

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In the matter of A.B.,)	
Petitioner,)	
)	
and)	CAUSE NO. 120829-88
)	
The Indiana High School Athletic Association,)	
Respondent.)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PROCEDURAL HISTORY

A.B. (“Petitioner”) attended Evansville Harrison High School (“Evansville Harrison”) during his freshman year. Petitioner is a foster child, who resides with his foster parents and five step-siblings in Evansville, Indiana. Petitioner subsequently withdrew from Evansville Harrison and enrolled at Mater Dei High School (“Mater Dei”), a parochial school in Evansville, Indiana. Petitioner’s foster parents secured a voucher pursuant to Indiana’s Choice Scholarship program,¹ which enabled Petitioner to attend Mater Dei.

On or about June 12, 2012, Petitioner’s foster parents initiated an Indiana High School Athletic Association (“IHSAA”) Transfer Report (“Transfer Report”), and indicated that Petitioner was transferring schools for religious reasons and because Petitioner had secured a voucher. The Transfer Report also indicated that the transfer was subject to Rule 19-6.2 Limited Eligibility When Transfer Without Change of Residence by Parent(s)/Guardian(s). Petitioner thus sought a waiver seeking full athletic eligibility at Mater Dei.

Evansville Harrison completed its portion of the Transfer Report on June 18, 2012, and indicated that Petitioner should receive limited athletic eligibility pursuant to Rule 19-6.2 at Evansville Harrison because the transfer did not correspond to an address change and one of Petitioner’s siblings remained at Evansville Harrison. Thus, Evansville Harrison did not sign the rule 17-8.5 verification. When Mater Dei’s principal completed the Transfer Report, he signed the verification and recommended that Petitioner have full eligibility under rule 17-8.5.

On June 19, 2012, IHSAA Assistant Commissioner Phil Gardner ruled that Petitioner’s transfer was subject to Rule 19-6.2, and Petitioner was entitled to limited eligibility at Mater Dei. On or about June 23, 2012, Petitioner appealed Assistant Commissioner Gardner’s ruling. The

¹ Ind. Code ch. 20-51-1.

IHSAA sent a letter to Petitioner acknowledging receipt of Petitioner's request for appeal and set the matter for a hearing before the Executive Committee for August 7, 2012. On August 17, 2012, the Executive Committee upheld Assistant Commissioner Gardner's ruling.

On August 24, 2012, Petitioner, through his foster parents, appealed the Executive Committee's decision to the Indiana Case Review Panel ("CRP"),² and the CRP notified the parties that it would review the decision during a CRP meeting. The CRP requested and received the record from the IHSAA. On September 13, 2012, the CRP held a meeting where a quorum of members was present.³ Based on a review of the record and applicable rules and laws, the CRP made the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Petitioner lives with his foster parents in Evansville, Indiana within the Evansville Harrison school district.
2. Petitioner attended Evansville Harrison during his freshman year (2010–2011) and participated on the freshman basketball team, junior varsity track team, and freshman and junior varsity football team. Petitioner last participated in sports at Evansville Harrison on May 10, 2012.
3. Petitioner is a foster-child whose foster parents are in the process of formally adopting him.⁴
4. Petitioner's foster parents recently secured a voucher for Petitioner and his brother pursuant to the Indiana Choice Scholarship program. On or around June 12, 2012,

² According to Ind. Code § 20-26-14-6(c)(3), the CRP is a nine-member panel established by the IHSAA. The Superintendent of Public Instruction appoints the members, and he or his designee serves as the Chairperson. The CRP reviews final student eligibility decisions of the IHSAA when a parent or guardian so requests. The CRP may uphold, modify, or nullify any student eligibility decision made by the IHSAA.

³ The following members were present at the meeting: Angela Rapp Weber (Chairperson), Ms. Dana Cristee, Ms. Cathy Ann Klink, Mr. Earl Smith, Mr. Brett Daghe, and Mr. Chuck Weisenbach. Mr. Chris Greisl attended the meeting as counsel to the CRP.

⁴ On September 6, 2012, counsel for the IHSAA submitted to the CRP a *Demand of Indiana High School Athletic Association, Inc. to Reject and Dismiss Appeal of [Petitioner] for Lack of Jurisdiction*. The CRP will treat the IHSAA's submission as a Motion to Dismiss. The Motion to Dismiss states that it should be granted because a student's parent is the only person who can appeal an IHSAA decision to the CRP pursuant to Ind. Code § 20-26-14-6 and Rule 17-10.1. A parent is defined as "[a] guardian; protector." American Heritage Dictionary 952 (10th ed. 1981). The Executive Committee acknowledges on page 2 of its decision, for example, that Petitioner's foster parents completed the Transfer Report and Petitioner lived with his foster parents in Evansville, Indiana. The Motion to Dismiss is denied. To rule otherwise would cause those students who are cared for by anyone other than a biological parent (e.g., a guardian, sibling, grandparent) to be treated differently than those who are fortunate to have his or her biological parent(s) present. That student would have to appeal an IHSAA decision through the traditional judicial system instead of utilizing the more efficient and less expensive CRP process established by Ind. Code ch. 20-26-14.

Petitioner and his brother enrolled at Mater Dei and subsequently initiated an IHSAA Transfer Report. An elder sister remained enrolled at Evansville Harrison.

5. Evansville Harrison's Athletic Director, Bryan Speer, indicated in his Summary Statement Testimony that Petitioner's father explained that a religious-based education would be more beneficial for his sons. Petitioner's father insisted the transfer was not athletically-motivated. Mr. Speer noted that Petitioner's other children would remain in the Evansville public school system.
6. Mater Dei recommended that Petitioner receive full athletic eligibility under rule 17-8.5 when it completed its portion of the Transfer Report. Evansville Harrison's athletic director, after conducting his investigation, recommended that Petitioner receive limited athletic eligibility because the transfer to Mater Dei did not correspond to a change of address and Petitioner's elder sister remained enrolled at Evansville Harrison.
7. Petitioner, through is foster parents, appealed Assistant Commissioner Gardner's ruling that Petitioner is eligible to participate in athletics on a limited-basis pursuant to Rule 19-6.2 to the Executive Committee.
8. In the Appeal Statement signed by Petitioner and Petitioner's foster parents and prepared with the help of legal counsel, Petitioner's foster parents stated that although athletics is one factor in the decision to transfer to Mater Dei, it is not the primary factor, which is a better education and environment.
9. At the August 7, 2012 hearing, Petitioner's foster father testified that the transfer was also motivated by religious reasons and that he, his wife, and Petitioner intend to convert to Catholicism. The IHSAA's legal counsel and the Executive Committee extensively questioned Petitioner and Petitioner's foster father about the conversion to Catholicism and an athletic motivation behind the transfer. Petitioner's foster father insisted the transfer was for religious reasons. He also admitted that 20% of the motivation to transfer to Mater Dei was for athletic purposes.
10. The Executive Committee upheld Assistant Commissioner Gardner's decision. Thus, Petitioner will be eligible to fully participate in athletics at Mater Dei on May 11, 2013. As indicated above, Petitioner, through his foster parents, appealed the Executive Committee's determination to the CRP. Since Evansville Harrison did not sign the verification required under Rule 17-8.5, Petitioner seeks a general waiver pursuant to Rule 17-8.1.

CONCLUSIONS OF LAW

1. Any Finding of Fact that may be considered a Conclusion of Law shall be so considered. Any Conclusion of Law that may be considered a Finding of Fact may be considered as such.
2. Although the IHSAA is a voluntary not-for-profit corporation and is not a public entity, its decisions with respect to student eligibility to participate in interscholastic athletic competition are considered a “state action” making the IHSAA analogous to a quasi-governmental entity. IHSAA v. Carlberg, 694 N.E.2d 222 (Ind. 1997), *reh. den.* (Ind. 1998).
3. The CRP has jurisdiction in this matter. The CRP is established by the IHSAA to review final student eligibility decisions with respect to interscholastic athletic competition. Ind. Code ch. 20-26-14. The CRP has jurisdiction when a student’s parent or guardian refers the case to the CRP not later than thirty days after the date of the IHSAA decision. Ind. Code § 20-26-14-6(b). In this matter, the Executive Committee rendered a final determination of student-eligibility adverse to the Petitioner on August 17, 2012, and Petitioner sought timely review on August 24, 2012.
4. The CRP may uphold, modify, or nullify the IHSAA Executive Committee’s decision. (Ind. Code § 20-26-14-6(c)(3)).
5. The CRP is not required to review the IHSAA determination *de novo*. The CRP review is similar to an appellate-level administrative review. A full hearing to recreate the record is not required. The CRP is required to hold a meeting, not a hearing. Ind. Code § 20-26-14-6(c)(2). The CRP is not required to collect testimony and information during the meeting, but may collect testimony and information prior to the meeting. See, Ind. Code § 20-26-14-6(c)(1). If the CRP upholds the IHSAA decision, pursuant to Ind. Code § 20-26-14-7(c), a court of jurisdiction may consider the IHSAA decision as opposed to the CRP decision. The Executive Committee hearing process provides students with due process protection. Carlberg, 694 N.E.2d at 241.
6. The CRP 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).

7. According to IHSAA Rule 19-4, a student is athletically ineligible if his or her transfer was for primarily athletic reasons or the result of undue influence. Petitioner's foster father stated the transfer was motivated 20% by athletics, and the Executive Committee described this as a "substantial role" on page 9 of its decision. But the only thing substantial about 20% is that it is substantially less than a majority. Petitioner's transfer to Mater Dei was neither primarily motivated by athletics nor the result of undue influence; thus, Petitioner is not athletically ineligible pursuant to Rule 19-4.
8. Since Petitioner's transfer did not correspond to a change of residence by Petitioner's parent or guardian pursuant to Rule 19-6.2, he is eligible to participate in athletics at Mater Dei on a limited-basis. Petitioner may participate fully in athletics if he receives a waiver.
9. There are two waivers available to students under the IHSAA Rules: a Limited Eligibility Waiver pursuant to Rule 17-8.5 and a General Waiver of an IHSAA Rule pursuant to Rule 17-8.1. The CRP agrees with the Executive Committee that because Evansville Harrison's athletic director did not sign the verification on the Transfer Report, Petitioner does not qualify for a Limited Eligibility Waiver pursuant to Rule 17-8.5.
10. In order to qualify for a General Waiver of an IHSAA Rule pursuant to Rule 17-8.1, Petitioner needed to provide clear and convincing evidence that, among other things, a hardship condition existed as defined in Rule 17-8.3. Rule 17-8.3(b) provides that if the transfer is motivated even partially by athletic reasons, albeit not primarily, a student is ineligible for a general waiver. Petitioner admitted in the Appeal Statement that athletics played a role in the decision to transfer to Mater Dei, and Petitioner's foster father admitted that the transfer was motivated 20% by athletics. Hence, Petitioner does not qualify for a general waiver pursuant to Rule 17-8.3.⁵
11. The CRP notes that at the August 7, 2012 hearing, the Executive Committee questioned Petitioner and his foster father at length regarding the sincerity of their conversion to Catholicism.⁶ In its decision, the Executive Committee discussed Petitioner's and his father's planned conversion to Catholicism noting that "oddly" Petitioner had not attend a

⁵ The academic environment has significantly changed in Indiana as a result of the School Choice Scholarship program codified at Ind. Code 20-51-1 *et seq.* When a voucher is used to transfer schools, a student could be negatively affected. The CRP notes that when a parent or guardian is considering which school a child should attend, the complete school environment may be considered, which could include athletics. According to the IHSAA's bylaws, if athletics are even a passing thought, a student would be eligible to participate only on a limited-basis.

⁶ When Petitioner's foster father stated at the August 7, 2012 hearing that he was previously Pentecostal, the IHSAA's legal counsel stated, "Pretty big thumpers over there." Butler-000069. The CRP finds this statement to be, at the very least, inappropriate and unnecessary.

Catholic church yet. Order at 5. The Executive Committee also stated that Petitioner and his father “not too convincingly” testified at the August 7, 2012 hearing about their pending conversion. Order at 7. Even though Petitioner’s foster father provided reasonable explanations at the hearing, the Executive Committee noted in its decision that Evansville Harrison’s Athletic Director, Bryan Speer, found it suspicious that some of Petitioner’s siblings remained at Evansville Harrison and its feeder schools and Petitioner did not enroll at Reitz Memorial, a Catholic school closer to Petitioner’s home than Mater Dei. The CRP declines to question the sincerity of Petitioner’s and his foster family’s personal decision to convert to Catholicism, regardless of the manner and timing in which they choose to do so.

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Angela Rapp Weber, Chairperson, dissenting.

The Executive Committee determined that Petitioner may participate in athletics at Mater Dei on a limited-basis because his transfer did not correspond to a change in residence. The Executive Committee relied on Rule 19-6.2 of the IHSAA’s Bylaws when rendering its decision. The question in this case is whether Rule 19-6.2 applies to transfers from a traditional public school with a defined territory or district to a private school. I conclude it does not.

Rule 19-6.2 states, “A student who transfers without a corresponding change of residence to a new district or territory by the student’s parent(s)/guardian(s) will have limited eligibility at the new school, provided the transfer was not for primarily athletic reasons or the result of undue influence.” The key language is “to a new district or territory” and “at the new school.” The language of Rule 19-6.2 contemplates a move from one school district or territory to a different school district or territory. If a student chooses to enroll at a school without moving into that school’s district or territory, he or she will receive limited eligibility at the new school.

This interpretation is consistent with the Philosophy provided at the beginning of Rule 19. Item (c)(6) listed in Rule 19’s Philosophy states, “[T]hey maintain the fundamental principle that a high school student should live at home with his/her parents or legally-appointed guardian (if the parents are deceased) and *attend school in the school district in which the parents or guardian live[.]*” (emphasis added). Rule 19’s definition of “bona fide change of residence” indicates a student and his or her entire immediate family must abandon the previous residence and legitimately establish a new residence. Reading Rule 19-6.2 together with Rule 19’s philosophy and the definition of “bona fide change of residence,” it is clear that for a student to be fully eligible for athletic participation at the receiving school without receiving a waiver pursuant to Rule 17-8.1 or 17-8.5, he or she is expected to move into the receiving school’s district or territory.

In this case, Petitioner wishes to transfer from a public school to a private school. Private schools, however, do not have defined districts or territories for attendance purposes. Thus a student, for example, who lives in Columbus, Indiana and wishes to attend Brebeuf Jesuit Preparatory School located on the north side of Indianapolis, Indiana is not prohibited from doing so based on his or her address. Petitioner is likewise not required to attend Reitz Memorial Catholic High School in Evansville, Indiana because he lives closer to it than Mater Dei.

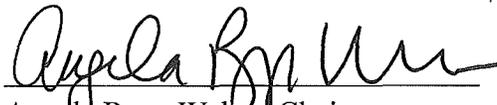
I therefore conclude that Rule 19-6.2 only applies to transfers from a traditional public school with an established territory or district to another.¹ Since Petitioner is transferring from a public school to a private school, only Rule 19-4 applies. The evidence clearly indicates that Petitioner's transfer was neither primarily for athletic reasons nor the result of undue influence. Petitioner is entitled to full athletic eligibility. This conclusion is consistent with the Legislature's authorization of a voucher system under the School Choice Scholarship program,² which provides students in Indiana the opportunity to choose which school to attend regardless of an address.

ORDER

The CRP finds by a vote of 5-1 that Petitioner is eligible to participate in athletics on a limited-basis at Mater Dei until May 10, 2013. Petitioner will be eligible to fully participate in athletics at Mater Dei on May 11, 2013.

DATE: _____

9/27/12



Angela Rapp Weber, Chairperson
Case Review Panel

APPEAL RIGHT

Any party aggrieved by the decision of the Case Review Panel has forty-five days from receipt of this written decision to seek judicial review in a civil court with jurisdiction, as provided by Ind. Code § 20-26-14-7.

¹ Rule 19-4 states, “[A] student athlete who transfers from one school to a new school for primarily athletic reasons or as a result of undue influence will be ineligible at the new school for 365 days from the date the student enrolls at the new school. . . .”

² Ind. Code 20-51-1 *et seq.*