

**BEFORE THE INDIANA  
CASE REVIEW PANEL**

<b>In The Matter of E.B.,</b>	)	
<b>Petitioner,</b>	)	
	)	
<b>and</b>	)	
	)	<b>CAUSE NO. 150106-130</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 August 15, 2014 E.B.'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 from Hammond Academy of Science and Technology ("HAST") to Hammond Gavit High School ("Gavit"). On August 21, 2014, HAST, as the sending school, completed its portion of the Transfer Report. According to the Transfer Report received as part of the record, Gavit, as the receiving school, completed its portion on October 30, 2014.

On November 4, 2014, the IHSAA Assistant Commissioner determined that the Petitioner's transfer was without a change of residence, and that Petitioner was entitled to "Limited Eligibility" under Rule 19-6.2 at Gavit for 365 days from the date Petitioner last participated in interscholastic athletics at HAST, which was on May 23, 2014 and he would be fully eligible to participate on May 24, 2015, provided he is academically eligible and meets all other eligibility rules. The Petitioner appealed the Assistant Commissioner's determination to the IHSAA Executive 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 10, 2014. Following the evidence presented at the December 10, 2014 hearing, the Executive Committee issued its ruling on December 22, 2014 upholding the Assistant Commissioner's ruling granting Petitioner limited eligibility under Rule 19-6.2.

On January 6, 2015, 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 and they were received January 16, 2015. On January 28, 2015, 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 relevant to its decision.

1. Petitioner lived with his mother, grandparents and sister in Hammond, Indiana and attended HAST his freshman – junior years. HAST, an Indiana charter school, does not require a student to live in a particular district or territory. In February, 2014 Petitioner's parents reconciled and the Petitioner, his mother and sister moved in together in a home with Petitioner's father that was located in the Gavit district. Petitioner completed his junior year at HAST after the move. Petitioner was enrolled in Gavit, a public school, on August 13, 2014. Petitioner's sister, decided to stay at HAST and is attending that school for the 2014-15 school year.

2. Petitioner attended HAST his freshman (2011-12), sophomore (2012-13), and junior year (2013-14). At HAST during his junior year, Petitioner was a member of the varsity basketball, track and field, and cross country teams. He last participated athletically at HAST on May 23, 2014.

3. On August 15, 2014, Petitioner's parents completed the Transfer Report, after enrolling Petitioner at Gavit. In the report, Petitioner indicated that he was transferring schools because Petitioner was "going from a charter school to a public school and taking an AP schedule that HAST did not offer." HAST does not offer AP courses. Additionally, when Petitioner's parents reconciled, they moved into a house together as a family in the Gavit district. Petitioner is able to walk to school while attending Gavit.

4. HAST, the sending school, completed the Transfer Report and recommended limited eligibility pursuant to Rule 19-6.2 and did not sign the Rule 17-8.5 *Verification* portion of the Transfer Report, recommending that the Petitioner receive full eligibility per Rule 17-8.5.

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

5. Gavit, as the receiving school, completed its portion of the Transfer Report on October 20, 2014 and recommended limited eligibility pursuant to Rule 19-6.2. Gavit did not sign the Rule 17-8.5 *Verification* portion of the Transfer Report, recommending that the Petitioner receive full eligibility per Rule 17-8.5

6. Rule 19-6.1(b) allows a student to have full eligibility when that student transfers with a corresponding change of residence to a new district or territory to reside with a parent. Moves between divorced or separated parents may meet the criterion of 19-6.1(b).

7. Rule 19-6.2 allows a student to have limited eligibility when that student transfers without a corresponding change of residence to a new district or territory, "provided the transfer was not for primarily athletic reasons or the result of undue influence." This rule establishes that the period of limited eligibility at the new school begins on the date of enrollment and continues until the first anniversary of the date on which the student last participated in interscholastic athletics at the previous school. Under limited eligibility, the Petitioner can participate at the junior varsity level of interscholastic athletics until May 23, 2015 and may fully participate at Gavit starting May 24, 2015.

#### 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 December 22, 2014, and Petitioner sought timely review on January 6, 2015.

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 finds the transfer to Gavit was not primarily for athletic reasons or the result of undue influence. Thus, Petitioner is not athletically ineligible pursuant to Rule 19-4.

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. Neither the sending school nor the receiving school signed the Rule 17-8.5 *Verification* on the Transfer Report, so Petitioner did not qualify for a Limited Eligibility Waiver pursuant to Rule 17-8.5.

8. The Panel finds by clear and convincing evidence there was a bona fide change of residence and the Petitioner satisfied the elements of Rule 19-6.1(b). The Panel finds there was evidence before the Review Committee that Petitioner’s parents reconciled and moved to his father’s home within the Gavit district. Therefore, Petitioner’s transfer to Gavit resulted from a change of address and Petitioner would qualify for full eligibility under 19-6.1(b).

### ORDER

The Case Review Panel finds by a vote of 8-0 that the decision of the Review Committee is NULLIFIED. The Panel finds that Petitioner transferred with a corresponding change of residence into a new district or territory to reside with his parents; Petitioner is fully eligible to participate in athletics at Gavit under Rule 19-6.1(b) and that eligibility became effective on January 28, 2015.

DATE:

1/30/2015

  
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George Frampton Ed.D., Chair  
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.