

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter C.R.)	
Petitioner,)	
)	
and)	
)	CAUSE NO. 150916-135
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 June 15, 2015, C.R.'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 Southwestern High School ("Southwestern"), the sending school, completed its portion of the Transfer Report. The receiving school, Triton Central High School ("Triton Central") completed its portion of the Transfer Report on June 15, 2015.

On July 6, 2015, the IHSAA Assistant Commissioner determined that Petitioner's 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 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 May 21, 2016, and then on May 22, 2016, she would be fully eligible to participate in athletics at the receiving school, provided she is academically eligible and meets all other eligibility rules.

On September 16, 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 October 5, 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, now a junior, lived with her mother in Shelbyville, Indiana and attended Southwestern, a public school in Shelby County, Indiana which served her residence. In the summer 2015, she moved from her mother's residence to her father's residence in Franklin Township, Marion County, Indiana. The Petitioner then enrolled, not in Franklin Central High School (the school serving her father's residence) but at Triton Central High School (Triton Central), a public school in Fairland, Shelby County, Indiana.
2. Petitioner attended Southwestern her freshman and sophomore years. While at Southwestern, during her freshman year (2013-14) and sophomore year (2014-15) she played varsity basketball as a freshman and sophomore and on the varsity volleyball and tennis teams as a sophomore. She last participated athletically at Southwestern on May 21, 2015.
3. On June 15, 2015, Petitioner's parents completed the Transfer Report, and indicated that the transfer to Triton Central was to move from her mother's residence to her father's residence (her parents are divorced).
4. The Petitioner always lived with her mother in Shelbyville and attended Southwestern Schools (which are located in south western Shelby County), until she enrolled at Triton Central (which is located in north western Shelby County). The Petitioner said she loved Southwestern Schools, but wanted to move into her father's home in Franklin Township (Indianapolis), to be a part of the upbringing of her father's newly adopted infant daughter, and this move apparently necessitated a need to change schools.²
5. In the Review Committee's decision there is a reference to an alleged conversation between a Southwestern school employee with the Petitioner and her mother. The Panel

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.

² There was reference at the Hearing and in the Review Committee decision about comments made regarding the Petitioner that were of a very personal nature. The Panel finds the comments and reference to those comments by the IHSAA and the Review Committee unprofessional and should not be permitted at Hearings or in findings/orders/opinions when there is no connection to the case. Students should be treated with respect during this process and should not be subjected to unfounded and baseless accusations of a personal nature.

gives no weight at all to this conversation. It is a statement that appears to be quoted but no one ever identified the name of the person who made the statement. Both the Petitioner and her mother, who came to the hearing and testified under oath, deny the conversation.³

6. Southwestern recommended Petitioner have limited eligibility under rule 19-6.2 and neither recommended full eligibility under rule 17-8.5 nor signed the *Verification*. Triton Central 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 16, 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

³ The Panel believes hearsay statements of unknown persons who do not come to Review Committee meetings to testify under oath should never be considered as evidence by the IHSAA, Review Committee or the Case Review Panel.

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 made a decision to move in with her father to help with the upbringing of her younger sister. This is admirable and the Petitioner should be commended for making a decision to be a very active part of her sister’s life. The Petitioner’s decision to transfer schools was a choice and she was not compelled to transfer. The Petitioner’s parents made the decision to not enroll her in the district or territory where her father resided. The Panel finds this was a choice by her 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 8-0 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 May 21, 2016, and then on May 22, 2016 she would be fully eligible to participate in athletics at the receiving school provided she is academically eligible and meets all other eligibility rules.

DATE: 10/9/2015



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.