

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS**

David Ruggles, as parent and natural guardian)
of B.R., on their behalf and on behalf of parents)
and guardians of minor children similarly)
situated in the State of Illinois, Chris Warden,)
as parent and natural guardian of P.W., on their)
behalf and on behalf of parents and guardians)
of minor children similarly situated in the State)
of Illinois, and Kelly Ridges, as parent and)
natural guardian of D.R. and A.R., on their)
behalf and on behalf of parents and guardians)
of minor children similarly situated in the State)
of Illinois,)
Plaintiffs,)
v.)
Illinois High School Association,)
Defendant.)

Case No. 2020CH00552

PLAINTIFF’S EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER

Plaintiffs, David Ruggles, as parent and natural guardian of B.R., on their behalf and on behalf of parents and guardians of minor children similarly situated in the State of Illinois, Chris Warden, as parent and natural guardian of P.W., on their behalf and on behalf of parents and guardians of minor children similarly situated in the State of Illinois, and Kelly Ridges, as parent and natural guardian of D.R. and A.R., on their behalf and on behalf of parents and guardians of minor children similarly situated in the State of Illinois, hereby to move this Honorable Court for entry of a Temporary Restraining Order, pursuant to 735 ILCS 5/11-101, and in support thereof, state as follows:

1. The Illinois High School Association (IHSA) regulates all interscholastic athletics of IHSA member schools, subject to the IHSA Constitution and IHSA By-laws. Recently, the IHSA Board of Directors issued a series of guidelines (“Return To Play & Contact Day Guidelines)

that amend the 2020-21 sport seasons mandated by the IHSA By-laws. In some cases, the Return To Play & Contact Day Guidelines ban student-athletes from playing during the sport season mandated by the IHSA By-laws altogether. The IHSA Constitution requires a vote of IHSA members to amend by-laws. But there has been no member vote on the Return To Play & Contact Day Guidelines. Because the Return To Play & Contact Day Guidelines change the IHSA By-laws without following the legislative process required by the IHSA Constitution, Plaintiffs are likely to succeed on the merits of their claim for a declaratory judgment invalidating the Guidelines.

2. Plaintiffs and other similarly situated student-athletes have clearly ascertainable rights as intended third-party beneficiaries of their schools' memberships in the IHSA. Without a temporary restraining order, Plaintiffs and other similarly situated IHSA student-athletes will suffer irreparable harms. None of the harms can be corrected with a monetary award.

BACKGROUND

3. The IHSA Constitution and IHSA By-laws are the framework of rules that govern all interscholastic competition among IHSA member schools. <https://www.ihsa.org/About-the-IHSA/Constitution-By-laws-Policies> (last visited 9/28/20). The IHSA By-laws include express limits on the timing and length of sports seasons, see generally Exh. A at 71-85 (IHSA Handbook - Constitution § 5.000). The IHSA Board of Directors does not have the authority to override the IHSA Constitution or IHSA By-laws through administrative procedures, guidelines, or policies. Exhibit A at 90 (IHSA Handbook - Administrative Procedures, Guidelines and Policies)).

4. Responding to concerns over Covid-19, Governor Pritzker issued non-binding guidance regarding the conduct and timing of interscholastic athletics. Despite the fact that Governor Pritzker has not issued an executive order mandating that the IHSA act, the IHSA Board of Directors adopted binding restrictions incorporating the non-binding guidelines issued by Governor Pritzker. Exhs. B - C (together, "Return To Play & Contact Day Guidelines"). The

Return To Play & Contact Day Guidelines amend the sport seasons mandated by the IHSA By-laws. Exh. D at 1 (Return to Activities 2.0). Critically, the Return To Play & Contact Day Guidelines even ban some sports from occurring during the time periods mandated by the IHSA by-laws: “Certain fall sports will not be allowed to happen in the fall as a result the IHSA calendar will be adjusted with the following tentative timelines.” Exh. D at 1 (Return to Activities 2.0).

5. As an example, the IHSA By-laws mandate that “No school belonging to this Association shall organize its Boys Football teams, practice or participate in interscholastic contests earlier than Monday of Week 6 or later than Saturday of Week 21 in the IHSA Standardized Calendar.” Exh. A at 74 (IHSA Handbook - Constitution § 5.071). And “[n]o school belonging to this Association shall organize its teams, practice, scrimmage, or participate in any interscholastic sport outside of the season limitations as prescribed in Section 5.000 of these By-Laws” Exhibit A at 36 (IHSA Handbook - Constitution § 2.090) (Season Limitation in Athletic Activities). But no school is able to comply with these By-laws under the amended sport season that is part of the Return To Play & Contact Day Guidelines for football, which does not begin until February 2021, months after the By-law cutoff of Week 21. Football, soccer, and girls volleyball are disallowed fall sports that will not be allowed to run during the fall. Exh. D at 2-4 (Return to Activities 2.0).

6. Sections 1.700 and 1.900 of the IHSA Constitution establish an exclusive process for amending IHSA By-laws. Exhibit A at 23 & 26 (IHSA Handbook - Constitution §§ 1.700 & 1.900). Neither the IHSA Constitution nor the IHSA By-laws provide an alternative route for the IHSA Board of Directors or member schools to alter the IHSA By-laws. The IHSA Board of Directors failed to follow the requirements of Sections 1.700 and 1.900 before announcing the Return To Play & Contact Day Guide-lines.

LEGAL STANDARD

7. The legal standard for a temporary restraining order is straightforward. Parties seeking injunctive relief must establish

- (i) a clearly ascertained right in need of protection exists;
- (ii) irreparable harm will occur without the injunction;
- (iii) there is not an adequate remedy at law for the injury; and
- (iv) there is a likelihood of success on the merits.

See Makindu v. Illinois High School Ass'n, 2015 IL App (2d) 141201, at ¶ 31 (2015) (granting preliminary injunction against Defendant IHSA); *Bacon v. Illinois High School Ass'n*, 2019 CH 12760 (Cook Cnty. Cir.) (Nov. 1, 2019) (same). If these four elements are met, the court must balance the hardships and consider the public interests involved. *See Makindu*, 2015 IL App (2d) 141201. Plaintiffs must raise a “fair question” that each element is satisfied. *Id.*

ARGUMENT

A. Clearly Ascertained Right

8. Student-athletes at IHSA member schools are intended third-party beneficiaries of their schools’ memberships in the IHSA. *Bacon*, (Cook Cnty.) CH 12760, at ¶ A (order granting temporary restraining order). See Exh. E. Thus, as student-athletes at IHSA member schools, B.R. and P.W., D.R., and A.R. are intended third-party beneficiaries of the membership of their schools in the IHSA as well as the IHSA Constitution and IHSA By-laws. *Id.* at ¶ A (Plaintiffs “have a clearly ascertainable right in need of protection, namely, the rights conferred on CPS student-athletes as intended third-party beneficiaries of the membership by CPS with the IHSA.”).

B. Irreparable Harm and No Adequate Remedy at Law

9. To IHSA student athletes, not being able to play for their high school team constitutes irreparable harm that cannot be corrected by money damages. *Makindu*, 2015 IL App (2d) 141201, at ¶ 44 (“Here, the plaintiff alleged that, if the IHSA’s amended bylaw were upheld,

he would not be able to play for his high school basketball team at all before he graduates. This is the type of harm that could not be corrected by monetary damages.”)

10. In addition, the following constitute irreparable harms that cannot be remedied by money damages.

- Student-athletes who compete in more than one sport will have seasons overlap—preventing them from playing both sports and depriving other student-athletes of a teammate.
- Senior student-athletes in fall sports barred from playing during the time period mandated by the IHSA By-laws, there will be no other opportunity as high school students to compete before colleges make athletics-related admissions and scholarship decisions during the spring. College athletics programs rely on senior season stats to make key decisions about whom to recruit and whether to offer scholarships or grants to student athletes. Because the timing of those college decisions coincide with traditional fall sport seasons, IHSA students will suffer irreparable harm when considered next to peers in other states who were not required to sit out during the fall. This is especially true given that high school sports are continuing according to their traditional seasons in many states. *See, e.g.*, <https://www.nfhs.org/articles/sports-seasons-modifications-update> (last visited 9/9/2020) (majority of states will not cancel fall seasons).
- The increased responsibility to team and community that students develop when organized in teams. For example, a study using a nationally representative sample of 1,200 public high schools found schools with higher proportions of sports participants report significantly fewer violent crimes. Veliz, Philip and Sohaila Shakib. *Interscholastic Sports Participation and School Based Delinquency: Does Participation in Sport Foster a Positive High School Environment?* SOCIOLOGICAL SPECTRUM: MID-SOUTH SOCIOLOGICAL ASSOCIATION 32.6 (2012): 558-580.
- The mental health of student-athletes will suffer. Taliaferro, Lindsay A. et al., *Participation and Selected Health Risk Behaviors from 1999 to 2007* JOURNAL OF SCHOOL HEALTH 80.8 (2010): 399-410 (finding “involvement in sport confers unique psychosocial benefits that protect adolescents against suicidality... and suggest[ing] that mechanisms other than physical activity contribute to the protective association between sport and reduced suicidality.”); *see also* Harrison, P.A. and G. Narayan, *Differences in behavior, psychological factors, and environmental factors associated with participation in school sports and other activities in adolescents* JOURNAL OF SCHOOL HEALTH 73.3 (2003): 113-20) (significantly higher rates of healthy self-image and significantly lower odds for emotional distress, suicidal behavior, and physical and sexual victimization than students not involved in sports).

None of these losses can be repaired through money damages, if at all. Moreover, IHSA public schools provide interscholastic sports opportunities for many lower-income students who cannot replace those opportunities with private teams or individual lessons.

11. In short, there are no money damages that can repair these harms to Plaintiffs or other similarly situated IHSA student-athletes. *See, e.g., Makindu*, 2015 IL App (2d) 141201, at ¶ 44. It should go without saying that no legal remedy can restore the contributions of a missing teammate who was forced to choose between two sports due to amended sport seasons improperly adopted as part of the Return To Play & Contact Day Guidelines, or the senior and/or junior year statistics and performance on the field that college coaches need to evaluate recruits.

12. Furthermore, the irreparable harms and threat of irreparable harms at issue in this matter result from the IHSA’s failure to follow its own governing documents. There is a substantial likelihood that unless this Court enjoins such behavior, the IHSA will continue to issue procedurally faulty guidelines as the school year unfolds—especially as the IHSA begins to wrestle with the implications of sport season changes and other by-laws.

C. Likelihood of Success on the Merits

13. Plaintiffs are likely to succeed on the merits because the IHSA Board of Directors disregarded the exclusive legislative process for amending IHSA By-laws when imposing changes as part of the Return To Play & Contact Day Guidelines.

14. The authority of the IHSA Board of Directors to issue guidelines is constrained by the IHSA Constitution. See Exh. A at 21 (IHSA Handbook - Constitution § 1.450). The IHSA Constitution requires amendments to IHSA By-laws to follow the legislative set by Sections 1.700 and 1.900. Exhibit A at 23 & 26 (IHSA Handbook - Constitution §§ 1.700 & 1.900). As such, “all proposed amendments to either the Constitution or By-laws . . . shall be referred to the Legislative Commission . . . [and] [a]ction shall be taken by the Commission . . . as provided for in Section 1.920.” Exhibit A at 23 (IHSA Handbook - Constitution § 1.710). Section 1.900 requires, “All such proposed amendments to the Constitution and By-laws recommended by the Legislative

Commission for final action by the membership must be voted on as provided in Section 1.920.” Exhibit A at 26 (IHSA Handbook - Constitution § 1.910).

15. Neither the IHSA Constitution nor the IHSA By-laws provide an alternative to Sections 1.700 and 1.900 for the IHSA Board of Directors or member schools to change the IHSA By-laws. The IHSA agrees: “every provision of the IHSA Constitution and every By-law was voted into effect by the membership and can be changed only by a vote of the membership.” <https://www.ihsa.org/About-the-IHSA/Constitution-By-laws-Policies> (last visited 9/28/20) (emphasis added). Because the Return To Play & Contact Day Guidelines meet none of those requirements, the IHSA Return To Play & Contact Day Guidelines are invalid.

D. Balance of Equities.

16. When balancing the equities, “a trial court must weigh the benefits of granting the injunction against the possible injury to the opposing party.” *Makindu*, 2015 IL App (2d) 141201, at ¶ 47. The court should also consider the injunction’s effect on the public interest. *Id.* Here, the balance of equities falls in favor of Plaintiffs, who seek only a return to the status quo to preserve their rights under the IHSA Constitution and IHSA By-laws. In contrast, the Plaintiffs and other similarly situated student-athletes are threatened with irreparable harm from missing unique opportunities to for their high school teams if the temporary restraining order is not entered.

17. For context, there have been 1,000 high school football games played across the nation this season without incident. Brendan Gulick, *Over 1,000 HS Football Games Played, Zero Reports of Community Spread*, <https://www.si.com/college/ohiostate/news/over-1-000-hs-football-games-played-zero-reports-of-community-spread-jHBsXpWt3EOfK8PWLY4QzA> (last visited 9/2/20). Other, less contact-focused sports are similar. A study of 90,000 youth soccer athletes in various stages of training and competition throughout the country suggests the “incidence of reported COVID-19 cases among youth soccer players is not increased compared to

the national pediatric case rate.” <https://www.theecn.com/university-of-wisconsin-study-analyzes-covid-19-rates-among-youth-soccer-players> (last visited 9/29/20). And other state and leaders have reversed their decisions to disrupt high school sports during 2020-21. *See* Gulick, <https://www.si.com> (noting Michigan and Colorado reversing course on football season).

18. Protecting Plaintiffs and other similarly situated IHSA student-athletes from unauthorized amendments to the IHSA By-laws also aligns with the values of equity, fairness, and good sportsmanship the IHSA espouses. The purpose of the IHSA is “to provide leadership for the development, supervision and promotion of good sportsmanship...” <https://www.ihsa.org/About-the-IHSA/Mission-Statement-Beliefs> (last visited 9/28/20). By its own admission, the “IHSA believes equality and fairness must always be safeguarded.” <https://www.ihsa.org/About-the-IHSA/Mission-Statement-Beliefs> (last visited 9/28/20). That is all Plaintiffs ask with this Motion: for the Court to issue a temporary restraining order preserving the IHSA By-laws absent amendment through a vote of IHSA members pursuant as required by Sections 1.700 and 1.900 of the IHSA Constitution. Indeed, granting such an order would help the IHSA uphold its core belief that “to remain effective it must be a self-governing organization where each member school must take responsibility for the knowledge and enforcement of all rules and regulations.” <https://www.ihsa.org/About-the-IHSA/Mission-Statement-Beliefs> (last visited 9/28/20).

* * *

19. The IHSA disregarded the legislative process and member vote required by its Constitution to amend By-laws. The Return To Play & Contact Day Guidelines are invalid as a result. If allowed to stand, these invalid changes will cause irreparable harm to IHSA student-athletes for which there is no remedy at law. In short, the IHSA Board of Directors should lead by example—and follow the governing rules to which it agreed up front with each of its member schools and their student-athletes.

CONCLUSION

For the reasons above, Plaintiffs ask the Court to enjoin the IHSA from implementing or otherwise enforcing the Return To Play & Contact Day Guidelines.

Dated: September 29, 2020

Respectfully submitted,

David Ruggles, as parent and natural guardian of B.R., on their behalf and on behalf of parents and guardians of minor children similarly situated in the State of Illinois, Chris Warden, as parent and natural guardian of P.W., on their behalf and on behalf of parents and guardians of minor children similarly situated in the State of Illinois, and Kelly Ridges, as parent and natural guardian of D.R. and A.R., on their behalf and on behalf of parents and guardians of minor children similarly situated in the State of Illinois,

By: /s/ Jeffrey L. Widman

One of Their Attorneys

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