

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter of T.B.,)	
Petitioner,)	
)	
and)	
)	CAUSE NO. 130429-102
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 December 12, 2012, T.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 the Petitioner's transfer from Noblesville High School ("Noblesville") to Theodore Guerin Catholic High School ("Guerin Catholic"). On January 16, 2013, Noblesville, as the sending school, completed its portion of the Transfer Report. According to the Transfer Report received as part of the record, Guerin Catholic, as the receiving school, completed its portion on January 17, 2013.

On February 28, 2013, the IHSAA Assistant Commissioner determined that the Petitioner's transfer was primarily for athletic reasons or undue influence and ruled that he was ineligible at Guerin Catholic. The Assistant Commissioner further determined that the Petitioner would be ineligible to participate in athletics at Guerin Catholic for 365 days from the date Petitioner enrolled at Guerin Catholic, which was on January 7, 2013. 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. Following the evidence presented at the March 22, 2013 hearing, the Executive Committee issued its ruling on April 4, 2013 reversing determination of ineligibility under rule 19-4 and granting limited eligibility under Rule 19-6.2.

On April 29, 2013, the Petitioner appealed the Executive Committee's decision to the Indiana Case Review Panel ("Panel"),¹ 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 June 12, 2013, the Panel held a meeting,² 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 and relevant to its decision.

1. Petitioner attended Noblesville until the end of the first semester of his sophomore year in high school (2012–2013). While at Noblesville, he participated on the varsity football team his freshman and sophomore years and the varsity track and field team as a freshman. He currently lives with his parents and two younger siblings within the Noblesville School District.

2. On January 16, 2013, Petitioner completed the *IHSAA Transfer Report* (Transfer Report), after Petitioner began attending Guerin Catholic on January 7, 2013. In the report, Petitioner indicated that he was transferring schools because of a desire to return to Catholic education to fulfill his spiritual, academic, and emotional needs.

3. On his Transfer Report, Petitioner acknowledged that it was a Rule 19-6.2 Limited Eligibility transfer, but sought a waiver under Rule 17-8.5, allowing full eligibility. Under this waiver, IHSAA had the authority to set aside the effect of the Transfer Rule and grant the Petitioner full eligibility if certain conditions were shown. One condition requires the principals of both Noblesville and Guerin Catholic 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.

4. Guerin Catholic, the receiving school, 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.

5. Noblesville did not sign the Rule 17-8.5 *Verification*, but instead recommended ineligibility under rule 19-4. On its section of the transfer report, Noblesville stated that the primary reason for the transfer was athletic. Noblesville supported its stance with a timeline of conversations between Petitioner's father and the Noblesville Athletic Director ("AD"). Upon learning from the AD that Noblesville would not sign off on the transfer, Petitioner's father complained that it would hurt his son's Division I football chances. Further, Petitioner's parents

¹ 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.

² 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.

told the Noblesville Principal that they wanted him to be around coaches of higher moral character.

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 29, 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 Guerin Catholic 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 Guerin Catholic 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. Noblesville 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. Petitioner failed to establish that the primary purpose of the rule would still be accomplished if the Rule is not strictly enforced. The rule's principle purpose is to deter athletically motivated transfers. The findings of fact show that the transfer was athletically motivated, satisfying the primary purpose. The secondary purpose of strict application of the transfer rule is to protect the opportunities of *bona fide* student-athletes, which would also be satisfied.

11. The Committee found, however, that the transfer wasn't primarily motivated by athletic reasons or that it was the result of undue influence because the Committee found that limited eligibility under Rule 19-6.2 was appropriate.

12. Despite Petitioner's contention that Guerin Catholic would better satisfy his spiritual, academic, and emotional needs; he did not establish through clear and convincing evidence that the transfer rule would not be offended or compromised by a waiver. The Transfer Rule is a prophylactic rule that limits the eligibility of all students without satisfaction of an exception listed in Rule 19-6.1. Petitioner's reasons for transfer are not significant, non-athletic events or conditions which, objectively, would compel a transfer.

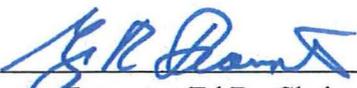
13. The Transfer Rule allows for a waiver if the student will suffer or be harmed if a waiver of the Rule is not granted, but Petitioner offered no evidence or proof in support of such a claim.

14. The last element for a general waiver is the existence of "hardship condition" that motivated the transfer. Petitioner's non-athletic motivations for transferring do not establish the existence of a hardship condition, because they did not satisfy the definition for a hardship condition provided by Rule 17-8.3.

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. However, the conditions for general waiver under Rule 17-8.1 were not met and the ruling of the Executive Committee denying a Limited Eligibility Waiver and a general waiver is UPHELD. Additionally, the findings of the Executive Committee that limited eligibility, as that term is defined by Rule 19-6.2, is appropriate in this case. That finding is also UPHELD. Petitioner will have limited eligibility and will receive full eligibility on October 27, 2013.

DATE: 6-20-2013



George Frampton Ed.D., 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.