BEFORE THE INDIANA
CASE REVIEW PANEL

In The Matter J.B.	)	
Petitioner,	)	
	)	
and	)	
	)	**CAUSE NO. 151109-139**
The Indiana High School Athletic Association,	)	
Respondent.	)	
	)	
Review Conducted Pursuant to Ind. Code	)	
§ 20-26-14 ***et seq.***	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PROCEDURAL HISTORY

On or about August 11, 2015, J.B.'s ("Petitioner") parents completed the student portion of an Indiana High School Athletic Association ("IHSAA") Athletic Transfer Report ("Transfer Repmt"). 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 August 12, 2015 Kokomo High School ("Kokomo"), the sending school, completed its portion of the Transfer Report. The receiving school, Eastern Greentown High School ("Greentown") completed its portion of the Transfer Report on August 12, 2015.

On August 12, 2015, the IHSAA Commissioner determined that Petitioner transfer was a Rule 19-6.2 and rnled Petitioner had limited eligibility at the receiving school. The Petitioner appealed the 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 8, 2015. Following the evidence presented at the October 8, 2015 hearing, the Review Committee issued its ruling on October 26, 2015, upholding the decision of the Commissioner declaring that according to Rule 19-6.2, Petitioner have limited eligibility until May 22, 2016, and then on May 23, 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.

On November 9, 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 November 24, 2015. On December 9, 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 Tipton, Indiana. Petitioner attended Kokomo for his freshman year. While at Kokomo, during his freshman year (2014-15) he played freshman basketball and baseball. He last participated athletically at Kokomo May, 23 2015.

2. After completion of the Petitioner's freshman year, his parents contacted Greentown to inquire about applying to the school. On August 4, 2015, the Petitioner began attending Greentown, another public school in Howard County, Indiana.

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

4. On August 11, 2015, Petitioner's parents completed the Transfer Report; the Petitioner indicated that the transfer to Greentown was to obtain "better educational opportunities." The Petitioner's parents explained he had struggled at Kokomo, and Greentown would have smaller class sizes and the Petitioner could get increased individual assistance at his new school.

5. The Petitioners' parents also believed there were social issues and bullying that led to their decision to transfer schools. The incidents, separately and as a whole, did not rise to the level of bullying that necessitated transferring schools.

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

6. Kokomo recommended Petitioner have limited eligibility under rule 19-6.2 and neither recommended full eligibility under rule 17-8.5 nor signed the *Verification.* Greentown recommended Petitioner have full eligibility under rule 17-8.5 and 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-l 4-6(b). In this matter, the Review Committee rendered a final determination of student-eligibility adverse to the Petitioner on October 26, 2015, and Petitioner sought timely review on November 9, 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 nova.* 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 smne 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,* 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.l(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.l(c)); and a hardship condition exists as defined in Rule 17-8.3 (Rule 17-8.l(d)).

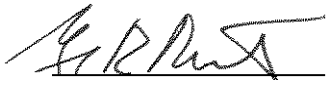
8. Petitioner failed to establish that the primary and secondary purposes of the rule would still be accomplished if the Rule is not strictly enforced.

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 patients believed he could succeed in a new school both academically and socially. 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 9-0 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 22, 2016, and then on May 23, 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: 12/11/2015



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.