

**BEFORE THE INDIANA  
CASE REVIEW PANEL**

<b>In The Matter of O.C.,</b>	)	
<b>Petitioner,</b>	)	
	)	
<b>and</b>	)	
	)	<b>CAUSE NO. 130906-103</b>
<b>The Indiana High School Athletic Association,</b>	)	
<b>Respondent.</b>	)	
	)	
<b>Review Conducted Pursuant to Ind. Code</b>	)	
<b>§ 20-26-14 <i>et seq.</i></b>	)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

**PROCEDURAL HISTORY**

On or about August 1, 2013, O.C.'s ("Petitioner") parents 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 2013-2014 school-year relating to the Petitioner's transfer from South Knox High School ("South Knox") to Barr-Reeve High School ("Barr-Reeve"). On August 7, 2013, South Knox, as the sending school, completed its portion of the Transfer Report. According to the Transfer Report received as part of the record, Barr-Reeve, as the receiving school, completed its portion on August 8, 2013.

On August 8, 2013, the IHSAA Assistant Commissioner determined that the Petitioner's transfer was without a change of residence, and that 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 Barr-Reeve for 365 days from the date Petitioner last participated in interscholastic athletics at South Knox, which was on May 2, 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 August 20, 2013. Following the evidence presented at the August 20, 2013 hearing, the Executive Committee issued its ruling on August 29, 2013 upholding the Assistant Commissioner's ruling granting Petitioner limited eligibility under Rule 19-6.2.

On September 6, 2013, the Petitioner appealed the Executive Committee's decision to the Indiana Case Review Panel ("Panel"),<sup>1</sup> 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 September 26, 2013, the Panel held a meeting,<sup>2</sup> 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 lived with her parents in Montgomery, Indiana and attended Barr-Reeve from Kindergarten until 6<sup>th</sup> grade. In 2009, Petitioner's parents filed for dissolution of their marriage. The parents agreed to "joint legal custody" and "joint physical custody" of Petitioner and Petitioner's four siblings.

2. Petitioner recently completed her sophomore year, 2012-2103, as a student at South Knox. Petitioner lived with her father in Vincennes, Indiana while attending South Knox. At South Knox, Petitioner was a member of the varsity basketball team as a freshman and a sophomore, a member of the varsity gymnastics team as a sophomore, and a member of the varsity track and field team as a freshman.

3. In July 2013, Petitioner decided to transfer to Barr-Reeve following a move to her mother's residence. Petitioner's father testified that his taking a new position that required significant travel was a factor in Petitioner spending more time at Petitioner's mother's residence in Washington, Indiana. Petitioner's mother's home is not located in the Barr-Reeve school district.

4. In late July, Petitioner and her parents consulted with South Knox's Superintendent regarding a transfer to Barr-Reeve. Petitioner's father testified that he met with the Principal of South Knox, Mr. Jeff Dhonau, who supported Petitioner's transfer to Barr-Reeve and encouraged Petitioner to commence the process for transfer. Petitioner's father testified that Mr. Dhonau told him that he would grant Petitioner full release and would sign the 17-8.5 *Verification* portion of the Transfer Report.

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<sup>1</sup> 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.

<sup>2</sup> The following members participated in the meeting: Dr. George Frampton (Chairperson), Ms. Dana Cristee, Mr. Brett Daghe, Mr. Michael Golembeski, Ms. Cathy Klink, Mr. Keith Pempek, Mr. Scott Reske, and Mr. Chuck Weisenbach. Katie Williams-Briles was also present as legal counsel to the Panel. On September 23, 2013, Mr. Chris Lancaster recused himself from participating in this case for he serves as South Knox High School's Athletic Director.

5. On August 1, 2013, Petitioner's parents completed the Transfer Report, while enrolling Petitioner at Barr-Reeve. In the report, Petitioner indicated that she was transferring schools because Petitioner was a former student at Barr-Reeve and she wanted to return to Barr-Reeve to complete her last two years of high school. Petitioner indicated on the Transfer Report that Petitioner was currently living with her father and brother in Vincennes, and that her parents' marriage was dissolved. After enrollment, Petitioner's parents signed an agreed entry in their dissolution proceedings that modified "physical custody" of Petitioner from joint custody to mother having physical custody.

6. On her Transfer Report, Petitioner acknowledged that it was a Rule 19-6.2 Limited Eligibility transfer, and 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 South Knox and Barr-Reeve 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.

7. Barr-Reeve, the receiving school, completed the Transfer Report and signed the Rule 17-8.5 *Verification* portion of the Transfer Report, recommending that the Petitioner receive full eligibility per Rule 17-8.5.

8. South Knox, as the sending school, completed its portion of the Transfer Report on August 7, 2013. South Knox did not sign the Rule 17-8.5 *Verification*, but instead recommended limited eligibility under rule 19-6.2. South Knox Principal, Mr. Dhonau, and South Knox Athletic Director, Mr. Chris Lancaster, testified that Petitioner's transfer was at least in part for athletic reasons.

9. Although neither the Petitioner, nor did Barr-Reeve sought full eligibility under 19-6.1(b) on the Transfer Report, the Petitioner now seeks full eligibility pursuant to Rule 19-6.1(b).

10. Rule 19-6.1(b) allows a student to have full eligibility when that student transfers with a corresponding change of residence to a new district or territory to reside with a parent. Moves between divorced or separated parents may meet the criterion of 19-6.1(b).

11. 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 Barr-Reeve starting May 3, 2014.

12. 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 August 16, 2013.

13. 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 August 29, 2013, and Petitioner sought timely review on September 6, 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 Barr-Reeve 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 Barr-Reeve had occurred before the Petitioner changed residences, Petitioner's transfer was without a corresponding change of residence by her parent or guardian, and she 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. South Knox 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 Executive Committee determined that Petitioner did not, by clear and convincing evidence, satisfy the elements of Rule 17-8.1 for a general waiver to be granted. The Panel finds there was evidence before the Executive Committee that because of the modification of physical custody of Petitioner, Petitioner's transfer to Barr-Reeve resulted in a change of address and that Petitioner would qualify for full eligibility under 19-6.1(b). (See Final Decision of the IHSAA Executive Committee pg. 6, Records at 000171) .

#### **Procedural Issues:**

11. 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.

12. At the hearing, the Petitioner advised that she 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 000025).

13. The Panel was troubled by the Petitioner's not having 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 testified, then she was at a disadvantage going into the hearing.

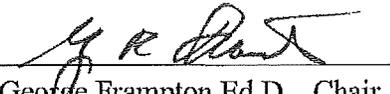
14. Actions undertaken by this Panel and the Executive Committee constitute "state action" for purposes of federal and state constitutional analysis. *Carlberg* (supra) at 231. A procedural violation by a state actor could, in some circumstances, result in a denial of due process. A proceeding before 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.

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

### ORDER

The Case Review Panel finds by a vote of 8-0 that the Panel has the authority to set aside the effect of any Rule. The Panel finds that Petitioner transferred with a corresponding change of residence into a new district or territory to reside with mother; Petitioner is fully eligible to participate in athletics at Barr-Reeve under Rule 19-6.1(b).

DATE: 10/10/2013

  
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.