

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter of L.T.,)
Petitioner,)
)
and)
) **CAUSE NO. 130131-100**
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 September 10, 2012, L.T. (“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 the Petitioner’s transfer from Gary Lew Wallace High School (“Lew Wallace”) to Gary Roosevelt High School (“Roosevelt”). On December 9, 2012, Lew Wallace, as the sending school, completed its portion of the Transfer Report, and Roosevelt, as the receiving school, completed its portion on December 12, 2012.

On December 14, 2012, the IHSAA Assistant Commissioner Sandra Walter determined that the Petitioner’s transfer was subject to Rule 19-4, Transfer for Primarily Athletic Reasons or the Result of Undue Influence. Thus, Petitioner was ineligible to participate in athletics at Roosevelt for 365 days from the date Petitioner enrolled at Roosevelt, which was August 31, 2012. The Petitioner appealed Assistant Commissioner Walter’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 January 17, 2013. Based on the evidence presented at the January 17, 2013 hearing, the Executive Committee issued its ruling on January 28, 2013 reversing Assistant Commissioner Walter’s ruling that Petitioner’s transfer was for primarily athletic reasons. The Executive Committee granted Petitioner limited eligibility under Rule 19-6.2 because his transfer did not correspond to a change in residence.

On January 31, 2013, the 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. On February 15, 2013, the CRP held a meeting,² and 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 attended Lew Wallace until the start of his junior year in high school (2012–2013) and participated on the basketball team his freshman and sophomore years. He currently lives with his mother and sister in Lew Wallace's school district.

2. On August 29, 2012, while at a gas station blocks away from Lew Wallace and Petitioner's house, an unknown individual pulled a gun on Petitioner and his friends. The individual was not a student at either Lew Wallace or Roosevelt. That evening Petitioner took his mother's gun and placed it in a drawer in his room. His mother discovered the missing gun the next morning and confronted Petitioner, who indicated he took the gun for safety reasons.

3. Petitioner's mother, without any discussion with Petitioner, transferred him from Lew Wallace to Roosevelt on August 31, 2012, two days after the gun incident and one day after she discovered Petitioner had taken her gun.

4. Petitioner did not want to transfer to Roosevelt; he testified that he was neither unhappy nor dissatisfied with Lew Wallace, including the basketball program. Prior to the August 29th event, Petitioner did not feel unsafe at Lew Wallace and had not seen a gun at Lew Wallace.

5. Lew Wallace, in its allegation of athletic motivation, relies upon a letter dated January 10, 2013 from ██████████, a six-year senior who recently transferred from Roosevelt to Lew Wallace. The letter claimed that while attending summer open gym, Drevon observed Petitioner's mother and Coach Renaldo Thomas discussing Petitioner's transfer to Roosevelt. Drevon also spoke with an administrator at Lew Wallace indicating that he and Petitioner played in summer gym together at Roosevelt. Coach Thomas is Roosevelt's basketball coach but was previously the basketball coach at Lew Wallace.

6. Petitioner testified he participated in open gyms at Lew Wallace, but did not participate in any open gyms at Roosevelt prior to transfer. In the time leading up to his transfer, Petitioner's mother indicated she had no discussions with Coach Thomas. Coach Thomas stated that any

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.

² The following members participated in the meeting: Ms. Angela Rapp Weber (Chairperson), Ms. Dana Cristee, Mr. Brett Daghe, Mr. Keith Pempek, and Mr. Chuck Weisenbach.

discussion between him and Petitioner's mother took place in September, after the transfer had occurred.

7. During Petitioner's time at Lew Wallace he was not coached by Coach Thomas. Coach Thomas was at Lew Wallace for Petitioner's freshman year, but not his sophomore year. He did not coach Petitioner his freshman year. Petitioner testified that he had no discussions with Coach Thomas prior to the transfer.

8. Petitioner's mother expressed her concern to various Lew Wallace administrators regarding her son's safety after the August 29 gun incident. Weeks after Petitioner transferred to Roosevelt, several of his friends at Lew Wallace were arrested. These friends were with Petitioner at the gas station on August 29, 2012.

9. Petitioner's sister was not transferred from Lew Wallace to Roosevelt with her brother. Petitioner's sister is mildly mentally disabled and enrolled in the special education program at Lew Wallace. Petitioner's mother did not want to remove her daughter from the program and disrupt her by putting her through the adjustment of a new school and a new program.

10. Since Petitioner's transfer to Roosevelt, his GPA has increased from 1.7 at Lew Wallace to 3.1 at Roosevelt, and Petitioner made the honor roll. Additionally, Petitioner indicated that the atmosphere at Roosevelt was stricter and had better security.

11. Assistant Commissioner Walter ruled that Petitioner's transfer was a rule 19-4 transfer. The Executive Committee reversed and found the transfer was not made for primarily athletic reasons. But, the Executive Committee determined that Petitioner is eligible to participate in athletics on a limited basis because he did not qualify for a General Waiver of an IHSAA Rule pursuant to 17-8.1, and his transfer was motivated in part by athletics. Petitioner will be fully eligible to participate in athletics at Roosevelt on March 11, 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 January 28, 2013, and Petitioner sought timely review on January 31, 2013.

4. The CRP may uphold, modify, or nullify the IHSAA Executive Committee's decision. (Ind. Code § 20-26-14-6(c)(3)). 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.

5. 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).

6. 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 Roosevelt was not primarily for athletic reasons or the result of undue influence. Thus, Petitioner is not athletically ineligible pursuant to Rule 19-4.

7. The Executive Committee determined that because Petitioner's transfer to Roosevelt was without a corresponding change of residence by his parent or guardian, he qualified for limited athletic eligibility pursuant to Rule 19-6.2. Rule 19-6.2 provides that transfers which are not motivated primarily by athletics and do not correspond to a change in residence qualify a student for limited athletic eligibility.

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. Lew Wallace 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 (Rule 17-8.1(a)); a waiver will not harm or diminish the Rule's purpose or spirit (Rule 17-8.1(b)); the student will suffer or be harmed if a waiver of the Rule is not granted (Rule 17-8.1(c)); and a hardship condition exists as defined in Rule 17-8.3 (Rule 17-8.1(d)).

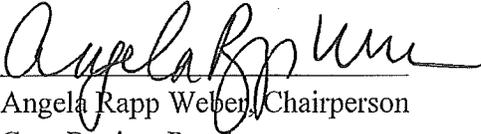
10. There is no evidence in the record that Petitioner's transfer was motivated even partially by athletics. Therefore, the Petitioner has met his burden with respect to Rule 17-8.1(a) and 17-8.1(b).

11. The Petitioner did not present evidence showing that he would be harmed if a waiver were not granted pursuant to Rule 17-8.1(c) and that a Rule 17-8.3 hardship condition exists pursuant to Rule 17-8.1(d). Thus, the CRP affirms the Executive Committee's decision to deny Petitioner a General Waiver pursuant to Rule 17-8.1.

ORDER

The CRP finds by a vote of 5-0 that Petitioner is eligible to participate in athletics at a Roosevelt on a limited-basis until March 10, 2013. Petitioner will be fully eligible to participate in athletics at Roosevelt on March 11, 2013.

DATE: 2/25/13


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.