High School Athletic Association, Inc. Plaintiff, Eric Woods (hereinafter "Eric"), and his mother Angel Price (hereinafter "Price"), appeared in Court in person and by their attorney of record, Jay Lauer, and the Defendant, Indiana High School Athletic Association (hereinafter "IHSAA"), appeared in Court by Commissioner Blake Ress and its attorney of record, Robert Baker. Hearing was commenced and concluded on October 20, 2009, during which the Court accepted evidence and testimony, and then took the matter under advisement pending submission by the parties of their proposed findings of fact and conclusions of law. The Court, having reviewed the record of the administrative proceedings

conducted by the IHSAA, having heard the evidence presented at the hearing and the arguments of counsel, is now duly advised in the premises and grants the relief prayed.

FINDINGS OF FACT

The Court now issues the following findings of fact:

1. This Court has jurisdiction over the parties and subject matter of this action.
2. Eric Woods is seventeen years old, and at all times relevant to this complaint, has resided, and still continues to reside, with Angel Price, his mother and natural guardian, in South Bend, St. Joseph County, State of Indiana.
3. Defendant, IHSAA, is an Indiana Corporation, with its principal office located in Marion County, Indiana, but it does business in all Indiana counties, including St. Joseph County.
4. South Bend Washington High School (hereinafter "Washington") is a public high school located in the city of South Bend, St. Joseph County, state of Indiana, and is one of the four high schools in the South Bend Community School Corporation. Washington is not a party to this action but is indirectly involved.
5. The IHSAA is an athletic association open to all public, private, parochial and institutional high schools of the State of Indiana, and as such, IHSAA administers a program of high school interscholastic athletics.
6. John Adams High School (hereinafter "Adams") is a public high school in St. Joseph County, Indiana, located in the city of South Bend. Adams is not a party to this action but is indirectly involved.
7. Washington and Adams are members of the IHSAA.
8. The IHSAA imposes on its member schools and their respective principals and

coaches certain rules, duties and responsibilities, including, but not limited to, the supervision of student eligibility for participation in interscholastic athletic contests, when such contests may take place, under what rules such contests will be governed, and who is eligible to officiate the contests.

9. This matter is being filed in this court as an appeal from a Decision of the IHSAA Review Committee (hereinafter "Decision"), dated September 30, 2009, against Eric Woods. The IHSAA bylaws provide for the option of proceeding to court or appealing to a Case Review Panel at this level of appeal.¹ Eric and his mother choose to proceed to this court, and they have exhausted the mandatory administrative remedies.

10. This matter arises as a result of Eric's transfer from Adams High School, where he had been enrolled for his first three years of high school (2006-2009), to South Bend Washington High School for his senior year (2009-2010).

11. Price on behalf of Eric, completed the transfer documents on May 28, 2009, and requested that Eric's transfer be approved under the IHSAA rule 17.8 with the transfer based on hardship.

12. Adams High School, through its Principal, Otha Reese (hereinafter "Reese"), approved this transfer on June 15, 2009, under IHSAA Rule 17.8.5.²

1 17-10.1

Right to Review of Final Association Decision by Parent of a Student

b. A parent shall have the right to do one of the following: (1) accept The Association's final decision, (2) refer the case to the Panel, or (3) take legal action without first referring the case to the Panel. A request for a review by the Panel must be filed within thirty days after receipt of the decision of the IHSAA Review Committee.

2 17-8.5

In addition to the foregoing, in transfer cases under Rule 19-6, the Commissioner, his designee or the Committee shall have the authority to set aside the effect of the transfer rule and grant a student full eligibility following a transfer if (a) the student continues to reside with his/her parent(s) or guardian(s), (b) the student establishes, to the reasonable satisfaction of the Commissioner, his designee or the Committee, that the transfer is in the best interest of the student and there are no athletic related motives surrounding the

13. The IHSAA, by Assistant Commissioner Bobby Cox, ruled on June 24, 2009 that Eric had full eligibility to participate in sports, including varsity football, for Washington High School.

14. The IHSAA reopened an investigation into this case in August of 2009. After completing its investigation, the IHSAA overruled itself on August 26th, 2009 and determined that Eric was ineligible to participate in varsity athletics at Washington for a period of 365 days from the date of his last athletic contest at Adams, which was October 31, 2008.

15. The IHSAA revoked full eligibility for Eric, granting him limited eligibility for his senior year at Washington, under IHSAA Rule 19-6.1 (transfer without a corresponding change of residence).

16. Eric lives with his mother, Angel Price, at 908 Laurelwood, South Bend, Indiana 46637. Price is a full-time student at Lake Michigan College and works part-time (6 hours per week) at the Aids Ministry in South Bend, Indiana.

17. Eric participated in football for all three years at Adams. In addition he participated in track his sophomore year. Eric played varsity football at Adams during his sophomore and junior years.

18. Eric enrolled in Washington in early June of 2009.

19. Price's stated reason on the IHSAA Transfer Report for Eric's transfer to Washington were academics, specifically the new trimester program being offered by Washington, which would help Eric raise his GPA so that he would be in a better position to attend college.

transfer, and (c) 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. In addition, in those circumstances where the student attended a school, other than the sending and receiving school, at any time during the 365 days prior to the transfer, the principal of the other school(s) the student attended during the 365 days prior to the transfer must also affirm in writing that the transfer is in the best interest of the student and there are no athletic related motives surrounding the transfer.

20. Another stated reason for this transfer was the need for Eric to maintain a cumulative GPA above 2.0. Eric's GPA at the end of his junior year at Adams was 1.8244. Eric is a member of the 21st Century Scholars Program, which requires that he maintain a 2.0 GPA. If Eric maintains a 2.0 GPA by the end of his senior year, and remains otherwise eligible, the State of Indiana will pay for his tuition and books at any public Indiana state university or college which Eric attends.

21. The IHSAA had received, in July of 2009, several e-mails from Adams High School parents regarding Eric's transfer. As a result, the IHSAA decided to reopen this case in August of 2009.

22. Assistant Commissioner Bobby Cox and Special Consultant Scott S. Eales (hereinafter "Eales") conducted the investigation for the IHSAA.

23. Assistant Commissioner Bobby Cox ruled on August 26th, 2009, that Eric was athletically ineligible to participate in varsity athletics for Washington, but could participate in athletics on the JV level (hereinafter "limited eligibility").³

24. Eric filed a timely appeal of this ineligibility ruling. A hearing was held on this appeal on September 18th, 2009. Eric appeared with his mother, Angel Price, and his attorney, Jay Lauer. The IHSAA appeared by Assistant Commissioner Bobby Cox, Special Consultant Scott Eales, and its attorney, Robert Baker.

25. Prior to the hearing, the parties filed their respective position statements and exhibits with the IHSAA. Eric received the IHSAA's list of witnesses on September 17, 2009, the

³ Rule 19 – Eligibility and Transfer

Definitions:

Limited Eligibility

A student who is declared to have limited eligibility shall 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.

day before the hearing, pursuant to the IHSAA regulations. The IHSAA received Eric's statement and list of witnesses on September 16, 2009. Eric and his attorney only had one day to prepare and rebut the IHSAA's witnesses and evidence. The IHSAA had been investigating this case for over a month, but did not interview Eric or his mother. The question of the fairness or unfairness of such procedure has not been raised and the Court makes no findings in that regard.

26. At the hearing, the IHSAA presented several witnesses, including Kirby Whiteacre, South Bend Community School Corporation Athletic Director; Bill Groves (hereinafter "Groves"), Adams Athletic Director; Otha Reese (hereinafter "Reese"), Adams Principal; and Marilyn Coddens ("Coddens"), Washington Athletic Director. Eric Woods and his mother, Angel Price, testified on Eric's behalf. Eric continues to reside with his mother, Angel Price at 908 Laurelwood, South Bend, Indiana 46637 and at all relevant times in this case, has resided with his mother.

27. The evidence and testimony at this hearing produced the following undisputed facts.

28. Eric is a member of a state-wide program, the 21st Century Scholars, which requires him to maintain a 2.0 cumulative GPA, and also to stay out of trouble. If Eric complies with these terms, the State of Indiana will pay his books and tuition at a public Indiana state college or university. Price does not have sufficient income or resources to pay for Eric's college expenses.

29. Washington decided to implement a trimester program, to replace its two semester program for the 2009-2010 school year. Adams does not have a trimester program and is on the two semester program. Angel Price learned about this trimester program in April of 2009 from her sister, whose child attends Washington High School. Price had become concerned that Eric

would not be able to attain a cumulative 2.0 GPA after his senior year at Adams, and thus would lose his 21st Century College Scholarship.

30. During his enrollment at Adams, Eric's head football coaches, Elmer Britton (freshman and sophomore years) and Peter Rausch (junior year), had promised Price to establish study tables at Adams that would have required football players to study before football practice began. Despite these promises made by these coaches, Adams never established a study table for its football players.

31. Washington High School, under its coach, Antwon Jones, established a study table for its athletes beginning in the fall of 2008. This study table is still in effect for the school year beginning in 2009.

32. Price and Eric believed that a study table would be of assistance in helping Eric achieve an overall cumulative GPA above 2.0. The trimester program also allows Eric to retake a number of courses at Washington in which he had received low grades at Adams.

33. Under the trimester program, Eric is scheduled to retake eight courses in which he received low grades at Adams. He is further scheduled to take Economics, Government, and two semesters of English 12, which are required courses for his senior year. Eric is also enrolled in several electives, including a construction course and a business course.

34. Eric's stated college goal is to major in either some type of architect or engineering program, which is his reason for enrolling in the construction course.

35. Price visited Washington High School, by herself, in April 2009 to discuss the trimester program with Washington Principal George McCullough.

36. Price learned from him that Washington also had teachers or counselors monitoring students in the 21st Century Scholars Program to ensure that they were maintaining at least a 2.0

GPA.

37. Washington also provides tutoring for its football players at its study table prior to football practice.

38. After her meeting with Principal McCullough in April 2009, Price met with Adams Principal Otha Reese, in early May 2009. At this meeting, she informed Reese that she intended to transfer her son to Washington High School because of the trimester program and the need to raise Eric's GPA above a 2.0 average for college purposes and continued eligibility in the 21st Century Scholars Program.

39. Otha Reese testified that she was unaware that Eric Woods had a GPA of 1.8 until she reviewed his records at the time of her meeting with Price.

40. Price also informed Reese that interim head football coach, Frank Amato, had made some inappropriate comments to Eric.

41. Reese informed Price that she would contact her regarding the issues raised in their discussion. Price did not receive any follow-up phone calls or letters from Reese.

42. On May 22, 2009, Price went to Adams for the purpose of transferring her son to Washington. She was informed that Reese was out of the office and that she would have to come back.

43. On May 26, 2009, Price returned to Adams to transfer Eric from Adams to Washington. At that time, Reese called her into a meeting with Athletic Director Groves and a school counselor, Mrs. Richards (hereinafter "Richards"). Price reiterated her reasons for transferring Eric from Adams to Washington. She discussed the trimester program and the need to raise Eric's overall GPA to at least a 2.0. Price also emphasized that her reasons for transferring Eric were academic, not athletic. Richards agreed that Eric would benefit academically from a

trimester program.

44. During this meeting, Groves indicated to Price that he would not sign off on this transfer to allow Eric to play football at Washington. Reese initially indicated that she was hesitant to sign off on this transfer, but informed Price that she would think about doing so.

45. Reese indicated that she would only sign off on this transfer if she believed that it was for academic and not athletic reasons.

46. When Ms. Price did not hear from Ms. Reese, she contacted School Superintendent, James Kapsa, in early June. Kapsa indicated that he would look into the transfer.

47. Reese signed the Transfer Report on June 15, 2009. This document had been brought to her by Washington's Athletic Director, Marilyn Coddens, who had been told by an administrator at Washington that Ms. Reese was going to approve Eric's transfer.

48. Reese filled out the Transfer Report in her office and then came out to ask Coddens the specific rule in which both principals sign off on the transfer. Coddens accessed a secretary's computer and provided a copy of Rule (17-8.5) to Reese, who inserted this Rule on the Transfer Report and signed off.

49. Reese made this decision to approve Eric's transfer on her own, without any coercion, force, or undue influence from any individual, including Coddens, Superintendent James Kapsa, or any South Bend School Board Member. Reese indicated in her written statement and testimony, that "[A]fter much consideration, I concluded that his grades were not good enough for him to get into most colleges and that this would probably be his last semester playing football."

50. South Bend School Board member Bill Sniadecki had visited Adams the week before Reese signed off on this transfer. He was there to discuss an issue involving another

student. At the end of the conversation, he asked Reese the status of the Woods case.

51. Groves testified that he was present on June 15, 2009 at Adams High School when Reese signed off on the Transfer Report. Reese testified that she did not know Groves was in the building at the time she signed off on the transfer. It is noted that the Transfer Report requires the signature of the Principal or her designee, not the Athletic Director from the sending school.

52. Groves went on vacation beginning June 18, 2009. He testified that while on vacation he began to receive e-mails from several Adams parents regarding Eric's transfer. On or about July 2, 2009, upon his return from vacation, Groves was surprised to learn that Reese had signed off on the Transfer Report for Eric's case.

53. The IHSAA began receiving emails in mid-July from several Adams parents with respect to Eric's transfer. As previously noted, the IHSAA reopened an investigation into the case in August 2009, directed by Assistant Commissioner Cox and Special Consultant Eales.

54. Based on Cox's investigation findings, the IHSAA reversed its earlier decision which had found Eric eligible to participate in varsity athletics at Washington for the 2009-2010 school year. The IHSAA issued its decision on August 26th, 2009, revoking Eric's eligibility for varsity participation for athletics. The IHSAA granted Eric limited eligibility for 365 days from the date of his last football game at Adams, which was October 31, 2008.

55. Therefore, Eric was not allowed to participate in any varsity athletics at Washington until November 1, 2009. IHSAA Assistant Commissioner Cox and Special Consultant Eales submitted their reports to the IHSAA, which were made part of the record in this case. Eric Woods and his mother, Angel Price, were not interviewed by either Cox or Eales during their investigation.

56. Since enrolling at Washington High School, Eric has received A's and a B on his

recent four week progress report. Eric also received a "B" at Clay High School this past summer when he retook U.S. History. He had received a "D" at Adams in this same subject. Eric recently received 4 B's and an A on his first report card from Washington.

57. Eric has also been attending study table prior to football practice everyday. He has been receiving assistance with his school work from either coaches or tutors. Eric is also being monitored by the Washington staff with respect to the 21st Century Scholars Program. Eric and Price are very pleased with the academic environment at Washington High School and his academic progress. They believe that he has a very good chance of achieving a sufficient grade appoint average his senior year at Washington that he would be able to enroll in college and be eligible for financial assistance under the 21st Century Scholars Program. At the preliminary injunction hearing on October 20, 2009, Price reiterated that she still does not have sufficient means or money as a full-time nursing student at Lake Michigan College and part-time employee, to provide financial assistance for Eric's college expenses.

58. Eric was currently a member of the JV Football program at Washington pursuant to the IHSAA's ruling of August 26, 2009 until this court granted his request for a Temporary Restraining Order that has permitted him to play in Washington's last two regular season varsity games against Riley on October 9, 2009 and Mishawaka on October 11, 2009.

59. Price maintained at the hearing on September 18, 2009, that she transferred Eric solely for academic reasons. She filled out the Transfer Report because Eric was still desirous of playing football at Washington. Both Eric and Price testified that no one, including anyone associated with Washington, induced or encouraged Eric to attend Washington.

60. Adams Athletic Director Groves testified that his reason for refusing to sign off on Eric's transfer was his belief that undue influence occurred with respect to this transfer.

61. The only direct evidence that Groves could provide at the Review Committee hearing concerning undue influence was his observation that on several occasions, Susie Dieter provided a ride home to Eric Woods after school. Susie Dieter is the head security officer at Adams High School, who also worked security at athletic events. Groves was unaware whether Susie Dieter had also provided rides home to other students on occasion. Her sons had transferred from Adams High School in January of 2009. Eric acknowledged that Nolan Dieter was his best friend; however, Eric denied that Nolan Dieter and his brother Gehrig Dieter, both football players, had induced or encouraged him to transfer to Adams.

62. The IHSAA presented no direct evidence indicating that any member of the Dieter family had encouraged or induced Eric or Angel Price to transfer to Washington High School.

63. Groves was not able to produce any other direct evidence of undue influence, except hearsay statements that Eric had allegedly worked out at the Washington's weight room in the spring semester of 2009.

64. Adams Principal Otha Reese testified at the Review Committee hearing that she would not approve of the transfer, if she was given the Transfer Report again. She testified that one of the main reasons was the subsequent negative reaction received from certain members of the Adams community. Community reaction is not a stated criteria for considering a student transfer.

65. Reese did not have any direct evidence of undue influence being exerted with respect to Eric's transfer, only hearsay.

66. Reese also had no direct evidence that Eric's transfer was for athletic reasons.

67. The IHSAA maintains that this transfer was, in part, motivated by athletic reasons. The IHSAA also contends that there was undue influenced exercised by certain individuals with

respect to the transfer.

68. A review of the testimony and record does not indicate any direct evidence that Eric's transfer to Washington was motivated by athletic reasons or was the result of undue influence.

69. The IHSAA Review Committee adopted in its entirety the proposed findings and conclusions of the IHSAA in its Decision dated September 30, 2009. The Review Committee upheld the decision of the Commissioner, which had previously granted Eric limited eligibility for 365 days from his last athletic participation at Adams, under IHSAA Rule 19-6.1 (transfer without a corresponding change of residence).

70. The Review Committee failed to find Eric eligible under Hardship Rules 17-8.1 and 17-8.5. The Committee found that the IHSAA had improperly invoked Rule 17-8.5 when it initially gave Eric full eligibility on June 24, 2009.

71. The Review Committee in its Decision dated September 30, 2009, sets out the IHSAA's applicable By-Laws, (Pages 2-5), its Findings (Pages 6-14) and Conclusions (Pages 14-22).

72. Paragraph 17 of the Review Committee's Findings states that former Adams Assistant Coach Dieter called Adams to inquire whether the phones were bugged, stating that he was sending Eric's mother over to Adams to discuss the transfer of Eric to Washington. This finding is based on a hearsay statement from Adams Athletic Director Bill Groves. There is no indication whether he was joking or serious. More importantly, Eric's mother testified at the hearing that her phone was low on batteries and that she did not have the phone number for Adams High School. She merely asked Dieter to call Adams to let them know that she was coming over to discuss Eric's transfer with Adams' Principal Otha Reese. Angel Price had gone to

Adams on May 22, 2009 to discuss the transfer, but Principal Reese was not in her office at that time. She was told to come back at a later date. The Court finds that Dieter's phone call on behalf of Price does not constitute undue influence.

73. The Review Committee in Finding 19 claims that Principal Reese told Angel Price at the meeting on May 26, 2009 that Eric could transfer for academic reasons, but Adams would not be signing off on the transfer for athletics. This statement is only partially correct. Initially, Principal Reese indicated that she would not sign off on the transfer if it was for athletics. However, after some discussion with Price, Reese informed her that she had to think about the issue. Athletic Director Groves was the only person at that meeting who definitely would not sign off on this transfer. As previously noted the Transfer Report form from the IHSAA indicates that it is the Principal, or her designee, that has the power to sign off. Additionally, with respect to Finding 14, Eric's mother testified that she did not go into Susie Dieter's office to contact her son to see if he would reconsider his decision not to stay at Adams. Price testified that she went into the hallway to call her son regarding this issue. The inference from this finding is that Susie Dieter had some sort of direct influence on Angel Price's decision to transfer her son to Washington. Even if Price had placed a phone call from Dieter's office, this does not constitute undue influence under IHSAA Rule 20.

74. The Review Committee in Finding 21 claims that Adams personnel and the City Athletic Director had agreed that Adams was not going to recommend full eligibility for Eric under Rule 17-8.5 and that Adams Principal Reese was not going to sign the Rule 17-8.5 Verification. This finding is not supported by the evidence of record. Adams Principal Reese testified several times that she had to think about whether she was going to sign off on this transfer. She also indicated several times in her testimony that this decision was for her to make,

and that she was not influenced by anyone else, when she signed the Transfer Report on June 15, 2009. As previously noted, the Transfer Report specifically states that it is the Principal, not the Athletic Director, who approves transfer requests.

75. The Review Committee in Finding 24 claims that Washington Athletic Director Coddens looked up Rule 17-8.5 on an Adams' computer and had Reese cite Rule 17-8.5. The Finding misconstrues the testimony of both Reese and Coddens at the hearing. Although Reese was the interim principal at Adams, she was aware that there was a transfer rule, allowing both principals to sign off. When she asked Coddens to cite the Rule, Coddens had to look the Rule up on a computer. The Review Committee is trying to create the inference that Coddens asserted undue influence on Reese to sign the Transfer Report for Eric. As Reese testified several times at the hearing, she signed the Transfer Report without any coercion; this decision was made by her alone. The Court further finds that Coddens' assistance does not constitute undue influence under IHSAA Rule 20, which pertains to "encouraging" or "inducing" a prospective student to attend a school for athletic reasons. Rule 20 is silent with respect to influence on a principal from the student's sending or prior school.

76. The Review Committee in Finding 26 initially notes that A.D. Coddens works directly with Athletic Directors at other schools dealing with athletic eligibility questions. Although Coddens testified that she did not believe Groves was in the building at the time, she took the Transfer Report directly to Principal Reese to sign, since the Transfer Report requires the signature of the principal, or her designee. If Reese did not want to sign off on the Transfer Report, she could have informed Coddens, or, in the alternative, referred Coddens to A.D. Groves. Reese testified that she did not know if Groves was in the building at the time she met with Coddens on June 15, 2009, but it was Reese's decision, as Adams' principal, to sign off on the

Transfer Report. The Court finds Coddens' actions in Finding 26 do not constitute undue influence under Rule 20.

77. The Review Committee in Finding 27 claims that A.D. Groves was “shocked” to learn that Reese had signed off on the Transfer Report with respect to Eric’s eligibility. He was also supposedly “shocked” to learn that A.D. Coddens had hand-carried the Transfer Report to Adams, met directly with Reese, and “had gotten the Adams principal to sign off on the transfer.” These findings clearly misconstrue the evidence of record, including the testimony of Reese. Initially, Groves stated several times that he was “surprised” not “shocked” to learn that Principal Reese had signed off on this transfer. Furthermore, since Groves was not there, he could not testify that Coddens had coerced or forced Reese to sign off on this transfer. As previously noted, Reese indicated in her own testimony, several times, that it was her decision to sign off on this transfer.

78. The Review Committee in Finding 28 claims that Principal Reese believed that Eric’s mother was not totally truthful with her, because she assured her that this transfer was for academics only. Price repeatedly testified that this transfer was for academic reasons, but that Eric requested that she ask Principal Reese to sign the Transfer Report so that he could play football. Price, on behalf of her son, on May 26, 2009, requested that Reese approve the Transfer Report. Reese informed her that she would have to think about it. Reese did sign off on this Transfer Report on June 15, 2009. When Reese was asked by the IHSAA’s counsel if she would sign off on the Transfer Report again, she indicated that she would not. However, Reese indicated that there were several reasons for her decision. The first reason was the negative reaction (“flak”) from some members of the Adams community. The second reason was hearsay information she had regarding the transfer. However, Reese admitted that she did not have any direct evidence that

Eric's transfer was for athletic reasons or was based on undue influence.

79. The Review Committee in Finding 30 sets out calculations with respect to the grades Eric would need to graduate from Washington with a 2.0 G.P.A. The Committee claims that he will need at least 8 B's and 7 C's in his 15 courses at Washington in order to obtain a 2.0 G.P.A. The Committee then claims that if Eric had stayed at Adams he still would have needed 8 B's, just like at Washington, and C's in the remaining four courses. The inference in this finding is that it would have been easier for Eric to obtain a 2.0 G.P.A. at Adams than at Washington.

80. There was no evidence in the form of mathematical calculations at the hearing produced to verify Finding 30. This finding also fails to disclose that Eric received in his four week progress report at Washington, 4 A's and a B. Eric was being monitored by a staff member at Washington, as part of the 21st Century Scholars Program. The staff member is to make sure that Eric progressed in his studies. Eric is also part of the required study tables at Washington, which made football players study an hour before football practice began. As previously noted, Adams had promised study tables for three years, but had failed to establish these tables while Eric attended Adams. Washington had not only established those study tables for its football players, but attendance was mandatory.

81. The Review Committee in Finding 31 claims that his mother "now states" that another reason for the transfer to Washington was because of the study tables. The Committee previously found that Price learned about these study tables when she met with Washington Principal McCullough in April of 2009. Eric's mother did testify that these study tables were a factor in her decision to transfer Eric from Adams to Washington. The Committee claims that Eric was previously able to study after Adams football practices. However, the Committee fails to note that Eric did receive tutoring help from the mandatory study tables at Washington. Eric's mother

indicated that she had trouble getting Eric to study when he came home from school at Adams. She also indicated that she could not help him with certain subjects, whereas he could obtain that assistance at Washington. Finding 31 is not supported by substantial evidence of record.

82. The Review Committee in Finding 32 selectively quotes Eric with respect to a question posed by the IHSAA's attorney during the hearing:

MR. BAKER: Well, maybe I've got the percentage wrong. 30/40 percent of your reason for wanting to go to Washington was to play football; right?

ERIC WOOD: Right.

The Review Committee fails to note that upon further questioning by IHSAA's attorney Eric indicated that he was not attending Washington to play football with his friend Nolan Dieter, and his brother, or because Washington was going to have a better record than Adams, or because he did not want to play football at Adams, or Washington had a better game to play. Eric indicated that he wanted "to play the game." (Record 121). The Committee misconstrues Eric's response.

83. Eric does not dispute Review Committee's Conclusions 1, 2, 3 and 4.

84. The Review Committee in Conclusions 5 and 6 claims that the verification by Principal Reese was "factually incorrect", and that the transfer process contained irregularities, including evidence of improper pressure on Reese. Furthermore, the Committee contends that the transfer was not in Eric's best interest and that it is, at least in part, athletically motivated.

85. The Review Committee's Conclusions 5 and 6 distort and misconstrue the evidence. The conclusions are not based on substantial and substantive evidence of record and are arbitrary and capricious. Principal Reese did testify that at the time she signed the transfer, she thought it was in Eric's best interest, especially since he had low grades at Adams. Washington, through the trimester program, offered a way for Eric to improve his grades, so that he would get into college.

She also testified that she, alone, made the decision to sign-off on this transfer, since the Transfer Report leaves that decision to the principal. Prior to June 15, 2009, her sign-off date, she did not state that she would not sign off. Instead, she indicated that she had to think about the issue before making a final decision. The two reasons given by Reese at the hearing for not wanting to sign off again on the Transfer Report were the negative reaction from certain members of the Adams community and hearsay information regarding the reasons for Eric's transfer. Principal Reese admitted that she did not have any direct evidence that Eric's transfer was for athletic reasons or the result of undue influence. Moreover, she repeatedly indicated at the hearing on September 18, 2009, that she was not coerced on June 15, 2009, when she approved Eric's Transfer Report. 86.

86. The Review Committee claims in Conclusion No. 7 that there was evidence of improper pressure applied to Reese to have her sign off on Eric's transfer. As previously noted, Reese indicated repeatedly at her hearing that she made this decision on her own. There was no coercion applied to her; it was her decision to sign off on Eric's transfer. The mere fact that certain individuals inquired as to the status of the case is not sufficient evidence to conclude that she was pressured into signing Eric's Transfer Report. IHSAA Rule 20 ("Undue Influence"), specifically relates to encouragement or pressure on the athlete. It does not, on its face, relate to pressure or encouragement on a principal from the sending school. A full reading of Rule 20 supports the conclusion that it is limited to the athlete.

Rule 20 – Undue Influence

20-1

Recruitment

Undue influence is the act of encouraging or inducing a prospective student to attend a school for athletic purposes.

- a. It is a violation of this rule for a prospective student to be unduly influenced, with or without the offer of a tangible benefit.
- b. Any successful or unsuccessful attempt to recruit a prospective student through the use of undue influence will subject the school(s) benefited, or to be benefited,

- by the recruitment to sanctions.
- c. If, following any recruitment through the use of undue influence, a prospective student enrolls at a member school, the prospective student may be declared ineligible for athletics
 - d. The offer or the acceptance of any of the following shall constitute prima facie evidence of undue influence;
 - 1. Money or other valuable consideration for the prospective student or the prospective student's parent(s), guardian(s) or family;
 - 2. Free or reduced tuition, room or board for the prospective student, provided, however that schools which charge tuition or which may make room and board available to students, may adjust tuition, room and/or board for children of faculty members provided there is no undue influence or under an objectively determined need-based financial aid program for tuition, room and/or board,
 - 3. Pay for work that is not performed or that is excess of the amount regularly paid for such service for the prospective student,
 - 4. Free or reduced cost transportation for the prospective student,
 - 5. A residence for the prospective student with a person connected with or who is a supporter of the school,
 - 6. Any privilege, remuneration or inducement not afforded to non-athletes, or not uniformly available to all students, for the prospective student,
 - 7. Free or reduced rent for the prospective student or the prospective student's parent(s), guardian(s) or family,
 - 8. Payment or moving expenses for or assistance with the moving for the prospective student or the prospective student's parent(s), guardian(s) or family,
 - 9. Employment for the prospective student or the prospective student's parent, guardian or family members in order to entice a move to a certain community.
 - e. Submission of false information and/or withholding information may result in severe sanctions which may include permanent ineligibility for the student and suspension from membership by the school involved.

87. The Review Committee in Conclusion No. 8 claims that the IHSAA could not approve Eric for eligibility under Rule 17-8 because the transfer was supposedly not in Eric's best interest. The Committee cites several of its findings including its claim that Eric did not need three extra hours to raise his G.P.A. and that Eric's best interest would have been to remain at Adams. The Committee also claims that Washington's football study tables are "excessive and overkill", supposedly only a "small tool" to assist athletes with their studies.

88. The Review Committee does not have substantial evidence to support Conclusion No. 8. As previously noted, Eric is being allowed to take a number of courses over at Washington after he received D's and F's at Adams in these courses. Eric received all B's and one A on his most recent report card from Washington. He receives monitoring from the staff at Washington with respect to the 21st Century Scholars Program and the study tables at Washington. He also receives tutoring at the study tables. He did not receive this type of assistance at Adams. Eric transferred to Washington to raise his grade point average so that he could attend college and qualify for the 21st Century Scholars Program. He is achieving these goals, which are in his best interest. Based on the above reasons, the court finds that Eric's transfer to Washington was in his best interest under Rule 17-8.5(a).

89. The Review Committee also claims that there was evidence that Eric's transfer, was, at least in part, athletically motivated. The Committee cites Price's comments to Principal Reese regarding some inappropriate comments made by Coach Amato her son. The Committee also cites a hearsay report from A.D. Groves that Eric was supposedly working out in the Washington locker room with their football team. A.D. Groves also claims that he saw Eric leaving after school, with Adams security officer, Susie Dieter, who gave him a ride home. Groves saw this on several occasions. Groves did not know whether Susie Dieter, in her role as security officer also gave other students rides home. The mere fact that a parent discloses inappropriate comments made by a coach does not necessarily lead to the conclusion that a transfer is, in part, athletically motivated. There is not substantial evidence of record to indicate that Eric's transfer to Washington was athletically motivated.

90. The Committee also cites in Conclusion 9 Derek Dieter's phone call to Adams to let them know that Angel Price was coming over to transfer her son. As previously stated, her

phone had run out of batteries and she did not know the Adams phone number. She made a request to Dieter to call in advance, since she previously went there four days before and was asked to come back when Principal Reese was there. The Committee also claims that Eric stated that 30 to 40 percent of his reason for wanting to go to Washington was to play football. As previously noted, this misconstrues Eric's statement that he wanted to play the game of football itself -- not because he was playing for Washington.

91. The Review Committee states in Conclusion 9 that these were sufficient athletic motives surrounding the transfer that it does not qualify under Rule 17-8.5.

92. The Committee did not produce any direct evidence indicating that Eric's transfer was motivated, in part, by athletic reasons. The Committee relied on hearsay information, innuendo, or just plain misconstrued the evidence to support its decision. The Court finds that Conclusion 9 is not supported by substantial evidence of record.

93. The Review Committee in Conclusions 10-16, pages 18-22, contends that Eric does not meet the eligibility criteria under IHSAA Hardship Rule 17-8.1. The Committee claims that Eric has failed to establish, through clear and convincing evidence, that he meets each element of the Hardship Rule.

94. Rule 17-8.1 permits the Commission or the Committee to set aside the effect of any rule when the affected party meets three criteria:

17-8.1 General

Except with respect to Rules 4, 12 and 18, the Commissioner, his designee or the Committee shall have the authority to set aside the effect of any Rule when the affected party establishes, to the reasonable satisfaction of the Commissioner, his designee or the Committee, all of the following conditions are met:

a. Strict enforcement of the Rule in the particular case will not serve to accomplish the purpose of the Rule;

- b. The spirit of the Rule has not been violated; and
- c. There exists in the particular case circumstances showing an undue hardship that would result from enforcement of the Rule.

95. The Committee sets out in Paragraph 13 five purported reasons for Eric allegedly not meeting the hardship rule. The first reason is that Eric Woods replaced an existing Washington varsity football player on the roster. There was no evidence at the Review Committee hearing provided by the IHSAA to this effect. The evidence at the Preliminary Injunction hearing indicated that Washington had injuries or sickness at the slot wide receiver positions for its games against Riley (October 9th) and Mishawaka (October 16) to the extent that Eric, who plays slot wide receiver, did not replace any starter. Furthermore, Washington runs a spread offense which, most of the time, employs several slot wide receivers during its plays. Washington also rotates its slot wide receivers so that each one receives significant playing time. Based on the above reasons, the Review Committee's conclusion is not supported by substantial evidence. The second reason is that the Committee felt that it would be unfair to permit Eric to participate in varsity athletics when other students are granted limited eligibility. Since Eric transferred to Washington for academic reasons, based on certain conditions at Adams, outside of his control, strict enforcement of the 365 days limited eligibility rule will not serve in Eric's case to accomplish its purpose.

96. The Review Committee in Conclusion 14 states that the Transfer Rule assures that athletics is not permitted to assume a dominant position in the student's or school's program. It keeps the focus of educators on the fact that students attend school to receive an education first and participate in athletics second. The evidence in this case indicated that Eric's transfer was based on these principles. He knew that he ran the risk of being found ineligible, but he still transferred, because his primary purpose and focus was to raise his G.P.A. to 2.0 so that he could remain on the 21st Century Scholars Program and go to college. There is no direct evidence that

his transfer was athletically motivated.

97. The Review Committee in Conclusion 14 claims that Eric failed to establish, through clear and convincing evidence, that the spirit of the IHSAA Transfer Rule (17-8.1b) would not be violated by permitting immediate full eligibility. The Committee maintains that Eric voluntarily transferred to Washington and that the decision was totally within his control. The Committee's conclusion misconstrues the Transfer Rule. Eric did not have any control over the curriculum instituted by either Adams or Washington. He also did not have any control over whether Adams would ever install study tables or monitor its 21st Century Scholars. These decisions were out of his control and were the basis for his decision to transfer to Washington. The list of reasons in IHSAA Rule 17-8.4 is not an all inclusive list.⁴

98. The Review Committee maintains in Conclusion 15 that Eric failed to show that an undue hardship would result from Transfer Rule 17-8.1c. The Committee claims that Eric can still participate in JV football. The Committee ignores its own finding in Conclusion 10, in which it acknowledges that "Eric is a talented football player and played on the Adams varsity squad his sophomore and junior years." Despite being a talented football player, he has received no

⁴ 17-8.4

General Consideration

- a. Ordinary cases shall not be considered hardship; rather the conditions which cause a violation of a Rule, a disregard of a decision or directive made under these Rules, or the failure to meet the eligibility requirements must be beyond the control of the school, the coach, the student, the parents and/or the affected party.
- b. Injury, illness or accidents which cause a student to fail to meet a basic requirement are possible causes for a hardship consideration.
- c. Likewise, a change in financial condition of the student or a student's family may be considered a hardship, however, such conditions or changes in conditions must be permanent, substantial and significantly beyond the control of the student or the student's family.
- d. In a transfer case where a student seeks full or limited eligibility, and there is evidence that the transfer or move was motivated, in part, by athletic reasons, albeit not for primarily athletic reasons, it is unlikely that the student will qualify for a hardship.
- e. In any application for a hardship under this Rule 17-8, the burden is upon the party seeking the hardship, whether it is a student, school or affected party, to show entitlement to a hardship by clear and convincing evidence.

scholarship offers from any schools. Hope College in Michigan has indicated an interest in Eric. The evidence at the preliminary injunction hearing indicated that playing JV football is not conducive for the remainder of the season to encourage colleges to offer Eric football scholarships.

99. Eric has shown, by clear and convincing evidence, that he meets the criteria under Rule 17-8.1 and Rule 17-8.5 for a hardship eligibility. The failure of the Review Committee to find in his favor with respect to these Rules was arbitrary and capricious, and not supported by substantial evidence of record, and was an abuse of discretion.

100. There is clear and convincing evidence that the reasons for Eric's transfer from Adams to Washington were academically motivated. Eric had compiled only a 1.8 overall GPA during his three years at Adams. He needed to obtain an overall 2.0 GPA in order to retain his membership in the 21st Century Scholars Program. He also needed to increase his GPA in order to be admitted into college.

101. Angel Price, Eric's mother, had legitimate academic reasons for transferring Eric to Washington that were not athletically motivated. As previously noted, Washington has a trimester program, which allowed Eric to take additional courses over a three semester period, as opposed to a two semester period, which Adams offered. Eric is also able to retake a number of his courses at Washington during his senior year in order to increase his GPA, as well as his required senior courses and several electives which may benefit his future college goals or major. Washington also provides a study table for its athletes before football practice. Despite numerous promises to do so, Adams never provided a study table for its athletes, whose players went directly to football practice after school.

102. Eric is having a successful academic experience at Washington, as shown by his

one-month progress report that he received all B's with one A on his first Washington report card. Washington's academic environment provides the best opportunity to meet Eric's academic needs so that he can achieve an overall high school GPA of 2.0 or better, which would make him remain eligible for the 21st Century Scholars Program and permit him to attend college. Strict enforcement of the limited eligibility rule in Eric's case will not serve to accomplish its purpose.

103. Eric's transfer does not violate the spirit of Rule 17-8.1b since it is for academic reasons. Eric's mother recognized that her son needed an alternative academic environment and additional academic assistance for her son, so that he could achieve an overall GPA of 2.0 and remain eligible for a scholarship under the 21st Century Scholar Program, and increase his chances for college admission.

104. Since Eric's transfer is based on academic reasons, especially for the purposes of increasing his GPA, the Committee finds that it would be an undue hardship under Rule 17-8.1c for him not to play varsity football his senior year in high school. Eric was a varsity starting halfback for Adams his sophomore and junior years. Eric not only loves to play football but has aspirations of playing football at a state college or university in Indiana, whether as a walk-on or with a scholarship.

105. A further denial of Eric's participation on the Washington High School football team for his senior year would be an undue hardship on him. Eric receives discipline, structure and assistance from his participation in football, including the study table, all of which have and will continue to help him in his academic goals, growth, and maturity as a person.

106. The evidence submitted by Eric to the IHSA at the outset, and again at the hearing on September 18, 2009, was probative evidence, and conclusive evidence, that Eric's transfer from Adams to Washington was not athletically motivated.

107. Defendant, IHSAA, is required, pursuant to Rule 17-4.5(h) and applicable case law, to base its findings on evidence presented at the hearing which is "substantial, credible, and of probative value."

108. Eric had four witnesses testify at his preliminary hearing on October 20th, 2009. The first witness was Bob Chimel, a former recruiting coordinator for over 17 years from 1982 until 2000. Chimel was a recruiting coordinator for Northern Illinois (2 years) Northwestern (2 years) Michigan (11 years) and Notre Dame (5 years). Chimel was also a high school coach in the 1970's for Fenwick (Oak Park) and St. Joseph High School (West Chester). As recruiting coordinator for these universities, it was Chimel's job to evaluate talent to determine if a prospective high school player had the ability to play for his university. One of the primary evaluation tools used by Chimel and other recruiters is the review of high school varsity football game films. It is very important for college recruiters like Chimel to review as many game films as possible of a prospective high school athlete to determine their talent and skill level and whether it would be appropriate to offer a college football scholarship to that athlete.

109. Chimel also testified that an athlete, who switches his positions his senior year, from running back to wide receiver, really needs as many game films as possible for college recruiters to determine his talent and skill level at the wide receiver position in order to properly evaluate what level of college football that player is capable of playing.

110. Chimel further testified that recruiting is an ongoing process that can begin in the early years of high school if the player is an elite athlete; however, most of the college football scholarships are offered by Division I schools in the latter part of the high school player's careers. Schools from the Middle American Conference (MAC), which includes Ball State, make their scholarship offers later in a high school player's career than Big Ten schools, like Purdue or

Indiana, or Notre Dame. The MAC schools have to wait to see if the prospective high school player receives and accepts a football scholarship offer from a Big Ten school or other elite program. If that occurs, the MAC school has to withdraw their offer and look for another high school prospect. Chimel also indicated in his testimony that some high school football players are not discovered by college recruiters until late in their high school career, because of various reasons. The "discovery" of these high school players can sometimes occur during their senior year, or even after the end of their senior year of football, since recruiting is an ongoing process.

111. The second witness, Angel Price, Eric Woods' mother, testified that her son is doing well academically at South Bend Washington, having received all B's and one A on his first report card at Washington. She and Eric are very pleased with the current academic environment at Washington. Eric is also interested in playing college football at the Division I level. His three top choices are Indiana, Purdue and Ball State. If Eric does not receive a football scholarship, his college tuition, books and possibly room and board could be paid for by the 21st Century Scholars Program, if he maintains a 2.0 G.P.A. at the time of his graduation. Price is still studying nursing as a full-time student at Lake Michigan College and is unable financially to support her son's college education.

112. Eric's third witness, Jay Johnson, his receivers coach at Washington, testified that he played football at Notre Dame from 1996 until 2001. He was coached by Lou Holtz, who also recruited him along with Bob Chimel. Johnson was a starting wide receiver for Notre Dame during his senior year and his fifth year. As a Five Star Prospect, he was also heavily recruited by a number of major college football programs, including Penn State.

113. Based on his experience at Notre Dame as a wide receiver, and his observation of college football games, Johnson testified that Eric has the talent and ability to play Division I

football. Specifically, Eric has the agility, athleticism, speed and strength to play at that level. His best position would be slot receiver, which is the inside receiver position in an offensive formation. Eric has been playing this position for Washington during the most recent games against Riley and Mishawaka.

114. Johnson further testified that Eric's level of talent and experience at this time would place him in the MAC or USA Conference. The MAC Conference contains schools like Northern Illinois and Ball State. Conference USA includes schools like Cincinnati. Johnson further testified that it's very important for Eric's development as a high school player to play as many games as possible in his senior year, including the first two football games of the sectional tournament, assuming Washington wins its first game on October 23rd, 2009. Since Eric has not played wide receiver until his senior year, Eric needs game experience at this position, including the development of his abilities to run pass routes. Woods will also be better able to develop his talents against tougher competition such as Daniel Smith of Clay High School, who has accepted a verbal offer to play football at Notre Dame. If the court grants this injunction, Woods will be playing the slot wide receiver position against Clay and Daniel Smith will be playing defensive safety guarding Woods. This match-up will not only help Woods develop his receiving skills, but also assist college recruiters in evaluating how Woods matches up against elite Division I talent.

115. Johnson also testified that Woods would have the opportunity to further increase his skill and experience at wide receiver if Washington plays in the second round against the winner of Lowell versus Plymouth. The additional varsity games that Woods plays will enable him to better learn how to run his receiver routes, especially against tougher playoff competition.

116. Antwon Jones, Eric's head football coach at Washington, also agreed with the testimony of Jay Johnson regarding Eric's talent and ability to play Division I college football.

Jones testified that Woods' talent level at wide receiver would be currently at the MAC level, because they only have two game films of Eric at the wide receiver, since this is his first year playing that position. Jones, like Johnson, believes that Eric has the ability and talent to play at a higher Division I level, such as Purdue, Indiana or even Notre Dame, if he was given the game experience that would allow him to improve his talent and abilities at wide receiver. Playoff tournament games also involve a higher level of intensity that gives a player the opportunity to play at a higher level against a Daniel Smith of Clay High School or teams like Lowell or Plymouth that are top-ranked teams in Class 4A. College recruiters would be better able to evaluate Eric's talent for their programs. Jones also was a starter for Notre Dame from 1995-2000.

117. Jones also testified that Woods has not replaced any starting players from the Washington varsity while playing the slot wide receiver against Riley and Mishawaka, due to injuries and illnesses (especially the flu) that have occurred to the Washington players during these past two games. Since Washington utilizes a passing offense, referred to as the "spread", it uses several slot receivers in its plays; players are constantly rotated in and out. Furthermore, Eric has been practicing with Washington since August of this year and has earned his right to be a starting wide receiver. The players also recently voted to let Eric play on their team.

118. All three witnesses, Chimel, Johnson, and Jones, testified that college recruiters and coaches are not interested in junior varsity games or films. The level of JV football is much far less competitive than the varsity level. All three witnesses knew of no college program that utilized JV game films in evaluating the talent and abilities of a high school football player.

119. Coaches Johnson and Jones also testified that it is important for Eric's development as a football player, especially wide receiver, that he play the first two games of the

sectional football tournament. These additional two games would not only help to develop his skills but provide colleges with additional information on film, regarding his talent and abilities. Chimel testified that recruiting coordinators value character and what they see on game films in making their decision to offer a football scholarship to a high school athlete.

120. Based on the above testimony of the above witnesses at the preliminary injunction hearing, the Court finds that Eric has the talent and ability to play Division I college football. The Court also finds, based on this testimony that it is important for Eric to play in the first two games of the 2009 sectional football tournament, to develop his football talent, especially since he has only played two varsity games this season at a new position, slot wide receiver. It is important for Eric's development as a football player that he play these next two games in order for him to increase his skills at the wide receiver position, which may give him more opportunities for major colleges to see him on film in evaluating his talent for their program.

121. This IHSAA'S declaration of ineligibility may substantially impair Eric's ability for a college scholarship opportunity. He has not signed a letter of intent with any college. If he is not permitted to play the remainder of his varsity football season, whether for one, two or more varsity football games, he will be denied the opportunity to be seen by other colleges, who may offer him a scholarship.

122. If Eric is unable to participate in varsity football he will suffer undue hardship. He will suffer an increased likelihood of not being able to develop to his full potential as a football player. He will suffer a substantial, if not permanent, impairment to his college athletic career. Finally, he may lose the opportunity at a college football scholarship because colleges will not be able to see him at a varsity level, except for only two games (Riley and Mishawaka). These are harms that when suffered by Eric this year may be irreparable.

123. The IHSAA, through its Assistant Commissioner, Commissioner and Review Committee, has acted in a patently arbitrary and capricious manner in denying Eric the privilege and benefit of general eligibility in high school interscholastic athletics since there was substantial evidence before the IHSAA that, under the rules of the IHSAA, Eric's transfer was based on non-athletic reasons and met the criteria for a hardship transfer under Rules 17-8.1 and 17-8.5.

124. Eric has exhausted all mandatory administrative remedies available to him under the rules of the IHSAA.

125. Washington has at least one, and maybe two, remaining sectional games on October 23rd and October 30th before Eric's limited eligibility expires on October 31, 2009. Unless the IHSAA is enjoined from enforcing its decision, Eric will suffer irreparable injury, in that he will be denied the privilege and benefit concomitant to his status as a student at Washington High School of participating in interscholastic athletics, especially varsity football.

126. Eric has no adequate remedy at law, requiring that the Court exercise its equitable powers.

127. Severe and irreparable harm will occur to Eric if the IHSAA is not enjoined from enforcing its denial of full eligibility for Eric to participate on Washington's varsity football team. Eric will also continue to be prevented from achieving his full potential in a sport in which he does well, football.

128. If the IHSAA is not enjoined from enforcing their denial of limited eligibility, Eric will continue to be prevented from participating in tournaments, games and sectional competitions. Each opportunity that is missed is substantial and significant to the plaintiff as a student and as an athlete, and continues to cause the plaintiff emotional injury and damages.

129. No harm will occur to the IHSAA as a consequence of the injunction because the

IHSAA's goals are not furthered by penalizing students who simply seek to find the school where their specific academic needs can be met.

130. Although not a party to the complaint, it has already been substantiated in this complaint that Adams High School is not suffering any harm or hardship due to Eric's transfer to Washington High School.

131. It is also the right of every Indiana public school student to choose a school where their specific academic needs can be met. Indiana Code 20-26-11-5 states that Indiana students or their parents can request a transfer from one public school corporation to another school corporation, if another school would better suit the student's needs. Section 5 specifically states the following:

Sec.5. (a) The parents of any student, regardless of the student's age, or the student after the student has become eighteen (18) years of age may request a transfer from a school corporation in which the student has a legal settlement to a transferee school corporation in Indiana or another state if the student may be better accommodated in the public schools of the transferee corporation. Whether the student can be better accommodated depends on such matters as:

- (1) crowded conditions of the transferee or transferor corporation;
- and
- (2) **curriculum offerings at the high school level that are important to the vocational or academic aspirations of the student. (*Emphasis Added*)**

The Court recognizes that Eric's transfer was within the South Bend School Corporation, but our legislature, by recently enacting the above statute, recognizes the clear right of a student to transfer to another school which can meet his academic aspirations. The Court finds that Washington provides the most appropriate curriculum offerings for Eric's academic needs, while Adams was not able to meet his academic needs.

132. The Plaintiff's remedies at law are inadequate, thus, causing irreparable harm

pending resolution of the action.

133. Equitable relief in the form of preliminary injunction and permanent injunction should be granted.

134. The plaintiff has a reasonable likelihood of success on the merits, and this has been demonstrated by a preponderance of the evidence.

135. The real or threatened injury to the plaintiff outweighs the threatened harm, if any, that the injunction would cause the defendant. This harm and injury to the Plaintiff are irreparable.

136. The public interest would not be served by denying injunctive relief.

137. To the extent that any finding of fact constitutes a conclusion of law, it shall be deemed a conclusion of law.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties and the subject matter of this cause of action.

2. Indiana courts have held that athletics is an integral part of our constitutionally mandated educational system, in which essential educational benefits flow from interscholastic competition. *Haas v. South Bend Comm. School Corp.* 259 Ind. 515, 528, 289 N.E.2d 495, 502-503 (1972) [DeBruler, J., concurring]. One of the potential positive outcomes of athletic

competition is “enhanced decision-making schools, self-image, character, morality, independence, and . . . sense of achievement.”⁵

3. Under state common law, the courts of Indiana have jurisdiction to review challenges to IHSAA rules and the applicability of those rules to a particular student or specific situation. *Carlberg*, 694 N.E.2d at 231. The Indiana appellate courts have established an “arbitrary and capricious” standard as the appropriate standard for review of decisions of the IHSAA. *Id* at 230-231.⁶ The trial court must overturn an IHSAA determination when it finds that the IHSAA acted arbitrarily and capriciously in making its decision. *See, IHSAA, Inc. v. Martin*, 731 N.E. 2d 1, 9 (Ind Ct App. 2000).

4. In reviewing an appeal from an IHSAA determination, this Court may not substitute its judgment for the judgment of the IHSAA. *Carlberg* at 233. The Court should not conduct a *de novo* review. *Id.* at 233.

5. This Court’s task upon review is the same as when reviewing an administrative agency’s decision; it will not reweigh evidence or judge witness credibility, but simply analyzes the record as a whole, including both the proceedings before the IHSAA and the proceedings before this Court, to determine whether the IHSAA’s findings were supported by substantial evidence. *See, IHSAA, Inc. v. Reyes*, 659 N.E.2d 158, 164 (Ind. Ct. App. 1995) *trans. grnt’d. Aff’g. and adopting in part*, 694 N.E.2d 249, 258 (Ind. 1997). Substantial evidence is something

⁵ *IHSAA, Inc. v. Carlberg*, 694 9 N.E.2nd 222, 228-229 Ind. 1997) (Reh’g. Denied)

⁶ *An administrative decision is “arbitrary and capricious” only where 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.”* *Carlberg*, 694 N.E.2d at 233.

more than a scintilla, but something less than preponderance of the evidence. See, *Partlow v. Indiana Family and Soc. Servs. Admin.*, 717 N.E.2d 1212, 1217 (Ind.Ct.App. 1999).

6. Substantial evidence includes “that relevant evidence which a reasonable mind might accept as adequate to support a conclusion.” See, *City of Indianapolis v. Woods*, 703 N.E.2d 1087, 1091 (Ind. Ct. App. 1998).

7. The trial court is general limited to reviewing the record of proceedings conducted before the IHSAA with respect to the factual determinations made by the IHSAA. *Martin*, 731 N.E.2d at 8-9. However, the trial court may receive new evidence as it pertains to matters concerning the IHSAA proceeding or as it pertains to factual determinations made by the IHSAA.⁷

8. This Court finds it must also examine the evidence of the September 18, 2009 decision of the IHSAA Review Committee to determine whether it was based on substantial evidence. Based on its prior Findings of Fact, this court concludes that most of evidence, relied upon by the IHSAA in the administrative proceeding, was hearsay, erroneous assumptions, and not supported by substantial evidence in the Record, and were in disregard of the facts and circumstances before the IHSAA.⁸

⁷ *The trial court should not judge the credibility of witnesses or reweigh the evidence; it should simply analyze the record as whole, including the record of proceedings before the IHSAA along with any properly admitted, relevant new evidence presented to the trial court to determine whether the IHSAA's findings were supported by substantial evidence.* IHSAA, Inc. v. Martin, 731 N.E.1, 9 (Ind. App.2000)

⁸ *“The court noted that the only possible evidence of athletic motivation . . . was hearsay within hearsay. Further, this evidence was not confirmed by personal knowledge, but rather was an assumption . . . The trial court concluded that this was “hearsay within hearsay” and was not substantial evidence . . . In rendering its decision that the IHSAA acted arbitrarily and capriciously, the trial court looked at the IHSAA's particular decision with respect to B.J., applied the appropriate standard, and concluded that the IHSAA's conduct rose to the level of willful and unreasonable decision making that was in disregard of the facts and circumstances before it.”* IHSAA v. Durham, 748 N.E.2d 404, 409, 414 (Ind. App. 2001)

9. The granting or denial of preliminary injunction is within the court's equitable discretion and will be reversed only if the trial court's action constitutes a clear abuse of discretion. *IHSAA V. Wideman*, 688 N.E.2d 413, 416 (Ind.Ct.App. 1997).

10. The Court of Appeals recently issued a published decision in *Indiana High School Athletic Association, Inc. v. Jasmine Watson, individually and by and through her mother, Valerie K. Watson, and South Bend Community School Corporation*, Cause No. 71A03-0901-CV-25, on September 24, 2009, reiterating the standards for obtaining a preliminary injunction:

To obtain a preliminary injunction, the movant must establish the following elements by a preponderance of the evidence: (1) a reasonable likelihood of success at trial; (2) the remedies at law are inadequate; (3) the threatened injury to the movant outweighs the potential harm to the non-movant from the issuance of an injunction; and (4) the public interest would not be disserved by granting the requested injunction. *Central Ind Podiatry, P.C. v. Krueger*, 882 N.E.2d 723, 727 (Ind. 2008). The plaintiff bears the burden of proving the first three elements while the fourth is within the trial court's reasonable discretion.

Id. at 17-18 citing *Whiteco Indus., Inc. v. Nickolick*, 549 N.E. 396, 397 (Ind. Ct. App. 1990).

The Court of Appeals in *Watson* further noted that a party seeking a preliminary injunction must establish a prima facie case at the hearing:

The movant need not establish that he is entitled to relief as a matter of law, nor must he prove and plead a case that would entitle him to relief upon the merits. *Id.* Thus, in reviewing the trial court's decision, we must only determine "whether the likelihood of success is so improbable as to render the trial court's determination erroneous as a matter of law."

Id. at 18; emphasis added, citing *Avemco Ins. Co. v. state ex rel. McCarty*, 812 N.E.2d 108, 118 (Ind.Ct.App.2004)

11. *Wideman* further notes that a trial court is required to enter special findings of fact when it grants or denies a preliminary injunction. In reviewing the granting or denying of a preliminary injunction, a court of appeals is limited to whether the trial court abused its discretion. *Wideman* at 416 citing *Kennedy v. Kennedy*, 616 N.E.2d, 39, 41 (Ind.Ct.App.1993), trans. denied. An appeals court will neither reweigh the evidence nor resolve factual controversy when reviewing the decision to grant a preliminary injunction. Instead, the court looks to the special findings of fact to see whether they “validly support the trial court’s decision”. *Wideman*, at 416, *Kennedy* at 41 quoting *Fumo*, 590 N.E.2d 1103, 1007-1108 (Ind.Ct.App.1992, trans. denied.)

12. In order for findings to be set aside, they have to be “clearly erroneous” meaning both “insufficient to disclose a valid basis for the legal result reached in judgment” and “unsupported by evidence of probative value.” *Fumo*, 590 N.E.2d 1108. The court of appeals reviews the overall sufficiency of the evidence as a matter of law. *Fumo* at 1107; *Wideman* at 416.

13. Eric has established that his remedies at law are inadequate, thus causing irreparable harm pending resolution of this action. Based on the prior Findings of Fact, the Court concludes that the ability of Eric to have the opportunity to participate in interscholastic athletics or the inability of Eric to have the privilege to participate in varsity football at Washington for the remainder of the 2009 season, causes harm, which is irreparable in nature.⁹ He will lose the ability to develop his football skills and talents during the remainder of the 2009 varsity football season and those losses cannot be replaced. Eric will also be irreparably harmed due to loss of

⁹ The court recognizes that loss of “opportunity to earn a [athletic] scholarship is not a protected interest for due process analysis.” *Carlberg*, 694 N.E.2d at 241, n. 26. Accord, *Kriss v. Brown*, 390 N.E.2d 193, 198 (Ind. Ct. App. 1978); *Schaill v. Tippecanoe County School Corporation*, 679 F.Supp. 833, 855 (N.D. Ind. 1988); *State ex. rel. Missouri High School Athletic Association v. Schoenlaub*, 597 S.W.2d 354 (Mo. 1974); *Mitchell v. Louisiana High School Athletic Association*, 430 F.2d 1155 (5th Cir. 1970); *Walsh v. Louisiana High School Athletic Association*, 616 F.2d 152 (1980) cert. denied, 449 U.S. 1124, 101 S.Ct. 939, 67 L.Ed.2d 109 (1981); *Cf., Washington et al. V. Ind. High School Ath. Assoc., et al.*, 181 F.3d 840, 853 (5th Cir. 1999).

enjoyment, development of confidence and self-esteem, if he is not allowed to participate in varsity football for the remainder of the 2009 season.

14. Eric has not only made the varsity team at Washington, but has demonstrated that he has the talent and ability to play Division I football. Eric needs additional playing time to continue to develop his wide receiver skills so that he may qualify for a Division I college scholarship or a preferred walk-on. Eric has no adequate remedy of law for any of the injunction remedies he has sought. If he is not allowed to play in the next two sectional football games, assuming Washington defeats Clay on October 23, 2009, he will not only be precluded from developing his skills and talents as wide receiver, but his chances for a college football scholarship will be substantially diminished.

15. With respect to the likelihood of success on the merits, the Court, based on the foregoing findings of fact, concludes that the September 30, 2009 decision of the IHSAA's Review Committee in this matter was arbitrary and capricious, because it ignored the substantial evidence in the record and disregarded the facts and circumstances of this matter. In the Findings of Fact, substantive evidence of probative value indicated that Eric's transfer was based on academic reasons and was not athletically motivated or a result of undue influence.

16. The evidence further indicated the IHSAA's decision that undue influence on Eric, his mother, or Adams principal Otha Reese, was the motivating factor in Eric's transfer is not supported by the substantial evidence of record, is arbitrary and capricious, and ignored the substantial evidence of record without consideration and disregard of the facts or circumstances in this case.

17. The potential injury to Eric would also greatly outweigh the threat and harm the preliminary injunction would inflict on the IHSAA. Balancing these harms, the granting of the preliminary injunction will have minimal to no effect on the IHSAA.

18. The IHSAA maintains there is public harm in that another player may be displaced on the varsity roster. The evidence as to any displacement of any player on the varsity roster if Eric is allowed to play varsity football for Washington is speculative, especially given Washington's injuries and sickness issues and its spread offense that employs several slot receivers almost every play. The Court further concludes that playing time is not a substantial public harm.

19. The potential injury to Eric in preventing him from playing in the first two IHSAA games of the 2009 Sectionals football tournament greatly outweighs the potential threat and harm the preliminary injunction would inflict on the IHSAA.

20. There is public interest in this case because "the issue involves children and education, matters that are considered of great public concern, and our court has previously held that a challenge to an IHSAA eligibility rule is an issue of substantial public interest." *IHSAA v. Durham*, (Ind. App. 2001), 748 N.E.2d 404, at 412, citing *IHSAA v. Raikes*, 164 Ind.App.169, 329 N.E.2d 66 (1975).

21. The public interest will not be disserved if the injunction were to issue, for there is no negative effect to the public, the public has an interest in having no harm to its student athletes. It also has an interest in ensuring that the IHSAA does not act in an arbitrary and capricious manner, which respect to its decision. As indicated above, the IHSAA did act in an arbitrary and capricious manner, with respect to the enforcement of its rules.

22. Based on the foregoing reasons, this Court concludes that it has reviewed all evidence and requests for the granting of the preliminary injunction in this case, and concludes that the IHSAA acted in an arbitrary and capricious manner in rendering its September 30, 2009 decision; that all elements have been established, by a preponderance of the evidence, by Plaintiff in establishing his right to equitable relief; that he has a reasonable likelihood of success on the merits; that his remedies at law are inadequate; that he will suffer irreparable harm pending the resolution of this matter, that there is no remedy at law which can adequately provide relief to the Plaintiff; that the threatened injury to Plaintiff outweighs any threatened harm to the IHSAA or to the public; and that the public interest will not be disserved. As such, this Court concludes that it is appropriate to exercise its equitable powers and to enjoin the IHSAA with regard to the athletic eligibility of Eric Woods.

23. To the extent that any conclusion of law shall constitute a finding of fact, it shall be deemed a finding of fact.

ORDER GRANTING PRELIMINARY INJUNCTION

Based on the above findings of facts and conclusions of law,

IT IS ORDERED, ADJUDGED, AND DECREED by this Court that the Plaintiff's request for injunctive relief is GRANTED and that the Indiana High School Athletic Association, Inc., and its agents, servants, employees and attorneys, and all persons in active concert with the same, are hereby restrained and enjoined, pending the final determination of this action from holding Eric Woods ineligible under IHSAA Rule 19-5, and from holding him ineligible from playing interscholastic varsity athletics at South Bend Washington for the remainder of the 2009

varsity football season, including the first two games of the 2009 IHSAA Sectionals Football Tournament.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, by this Court that there shall be no lapse at any time in the force, validity, enforcement and effectiveness of this Order, that it shall be held in continuous enforcement until the injunction becomes permanent, including, if necessary, that this preliminary injunction may convert to a permanent injunction upon motion of Plaintiff in the event Plaintiff is not able to have a timely resolution of this matter to become a permanent injunction or until further ORDER of this Court.

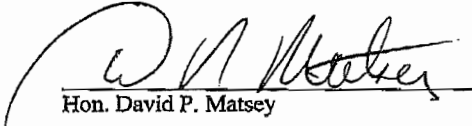
IT IS FURTHER ORDERED, ADJUDGED AND DECREED by this Court that the Indiana High School Athletic Association, Inc., and its agents, servants, employees, and attorneys, and all persons in active concert with the same, are hereby restrained and enjoined, pending the final determination of this action, from seeking any other direct or indirect means to accomplish its goal by attempting intimidation, threats, penalties or procedures in such ways including, but not limited to:

- A. Directly or indirectly threatening to stop or cancel regular season play, sectional, regional, semi-state or championship football tournaments if Eric Woods does not voluntarily dismiss or voluntarily vacate any injunction in his favor;
- B. Any direct or indirect actions or threats or penalties against the South Bend Washington High School, as the receiving school, for this or other matters relating directly or indirectly to this matter, in a manner which is an attempt to have said school suggest the dismissal or vacating of

the injunction, or to otherwise attempt to punish said school out of retaliation;

- C. Any attempt to enforce, implement or carry out in any manner, directly or indirectly, the decision of the IHSAA to the effect that the plaintiff, Eric Woods, is ineligible to participate in interscholastic athletics at and on behalf of Washington High School for the period commencing with his enrollment at Washington High School;
- D. Any and all direct or indirect threats, actions or charges against Eric Woods or Washington High School, or its employees or coaches, of any nature whatsoever, in any way arising out of the facts and circumstances of this matter regarding Eric Woods' enrollment at John Adams High School and his transfer to and enrollment at Washington High School, for the 2009-2010 school year; and
- E. Any direct or indirect actions, penalties, or threats against any school which is scheduled to compete or does compete against South Bend Washington High School, as a direct or indirect means to penalize or retaliate against Washington High School or said student, Eric Woods.

SO ORDERED AND ENTERED this 23rd day of October 2009, at 9:26 AM


Hon. David P. Matsey
Special Judge, St. Joseph Circuit Court