

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter B.S.)
Petitioner,)
)
and)
) **CAUSE NO. 140428-112**
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 January 17, 2014, B.S.'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 2014–2015 school year relating to the Petitioner's transfer from Center Grove High School ("Center Grove") to Indian Creek High School ("Indian Creek"). On January 20, 2014 Center Grove, as the sending school, completed its portion of the Transfer Report. Indian Creek, as receiving school, completed its portion of the Transfer Report on January 20, 2014.

On January 24, 2014, the IHSAA Assistant Commissioner determined that Petitioner, prior to participation, will serve a suspension of 25% of his next athletic season at the receiving school. Upon successful completion of his suspension and with all academic criteria met, Petitioner will gain limited eligibility under Rule 19-6.2 until November 15, 2014. On November 15, 2014 Petitioner will gain full eligibility. 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 April 15, 2014. Following the evidence presented at the April 15, 2014 hearing, the Executive Committee issued its ruling on April 23, 2014, upholding the decision of the Assistant Commissioner declaring Petitioner was ineligible for 25% of his next sports season and pursuant to rule 19-6.2 and rule 17-8, that Petitioner has limited or junior varsity eligibility at Indian Creek, after his temporary ineligibility, until November 15, 2014, at which time Petitioner would be fully eligible to participate in athletics at Indian Creek, as long as he is academically eligible and meets all other eligibility rules.

On April 28, 2014, the Petitioner appealed the Executive Committee's decision to the Indiana Case Review Panel ("Panel"), 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 May 22, 2014, the Panel held a meeting,¹ 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 mother, father, and a younger sibling in a home in Greenwood Indiana. Petitioner attended Center Grove his freshman - junior years. While at Center Grove, Petitioner was on the freshman football team and JV track & field team his freshman year, the JV football team and JV track & field team his sophomore year and the varsity football team his junior year. He last participated athletically at Center Grove on November 15, 2013.

2. Several incidents occurred involving the Petitioner and his football coach. One incident involved the Petitioner being accused of taking a jersey. Petitioner was upset he was accused and the coach believed he was lying about the situation. The second incident involved Petitioner leaving school early and hearing from another student the Coach was heard talking about his absence and that Petitioner was probably out smoking pot.

3. On December 5, 2013, Petitioner was caught with marijuana in his car on Center Grove property. Petitioner was arrested and adjudicated a delinquent in juvenile court. Center Grove suspended Petitioner for ten (10) days and he was expelled. Petitioner was given a waiver and allowed to attend classes following the suspension. His conduct violated the athletic code and he would have been athletically ineligible for part of his next sports season at Center Grove.

4. Petitioner withdrew from Center Gove, to transfer to Indian Creek. Petitioner enrolled at Indian Creek on January 6, 2014 for the remainder of the 2013-2014 academic school year. Petitioner intends to remain at Indian Creek for his senior year during the 2014-15 academic school year.

5. On January 17, 2014, Petitioner's mother completed the Transfer Report. On the Transfer Report, Petitioner indicated that his transfer to Indian Creek was because Petitioner wanted to get a new fresh start and because he likes the small, country school at Indian Creek.

¹ The following members participated in the meeting: Dr. George Frampton (Chairperson), Mr. Bret Daghe, Mr. Chuck Weisenbach, Mr. Michael Golembeski, Mr. Scott Reske, and Ms. Dana Cristee. Ms. Kelly Bauder, staff attorney, was also present as legal counsel to the Panel. Dr. Frampton chaired the meeting, but abstained from discussion and voting.

6. Neither Center Grove nor Indian Creek signed the 17-8.5 verification for a limited eligibility waiver.

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 April 23, 2014, and Petitioner sought timely review on April 28, 2014.

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 Indian Creek 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. Center Grove and Indian Creek 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 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 by a vote of 5-0 that the decision of the Review Committee, under Rule 3-8 that Petitioner was athletically ineligible for 25% of his next sports season and that under Rule 19-6.2 and 17-8 Petitioner has limited or junior varsity eligibility at Indian Creek High School, after his temporary ineligibility, until November 15, 2014, at which time Petitioner would be fully eligible to participate in athletics at Indian Creek High School is UPHELD. Petitioner has limited eligibility at Indian Creek until November 15, 2014, and will be fully eligible to participate in athletics at Indian Creek beginning November 15, 2014, should he be academically eligible and meet all other eligibility rules.

DATE: 5/28/2014

George Frampton
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.