

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter E.P.)	
Petitioner,)	
)	
and)	
)	CAUSE NO. 141027-126
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 July 22, 2014, E.P.'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. On July 22, 2014 Mount Vernon High School ("Mount Vernon"), the sending school, completed its portion of the Transfer Report. Warren Central High School ("Warren Central"), the receiving school, completed its portion of the Transfer Report on July 28, 2014.

On August 8, 2014, the IHSAA Assistant Commissioner determined that Petitioner's transfer was a Rule 19-6.2 and ruled Petitioner had limited eligibility at Warren Central. 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 2, 2014. Following the evidence presented at the October 2, 2014 hearing, the Review Committee issued its ruling on October 14, 2014, upholding the decision of the Assistant Commissioner declaring that according to Rule 19-6.2, Petitioner has limited eligibility until February 22, 2015, and then on February 23, 2015, he would be fully eligible to participate in athletics at Warren Central, provided he is academically eligible and meets all other eligibility rules.

On October 27, 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 25, 2014. On December 4, 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 lived with his mom and dad in McCordsville, Indiana. Petitioner attended Mount Vernon his freshman year. Over the summer, Petitioner transferred to Warren Central and was enrolled on July 28, 2014. While at Mount Vernon, during his freshman (2013-14) year he participated in varsity swimming. He last participated athletically at Mount Vernon on February 22, 2014.

2. Petitioner is a very successful competitive swimmer who already has several records at Mount Vernon as a freshman. Petitioner, like many competitive swimmers, swims year round for a swim club and his club team (since he was 12) is the Warren Swim Club, which is based at Warren Central. Most of the Warren Central swimmers also swim on the Warren Swim Club.

3. On July 22, 2014, Petitioner's Mother completed the Transfer Report. On the Transfer Report, Petitioner indicated that the transfer to the receiving school was because Warren Central offers "Project Lead the Way academic courses, specifically in the areas of Bio Medical sciences." Petitioner's mother wanted him to "take advantage of the extensive dual credit course offerings that will better prepare [E.P.] for college and give him the opportunity to earn college credits in multiple subject areas."

4. On September 8, 2014, after the Petitioner was granted limited eligibility and had requested an appeal, his mother told the IHSAA Assistant Commissioner for the first time that Ethan and some family member (the assistant commissioner recalled the family member was to be his mother, while Petitioner's mother recalled saying it was to be his father) were planning to move into the district, and to secure full eligibility ruling from the IHSAA.

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

5. Petitioner's mother called back a few days later and told the IHSAA that she and her husband were separating. Petitioner's father was going to move into the Warren Central district. This was the first time Petitioner's mother notified the IHSAA that she and her husband were separating.

6. On September 17, 2014 Petitioner's parents separated and E.P.'s father moved into the Warren Central district. E.P. moved in with his father a week later. E.P.'s mother and younger sibling stayed at the residence in McCordsville, Indiana.

7. The Mount Vernon recommended Petitioner have limited eligibility under rule 19.62 and neither recommended full eligibility under rule 17-8.5 nor signed the *Verification*. Warren Central 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.
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 14, 2014, and Petitioner sought timely review on October 27, 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

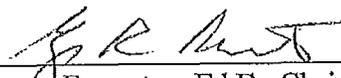
disregard of the facts or circumstances in the case, or without some basis which would lead a reasonable and honest person to the same conclusion.” Id. (citing Dep’t of Natural Resources v. Indiana Coal Council, Inc.), 542 N.E.2d 1000, 1007 (Ind. 1989).

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. Under Rule 19-5, a student transferring with a corresponding change of residence by a parent is entitled to full eligibility, provided there is a bona fide change of residence.
10. The Panel finds that the Petitioner was not entitled to full eligibility under Rule 19-5. At the time of the transfer there was not a change of residence by the parent or the student, making this a straight transfer without a corresponding change of residence by the student’s parents. Only after the Petitioner’s parents learned he would receive limited eligibility at Warren Central, did they notify the IHSAA one parent would be moving into the receiving school’s district. Additionally, it was only a couple of days later that the Petitioner’s parents notified the IHSAA that they were separating. The Panel finds this was not a bona fide change of residence.

ORDER

The Panel finds by a vote of 6-0 that the decision of the IHSAA Review Committee, upholding the decision of the Commissioner is UPHOLD. The Petitioner has limited eligibility under Rule 19-6.2 at Warren Central until February 22, 2015, and then on February 23, 2015 he would be fully eligible to participate in athletics at Warren Central provided he is academically eligible and meets all other eligibility rules.

DATE: 12-9-2014



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.