

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter of J.C.K.,)
Petitioner,)
)
and)
) **CAUSE NO. 131113-107**
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, J.C.K.'s ("Petitioner") mother 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 Jeffersonville High School ("Jeffersonville") to Floyd Central High School ("Floyd Central"). On August 27, 2013, Jeffersonville, as the sending school, completed its portion of the Transfer Report. According to the Transfer Report received as part of the record, Floyd Central, as the receiving school, completed its portion on September 3, 2013.

On September 12, 2013,¹ the IHSAA Assistant Commissioner determined that Petitioner would receive limited eligibility under Rule 19-6.2 and because Jeffersonville did not sign the Rule 17-8.5 *Verification* affirming the transfer was in the best interests of Petitioner. The Assistant Commissioner further determined that the Petitioner would be ineligible to participate in athletics at Floyd Central for 365 days from the date Petitioner last participated in interscholastic athletics at Jeffersonville, which was on February 15, 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 October 17, 2013. Following the evidence presented at the October 17, 2013 hearing, the Executive Committee

¹ While the Final Decision of IHSAA Review Committee identifies August 5, 2013 as the date IHSAA Commissioner Sandra Walters made her ruling, the record indicates the actual date to be September 12, 2013.

issued its ruling on November 4, 2013, upholding the decision of the Assistant Commissioner declaring Petitioner have limited or junior varsity eligibility at Floyd Central until February 16, 2014.

On November 13, 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 December 2, 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 lived with his mother in Jeffersonville, Indiana and attended Jeffersonville High School his freshman (2011-2012) and sophomore (2012-2013) years.

2. While at Jeffersonville, Petitioner participated on the freshman baseball, basketball, and football teams. As a sophomore, Petitioner participated on the junior varsity basketball team.

3. Petitioner's mother is engaged. As a result of the engagement, Petitioner's mother planned to move into a new home with her fiancé, which is located in New Albany, Indiana. Because the new home was not going to be ready until after the start of the next school year (2013-2014), mother and Petitioner temporarily moved into an apartment in the same area.

4. Petitioner withdrew from Jeffersonville during the summer of 2013, and enrolled in Floyd Central for the 2013-2014 academic year.

5. On August 1, 2013, Petitioner's mother completed the Transfer Report. In the report, Petitioner's mother indicated that Petitioner was transferring schools because of their move to the New Albany Floyd County School District. Petitioner's mother also indicated on the Transfer Report that Petitioner's transfer was with a corresponding change of residence as provided under Rule 19-5.

6. New Albany High School ("New Albany") and Floyd Central are both located in the New Albany-Floyd County Consolidated School Corporation ("NAFC"). NAFC has a policy that students who live in the geographic area served by New Albany must attend New Albany High.

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), Mr. Michael Golembeski, Mr. Bret Daghe, Ms. Dana Cristee, Ms. Cathy Klink, Mr. Keith Pempek, and Mr. Scott Reske. Ms. Katie Williams-Briles was also present as legal counsel to the Panel.

Students who live in geographic boundary served by Floyd Central must attend Floyd Central High.

7. Until this school year, transfers between the two boundaries were prohibited. NAFC implemented a new *In-District Student Transfer Policy* which permits a student the ability to petition NAFC to allow the student to attend either NAFC high school, even though the student lives in geographic area served by one specific NAFC high school. Grounds for approval for in-county transfers included child care transfers, continuation transfers, health transfers, imminent move transfers, and best interest of the child transfers.

8. When enrolling in Floyd Central, Petitioner completed an application for an in-county transfer based on "best interest of the child." Petitioner's residence in New Albany would have precluded Petitioner from attending Floyd Central based on NAFC's policy. The application was approved by NAFC and Petitioner was permitted to enroll in Floyd Central.

9. Petitioner's mother testified that the selection of Floyd Central over New Albany was because Floyd Central was a four star school and the best option for her son, academically. Petitioner's mother also testified that Floyd Central would provide the best opportunity for Petitioner to obtain an athletic scholarship to play college basketball.

10. Floyd Central recently hired a high-profile coach for their basketball program.

11. Floyd Central, 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 19-5.

12. Jeffersonville, 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 November 4, 2013, and Petitioner sought timely review on November 13, 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 Floyd Central was primarily for athletic reasons or the result of undue influence. Thus, Petitioner is not athletically ineligible pursuant to Rule 19-4.

7. Under Rule 19-5, a student who transfers with a corresponding change of residence to a new district or territory by the student's custodial parent(s)/guardian(s) will have full eligibility at the new school, provided there is a bona fide change of residence, provided neither the residential change nor the selection of the new residence was a result of primary athletic reasons or the result of undue influence, and provided the transfer was not for primarily athletic reasons or the result of undue influence.

8. The Executive Committee determined that Petitioner's transfer to Floyd Central was with a corresponding change of residence by his parent or guardian, however, Petitioner did not qualify for full eligibility pursuant to Rule 19-5. Petitioner was granted limited eligibility in compliance with rule 19-5.1c. Rule 19-5 provides that a student can only obtain full eligibility at the public school serving the new residence. The Executive Committee determined that Petitioner was only entitled to limited eligibility because Petitioner enrolled in Floyd Central when New Albany was the public school serving Petitioner's residence. To receive full eligibility, Petitioner would have had to enroll in New Albany.

9. The Panel disagrees with the Executive Committee in that the Petitioner qualifies for full eligibility at Floyd Central pursuant to 19-5. The Panel believes that while Petitioner's residence is in the geographic area of New Albany, Petitioner has enrolled in a public school (Floyd

Central) in the district serving the student's residence. The Panel notes that NAFC granted Petitioner's application to enroll in Floyd Central, and NAFC is still serving the Petitioner as required by Rule 19-5. The Panel concludes that Petitioner qualifies for full eligibility at Floyd Central.

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George Frampton, Chairperson, Bret Daghe, Mickey Golembeski, dissenting.

The Case Review Panel ("Panel") reversed the Executive Committee's determination that Petitioner may participate in athletics at Floyd Central on a limited-basis. The Executive Committee relied on Rule 19-5 of the IHSAA's Bylaws when rendering its decision. The question in this case is whether Petitioner is served by Floyd Central to qualify Petitioner for fully eligibility pursuant to Rule 19-5. We conclude that it does not.

Rule 19-5 states, "a student who transfers with a corresponding change of residence to a new district or territory by the student's custodial parent(s)/guardian(s) will have full eligibility at the new school, provided there is a bona fide change of residence, provided neither the residential change nor the selection of the new residence was a result of primary athletic reasons or the result of undue influence, and provided the transfer was not for primarily athletic reasons or the result of undue influence." The language of Rule 19-5 contemplates a move from one school district or territory to a different school district or territory. If a student chooses to enroll at a school without moving into that school's district or territory, he or she will receive limited eligibility at the new school.

While NAFC approved Petitioner's application to enroll in Floyd Central, Petitioner is not enrolled in a public school in the district serving the student's residence. "District" is defined in IHSAA's Bylaws as "a public school geographical area as established by the school Board of Trustees." The NAFC transfer policy has specifically outlined which public schools serve which geographical areas. Petitioner's residence in New Albany identifies that New Albany would be the public school serving the Petitioner. While Petitioner's transfer was to a new bona fide residence, Floyd Central is not the public school serving the Petitioner's residence. Petitioner may transfer and attempt to obtain limited eligibility in any public or private school which does not serve the Petitioner's area of residence as outlined in Rule 19-5.1c.

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. Jeffersonville 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.

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)).

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, we agree with the Executive Committee's decision to deny Petitioner a General Waiver pursuant to Rule 17-8.1 and to grant Petitioner limited eligibility in compliance with Rule 19-5.1c.

ORDER

The Case Review Panel finds by a vote of 4-3 that Petitioner qualifies for fully eligibility at Floyd Central pursuant to Rule 19-5.

DATE: 12-16-13


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.