

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter of A.O.,)
Petitioner,)
)
and)
) **CAUSE NO. 131025-105**
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 July 31, 2013, A.O.'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 Fort Wayne Bishop Dwenger High School ("Bishop Dwenger") to Lakewood Park Christian High School ("Lakewood"). On August 7, 2013, Bishop Dwenger, as the sending school, completed its portion of the Transfer Report. According to the Transfer Report received as part of the record, Lakewood, as the receiving school, also completed its portion on August 7, 2013.

On August 10, 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 Bishop Dwenger 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 Lakewood for 365 days from the date Petitioner last participated in interscholastic athletics at Bishop Dwenger, which was on February 19, 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 October 16, 2013, upholding the decision of the Assistant Commissioner declaring Petitioner have limited or junior varsity eligibility at Lakewood until February 19, 2014.

On October 25, 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 November 13, 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 lives with his parents and five siblings in Fort Wayne, Indiana. Petitioner's sisters both attended Bishop Dwenger. Petitioner's older sister is a recent graduate, while Petitioner's younger sister is an underclassman. Petitioner enrolled in Bishop Dwenger as a freshman in 2010-2011. Petitioner attended Bishop Dwenger's feeder schools, both elementary and middle.

2. Petitioner played basketball for Bishop Dwenger, serving on the junior varsity team his sophomore year.

3. Petitioner did not participate on the 2012-2013 varsity boy's basketball team. It appears that all of the 11 members who participated on the 2012-2013 varsity boy's basketball team will be returning for the 2013-2014 season.

4. Petitioner withdrew from Bishop Dwenger on July 12, 2013, and enrolled in Lakewood for the upcoming 2013-2014 academic school year.

5. On July 31, 2013, Petitioner's parents completed the *IHSAA Transfer Report* (Transfer Report). In the report, Petitioner's parents indicated that Petitioner was transferring schools because Petitioner suffered depression due to peer pressure issues and Petitioner had minor academic struggles due inadequate structure. Petitioner's parents testified that they believed Petitioner's transfer to Lakewood, a smaller school environment, would alleviate Petitioner's academic and social issues.

6. While Petitioner's parents testified that Petitioner suffered from depression as a result of social and peer pressure, Petitioner has neither been evaluated by any health professional for

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

depression nor has Petitioner been diagnosed with depression.

7. Petitioner indicated that he wanted to transfer to Lakewood as result of academic struggles and because of the failure on part of teachers at Bishop Dwenger to assist Petitioner. According to Petitioner's transcripts at Bishop Dwenger, Petitioner was on track to receive an Academic Honors Diploma.

8. 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 Bishop Dwenger and Lakewood 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.

9. Lakewood, 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.

10. Bishop Dwenger, as sending school, did not sign the Rule 17-8.5 *Verification*, but instead recommended limited eligibility under rule 19-6.2.

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 Lakewood 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 Lakewood 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. Bishop Dwenger 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 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 Case Review 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. By a vote of 5-0, the Panel finds the conditions for general waiver under Rule 17-8.1 were not

met and Panel upholds the ruling of the Executive Committee of the IHSAA. Petitioner has limited eligibility at Lakewood until February 19, 2014, and will be fully eligible to participate in athletics at Lakewood beginning February 20, 2014.

DATE: 11/25/2013


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.