BEFORE THE INDIANA
CASE REVIEW PANEL

In The Matter D.B.	)	
Petitioner,	)	
	)	
and	)	
	)	**CAUSE NO. 151210-141**
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 17, 2015, B.D.'s ("Petitioner") grandfather 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 August 17, 2015 Yorktown High School ("Yorktown"), the sending school, completed its portion of the Transfer Report. The receiving school, Frankton High School ("Frankton") completed its portion of the Transfer Report on August 17, 2015.

On August 17, 2015, the IHSAA Assistant Commissioner determined that Petitioner's transfer was a Rule 20-2 and ruled Petitioner was ineligible for 365 days from his enrollment at Frankton. 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 an appeal and set the matter for a hearing before the Review Committee for November 6, 2015. Following the evidence presented at the November 6, 2015 hearing, the Review Committee issued its ruling on November 19, 2015, upholding the decision of the Assistant Commissioner declaring that according to Rule 20-2 the Petitioner was ineligible for 365 days from his enrollment at Frankton.

On December 10, 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 December 14, 2015. On December 16, 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 sophomore, lived with his father and attended Yorktown, a public school. Yorktown did not serve the Petitioner's father's residence. On August 13, 2015 the Petitioner enrolled in Frankton for the 2015-16 school year and began attendance. Frankton is the public school which serves his father's residence. The Petitioner's father ended a long-term relationship with a girlfriend, which resulted in a significant reduction in family financial resources. In April 2015, the Petitioner's home that he lived in with his father was sold in a sheriff sale. The Petitioner's father was able to find a rental home, securing an agreement to pay half of the amount of rent/mortgage he had been previously paying. The rental home just happened to be across the street from the home sold in a sheriff sale and which was also in the Frankton school district.

2. The Petitioner's grandfather, the Petitioner's father and the father's girlfriend had been providing transportation to and from school while the Petitioner attended Yorktown. The girlfriend was no longer living with the family in the Spring of 2015 and the Petitioner's grandfather returned to full-time work after retiring for a period of time. The Petitioner no longer had access to transportation to and from school while attending Yorktown. The Petitioner now rides the Frankton school bus to and from school.

3. Petitioner attended Yorktown his freshman year. While at Yorktown, during his freshman year (2014-15) he played varsity wrestling and varsity football. He last competed athletically at Yorktown on February 19, 2015.

4. While attending Yorktown his final semester, the Petitioner received three Cs, two Ds and two Fs. Since attending Frankton, the Petitioner was on the A-B honor roll during the first nine weeks of school.

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[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. Chuck Weisenbach, and Ms. Dana Cristee. Ms. Kelly Bauder, staff attorney, was also present as legal counsel to the Panel.

5. Yorktown recommended ineligibility for the Petitioner under Rule 20-2, the Past Link Rule. Yorktown did not recommend full eligibility under 17-8.5 nor signed the *Verification*. Frankton recommended Petitioner have full eligibility under rule 17-8.5 and signed the 17-8.5 *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 November 19, 2015, and Petitioner sought timely review on December 10, 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. 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)).

7. It is clear the Petitioner's family suffered a financial hardship in 2015 that necessitated making changes to accommodate the family's living situation and the lack of transportation to and from school. The family suffered a reduction in family finances and lost the family home to a Sheriff sale. This hardship was outside the control of the Petitioner and therefore the conditions for a hardship under 17-8.1 have been met.

8. The Panel does not find it necessary to make findings related to Rule 20-2. A hardship condition existed in April, 2015 and the Petitioner's father began making arrangements to accommodate his family. Any action by other parties that could have impacted the Petitioner occurred after the existence of a hardship and was outside the control of the Petitioner and his family.

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 MODIFIED. The Petitioner has full eligibility under Rule 17-8.1 at Frankton as of December 16, 2015, provided he is academically eligible and meets all other eligibility rules.

DATE: 12/18/2015

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.