

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter of C.W.,)	
Petitioner,)	
)	
and)	
)	CAUSE NO. 130910-104
The Indiana High School Athletic Association,)	
Respondent.)	
)	
Review Conducted Pursuant to Ind. Code)	
§ 20-26-14 et seq.)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PROCEDURAL HISTORY

On or about June 6, 2013, C.W.'s ("Petitioner") father 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 Jimtown High School ("Jimtown") to Elkhart Christian Academy ("ECA"). On June 11, 2013, Jimtown, as the sending school, completed its portion of the Transfer Report. According to the Transfer Report received as part of the record, ECA, as the receiving school, also completed its portion on June 11, 2013.

On June 11, 2013, the IHSAA Assistant Commissioner determined that Petitioner would receive limited eligibility under Rule 19-6.2 since Petitioner's transfer was without a change of residence and because Jimtown did not sign the Rule 17-8.5 *Verification* affirming transfer was in the best interests of Petitioner. The Assistant Commissioner further determined that the Petitioner would be ineligible to participate in athletics at ECA for 365 days from the date Petitioner last participated in interscholastic athletics at Jimtown, which was on March 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 7, 2013. Following the evidence presented at the August 7, 2013 hearing, the Executive Committee issued its ruling on August 22, 2013¹, upholding the decision of the Assistant Commissioner declaring

¹ IHSAA Executive Committee issued an "Amended to Correct" ruling dated September 16, 2013. The ruling

Petitioner have limited or junior varsity eligibility at ECA until March 2, 2014.

On September 10, 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 September 26, 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 and relevant to its decision.

1. Petitioner was homeschooled until his freshman year when he enrolled at ECA. Petitioner attended ECA until the spring semester of his junior year when Petitioner transferred to Jimtown. While at ECA, Petitioner participated on the varsity basketball team his freshman, sophomore, and junior years.

2. Petitioner enrolled at Jimtown in January 2013 after Petitioner's family experienced financial difficulty and was unable to afford Petitioner's tuition at ECA. While at Jimtown, he participated on the junior varsity basketball team. Petitioner sought hardship waiver from Jimtown and was given full eligibility to participate on Jimtown's varsity basketball team.

3. Petitioner withdrew from Jimtown in June 2013, and enrolled in ECA for the upcoming 2013-2014 academic school year. Petitioner currently lives with his parents and two siblings in Elkhart, Indiana.

4. On June 6, 2013, Petitioner's father completed the *IHSAA Transfer Report* (Transfer Report), while enrolling Petitioner at ECA. In the report, Petitioner indicated that he was transferring schools because of a desire to return to ECA where Petitioner initially attended school since his freshman year. Petitioner's father testified that Petitioner's transfer to Jimtown was a result of financial difficulty and that Petitioner was not, at the time, eligible for a state voucher. Because Petitioner's younger sibling has attended ECA through middle school, and because of a change in eligibility requirements, the Petitioner now qualifies for the Indiana

corrected the eligibility dates in the August 22, 2013, ruling to reflect the appropriate school year. IHSAA Executive Committee erroneously labeled Petitioner's eligibility date for March 3, 2013, which should read March 3, 2014.

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. Michael Golembeski, Ms. Cathy Klink, Mr. Chris Lancaster, Mr. Keith Pempek, Mr. Scott Reske, and Mr. Chuck Weisenbach. Katie Williams-Briles was also present as legal counsel to the Panel.

Choice Scholarship Program. Petitioner indicated a desire to return to ECA to continue his Christian education.

5. 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 Jimtown and ECA 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.

6. ECA, 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.

7. Jimtown, as sending school, did not sign the Rule 17-8.5 *Verification*, but instead recommended limited eligibility under rule 19-6.2. On its section of the transfer report, Jimtown stated no change of residence as reason for its recommendation for limited eligibility.

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 22, 2013, and Petitioner sought timely review on September 10, 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 no claim has been made that Petitioner’s transfer to ECA was 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 ECA 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. Jimtown 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 Panel disagrees with the Executive Committee in that the Petitioner established 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 Panel believes the transfer was not 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. Petitioner was returning to his former school (ECA) where he had already participated on the varsity basketball team his freshman, sophomore, and junior years.

11. The Committee found 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. The Panel finds that Petitioner has established 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 significant, non-athletic events or conditions which, objectively, would compel a transfer. Petitioner was ineligible for voucher and his transfer to Jimtown was precipitated by financial hardship. Because Petitioner now qualifies for a voucher, Petitioner can return to the school he attended since his freshman year (ECA). The Panel finds that the Petitioner's positive change in circumstance is a result of legislative changes, and the purpose behind the Transfer Rule will not be compromised by Petitioner's return to ECA.

13. The Executive Committee states that Petitioner failed to show he would suffer an undue burden or harm if he is only permitted to participate in athletics at ECA on a limited basis. The Transfer Rule allows for a waiver if the student will suffer or be harmed if a waiver of the Rule is not granted. If Petitioner were able to participate in athletics on a limited basis until March 3, 2014, he would serve an additional punishment because of legislative changes outside of his control. Petitioner participated on the varsity basketball team at ECA his freshman, sophomore, and junior years. The Panel finds that Petitioner will suffer harm or undue burden if he is permitted to participate in athletics on a limited basis because Petitioner now qualifies for a voucher through the Indiana Choice Scholarship Program.

14. The last element for a general waiver is the existence of a "hardship condition" that motivated the transfer. The Executive Committee states that Petitioner failed to show that a hardship condition exist pursuant to Rule 17-8.3. The Executive Committee states that 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. Petitioner's transfer, as determined by the Executive Committee, was not a result of a negative situation or unforeseen and uncorrectable events. The Panel finds that Petitioner's case is a rare and extraordinary one, and that Petitioner should not be punished for a change in circumstance that is beyond Petitioner's control. The Panel finds that a hardship condition exist pursuant to Rule 17-8.3.

ORDER

The Case Review Panel finds by a vote of 9-0 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 Panel, that all of the following conditions of Rule 17-8.1 are met. The Panel finds the conditions for general waiver under Rule 17-8.1 were met and Petitioner is fully eligible to participate in athletics at ECA.

DATE: 10/10/2013


George Brampton, 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.