

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter A.B.)	
Petitioner,)	
)	
and)	
)	CAUSE NO. 150911-134
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 6, 2015, A.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 2015-2016 school year relating to the Petitioner's transfer. On July 6, 2015 Fort Wayne Northrop High School ("Northrop", the sending school, completed its portion of the Transfer Report. The receiving school, Bishop Luers High School ("Bishop Luers") completed its portion of the Transfer Report on July 7, 2015.

On July 12 2015, the IHSAA Assistant Commissioner determined that Petitioner transfer was a Rule 19-6.2 and ruled Petitioner had limited eligibility at the receiving school, she also ruled the Petitioner was temporarily ineligible under Rule 18-1 (academic ineligibility) and then entitled to limited eligibility at Bishop Luers. 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 August 19, 2015. Following the evidence presented at the August 19, 2015 hearing, the Review Committee issued its ruling on September 3, 2015, upholding the decision of the Assistant Commissioner declaring that according to Rule 19-6.2, Petitioner have limited eligibility until February 27, 2016, and then on February 28, 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. Apparently the temporary ineligibility under Rule 18-1 was an error and not mentioned in the Review Committee decision.

On September 11, 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 September 24, 2015. On October 7, 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 mom and dad in Fort Wayne, Indiana. Petitioner attended Northrop for his freshman and sophomore years. Petitioner transferred to Bishop Luers in June 2015 and was enrolled on June 25, 2015. While at Northrop, during his freshman year (2013-14) he played freshman basketball and his sophomore year (2014-15) he played junior varsity basketball. He last participated athletically at Northrop on February 27, 2015.

2. Petitioner transferred without a corresponding change of residence by his parents to a new district or territory.

3. On July 6, 2015, Petitioner's parents completed the Transfer Report; the Petitioner indicated that the transfer to Bishop Luers was for academic reasons.

4. Petitioner's parents moved to Fort Wayne in 2011 and he first attended Shawnee Middle School as a 7th grader. He continued at Shawnee Middle School for 8th grade and then enrolled at Northrop, the public high school serving the Petitioner's north-side Fort Wayne residence. The Petitioner attended Northrop his freshman and sophomore years.

5. The Petitioner excelled in the classroom during his seventh and eighth grade years at Shawnee. The Petitioner has to work hard before, during and after school to achieve good grades. He had a lot of assistance from his middle school teachers at Shawnee Middle School and credits his academic success to those teachers. They made themselves available before and after school hours to help him.

6. The Petitioner played basketball for Shawnee Middle School and also an AAU team based out of Fort Wayne (2013). This AAU team was coached by J.J. Foster. Mr.

¹ The following members participated in the meeting: Dr. George Frampton (Chairperson), 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. *Mr. Rick Donovan abstained from voting in this case.

Foster later accepted the head boys' basketball coaching position at Bishop Luers.

7. Northrop was the feeder school to Shawnee Middle School and was the most attractive option for the Petitioner because they offered the classes in engineering he was looking for and he would be able to remain with his friends from middle school.

8. The Petitioner's freshman year at Northrop was academically challenging. He was not able to maintain the same grades he received in previous years. The teachers at Northrop were not able to assist him before and after school as his middle school teachers had. The Petitioner's family did make efforts to reach out to teachers and staff for assistance with his school work, with little success. Northrop did provide tutoring help and study tables every Tuesday, Wednesday and Thursday. Petitioner stated he was unaware of the study tables even though they were announced at the beginning of the year parent and student meetings. The Petitioner's parents let him know if things did not change, they would seek a transfer to another school after his sophomore year.

9. At Northrop the Petitioner was unhappy with his relationship with his basketball teammates. He was left out of photos taken after games, he was not included in Instagram messages and twitter messages and he was not included in some team after-game get-togethers.

10. During the time the Petitioner had been at Northrop there was only one varsity basketball coach, Coach Coolman. Coach Coolman announced on June 9, 2015 that he had taken another job and was leaving Northrop, the Petitioner enrolled in Bishop Luers a couple of weeks later. After Coach Coolman left Northrop, several other members of the basketball team transferred out of Northrop as well.

11. The Petitioner stated his principle reason for transferring to Bishop Luers for his junior year was because of academics and his desire to go to a smaller school where he could get more attention in the smaller classes and where he would get help and tutoring with his courses.

12. Northrop recommended Petitioner have limited eligibility under rule 19-6.2 and neither recommended full eligibility under rule 17-8.5 nor signed the *Verification*. Bishop Luers recommended Petitioner have limited eligibility under rule 19-6.2 and neither recommended full eligibility under rule 17-8.5 nor signed the *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 September 3, 2015, and Petitioner sought timely review on September 11, 2015.
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 and the receiving school did not sign the *Verification*, 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's decision to transfer schools was a choice and he was not compelled to transfer. The Petitioner's parents believed he could succeed in a smaller school where he could get individualized attention. 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 6-1 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 27, 2016, and then on February 28, 2016 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:

10/15 10/9/2015
MDE



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.