**BEFORE THE INDIANACASE REVIEW PANEL**

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| In The Matter of S.T-1<br>Petitioner | ) | |
| and | ) | **CAUSE NO. 111020-80** |
| The Indiana High School Athletic Assoc. (IHSAA),<br>Respondent | ) | |
| Review Conducted Pursuant to<br>I.C. 20-26-14 *et seq.* | ) | |

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

### Procedural History

The Petitioner, S.T-1., attended Blue River Valley High School (Blue River) until the end of his sophomore year, the end of the 2010-2011 school year. During the summer of 2011, he withdrew from Blue River and enrolled at Union High School (Union). Petitioner began attending Union on August 3, 2011.

On August 4, 2011, Petitioner's father completed the student's portion of the Indiana High School Athletic Association (IHSAA) transfer report requesting full eligibility to Petitioner. The reasons listed on the IHSAA Transfer Report (Transfer Report) for the Petitioner's transfer were related to academics and course offerings not available at the previous school.

On April 8, 2011, Blue River, the sending school, completed its portion of the Transfer Report recommending that Petitioner receive limited eligibility under Rule 19-6.2 citing the transfer was without a change of residency by the Petitioner's parents. Blue River did not sign the rule 17-8.5 verification. Also, on August 8, 2011, Union, the receiving school, completed its portion of the Transfer Report citing that Petitioner's transfer was a rule 19-6.2 transfer and signed the rule 17-8.5 verification with the recommended that Petitioner receive full eligibility for the reasons provided by the Petitioner's parents. On August 17, 2011, the Assistant Commissioner of the IHSAA determined Petitioner had limited eligibility, under Rule 19-6.2, until May 19, 2012.

The Petitioner sought review by the IHSAA Review Committee of the Commissioner's determination and requested full eligibility under Rule 19-6.2. The Review Committee

conducted its hearing on October 6, 2011, and issued its decision on October 17, 2011. The decision upheld the Commissioner's determination of limited eligibility.

## APPEAL TO THE CASE REVIEW PANEL

Petitioner appealed to the Indiana Case Review Panel[1] on October 17, 2011. On October 26, 2011, the Panel notified the parties that the Panel would review the IHSAA Review Committee decision during a Panel meeting. The Panel requested and received the record from the IHSAA. The record was copied and provided to each participating member of the CRP. On November 3, 2011, the CRP held a meeting where a quorum of members was present.[2] In consideration of the record, the following Findings of Fact and Conclusions of Law were determined.

## FINDINGS OF FACT

1. While attending Blue River, the Petitioner participated in basketball during his sophomore year on the junior varsity team. He also participated on the varsity cross country and varsity track & field teams.
2. In November of 2010, Petitioner's parents expressed dissatisfaction with the girls' basketball coach, Coach Koontz, and the amount of playing time of their oldest child, H.T., who played on the girls' varsity basketball team at Blue River.
3. On November 24, 2010, Petitioner's four sisters, left a closed practice after their father and the Coach Koontz had a disagreement.
4. On December 1, 2010, after playing time continued to decrease in the next two games for the oldest girl, all four daughters quit the girls' basketball program at Blue River.
5. The four girls quit the basketball program at Blue River out of concern for the administration's failure to address the issues raised by the family with Coach Koontz. The following spring of 2011, F.T. and her sister, H.T-1., asked Coach Koontz if they

[1] The Case Review Panel (CRP) is a nine-member panel established by the IHSAA. The Superintendent appoints the members and his designee serves as the chairperson. The Panel reviews final student-eligibility decisions of the IHSAA when a parent or guardian so requests. The CRP, by statute, is authorized to uphold, modify, or nullify any student eligibility decision made by the IHSAA. I.C. § 20-26-14-6(c)(3).

[2] Six members were present at the meeting, including Mr. Pat Mapes (chairperson), Ms. Cathy Klink, Mr. Earl Smith, Ms. Dana Cristee, and Mr. Ed Baker. Ms. N. Renee Gallagher attended the meeting as counsel to the Panel.

could play basketball for Blue River. The coach agreed and the girls began practicing informally during an open gym and later participated in an annual summer program.

6. Coach Koontz took the top 10-12 players from the summer program to several summer tournaments, however, Petitioner and her sister were not asked to participate.
7. On June 22, 2011, the Petitioner's parents notified the coach at Blue River that their daughters would not take part in a tournament hosted by Coach Koontz.
8. In June or July 2011, the Petitioner and his four siblings sought to enroll at Union and on July 6, 2011 permission to enroll was granted by the superintendent of the Union schools.
9. On August 4, 2011, Petitioner's father completed the student's portion of the IHSAA transfer report requesting full eligibility to Petitioner. The reasons listed on the Transfer Report for the Petitioner's transfer were related to academics and course offerings not available at the previous school.
10. On April 8, 2011, Blue River, the sending school, completed its portion of the Transfer Report recommending that Petitioner receive limited eligibility status under Rule 19-6.2 as the transfer was without a change of address by his parents. Blue River did not sign the rule 17-8.5 verification.
11. On August 8, 2011, Union, the receiving school, completed its portion of the Transfer Report citing that Petitioner's transfer was a rule 19-6.2 transfer and signed the rule 17-8.5 verification with the recommendation that Petitioner receive full eligibility. On August 16, 2011, the Assistant Commissioner of the IHSAA determined Petitioner had limited eligibility under Rule 19-6.2 or until May 19, 2012.
12. The Petitioner sought review by the IHSAA Review Committee of the Commissioner's determination and requested full eligibility under Rule 19-6.2 and requested a general waiver under Rule 17-8.1.
13. The Review Committee conducted its hearing on October 6, 2011, and issued its decision on October 17, 2011. The decision upheld the Commissioner's determination of ineligibility.
14. Petitioner appealed to the Indiana Case Review Panel[3] on October 17, 2011.

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[3] The Case Review Panel (CRP) is a nine-member panel established by the IHSAA. The Superintendent appoints the members and his designee serves as the chairperson. The Panel reviews final student-eligibility decisions of the IHSAA when a parent or guardian so requests. The CRP, by statute, is authorized to uphold, modify, or nullify any student eligibility decision made by the IHSAA. I.C. § 20-26-14-6(c)(3).

15. On October 26, 2011, the Panel notified the parties that the Panel would review the IHSAA Review Committee decision during a Panel meeting. The Panel requested and received the record from the IHSAA. The record was copied and provided to each participating member of the CRP.
16. On November 3, 2011, the CRP held a meeting where a quorum of members was present.

## CONCLUSIONS OF LAW

1. Although the IHSAA (Respondent) is a voluntary, not-for-profit corporation and is not a public entity, its decisions with respect to student eligibility to participate in interscholastic athletic competition are "state action" and for this purpose makes the Respondent analogous to a quasi-governmental entity. *IHSAA v. Carlberg*, 694 N.E.2d 222 (Ind. 1997), *reh. den.* (Ind. 1998).
2. The CRP is established by the Respondent to review final student eligibility decisions with respect to interscholastic athletic competition. I.C. 20-26-14 *et seq.* The CRP has jurisdiction when a parent, guardian, or eligible student invokes the review function of the CRP. In the instant matter, the Respondent has rendered a final determination of student limited eligibility for one year, until May 19, 2012 to the Petitioner. Petitioner has timely sought review by the CRP.
3. The CRP has jurisdiction to review and determine this matter. The CRP is not limited by any by-law of Respondent. The CRP is authorized by statute to uphold, modify, or nullify the Respondent's adverse eligibility determination. Any Finding of Fact that may be considered a Conclusion of Law shall be so considered. Any Conclusion of Law that may be considered a Finding of Fact may be considered as such.

4. The Panel is not required to review the IHSAA determination *de novo*. The Panel review is similar to an appellate-level administrative review. A full hearing to recreate the record is not required. The Panel is required to hold a "meeting," *I.C. 20-26-14-6(c)(2),* not a hearing. The Panel is not required to collect testimony and information during the meeting but may collect testimony and information prior to the meeting. *See* I.C. 20-26-14-6(c)(1). If the Panel upholds the IHSAA decision, a court of jurisdiction may consider the IHSAA decision, I.C. 20-26-14-7(c), as opposed to the Panel decision. The IHSAA

Review Committee hearing process provides students with due process protection. *See Carlberg*, 694 N.E.2d at 241.

5. The Panel reviews the IHSAA determination for arbitrariness or capriciousness. *See Carlberg*, 694 N.E.2d at 233. A rule or decision will be found to be arbitrary and capricious "only when it is willful and unreasonable, without consideration and in disregard of the facts or circumstances in the case, or without some basis which would lead a reasonable and honest person to the same conclusion." *Id.* citing *Dep't of Natural Resources v. Indiana Coal Council, Inc.*, 542 N.E.2d 1000, 1007 (Ind. 1989). Additionally, the Panel reviews whether an IHSAA decision is:

> not a fair and logical interpretation or application of the association's rule; . . . contrary to a constitutional right, power, privilege, or immunity; . . . in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; . . . without observance of procedure required by law; or . . . unsupported by substantial evidence.

I.C. 20-26-14-7(c).

6. Any Finding of Fact that may be considered a Conclusion of Law shall be so considered. Any Conclusion of Law that may be considered a Finding of Fact may be considered as such.
7. Under IHSAA Rule 19-6.2, a student who transfers without a corresponding change of residence by the student's parents may have limited eligibility at the new school.
8. Under IHSAA Rule 17-8.1, the CRP "shall have the authority to set aside the effect of any Rule and grant a general waiver when the affected party establishes, by clear and convincing evidence, and to the reasonable satisfaction of the . . . CRP, that all of the following conditions are met: (a) Strict enforcement of the rule in the particular case will not serve to accomplish the primary purposes of the Rule; (b) The spirit of the Rule will not be offended or compromised by a waiver; (c) Unless waived, an undue harm or burden will be suffered by the affected party from enforcement of the Rule; and (d) When a student eligibility waiver is requested, a hardship condition . . . exists."
9. Under IHSAA Rule 17-8.3, provides that a student seeking a general waiver must show that a hardship condition exists. A "hardship condition" is defined under Rule 17-8.3, in pertinent part, as an "extremely negative non-athletic condition, peculiar to the student,

which is caused by unforeseen, unavoidable and uncorrectable events which is beyond the election, control or creation of the student, the student's family, the student's supporters, the student's coaches and the student's school, which causes the student to be ineligible or not fully eligible."

10. Transfer to Union from Blue River was without a corresponding change of address of the parents: There is substantial evidence in the record to support that the transfer to Union was a transfer without a corresponding change of address under Rule 19-6.2, however, there is substantial evidence that this case falls under the general waiver under Rule 17-8.1 which caused the transfer without a corresponding change of address by the Petitioner's parents.
11. Reasons for the transfer to Union, the conduct and actions by the parents, the coach and the school as well as the adverse impact to the Petitioner supports the granting of a general waiver under Rule 17-8.1: There is clear and convincing evidence in the record that the facts of this case show that the an extremely negative athletic environment existed which was to such a degree that they were unavoidable and uncorrectable events. The circumstances between the Petitioner's sisters and his parents went beyond the election, control or creation of the Petitioner, his parents, his supporters and his coach. It was also beyond the control of the school. The student, in the end, suffered the harm created by circumstances not foreseen by the adults in the situation. The spirit of the rules, and purpose of the IHSAA, "to provide for fair wholesome amateur interschool athletic competition"[4] would not be served if the application of the rules served to, in effect, punish a student for the failings of the adults on both sides of the situation to work through disputes and differences. Limiting the Petitioner to limited eligibility when the issues involving his sisters did not include the Petitioner would not serve the purposes or spirit of the Rules in this case and therefore, as there is no evidence to suggest that the Petitioner's transfer was for athletic reasons, a general waiver is granted due to the existence of a hardship condition.
12. The IHSAA decision to provide Petitioner with limited eligibility for one year was arbitrary and capricious and was not supported by substantial evidence although there

[4] See 2011-2012 IHSAA Articles of Incorporation, Second, p. 1. See also, 2011-2012 IHSAA By-Laws, Article II-Purpose, p. 3.

was sufficient evidence that a hardship condition existed. The compelling facts of this case support application of the general waiver under Rule 17-8.1 as the requirements of the Rule 17-8.3 are satisfied by clear and convincing evidence.

13. Therefore, the IHSAA Review Committee's determination that Petitioner transferred without a change of address and the transfer was for athletic purposes denying him a waiver is hereby **nullified** as clear and convincing evidence exists to support the existence of a hardship condition and the granting of a general waiver under Rule 17-8.1 and Rule 17-8.3 is merited. The Petitioner is granted **FULL ELIGIBILITY** immediately.

## ORDER

The IHSAA Review Committee order is hereby **NULLIFIED by a vote of 5-0**. Petitioner is granted **FULL ELIGIBILITY** immediately.

DATE: 11-15-11

Pat Mapes, Chair
Case Review Panel

## APPEAL RIGHT

Any party aggrieved by the decision of the CRP has forty-five (45) days from receipt of this written decision to seek judicial review in a civil court with jurisdiction, as provided by I.C. 20-26-14-7.