

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter of D.D.)	
Petitioner,)	
)	
and)	
)	CAUSE NO. 131230-111
The Indiana High School Athletic Association,)	
Respondent.)	
)	
Review Conducted Pursuant to Ind. Code)	
§ 20-26-14 <i>et seq.</i>)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PROCEDURAL HISTORY

On or about June 13, 2013¹, D.D.’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 New Albany High School (“New Albany”) to Floyd Central High School (“Floyd Central”). On July 31, 2013 New Albany, as the sending school, completed its portion of the Transfer Report. Floyd Central, as receiving school, completed its portion of the Transfer Report on August 2, 2013.

On August 18, 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. The Assistant Commissioner further determined that the Petitioner would be able to participate in athletics in a limited capacity at Floyd Central for 365 days from the date Petitioner last participated in interscholastic athletics at New Albany, which was on February 22, 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,. The hearing was later moved, at the request of Petitioner, to December 11, 2013. Following the evidence presented at the December 11, 2013 hearing, the Executive Committee issued its ruling on December 23, 2013, upholding the decision of the Assistant Commissioner declaring Petitioner have limited or junior varsity eligibility at Floyd Central until February 23, 2014.

On December 30, 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

¹ The IHSAA’s Executive Committee’s order references the Transfer Report was completed on June 13, 2013 and continued on to July 25, 2013. The Transfer Report is signed and dated for June 13, 2013.

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.

the decision during a Panel meeting. The Panel requested and received the record from the IHSAA. On January 16, 2014, 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 father in Kentucky, and attended high school as a freshman in Kentucky. Petitioner then moved back to Indiana and currently lives with his mother, step father, and two younger siblings in New Albany. Petitioner attended New Albany his sophomore year. While at New Albany, Petitioner participated in basketball at the Junior Varsity level.

2. Petitioner withdrew from New Albany, to transfer to Floyd Central for the upcoming 2013-2014 academic school year.

3. On June 13, 2013, Petitioner's mother completed the Transfer Report. On the Transfer Report, Petitioner indicated that his transfer to Floyd Central was because of academics. Specifically that Petitioner had received poor grades at New Albany, that Floyd Central was a four-star school, and negative prior experiences as Hazelwood and New Albany.

4. On the 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 Petitioner full eligibility if certain conditions were shown.

5. At hearing, Petitioner's mother testified that an additional reason was Petitioner's adjustment to New Albany after moving from his former high school in Kentucky. Testimony was given that New Albany was nearly twice the size of Petitioner's former high school.

6. During his time at Floyd Central, Petitioner's grades have improved, and he has taken advantage of intercession to boost his grades.

7. Petitioner was given limited eligibility at Floyd Central and would be able to participate on the Junior Varsity team. At hearing, Petitioner testified he did not want to participate on the Junior Varsity team; his desire was to participate on the Varsity squad or not at all.

8. Floyd Central, the receiving school, signed the Rule 17-8.5 *Verification* portion of the Transfer Report and recommended that Petitioner receive full eligibility.

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

³ The following members participated in the meeting: Dr. George Frampton (Chairperson), Mr. Bret Daghe, Mr. Keith Pempek, Mr. Chuck Weisenbach, Mr. Michael Golembeski, Mr. Scott Reske, 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. At hearing, New Albany raised the issue of athletic motivation. However, New Albany did not indicate athletic motivation on the Transfer Report.

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 December 23, 2013, and Petitioner sought timely review on December 30, 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 Floyd Central 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. New Albany 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. Petitioner failed to establish that the primary and secondary purposes 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 as well as promote the family unit. The secondary purpose of strict application of the transfer rule is to protect the opportunities of *bona fide* student-athletes.

11. The Panel finds that Petitioner did not establish 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 not significant, non-athletic events or conditions which, objectively, would compel a transfer.

12. The Transfer Rule allows for a waiver if the student will suffer or be harmed if a waiver of the Rule is not granted, but Petitioner offered no evidence or proof in support of such a claim.

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 Panel finds 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 was not a result of a negative situation or unforeseen and uncorrectable events.

ORDER

The Case Review Panel finds by a vote of 7-0 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 not met and the ruling of the Executive Committee denying a Limited Eligibility Waiver and a general waiver is UPHELD. Petitioner has limited eligibility at Floyd Central until February 22, 2014, and will be fully eligible to participate in athletics at Floyd Central beginning February 23, 2014.

DATE: _____


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.