

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter R.F.)	
Petitioner,)	
)	
and)	
)	CAUSE NO. 141229-127
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 September 30, 2014, R.F.'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 September 10, 2014 Cathedral High School ("Cathedral"), the sending school, completed its portion of the Transfer Report. Crispus Attacks High School ("Crispus Attacks"), the receiving school, completed its portion of the Transfer Report on October 13, 2014.

On October 24, 2014, the IHSAA Assistant Commissioner determined that Petitioner's transfer was a Rule 19-6.2 and ruled Petitioner had limited eligibility at Crispus Attacks. 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 December 11, 2014. Following the evidence presented at the December 11, 2014 hearing, the Review Committee issued its ruling on December 22, 2014, upholding the decision of the Assistant Commissioner declaring that according to Rule 19-6.2, Petitioner has limited eligibility until May 29, 2015, and then on May 30, 2015, he would be fully eligible to participate in athletics at Crispus Attacks, provided he is academically eligible and meets all other eligibility rules.

On December 29, 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 January 12, 2015. On January 14, 2015, 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 and father in Indianapolis, Indiana. Petitioner attended Cathedral his freshman – junior years. Over the summer, Petitioner transferred to Crispus Attacks and was enrolled on August 4, 2014. While at Cathedral, during his freshman (2011-12) year he participated in varsity track and field and freshman basketball. During his sophomore (2012-13) year he participated in junior varsity basketball and varsity track and field, and in his junior (2013-14) year, he participated in varsity track and field. He last participated athletically at Cathedral on May 29, 2014.
2. On September 30, 2014, Petitioner’s parents completed the Transfer Report. On the Transfer Report, Petitioner indicated that the transfer to the receiving school due to “finances [being] an issue with a daughter in college and R.F. wanted to be in a smaller school and has an interest in studying medicine.” Petitioner’s family had financial difficulties. They were having problems affording the cost to send Petitioner and his younger sister to Cathedral and to afford to send his older sister to private college for her sophomore year. Petitioner’s parents have had at least three occasions when they were told by Cathedral that unless payment arrangements were made to pay past due tuition, Petitioner and his siblings would be unable to continue at the school. In addition, Petitioner’s father was losing his job at the end of the year in 2014.
3. Petitioner, knowing that his parents were having financial problems, and being unhappy generally at Cathedral, offered to leave Cathedral and enroll in a public school.
4. After the Petitioner was granted limited eligibility, Petitioner’s parents separated and his father established a residence for himself and the Petitioner to live which was within the Crispus Attack’s district.

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

5. Cathedral recommended Petitioner have limited eligibility under rule 19.62 and neither recommended full eligibility under rule 17-8.5 nor signed the *Verification*. Crispus Attacks recommended Petitioner have full eligibility under 17-8.5 and signed the rule 17-8.5 *Verification*.

CONCLUSIONS OF LAW

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. 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 December 22, 2014, and Petitioner sought timely review on December 29, 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

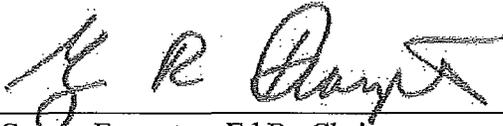
pursuant to Rule 17-8.5.

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 has established that a hardship condition exists as defined in Rule 17-8.3. Petitioner's family testified his father was losing his job and had known that was going to occur for several months. Additionally, Petitioner's family testified they were having difficulty meeting the financial obligations associated with having one child in college and two in a private parochial high school. Petitioner's parents were also unable to afford the family home and were in the process of losing it. There was no evidence the Petitioner was motivated for athletic reasons.
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. There was testimony at the final hearing that a lease had been signed in the Crispus Attacks district, although it was not clear when and if the Petitioner and his father were actually living in that home. It appears there very well could be a bona fide change of residence, but it was not clear from the record the Petitioner is in fact living at that residence at this time.

ORDER

The Panel finds by a vote of 7-0 that the decision of the IHSAA Review Committee, upholding the decision of the Commissioner is NULLIFIED. The Petitioner has full eligibility under Rule 17-8.3 and is immediately able to participate in athletics at Crispus Attacks provided he is academically eligible and meets all other eligibility rules.

DATE: January 16, 2015



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.