BEFORE THE INDIANA
CASE REVIEW PANEL

In The Matter John Doe	)	
Petitioner,	)	
	)	
and	)	
	)	**CAUSE NO. 141020-124**
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 1, 2014, John Doe's ("Petitioner") parents 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. On August 15, 2014 the sending school completed its portion of the Transfer Report. The receiving school completed its portion of the Transfer Report on August 19, 2014.

On August 19, 2014, the IHSAA Assistant Commissioner determined that Petitioner transfer was a Rule 19-6.2 and ruled Petitioner had limited eligibility at the receiving school. The Petitioner appealed the Assistant Commissioner's determination to the IHSAA Review Committee ("Review 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 Review Committee for October 1, 2014. Following the evidence presented at the October 1, 2014 hearing, the Review Committee issued its ruling on October 11, 2014, upholding the decision of the Assistant Commissioner declaring that according to Rule 19-6.2, Petitioner have limited eligibility until February 28, 2015, and then on March 1, 2015, he would be fully eligible to participate in athletics at the receiving school, provided he is academically eligible and meets all other eligibility rules.

On October 20, 2014, the Petitioner appealed the Review 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 November 10, 2014. On November 19, 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 mom and step dad in Indiana. Petitioner attended the transfer school his freshman year. Over the summer, Petitioner transferred to the receiving school and was enrolled on July 28, 2014. While at the transfer school, during his freshman (2013-14) year he played junior varsity basketball and football. He last participated athletically at the transfer school on February 28, 2014.

2. On July 28, 2014, Petitioner's parents completed the Transfer Report. On the Transfer Report, Petitioner indicated that the transfer to the receiving school was because Petitioner "needed a new environment" and he was bullied at his present school.

3. Petitioner had conflicts with another student while at the sending school over a period of years. Petitioner and his parents never brought the conflict to the attention of the sending school nor did they ask the school to intervene in the conflict. The sending school only became aware of the extent of the bullying after the process for the transfer had started. The sending school was not given the opportunity to address the bullying, threats or name calling.

4. The transfer school recommended Petitioner have limited eligibility under rule 19.62 and neither recommended full eligibility under rule 17-8.5 nor signed the *Verification*. The receiving school recommended Petitioner have full eligibility under 17-8.5 and signed the rule 17-8.5 *Verification*.

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.

---

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

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 Review Committee rendered a final determination of student-eligibility adverse to the Petitioner on October 11, 2014, and Petitioner sought timely review on October 20, 2014.

4. The Panel may uphold, modify, or nullify the IHSAA Review 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. 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. The sending school did not sign the *Verification*, but the receiving school did sign the *Verification* on the Transfer Report, so Petitioner did not qualify for a limited eligibility waiver pursuant to Rule 17-8.5.

7. 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)).

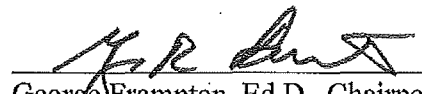
8. Petitioner failed to establish that the primary and secondary purposes of the rule would still be accomplished if the Rule is not strictly enforced.

9. The Panel finds that the Petitioner very well could have been a victim of bullying and threats while at the sending school, but he never sought the assistance of the school to intervene in the situation and attempt to resolve the matter between all students. The Panel finds that students must bring to the attention of the sending school allegations of bullying and threats. If the sending school does not take action or the bullying continues, at that point a hardship may exist. Petitioner's decision to transfer schools was a choice and he was not compelled to transfer. The Panel finds this was a choice by his family and did not rise to the level of a hardship. Therefore, all of the requirements of Rule 17-8.1 were not met.

ORDER

The Panel finds by a vote of 7-2[2] that the decision of the IHSAA Review Committee, upholding the decision of the Commissioner is UPHELD. The Petitioner has limited eligibility under Rule 19-6.2 at the receiving school until February 28, 2015, and then on March 1, 2015 he would be fully eligible to participate in athletics at the receiving school provided he is academically eligible and meets all other eligibility rules.

DATE: 11-21-2014



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.

[2] The two dissenting Panel members would have granted full eligibility.