

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter of G.B.,)
Petitioner,)
)
and)
) **CAUSE NO. 121212-97**
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 August 22, 2012, G.B. (“Petitioner”) completed the student portion of 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 Liberty Christian High School (“Liberty Christian”) to Anderson High School (“Anderson”). On August 27, 2012, Liberty Christian, as the sending school, completed its portion of the Transfer Report, and Anderson, as the receiving school, completed its portion on the same day.

On August 27, 2012, the 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 May 17, 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 November 2, 2012. Based on the evidence presented at the November 2, 2012 hearing, the Executive Committee issued its ruling on November 14, 2012 upholding Assistant Commissioner Gardner’s ruling.

On December 12, 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 IHSAA.

¹ According to Ind. Code § 20-26-14-6(c)(3), the CRP is a nine-member panel whose members are appointed by the Superintendent of Public Instruction, and his or her designee serves as the Chairperson.

On January 3, 2013, 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 Anderson, Indiana and in Anderson's school district.
2. Petitioner attended Liberty Christian during his freshman and sophomore years (2010–2012) and participated on the basketball and track and field teams. Petitioner last participated in athletics at Liberty Christian on May 17, 2012.
3. During the summer of 2012, Liberty Christian expelled Petitioner for the first semester of school. In order to re-enroll at Liberty Christian, the Petitioner had to complete a restoration program approved and monitored by Liberty Christian. Upon completion of the restoration program, Petitioner could reapply to Liberty Christian, but acceptance was not guaranteed.
4. Liberty Christian could have suspended the Petitioner, but instead decided to expel him. The Petitioner had to attend school, so he enrolled at Anderson at the start of his junior year. Petitioner lives in Anderson's school district.
5. Petitioner and his family had concerns with some aspects of Liberty Christian's restoration program and chose not to participate. Petitioner provided evidence from a counselor that it would be better for Petitioner to remain at Anderson for the remainder of high school instead of uprooting him again to re-enroll at Liberty Christian. In order to provide stability for the remainder of Petitioner's time in high school, Petitioner's family decided that he should remain at Anderson instead of returning to Liberty Christian.
6. Because Petitioner was expelled, he was athletically ineligible at Liberty Christian until January 7, 2013, which is the start of the second semester. Pursuant to Rule 3-8(b), Petitioner's ineligibility followed him to Anderson. Petitioner is not disputing that he is ineligible athletically at Anderson until January 7, 2013.
7. Petitioner did not change residences when he transferred to Anderson because he already lives in Anderson's school district. Thus, Liberty Christian and Anderson recommended that Petitioner be eligible for athletics on a limited basis once Petitioner's expulsion period expires.
8. 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 May 17,

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

2013. Petitioner seeks a General Waiver with respect to the determination that he is athletically eligible on a limited basis until May 17, 2013.

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 was established 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 November 14, 2012, and Petitioner sought timely review on December 12, 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.

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 Petitioner’s transfer to Anderson was not athletically-motivated. Thus, Petitioner is not athletically ineligible pursuant to Rule 19-4.

8. 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 17-8.1. Anderson and Liberty Christian did not sign the verification on the Transfer Report, so Petitioner does not qualify for a Limited Eligibility Waiver pursuant to Rule 17-8.5.

9. 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.

10. The Executive Committee points to the 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.

11. Petitioner's transfer to Anderson was not motivated by athletics but by the need to attend school. The Executive Committee states that Petitioner's participation in sports at Anderson will displace bona fide students. According to the Executive Committee's logic, no student will ever qualify for a General Waiver because any student who transfers to another school will displace a bona fide, thus making the General Waiver a ruse. Also, once Petitioner enrolled in Anderson he became a bona fide student. Nevertheless, there is no evidence to support the Executive Committee's determination that bona fide students will be displaced by the Petitioner's participation in sports at Anderson. The CRP finds that the primary purpose of Rule 19 will still be accomplished if the Rule in this case is not strictly enforced.

12. The Executive Committee states the spirit or purpose for the Rule is to deter athletically-motivated transfers. Petitioner did not transfer to Anderson for athletic reasons. 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.

13. The Executive Committee states that the Petitioner failed to show he would suffer an undue burden or harm if he is only permitted to participate in athletics at Anderson on a limited basis. Petitioner enrolled in Anderson because he needed to attend school, and his expulsion period ended on January 7, 2013. If the Petitioner were able to participate in athletics only on a limited basis after January 7, 2013, he would serve an additional punishment because he enrolled in Anderson out of necessity. Thus, the Petitioner will suffer harm or an undue burden if he is permitted to participate in athletics on a limited-basis because he had to attend school.

14. The Executive Committee states Petitioner failed to show that a hardship condition exists pursuant to Rule 17-8.3. Liberty Christian's decision to expel the Petitioner was extremely negative, peculiar to him, unavoidable and uncorrectable, and beyond the control of all but Liberty Christian. As a result of Liberty Christian's decision to expel the Petitioner and his need to attend school, the Petitioner was compelled to transfer schools. The CRP finds that a hardship condition exists pursuant to Rule 17-8.3.

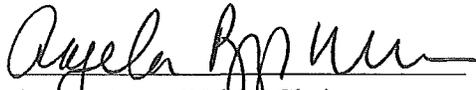
15. The CRP finds that based on the evidence presented, the Petitioner qualifies for a General Waiver under Rule 17-8.1. This determination is reasonable, in the Petitioner's best interests,

and furthers Rule 19's philosophy. According to the philosophy behind Rule 19 in the IHSAA's Bylaws, "[the Rule's] maintain the fundamental principle that a high school student should live at home with his/her parents or legally-appointed guardian . . . *and attend school in the district in which the parents or guardians live* Philosophy – Rule 19c.(6.) (emphasis added). The evidence indicates the Petitioner remains at home with his parents and now attends school in the district he lives in.

ORDER

The CRP finds by a vote of 5-0 that Petitioner is granted a General Waiver of an IHSAA Rule under Rule 17-8.1 and is fully eligible to participate in athletics at Anderson.

DATE: 1/15/13


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.