

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter of D.W.,)
Petitioner,)
)
and)
) **CAUSE NO. 131202-109**
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 August 7, 2013, D.W.'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 South Bend Adams ("Adams") to South Bend Clay ("Clay"). On August 7, 2013, Adams, as the sending school, completed its portion of the Transfer Report. Clay, as the receiving school, completed its portion on August 21, 2013.

On August 21, 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 neither Adams nor Clay signed 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 able to participate in athletics in a limited capacity at Clay for 365 days from the date Petitioner last participated in interscholastic athletics at Adams, which was on February 12, 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 November 8, 2013. Following the evidence presented at the November 8, 2013 hearing, the Executive Committee issued its ruling on November 19, 2013, upholding the decision of the Assistant Commissioner declaring Petitioner have limited or junior varsity eligibility at Clay until February 12, 2014.

On December 2, 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.

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.

On December 19, 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 her mother, father, as well as three younger brothers in South Bend, Indiana. Petitioner attended Adams her freshman (2020-2011), sophomore (2011-2012) and junior year (2012-2013).

2. While at Adams, Petitioner participated in basketball, lettering in basketball her freshman, sophomore, and junior years.

3. Petitioner participated on AAU basketball teams the summers of her freshman, sophomore, and junior years. Petitioner testified that neither other players nor coaches of the AAU team were from Clay.

4. In June of 2013, Petitioner's father was incarcerated for two years.

5. Petitioner withdrew from Adams, to transfer to Clay for the upcoming 2013-2014 academic school year.

6. On August 1, 2013, Petitioner's mother completed the Transfer Report. On the Transfer Report, Petitioner indicated that her transfer to Adams was necessary given the incarceration of Petitioner's father making transportation of younger siblings to and from school difficult. Petitioner indicated additional issues at Adams regarding intimidation by fellow students and issues with teachers and grades.

7. Adams' girls' basketball team had a record of 12 and 10 last year and has been improving with each year of the program. Clay's girls' basketball team won two games last year and four or five games two years ago.

8. The Athletic Director of Adams testified that Petitioner's mother indicated that even if Petitioner would receive limited eligibility, they would still transfer to Clay. Petitioner's Mother later testified that Petitioner receiving limited eligibility was not an important factor in the transfer.

9. Petitioner mother testified that she worked first shift and Petitioner's father worked second shift. Petitioner's father had been able to pick up the children and be with them until Petitioner's mother returned home.

² The following members participated in the meeting: Dr. George Frampton (Chairperson), Ms. Dana Cristee, Mr. Bret Daghe, Mr. Keith Pempek, and Mr. Chris Lancaster. Ms. Amelia Hilliker, certified legal intern, was also present as legal counsel to the Panel, supervised by Mr. Michael Moore.

10. Petitioner indicated that she is able to drive herself to and from Clay and is able to pick up and drop off her younger siblings who attend school within South Bend. Petitioner indicated that a one-way trip would take fifteen to twenty minutes.

11. Petitioner testified that driving from Clay to pick up her younger sibling provided a shorter drive time, avoided 'backtracking', and cut down on the waiting time of her siblings after school let out for the day.

12. On her Transfer Report, Petitioner acknowledged that it was a Rule 19-6.2 Limited Eligibility transfer.

13. Clay, the receiving school, did not sign the Rule 17-8.5 *Verification* portion of the Transfer Report and recommended that the Petitioner receive limited eligibility under rule 19-6.2.

14. Adams, 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 19, 2013, and Petitioner sought timely review on December 2, 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 that there is no evidence that athletic motivation was a primary reason for the transfer. Thus, Petitioner is not athletically ineligible pursuant to Rule 19-4.

7. The Executive Committee determined that because Petitioner's transfer to Clay was without a corresponding change of residence by her parent or guardian, 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. Neither Adams nor Clay signed 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.

11. 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. The incarceration of Petitioner's father created a family situation that necessitated Petitioner having to help her mother in the care of her younger siblings. The transfer to Clay allowed for Petitioner to provide assistance.

12. The Executive Committee states that Petitioner failed to show she would suffer an undue burden or harm if she is only permitted to participate in athletics at Clay 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 February 12, 2014 she would serve an additional punishment because of changes outside of her control. The Panel finds that Petitioner will suffer harm or undue burden if she is permitted to participate in athletics on a limited basis because Petitioner transferred due to reasons outside of her control and as a senior will be able to participate fully in athletics near the end of the season³.

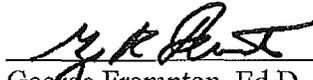
³ The Panel notes that the appeal to the Executive Committee was made in early September 2013 and expresses displeasure with the length of time it has taken this appeal to work through the system especially given that Petitioner is a Senior.

13. 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 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 Panel, that all of the following conditions of Rule 17-8.1 are met. The Panel finds that the conditions for general waiver under Rule 17-8.1 were met and the ruling of the Executive Committee denying a Limited Eligibility Waiver and a general waiver is REVERSED. Petitioner has full eligibility at Clay effective immediately.

DATE: 12-31-13



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.