

BEFORE THE INDIANACASE REVIEW PANEL

In The Matter of K.B.)	
Petitioner)	
)	
and)	CAUSE NO. 120104-85
)	
The Indiana High School Athletic Assoc.)	
Respondent)	
)	
Review Conducted Pursuant to I.C. 20-26-14 <i>et seq.</i>))	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Procedural History

The Petitioner, K.B., attended Tri-County High School (Tri-County) during her freshman and sophomore years. Petitioner then transferred to the Benton Central High School (Benton Central) for her junior and senior years at the beginning of the 2011-2012 school year. The Petitioner’s transfer was not due to a change of residence and she was only given limited eligibility to play sports at Benton Central.

On August 17, 2011, the Petitioner began attending Benton Central for the 2011-2012 school year. On August 10, 2011, according to the record, the Petitioner’s parents completed the student’s portion of the Transfer Report and provided the reason for the transfer as “[d]eep concern about financial and educational status of former school.” (Transfer Report, Section II). The IHSAA Review Committee’s order (Review Committee’s Order), however, provides that the Petitioner’s parents completed the Transfer Report on September 20, 2011.

On September 7, 2011, Benton Central, completed its portion of the Indiana High School Athletic Association’s (IHSAA) Transfer Report (Transfer Report) and recommended that the Petitioner receive full eligibility under Rule 17-8.5 and signed the Rule 17-8.5 Verification.

On September 7, 2011, according to the record, Tri-County completed its portion of the Transfer Report recommending the Petitioner receive limited eligibility and did not sign the Rule 17-8.5 Verification. The Review Committee’s Order issued on December 23, 2011, provides that Tri-County completed its portion of the Transfer Report on September 27, 2011.

According to the Review Committee’s Order, the IHSAA Assistant Commissioner Phil Gardner, on September 7, 2011, after receiving the Transfer Report from Benton Central on

September 7, 2011, and prior to receiving the Transfer Report from the student on September 20, 2011 and Tri-County's Transfer Report on September 27, 2012, determined that the Petitioner was to receive limited eligibility at Benton Central, under Rule 19-6.2, through May 21, 2012 and then to receive full eligibility on May 22, 2012.

On November 20, 2011, the Petitioner sought review by the IHSAA Review Committee of the Commissioner's determination and requested full eligibility. On December 15, 2011, the IHSAA Review Committee hearing was held and its issued order issued on December 23, 2011. The IHSAA Review Committee decision was to uphold the Commissioner's determination that the Petitioner receive only limited eligibility until May 22, 2012 and receive full eligibility on May 22, 2012.

APPEAL TO THE CASE REVIEW PANEL

Petitioner appealed to the Indiana Case Review Panel¹ (Panel) on January 4, 2012. On January 20, 2012, the Panel notified the parties that the Panel would review the Review Committee's Order 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 Panel. On February 23, 2012, the Panel 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. As a freshman and sophomore at Tri-County, the Petitioner participated in varsity softball.
2. Petitioner transferred to Benton Central for her junior and senior years and was given limited eligibility since her transfer was not accompanied by a change of residence.
3. On August 17, 2011, the Petitioner began attending Benton Central for the 2011-2012 school year.

¹ The Case Review Panel 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 Panel 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), Mr. Matthew Rager, Mr. Keith Pempek, Mr. Mickey Golembeski, Ms. Dana Cristee, and Ms. Cathy Kink. Ms. N. Renee Gallagher attended the meeting as counsel to the Panel.

4. On August 10, 2011, according to the documents in the record, the Petitioner's parents completed the student's portion of the Transfer Report and provided the reason for the transfer as "[d]eep concern about financial and educational status of former school." (Transfer Report, Section II).³
5. Petitioner's parents were concerned that the Tri-County school system was in financial trouble or would experience financial trouble in the near future which would result in a lower level of education and services to their four children.
6. Based on these beliefs, the Petitioner's parents, following a meeting with the superintendent for the Tri-County schools, chose to move their four children to Benton Central.
7. On September 7, 2011, Benton Central completed its portion of the Transfer Report as the receiving school and recommended the Petitioner receive full eligibility and signed the Rule 17-8.5 Verification.
8. On September 7, 2011, according to the Review Committee's Order, after receiving the Transfer Report from Benton Central, prior to receiving the Transfer Report from the student on September 20, 2011 and prior to receiving the Transfer Report submitted by Tri-County, the IHSAA Assistant Commissioner Phil Gardner determined that Petitioner's transfer was, under Rule 19-6.2, a transfer without a change of residence, and was to receive limited eligibility at Benton Central through May 21, 2012 and then to receive full eligibility on May 22, 2012.
9. On September 7, 2011, according to the documents in the record, Tri-County completed its portion of the Transfer Report as the sending school and recommended that Petitioner receive limited eligibility and did not sign the Rule 17-8.5 Verification.⁴
10. On November 20, 2011, the Petitioner sought review by the IHSAA Review Committee of the Commissioner's determination of limited eligibility and requested full eligibility.
11. On December 15, 2011, the IHSAA Review Committee hearing was held and in its order, issued December 23, 2011, the Review Committee upheld the Commissioner's

³ The IHSAA Review Committee's order, however, provides that the Petitioner's parents completed the Transfer Form on September 20, 2011.

⁴ The Review Committee's Order provides that Tri-County completed its portion of the Transfer Report on September 27, 2011.

determination that the Petitioner receive limited eligibility until May 21, 2012 and receive full eligibility on May 22, 2012.

12. The Petitioner timely sought review by the Panel of the IHSAA Review Committee's ruling.

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 Panel 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 Panel has jurisdiction when a parent, guardian, or eligible student invokes the review function of the Panel. In the instant matter, the Respondent has rendered a final determination of limited eligibility for one year, to the Petitioner. Petitioner has timely sought review by the Panel.
3. The Panel has jurisdiction to review and determine this matter. The Panel is not limited by any by-law of Respondent. The Panel is authorized by statute to uphold, modify, or nullify the Respondent's adverse eligibility determination. 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.
4. 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. *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, Limited Eligibility When Transfer Without Change of Residence by Parents, provides, in pertinent part, that a student who transfers without a corresponding change of residence to a new district by the student’s parents will have limited eligibility for one year from the date of enrollment and continues until the first anniversary of the date on which the student last participated in athletics at the former school.
8. Under IHSAA Rule 19-6.1(l) provides that a Limited Eligibility Waiver can be obtained if the student shows that the student continues to reside with her parents and the transfer was in the student’s best interests, with no athletic motivations surrounding the transfer. In addition, both the sending school and the receiving school must sign the Rule 17-8.5 Verification.
9. Substantial evidence exists in the record to support a finding of Limited Eligibility under Rule 19-6.2:
The Petitioner transferred from Tri-County to Benton Central prior to starting her junior year. The record contains no evidence that the Petitioner’s transfer was made in conjunction with a change of residence to a new school district.
10. Substantial evidence does not exist in the record to support the granting of a Limited Eligibility Waiver under Rule 19-6.1(l):

The record does not contain substantial evidence to support the granting of a waiver of Limited Eligibility under Rule 19-6.2. Benton Central signed the Rule 17-8.5 Verification however, Tri-County did not. The record does not contain substantial evidence to show that the transfer from Tri-County to Benton Central was in the student's best interest as the concerns regarding the educational and financial condition of Tri-County held by the Petitioner's parents appear to be speculative as the record contains little to no evidence to show that the Tri-County school system was experiencing financial or educational problems at the time of the student's transfer.

11. Therefore, the IHSAA decision to provide Petitioner with limited eligibility for one year, or through May 21, 2012, was not arbitrary and capricious and was supported by substantial evidence. Therefore, the IHSAA Review Committee's determination that Petitioner receive limited eligibility or junior varsity eligibility at Benton Central through May 21, 2012 is upheld.

ORDER

The IHSAA Review Committee order is hereby **UPHELD** by a vote of 6-0. Petitioner is to have LIMITED ELIGIBILITY or junior varsity eligibility at Benton Central through May 21, 2012 and receive full eligibility on May 22, 2012.

DATE: 3-2-12


Pat Mapes, Chair
Case Review Panel

APPEAL RIGHT

Any party aggrieved by the decision of the Panel 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.