

**BEFORE THE INDIANA  
CASE REVIEW PANEL**

<b>In The Matter E.W.</b>	)	
<b>Petitioner,</b>	)	
	)	
<b>and</b>	)	
	)	<b>CAUSE NO. 140604-113</b>
<b>The Indiana High School Athletic Association,</b>	)	
<b>Respondent.</b>	)	
	)	
<b>Review Conducted Pursuant to Ind. Code</b>	)	
<b>§ 20-26-14 <i>et seq.</i></b>	)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

**PROCEDURAL HISTORY**

On or about January 31, 2014, EW's ("Petitioner") father 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 Arsenal Technical High School ("Tech") to Lawrence Central High School ("Lawrence Central"). On February 3, 2014, Tech, as the sending school, completed its portion of the Transfer Report. Lawrence Central, as receiving school, completed its portion of the Transfer Report on February 6, 2014.

On February 7, 2014, the IHSAA Assistant Commissioner determined that Petitioner transfer was a Rule 19-4 and ruled Petitioner was athletically ineligible at Lawrence Central. 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 May 5, 2014. Following the evidence presented at the May 5, 2014 hearing, the Executive Committee issued its ruling on May 15, 2014, upholding the decision of the Assistant Commissioner declaring Petitioner was ineligible.

On June 4, 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 August 19, 2014, the Panel held a meeting,<sup>1</sup> 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 father in a home at ██████ Englewood Drive in Indianapolis, Indiana. Petitioner attended Tech his sophomore- junior years. During the middle of his junior year Petitioner transferred to Lawrence Central and was enrolled on January 24, 2014. While at Tech, during his sophomore (2012-13) and junior (2013-14) years Petitioner was on the varsity football team. He last participated athletically at Tech on November 8, 2013.

2. Before his transfer, Petitioner lived with his mother in a home on Hillside in the Tech district. The water pipes of the home busted and the home became uninhabitable. Some family members moved in with his grandmother, Petitioner moved in with his father at the 4679 Englewood Drive address in Lawrence Central district.

3. Petitioner was a starter on the Tech football team and has had some interest from several colleges. Tech had a successful 2013 season and made it to the championship sectional game. After the game, Tech head coach Ekiyor announced he was leaving the Tech program.

4. Coach Ekiyor's announcement created some turmoil at Tech. Reports were received by Tech administrators that football players were planning to leave Tech and transfer to other school football programs. Several Tech assistant coaches applied for coaching jobs at Lawrence Central. After hearing about Coach Ekiyor's announcement, Assist Coach Mohammed, was heard telling Tech football players to leave and suggested transferring to Lawrence Central.

5. After Petitioner moved in with his father sometime in October or November of 2013. Petitioner still attended Tech during those months and his father provided transportation to school.

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<sup>1</sup> The following members participated in the meeting: Dr. George Frampton (Chairperson), Mr. Bret Daghe, Mr. Chuck Weisenbach, Mr. Michael Golembeski, Mr. Glenn Johnson, Mr. Keith Pempek and Mr. Chris Lancaster, and Ms. Dana Cristee. Ms. Kelly Bauder, staff attorney, was also present as legal counsel to the Panel.

6. Petitioner's father obtained the Lawrence Central's head football coach's cellphone number. On December 17, 2013, Petitioner's father contacted Coach Richman and asked about having a meeting. On December 18, 2013, Petitioner and his father had a meeting at Lawrence Central in Coach Richman's office. Several assistant coaches also attended the meeting. The coaches, Petitioner and his father claim the meeting was to discuss Petitioner's grades and about his enrollment at Lawrence Central.

7. Petitioner withdrew from Tech and transferred to Lawrence Central. Petitioner enrolled at Lawrence Central on January 24, 2014 for the remainder of the 2013-2014 academic school year. Petitioner intends to remain at Lawrence Central for his senior year during the 2014-15 academic school year.

8. On January 31, 2014, Petitioner's father completed the Transfer Report. On the Transfer Report, Petitioner indicated that the transfer to Lawrence Central was because the water pipes of the home busted and the home became uninhabitable. Some family members moved in with his grandmother, Petitioner moved in with his father at the [REDACTED] Englewood Drive address in Lawrence Central district.

9. Tech and Lawrence Central signed the transfer verification forms. Both recommended Petitioner be ineligible under Rule 19-4 and did not sign the rule 17-8.5 verification. Lawrence Central later changed their position and stated at the May 5, 2014 hearing they felt there was no violation and no undue influence. They further stated they felt they were pressured to make their previous decision.

10. Lawrence Central coaching staff have been sanctioned by the IHSAA for violations of Rule 20 and the Lawrence Central football program has been placed on probation for the 2014-15 season as a result of this case and another similarly situated one.

#### 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 May 15, 2014, and Petitioner sought timely review on June 4, 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.

7. 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. Tech and Lawrence Central 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.

8. 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)).

9. 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.

10. 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.

11. 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.

12. Under Rule 19-4, a transfer primarily motivated by athletics or as a result of undue influence will cause a student to be athletically ineligible at the receiving school during the first 365 days following the student's enrollment at the receiving school.

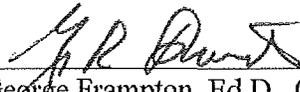
13. Considering the totality of the circumstances, the evidence supports the conclusion that Petitioner transferred from Tech to Lawrence Central primarily for athletic reasons. Immediately following the announcement of the departure of head coach Ekiyor at Tech, assistant coaches and students began talking about transferring to Lawrence Central. Petitioner's father obtained the cellphone number of Lawrence Central head coach and called him directly to set up a meeting. Petitioner and his father went to Lawrence Central and met with the head coach and several assistant coaches to talk about his enrollment, grades and credits. Petitioner and his father did not seek a meeting with school administrators; they only sought information about Lawrence Central from the football coaching staff. Even after moving in with his father, Petitioner continued attending Tech; although he now lived in the Lawrence Central district. It was not until the conclusion of the football season and the announcement of the departure of Tech's head coach that Petitioner began making plans to transfer to Lawrence Central.

### ORDER

The Case Review Panel finds by a vote of 8-0 that the decision of the Review Committee, having found violations of Rule 19-4, declared Petitioner athletically ineligible at Lawrence Central until January 24, 2015 is UPHeld. Petitioner is athletically ineligible at Lawrence Central up to and including January 24, 2015, should he be academically eligible and meets all other eligibility rules.

DATE:

8/25/2014

  
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.