

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter of N.C.,)
Petitioner,)
)
and)
) **CAUSE NO. 121119-96**
The Indiana High School Athletic Association,)
Respondent.)
)
Review Conducted Pursuant to Ind. Code ch. 20-26-14)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PROCEDURAL HISTORY

On or about June 7, 2012, N.C. (“Petitioner”) and his parents initiated an Indiana High School Athletic Association (“IHSAA”) Athletic Transfer Report (“Transfer Report”). The Transfer Report requested that the IHSAA make an athletic eligibility determination for the 2012–2013 school year relating to Petitioner’s transfer from Taylor High School (“Taylor”) to Eastern High School (“Eastern”). Taylor, as the sending school, completed its portion of the Transfer Report on August 15, 2012. On September 6, 2012, Eastern, as the receiving school, completed its portion of the Transfer Report.

On September 6, 2012, IHSAA Assistant Commissioner Phil Gardner determined that Petitioner’s transfer was subject to Rule 19-6.2, Limited Eligibility When Transfer Without Change of Residence by Parent(s)/Guardian(s). Thus, Petitioner was entitled to limited eligibility until February 2, 2013. Petitioner appealed Assistant Commissioner Gardner’s determination to the IHSAA Executive Committee (“Executive Committee”).

The 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 October 25, 2012. Based on the evidence presented at the October 25, 2012 hearing, the Executive Committee issued its ruling on November 2, 2012 upholding Assistant Commissioner Gardner’s ruling.

On or about November 19, 2012, Petitioner appealed the Executive Committee’s decision to the Indiana Case Review Panel (“CRP”),¹ 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

¹ 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 his designee serves as the Chairperson. The CRP reviews final student-eligibility decisions of the IHSAA when a parent or guardian so requests.

IHSAA. On December 19, 2012, the CRP held a meeting where a quorum of members was present.² 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 parents in the Taylor school district. Petitioner attended Taylor during his freshman year, 2011–2012. During the summer of 2012, he enrolled at Eastern without changing addresses.

2. Petitioner played on the junior varsity basketball team during his freshman year and last participated in athletics at Taylor on February 2, 2012.

3. Petitioner explained on the Transfer Report that he decided to transfer to Eastern for academic reasons. When Petitioner was in the eighth grade, Taylor subscribed to the New Tech program. New Tech instruction is predominantly project-based and utilizes group study. Eastern utilizes traditional instruction methods.

4. Petitioner experienced very little group instruction during his eighth-grade year. He did not want to attend Taylor his freshman year because of the New Tech program. Petitioner's parents, however, wanted him to give the New Tech program a chance, which is why he attended Taylor his freshman year. Petitioner never grew to like the New Tech program and decided to transfer to Eastern at the end of his freshman year.

5. At the October 25, 2012 hearing, Petitioner's parents testified that Petitioner's decision to transfer was motivated only by academics and not athletics. They also said Petitioner expressed an interest in participating in track, football, and swimming in addition to basketball. Petitioner's mother testified that if Petitioner is able to participate in athletics on a limited-basis and Eastern has no junior varsity team, Petitioner will not be able to participate in athletics at Eastern.

6. As a result of Assistant Commissioner Gardner's ruling, which the Executive Committee upheld, Petitioner has limited athletic eligibility and gains full athletic eligibility on February 3, 2013. As indicated above, Petitioner appealed the Executive Committee's determination to the CRP. Since Taylor did not sign the verification required under Rule 17-8.5, Petitioner seeks a general waiver pursuant to Rule 17-8.1.

² The following members were present at the meeting: Ms. Angela Rapp Weber (Chairperson), Ms. Dana Cristee, Mr. Keith Pempek, Mr. Chuck Weisenbach, and Mr. Bret Daghe. Mr. Chris Greisl attended the meeting as counsel to the CRP.

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 reviews 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 November 2, 2012, and Petitioner sought timely review on November 19, 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. 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 Rule 19-4, a student is athletically ineligible if his or her transfer was for primarily athletic reasons or the result of undue influence. The CRP agrees with the Executive Committee’s determination that Petitioner’s transfer to Eastern was not primarily for athletic reasons. Thus, Petitioner is not athletically ineligible pursuant to Rule 19-4.

8. The Executive Committee determined that because Petitioner’s transfer was without a corresponding change of residence by his parents or guardian to Eastern, he qualified for limited athletic eligibility pursuant to Rule 19-6.2. Rule 19-6.2 provides that transfers which are not

primarily motivated by athletics and do not correspond to a change in residence qualify a student for limited athletic eligibility.

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 Taylor did not sign the verification on the Transfer Report, Petitioner does not qualify for a Limited Eligibility Waiver pursuant to Rule 17-8.5. The CRP disagrees with the Executive Committee, however, that Petitioner does not qualify for a General Waiver of an IHSAA Rule under Rule 17-8.1.

10. Generally, a student seeking a Rule 17-8.1 waiver must prove by clear and convincing evidence that the primary purpose of the Rule will still be accomplished if the Rule is not strictly enforced; a waiver will not harm or diminish the Rule's purpose or spirit; the student will suffer or be harmed if a waiver of the Rule is not granted; and a hardship condition exists as defined in Rule 17-8.3. The Petitioner has proved by clear and convincing evidence that a Rule 17-8.1 waiver should be granted.

11. The Executive Committee points to Philosophy – Rule 19 in the IHSAA's bylaws to explain Rule 19-6.2's purpose as principally to deter athletically-motivated transfers, to promote the family unit (when a change of address occurs), and to protect the opportunities of bona fide students to participate in sports at the receiving school.

12. The Executive Committee states on page ten of its Order that strictly enforcing Rule 19-6.2 will protect the opportunities of bona fide students because any participation by Petitioner will displace another student. First, no evidence in the record indicates that any student will be displaced by Petitioner's presence. Second, once Petitioner enrolled at and was accepted by Eastern, he became a bona fide student. Third, based on the Executive Committee's logic, no transferring student will ever be eligible for a General Waiver, thus rendering the existence of the General Waiver a ruse.

13. The CRP also notes that the Executive Committee ignored other purposes listed in IHSAA's bylaws describing Rule 19's philosophy. The purpose of Rule 19 is to also ensure that participation in athletics is a privilege that should not dominate school programs and that the focus of students and educators remains on academics. Petitioner's focus is clearly on academics, and his purpose for transferring was not athletically-motivated. The CRP finds that based on the evidence presented, strictly enforcing Rule 19 will not serve its primary purpose.

14. The Executive Committee states the spirit or purpose for the Rule is to deter athletically-motivated transfers. As discussed above and as indicated on page ten of the Executive Committee's Order, Petitioner has provided clear and convincing evidence that his transfer was academically-motivated and not athletically-motivated. The CRP finds that the spirit and purpose of Rule 19 will not be offended by granting a General Waiver under Rule 17-8.1.

15. The Executive Committee states that Petitioner failed to show that he would suffer an undue burden or harm if he is only permitted to participate athletically on a limited-basis at Eastern. As Petitioner's parents testified, Petitioner is interested in playing sports other than basketball. If that sport does not have a junior varsity team, he will be punished by not being able to participate in that sport in a meaningful way. Further, according to the evidence, Petitioner is transferring for academic reasons. Participation in athletics on a limited-basis punishes Petitioner for focusing on academics, which is a stated purpose behind Rule 19.

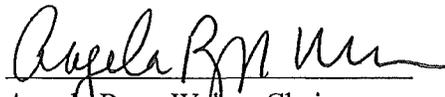
16. The Executive Committee states Petitioner failed to show that a hardship condition existed. But, according to the evidence presented, Petitioner's reaction and ability to adapt to the New Tech program (or his preference for traditional instruction) is extremely negative, peculiar to Petitioner, and beyond his control since each student learns differently. As a result of Petitioner's personal reaction to the New Tech program, he was compelled to transfer to Eastern. The CRP finds that a hardship condition existed pursuant to Rule 17-8.3.

17. Petitioner is granted a General Waiver pursuant to Rule 17-8.1, which, based on the evidence presented in this matter, is a just and reasonable conclusion.

ORDER

The CRP finds by a vote of 5-0 that Petitioner is granted a General Waiver pursuant to Rule 17-8.1 and able to participate fully in athletics.

DATE: 12/2/12


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.