

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter of T.W.,)	
Petitioner,)	
)	
and)	
)	CAUSE NO. 130409-101
The Indiana High School Athletic Association,)	
Respondent.)	
)	
Review Conducted Pursuant to Ind. Code)	
§ 20-26-14 <i>et seq.</i>)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PROCEDURAL HISTORY

On or about January 8, 2013, T.W. (“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 Mooresville High School (“Mooresville”) to Cardinal Ritter High School (“Cardinal Ritter”). On January 22, 2013, Mooresville, as the sending school, completed its portion of the Transfer Report. According to the Transfer Report received as part of the record, Cardinal Ritter, as the receiving school, completed its portion on January 23, 2013.

On February 4, 2013, the IHSAA Assistant Commissioner determined that the Petitioner’s transfer was without a change of residence, but that the Petitioner was entitled to “Limited Eligibility” under Rule 19-6.2. The Assistant Commissioner further determined that the Petitioner would be ineligible to participate in athletics at Cardinal Ritter for 365 days from the date Petitioner last participated in interscholastic athletics at Mooresville, which was on October 19, 2012. The Petitioner appealed the Assistant Commissioner’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 March 22, 2013.¹ Following the evidence presented at the March 22, 2013 hearing, the Executive Committee issued its ruling on April 4, 2013 upholding the Assistant Commissioner’s ruling granting Petitioner limited eligibility under Rule 19-6.2.

¹ According to all documents provided, the hearing under review took place on March 22, 2013. However, the cover sheet for the transcript states: “Hearing heard on the 23rd day of March, 2013.”

On April 9, 2013, the Petitioner appealed the Executive Committee's decision to the Indiana Case Review Panel ("Panel"),² and the Panel notified the parties that it would review the decision during a Panel meeting. The Panel requested and received the record from the IHSAA. On May 13, 2013, the Panel held a meeting,³ and based on a review of the record and applicable rules and laws, the Panel made the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

The Panel finds the following facts to be true relevant to its decision.

1. Petitioner attended Mooresville until the end of the first semester of his sophomore year in high school (2012–2013). While at Mooresville, he participated on the freshman football and varsity baseball teams; and, later, as a sophomore, on the varsity football team. He currently lives with his parents and two younger siblings.

2. On October 15, 2012, the Petitioner and another Mooresville student shadowed at Cardinal Ritter. The other student, like the Petitioner, played football for Mooresville. While the Petitioner shadowed a Cardinal Ritter student, his parents met with school representatives and discussed the academic program at Cardinal Ritter.

3. The Petitioner's family also looked at other schools in and adjoining Marion County.

4. In November, both the Petitioner and the other Mooresville student made application for enrollment to Cardinal Ritter. Both were accepted and began classes in January of 2013.

5. Unknown to the Petitioner and his family, a third student and football player from Mooresville was also considering Cardinal Ritter as an option. That student made application to Cardinal Ritter and was accepted. He started at Cardinal Ritter shortly after the Petitioner and the other student began. By January of 2013, three former Mooresville student athletes had transferred to Cardinal Ritter—the Petitioner and the two other students.

6. The Petitioner and the two other former Mooresville student-athletes sought a waiver of the transfer rule in order to participate in the athletic programs at Cardinal Ritter. Mooresville "signed off" on the other two students who are currently participating in interschool sports for Cardinal Ritter.

7. The Petitioner sought a Limited Eligibility Waiver under Rule 17-8.5. Under this waiver, IHSAA had the authority to set aside the effect of the transfer rule and grant the Petitioner full

² According to Ind. Code § 20-26-14-6(c)(3), the Panel is a nine-member panel whose members are appointed by the Superintendent of Public Instruction, and his or her designee serves as the Chairperson.

³ The following members participated in the meeting: Dr. George Frampton (Chairperson), Ms. Dana Cristee, Mr. Brett Daghe, Mr. Keith Pempek, and Mr. Chuck Weisenbach. Michael Moore was also present as legal counsel to the Panel.

eligibility if certain conditions were shown. One condition requires the principals of both Mooresville and Cardinal Ritter to each affirm in writing that the transfer was in the best interest of the Petitioner and that there were no athletic related motives surrounding the transfer.

8. Cardinal Ritter signed the Rule 17-8.5 *Verification* portion of the Transfer Report and recommended that the Petitioner receive full eligibility per Rule 17-8.5.

9. Mooresville did not sign the Rule 17-8.5 *Verification*. Instead, Mooresville recommended that the Petitioner receive Limited Eligibility under Rule 19-6.2.

10. Rule 19-6.2 allows a student to have limited eligibility when that student transfers without a corresponding change of residence to a new district or territory, "provided the transfer was not for primarily athletic reasons or the result of undue influence." This rule establishes that the period of limited eligibility at the new school begins on the date of enrollment and continues until the first anniversary of the date on which the student last participated in interscholastic athletics at the previous school. Under limited eligibility, the Petitioner can participate in interscholastic athletics at Cardinal Ritter starting October 19, 2013.

11. Prior the hearing, the parties were required, under IHSAA Rule 17-4.4, to present to the Executive Committee, and to exchange with each other, a written statement which summarizes the their respective positions. This statement is called an appeal statement. The parties were required to attach to their appeal statements "(i) all documents relied upon by a party to the appeal, and (ii) a written summary statement, under oath, of the testimony to be given by the witness relied upon by a party to the appeal." The appeal statements were due to the Executive Committee and were to be exchanged between the parties no later than two (2) business days prior to the hearing. That date would have been March 20, 2013.

12. The Petitioner provided his appeal statement timely. It is unclear when the IHSAA submitted its appeal statement; however, it was admitted at the hearing and marked as "Exhibit A." Petitioner did not receive a copy until the day before the hearing.

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 Panel has jurisdiction in this matter. The Panel was established to review final student eligibility decisions with respect to interscholastic athletic competition. Ind. Code § 20-

26-14. The Panel has jurisdiction when a student's parent or guardian refers the case to the Panel 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 April 4, 2013, and Petitioner sought timely review on April 9, 2013.

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

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).

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 Panel agrees with the Executive Committee's determination that Petitioner's transfer to Cardinal Ritter 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 Cardinal Ritter 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. Mooresville did not sign the verification on the Transfer Report, so Petitioner did 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. The Petitioner has met his burden with respect to the first two conditions. Mooresville recommended that the Petitioner receive limited eligibility and the IHSAA Assistant Commissioner agreed and granted the Petitioner limited eligibility under Rule 19-6.2. That rule

would only allow for limited eligibility when the transfer was not for primarily athletic reasons or the result of undue influence.

11. Despite the Executive Committee's finding, there was very little evidence introduced tending to show that the transfer from Mooresville to Cardinal Ritter was motivated by athletic reasons. There was no evidence introduced supporting the finding that there was "strong and documented athletic motivation" for the transfer. The Executive Committee's finding here was based solely on supposition and innuendo influenced by the beliefs of Mooresville school personnel, the timing of the transfer along with the two other Mooresville students and by the Petitioner's father's "keen understanding and knowledge of the Cardinal Ritter football program and personnel."

12. Both Mooresville and the Commissioner were satisfied that the primary motivation for the move was not for athletic reasons. Therefore, the Panel finds that the primary purpose of the Transfer Rule will still be accomplished if the Rule is not strictly enforced, and, in this case a waiver will not harm or diminish the Rule's purpose or spirit. The Petitioner has met his burden with respect to Rule 17-8.1(a) and 17-8.1(b).

13. Petitioner must also show by clear and convincing evidence that "[u]nless waived, an undue hardship or burden will be suffered by the affected party from enforcement of the [Transfer] Rule." Rule 17-8.1(c). , The Panel FINDS that the Executive Committee's determination that the Petitioner failed to establish this condition is arbitrary and capricious;

14. There was evidence before the Executive Committee that two other Mooresville student-athletes who, like the Petitioner, transferred to Cardinal Ritter without a change of address. The Executive Committee found this fact to be true. (See Final Decision of the IHSAA Executive Committee pg. 8., Record at 000008)⁴ These students would, likewise, have only been eligible for a limited waiver.

15. Further, uncontroverted evidence was presented that Mooresville "signed off" for those two students and they were both able to participate in interscholastic athletics at Cardinal Ritter immediately. (See e.g. January 22, 2013 letter by [Petitioner's father], Record at 000087; Petition's Appeal Statement, Record at 000105-6; Summary of testimony of [Father], Record at 000114.) The Executive Committee found that this fact supported its finding that the Petitioner's motivation to transfer was for athletic reasons.

16. However, in doing so, the Executive Committee disregarded the fact that the Petitioner's treatment by Mooresville was disparate when compared to its treatment of at least one other student-athlete who transferred to the same school at the same time.

⁴ The Panel will reference specific exhibits by the bate stamp number placed on the document and made part of the record.

17. The Panel finds that this disparate treatment of the Petitioner is proof that he suffered a burden not imposed on other similarly situated student-athletes. Thus, he met his burden as to Rule 17-8.1(c) and the finding of the Executive Committee to the contrary is arbitrary and capricious. In doing so, the Panel only focuses on the Committee's review of Mooresville disparate treatment of the Petitioner. The Panel was not provided any information as to whether the IHSAA granted those two students a general waiver upon a request by either.

18. The Executive Committee found that under Rule 17-8.1, the Petitioner was also required to establish, by clear and convincing evidence, the existence of a hardship condition. The Committee found that the Petitioner failed to meet this condition. Normally, the Panel would agree; however, in this case, the Panel is struck again by the unequal treatment between the Petitioner and the two other student-athletes who transferred from Mooresville to Ritter and were permitted to participate in interscholastic athletics.

19. Rule 17-8.3 defines the term "hardship condition" and adds; "[a] student eligibility general waiver is exceptional and extraordinary relief, granted in rare cases; ordinary cases shall not qualify for a student general eligibility waiver." In this case, the uncontroverted evidence was that two other students transferred from Mooresville to Cardinal Ritter at the same time as the Petitioner, were allowed to play interscholastic sports and that Mooresville "signed off" on both of their requests.

20. The Panel finds that the disparate treatment of the Petitioner by Mooresville amounts to a hardship condition and that the "exceptional and extraordinary relief" that is a waiver should have been granted in this case. The Executive Committee's ruling with regards to this element is arbitrary and capricious.

Procedural Issues:

21. When an affected party wishes to seek a review of an IHSAA's ruling Rule 17-4.4, that party may seek an appeal. Once a hearing is scheduled, IHSAA and the affected party, are required to submit to the Executive Committee and to exchange with each other a written statement which summarizes each party's position. This Appeal Statement must also have attached to it "(i) all documents relied upon by a party to the appeal, and (ii) a written summary statement, under oath, of the testimony to be given by the witness relied upon by a party to the appeal." The parties were to submit the statement and send a copy to the other at least two business days prior to the hearing.

22. At the hearing, the Petitioner's father complained that he received IHSAA's appeal statement less than 24 hours prior to the hearing. There was no other evidence regarding when, IHSAA's appeal statement was submitted other than the date of the hearing when it was entered and marked as an exhibit. (Record at 000074).

23. The Case Review Panel was troubled by the Petitioner's complaint about having not received IHSAA's appeal statement timely and the subsequent lack of a denial or follow-up by the IHSAA to that claim. IHSAA's own by-laws require this exchange and provide a deadline by which it is to occur. Rule 17-4.4. The likely purpose for this exchange is to give both sides the opportunity to adequately prepare for the hearing. If the exchange did not occur as the Petitioner complained, then he was at a disadvantage going into the hearing.

24. Actions undertaken by this Panel and the Executive Committee constitute "state action" for purposes of federal and state constitutional analysis. *Carlberg* (supra) at 231. A procedural violation by a state actor could, in some circumstances, result in a denial of due process. A proceeding before a body like the Executive Committee, however, is not required to be conducted with all of the procedural safeguards afforded by judicial proceedings. See *City of Mishawaka v. Stewart*, 261 Ind. 670, 676, 310 N.E.2d 65, 68 (1974). A lower standard in proceedings like that before the Executive Committee is acceptable because it would be unworkable to do otherwise. *Id.* There is, nevertheless, a minimum standard.

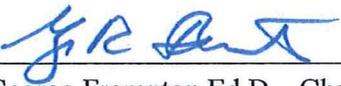
25. Here, we do not determine whether IHSAA's appeal statement was submitted untimely because the record is unclear on that issue. Even if we were to make that finding, we do not believe a failure to submit the appeal timely would, by itself, constitute a failure to provide due process to the Petitioner. We would encourage the IHSAA and any party appearing before the Executive Committee to comply with Rule 17-4.4.

ORDER

The Panel finds by a vote of 5-0 that the Panel has the authority to set aside the effect of any Rule and grant a general waiver when the affected party establishes, by clear and convincing evidence, and to the reasonable satisfaction of the Case Review Panel, that all of the following conditions of Rule 17-8.1 are met. A general waiver, under Rule 17-8.1, is hereby GRANTED and the Petitioner is fully eligible to participate in athletics at Cardinal Ritter.

DATE:

5/23/2013


George Frampton Ed.D., Chair
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.