

**BEFORE THE INDIANA  
CASE REVIEW PANEL**

In The Matter of T.P.	)	
Petitioner	)	
	)	
And	)	<b>CAUSE NO. 101005-71</b>
	)	
The Indiana High School Athletic Assoc. (IHSAA),	)	
Respondent	)	
	)	
Review Conducted Pursuant to	)	
I.C. 20-26-14 <i>et seq.</i>	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

**Procedural History**

On August 16, 2010, Petitioner, T.P. and her parents, filed a transfer request with the Indiana High School Athletic Association (IHSAA) and requested the IHSAA make an athletic eligibility determination for the 2010-2011 school year. On August 17, 2010, the Assistant Commissioner of the IHSAA determined Petitioner to have limited eligibility until February 3, 2011, after which date Petitioner regains full eligibility.

On September 2, 2010, Petitioner sought review by the IHSAA Review Committee of the Assistant Commissioner's determination. The Review Committee conducted its hearing on October 7, 2010, and issued its decision on October 15, 2010. The decision upheld the Commissioner's determination of limited eligibility.

APPEAL TO THE CASE REVIEW PANEL

Petitioner appealed to the Indiana Case Review Panel<sup>1</sup> on October 29, 2010. On November 4, 2010, the Panel notified the parties that the Panel would review the IHSAA Review Committee's decision during a Panel meeting. The Panel requested and received the record from the IHSAA. The record was copied and provided to each participating member of the Panel. On November 9, 2010, the Panel held a meeting where a quorum of members was present.<sup>2</sup> In consideration of the record, the following Findings of Fact and Conclusions of Law were determined.

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<sup>1</sup> The Case Review Panel (Panel) is a nine-member panel established by the IHSAA. The Superintendent appoints the members and his designee serves as the chairperson. The Panel reviews final student-eligibility decisions of the IHSAA when a parent or guardian so requests. The Panel, by statute, is authorized to uphold, modify, or nullify any student eligibility decision made by the IHSAA. I.C. § 20-26-14-6(c)(3).

<sup>2</sup> Six members were present at the meeting, including Mr. Matt Tusing (chairperson), Ms. Cathy Ann Klink, Mr. Matthew Rager, Mr. Marcus Robinson, Ms. Dana Cristee, and Mr. Earl Smith Jr.

## FINDINGS OF FACT

1. Petitioner lives with her parents in Fort Wayne, Indiana, and within the Northwest Allen County Schools district. Carroll High School is a school operated by Northwest Allen County Schools.
2. Petitioner attended Carroll High School (Carroll) her freshman and sophomore years (2008-2009, 2009-2010) and played on the junior varsity basketball teams both years. She last participated in athletics at Carroll on February 3, 2010.
3. Petitioner's grade point average steadily declined from the start of her freshman year at Carroll through the end of her sophomore year at Carroll, from 8.633 down to 8.000 on a 12 point scale.
4. Petitioner was unhappy at Carroll and with her teachers her freshman year. She started to withdraw from her friends and family. Her attitude improved when she played on the junior varsity basketball team at Carroll.
5. Petitioner displayed signs common to depression including spending most of her time alone, reckless behavior, joking about death, binge eating, internet addiction, and a progressively decreasing self-esteem.
6. Petitioner started binge eating. Petitioner weighed approximately 125 pounds at age 15 (50-75 percentile), and gained approximately 13 pounds before she turned 16 (75-90 percentile).
7. Petitioner's parents hired a fitness club basketball instructor for the Petitioner beginning in April of 2009 to act as a "life coach." Petitioner and parents consider the instructor a life mentor. The instructor is employed as a licensed teacher at Wayne High School, an IHSAA basketball referee, and collegiate level basketball official. The instructor also works at a local fitness club, where Petitioner met with her five days a week to work on

basketball instruction and to manage Petitioner's weight gain. Petitioner's parents paid the instructor for a few days a week, but not the entire five days.

8. The relationship between Petitioner and the fitness instructor advanced. Petitioner spent numerous hours with the instructor's family at the instructor's home, and Petitioner discussed many personal issues with the instructor unrelated to basketball or weight gain.
9. Petitioner's parents considered transferring Petitioner from Carroll between her freshman and sophomore year, but Petitioner continued at Carroll for her sophomore year.
10. Petitioner met with the Carroll school counselor to establish her junior year course schedule. Petitioner requested classes focused on a career in teaching. The counselor encouraged Petitioner to go into engineering because the pay was better and then signed Petitioner up for classes related to engineering.
11. Petitioner's parents asked the life coach/fitness instructor for transfer advice. The life coach/fitness instructor recommended to Petitioner's parents that Petitioner transfer Leo High School. The life coach had reviewed numerous Ft. Wayne-area schools based on size of school and proximity to Petitioner's home. The life coach had familiarity with Leo because through her basketball experience, she knew the Leo principal.
12. In June 16, 2010, Petitioner was accepted, and subsequently enrolled, at Leo Jr/Sr High School (Leo), which is operated by the East Allen County Schools district, for her junior (2010-2011) year.
13. In 2009-2010, Carroll had a 33% larger student population than Leo. The enrollment at Carroll for the 2009-2010 school year was 1,905 students and the student-teacher ratio was 9-1. The enrollment at Leo for the 2009-2010 school year was 1,259 students and the student-teacher ratio was 7-1. Additionally, Leo covers grades 7-12, while Carroll covers grades 9-12.
14. Leo High School is a 10 minute drive from Petitioner's home.

15. On August 10, 2010, Petitioner completed the student portion of the IHSAA Transfer Report (Transfer Report). In the Transfer Report, Petitioner claimed that Hardship Rules 17-8.1 and 17-8.5 apply because she needs a quality education in an atmosphere more equivalent to her personality and is more supportive toward her academic goals. Petitioner further claimed that large student enrollment at Carroll prevented her from receiving support for her future goals, led to depression, led to weight gain, and caused a decline in her grades. Petitioner claimed that construction at Carroll did not create a good atmosphere, her car had been vandalized, and a counselor dissuaded Petitioner from taking her chosen career path because of the inadequate salary. Petitioner also claimed that Leo is located close to her home, the staff at Leo is more supportive, and Leo has allowed her to enroll in a student teaching rotation.
16. On August 10, 2010, Carroll, the sending school, completed its portion of the Transfer Report and claimed that Petitioner should not be eligible for athletics at the receiving school because Petitioner did not change residence. Carroll did not recommend eligibility under the Transfer Hardship Rule 17-8.5.
17. On August 16, 2010, Leo, the receiving school, completed the Transfer Report and recommended that a hardship exception should apply for the reasons put forth by the Petitioner. Leo recommended eligibility under the Transfer Hardship Rule 17-8.5.
18. On August 17, 2010, IHSAA Assistant Commissioner Sandy Searcy determined that Petitioner had limited eligibility under Rule 19-6.2 because Petitioner did not have a corresponding change of residence. Searcy determined that Petitioner did not meet the requirements of the General Hardship Rule 17-8.1. Searcy also determined that the Petitioner did not meet the requirements of the Transfer Hardship Rule 17-8.5 because both school principals did not approve of full eligibility. Finally, Searcy determined that the transfer was not for primarily athletic reasons.
19. On October 4, 2010, the Athletics Director at Carroll amended through testimony Carroll's reasons for denying eligibility on the Transfer Report to include evidence of

Petitioner's athletic motivation. The amendment claims that previous Carroll staff had reported that Petitioner's father met prior to Petitioner's freshman year with the Carroll head basketball coach to encourage him to promote Petitioner from the freshman to the junior varsity team, which the coach did. The amendment claims that Petitioner was not happy with the program. The amendment claims that during the summer before Petitioner's sophomore year, Petitioner was considering transferring to Northrop High School because she played summer basketball with students who attend Northrop.

20. With Petitioner's transfer to Leo, Carroll was losing a strong ambassador for their program.
21. On October 7, 2010, in response to Petitioner's request for appeal, the IHSAA Executive Review Committee (Committee) held a due process hearing wherein both the IHSAA and Petitioner presented evidence and testimony in the matter.
22. On October 15, the IHSAA Executive Review Committee upheld the determination by Assistant Commissioner Sandy Searcy based on the following seven (7) Conclusions of Law:
  1. *Eligibility under rule 19-6.2. [Petitioner] transferred schools without a corresponding change of residence by her parents, and under rule 19-6.2, without any other evidence, [Petitioner] would be entitled, at best, to limited eligibility.*
  2. *Eligibility under rule 19-6.1. If [Petitioner's] circumstances met one of the conditions of rule 19-6.1, then she might qualify for full eligibility, however under that situation, [Petitioner] would bear the ultimate burden of persuasion that her circumstances met rule 19-6.1. Here, [Petitioner] does not contend that she met any of the criteria of rule 19-6.1, and she also failed to provide any proof that demonstrates her circumstances met any of the criteria of rule 19-6.1. Accordingly, the Committee concludes that [Petitioner's] circumstances do not meet the provisions of rule 19-6.1 and that she is not entitled to full eligibility thereunder.*
  3. *Ineligibility under rule 19-4. If there is evidence that the transfer was primarily motivated by athletic reasons, then [Petitioner] could be declared ineligible for 365 days from her enrollment at Leo, under rule 19-4. The IHSAA has assumed the ultimate burden of proving that [Petitioner's]*

*transfer was primarily motivated by athletic reasons. Here, while Ft. Wayne Carroll contends that there is evidence that the transfer involved athletics, there is insufficient evidence to conclude that the transfer was primarily motivated for athletic reasons. Accordingly, [Petitioner] will not be denied athletic eligibility at Ft. Wayne Carroll [sic].*

4. *Eligibility under rule 17-8. If her circumstances constitute a hardship, [Petitioner] may qualify for full eligibility, however, [Petitioner] bears the ultimate burden of persuasion that her circumstances meet the criteria under the General Hardship Rule, rule 17-8.1 or the criteria under the Transfer Hardship Rule, rule 17-8.5.*
5. *Eligibility under rule 17-8.5. If [Petitioner] could show the requirements of rule 17-8.5 were met, [Petitioner] might have full eligibility. Under rule 17-8.5, [Petitioner] needed to show, first, that after the transfer, she continued to reside with her parents, second, that the transfer was in her best interests and there are no athletic related motives surrounding the transfer and third, that both principals, the sending and receiving, each signed a rule 17-8.5 Hardship Verification confirming that the transfer was in the best interest of [Petitioner] and that there were no athletic related motives surrounding the transfer. While [Petitioner] did establish the first criteria, she fails to establish the second or third criteria. Regarding the third criteria, Ft. Wayne Carroll did not sign the rule 17-8.5 Hardship Verification. But even if [Petitioner] had secured Ft. Wayne Carroll's signature on the rule 17-8.5 Verification, her request for full eligibility would still fail since the evidence would not permit the Committee to conclude that the transfer from Ft. Wayne Carroll to Leo was in her best interests and that there were no athletic related motives surrounding the transfer. Consequently, [Petitioner] fails to show entitlement to full eligibility under rule 17-8.5.*
6. *Eligibility under rule 17-8.1. If [Petitioner] could demonstrate that the requirements of rule 17-8.1 have been met, [Petitioner] might qualify for full eligibility. Under rule 17-8.1, relief from the operation of an IHSAA rule cannot be granted until the party seeking the hardship ([Petitioner]), establishes to the satisfaction of this Committee, through clear and convincing evidence<sup>FN2</sup> [FN2 See, rule 17-8.4(d)] that each question raised by the general hardship rule has been answered in the affirmative.*
  - a. *Has the student shown that none of the purposes of the rule will be advanced by strict enforcement of the Transfer Rule (rule 17-8.1(a))? [Petitioner] fails to establish that strict enforcement of the Transfer Rule will not serve to accomplish some or all of the purposes of the Transfer Rule, as enumerated in the philosophy of such a rule. Initially, the Committee notes that participation in interschool athletics is a privilege earned by students who meet the IHSAA's democratically established standards for qualification, and that generally, participation in interschool athletics is only available to*

*bona fide students who live in the school district where their parent(s) or legally established guardian(s) reside. Here, the goals of the Transfer Rule are advanced by its application to this student:*

- (1.) The Transfer Rule protects the opportunities of bona fide resident students to participate in their home varsity athletic program. A student who qualifies for limited eligibility should not displace an existing bona fide varsity student athlete who has invested time, energy and talent into such varsity athletic program. Here, granting full eligibility to [Petitioner] would result in the displacement of an existing bona fide varsity student athlete who had invested time, energy and talent in Leo's varsity athletic program;*
- (2.) The published Transfer Rule, which provides a fair and equitable framework in which interschool athletic competition can take place in an educational setting, provides student athletes who are making decisions about school enrollment and withdrawal, with knowledge of the Transfer Rule and that it is enforced fairly, uniformly and can consistently, and here, following IHSAA rules, [Petitioner] can enroll in the school of her choice and can benefit from that school's size and environment, but because of the Transfer Rule, will be eligible for the same level of participation as all similar non-moving transfer students, namely limited eligibility;*
- (3.) The Transfer Rule provides standards for maintaining athletic competition and provides boundaries on student athletes' movements between schools so that a disproportional pool of talent does not, by design or otherwise, reside at a particular school, and here, by uniformly enforcing the Transfer Rule, Leo girls' varsity basketball pool will not be deepened.*
- (4.) The Transfer Rule serves as a deterrent to students who would transfer to another school for athletic reasons, as a deterrent to students who would run away from or avoid an athletic conflict or discipline imposed at a prior school and as a deterrent to individuals who would recruit student athletes, and by uniformly enforcing the democratically established Transfer Rules, student athletes and their supporters will be less likely to attempt to circumvent these regulations and to transfer schools for an athletic reason. Here, while there is some evidence that this transfer was for athletic reasons, ([Petitioner] and her parents had reportedly been unhappy with the Ft. Wayne Carroll program, they had previously considered a transfer and it was [Petitioner's] private basketball coach who recommended the schools to transfer to)*

*and therefore, it is appropriate to enforce the democratically established and uniformly enforced Transfer Rule.*

*(5.) The Transfer Rule protects school programs from losing any students who has [sic] established an identity as a student and athlete, and as such has contributed to the overall school program and image, and here, [Petitioner] who her father called a school ambassador, had established an identity and had contributed to the Ft. Wayne Carroll's program and image.*

*b. Has the student shown that waiving the rule will not violate the spirit of the Transfer Rule (rule 17-8.1(b))?*

*[Petitioner] fails to establish that the spirit of the Transfer Rule would not be violated by permitting immediate full eligibility. An underlying goal of the Transfer Rule is to discourage recruitment and school jumping, which is accomplished, in part, by limiting or denying eligibility to a student whose transfer is not the result of circumstances which are beyond the control of the student or the student's parent(s). Rule 17-8.4 specifically explains that a hardship cannot be predicated upon a choice or voluntary transfer. The harshness of the rule is ameliorated, however, by granting limited eligibility to nonmoving transfer students when the transfer is not primarily for athletic reasons. Here the primary reason given for the transfer was the parents' belief that Ft. Wayne Carroll was too big and that [Petitioner] did not respond to the size well, became depressed, was withdrawing, had lower grades, and gained weight. Though there are cases where a school's environment might be so bad that it fundamentally requires a student to leave and transfer to a new school (such as when there is open gang activity and other conditions which create a physical danger to a student), that case is not here. The best evidence for [Petitioner] is that Ft. [sic] Carroll is so big that she became depressed with her surroundings, which resulted in her being unhappy, her grades lowering and her gaining weight. Even if true, such a situation does not compel a transfer. In addition, the testimony from Coach Jackson seems to suggest that she believes [Petitioner's] symptoms were consistent with battered wife syndrome and that was caused by [Petitioner's] boyfriend, which had nothing to do with Ft. Wayne Carroll or its size. In short, while this transfer might be beneficial in the eyes of [Petitioner] and her parents, it was nonetheless voluntary, within the control of [Petitioner] and her parents, and therefore, a "choice." Since the transfer was within the control of [Petitioner] and her parents, giving [Petitioner] full eligibility would violate the spirit of the Transfer Rule.*

*c. Has the student shown that an undue hardship will be suffered by enforcement of the Transfer Rule (rule 17-8.1(c))?*

*[Petitioner] fails to establish that there is in her case, circumstances showing an undue hardship would result from enforcement of the Transfer Rule. Ordinary cases of hardship are not subject to a rule 17-8.1 hardship ruling, and a decision which simply restricts athletic eligibility from full to limited, for a short period of time, does not result in an undue hardship. Here, the limited eligibility ruling does not prohibit [Petitioner] from participating in athletics, it just restricts athletic participation to the JV level, and since [Petitioner] can still participate in basketball, albeit on the junior varsity team, the decision will not result in an undue hardship. Moreover, [Petitioner's] limited eligibility only runs through Thursday, February 3, 2011, and provided at that time [Petitioner] is in compliance with all other eligibility rules, she will be fully eligible and will be able to play on the Leo varsity basketball team beginning Friday, February 4, 2011, and will be eligible to play for Leo during the IHSAA girls state basketball tournament series.*

*[sic (7.)] But not only has [Petitioner] failed to show that her circumstances constitute a hardship under rule 17-8.1, since there is some evidence of athletic motivation here, under rule 17-8.4(d), the Committee is constrained to grant [Petitioner's] hardship application. Accordingly, [Petitioner] fails to show that her circumstances constitute a general hardship under rule 17-8.1 or that she is entitled to full eligibility.*

23. Petitioner filed an appeal of the IHSAA Review Committee's decision with the Case Review Panel on October 29, 2010.

#### 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, the Respondent herein, 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 "state action" and for this purpose makes the IHSAA analogous to a quasi-governmental entity. IHSAA v. Carlberg, 694 N.E.2d 222 (Ind. 1997), *reh. den.* (Ind. 1998).

3. The Case Review Panel (Panel) has jurisdiction in this matter. The Panel is established by the IHSAA to review final student eligibility decisions with respect to interscholastic athletic competition. I.C. 20-26-14 et seq. The Case Review Panel has jurisdiction when a student's parent refers the case to the panel not later than thirty (30) days after the date of the IHSAA decision. I.C. 20-26-14-6(b). In this matter, the IHSAA rendered a final determination of student-eligibility adverse to the student on October 15, 2010. Petitioner sought timely review on October 29, 2010. The Panel may uphold, modify, or nullify the IHSAA Review Committee's decision. I.C. 20-26-14-6(c)(3).
4. The Case Review Panel is not required to review the IHSAA determination *de novo*. The Case Review Panel review is similar to an appellate-level administrative review. A full hearing to recreate the record is not required. The Panel is required to hold a "meeting," I.C. 20-26-14-6(c)(2), not a hearing. The Panel is not required to collect testimony and information during the meeting, but may collect testimony and information prior to the meeting. See I.C. 20-26-14-6(c)(1). If the Panel upholds the IHSAA decision, a court of jurisdiction may consider the IHSAA decision, I.C. 20-26-14-7(c), as opposed to the Panel decision. The IHSAA Review Committee hearing process provides students with due process protection. Carlberg, 694 N.E.2d at 241.
5. The Case Review 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). Additionally, the Case Review Panel reviews whether an IHSAA decision is "not a fair and logical interpretation or application of the association's rule; . . . contrary to a constitutional right, power, privilege, or immunity; . . . in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; . . . without observance of procedure required by law; or . . . unsupported by substantial evidence." See I.C. 20-26-14-7(c).
6. The IHSAA Review Committee's interpretation of Rule 19-6.2 is not a fair and logical interpretation of the association's rule. The IHSAA Review Committee finds that Rule

19-6.2 requires the IHSAA to determine that the Petitioner has, at best, limited eligibility under the circumstances. However, Rule 19-6.2 reads, in part, that a “student who transfers without a corresponding change of residence . . . may be declared to have limited eligibility.” Rule 19-6.2 does not require a limited eligibility determination, but only permits one. If a “shall” requirement is read into Rule 19-6.2, then Rule 19-6.2 will conflict with Rule 19-3. Rule 19-3 allows the principal of the receiving school and the IHSAA to, at best, jointly approve full eligibility regardless as to whether a student receives limited eligibility under Rule 19-6.2.

7. The IHSAA Review Committee’s interpretation and application of Rule 17-8.1 is arbitrary and capricious, and not a logical interpretation and application of the association’s rule. Rule 17-8.1 allows the Committee to set aside the effect of any rule when the student demonstrates that:

- a. Strict enforcement of the Rule in the particular case will not serve to accomplish the purpose of the Rule;*
- b. The spirit of the Rule has not been violated; and*
- c. There exists in the particular case circumstances showing an undue hardship that would result from enforcement of the Rule.*

(a) The Committee’s interpretation and application of Rule 17-8.1(a) is not fair or logical and leads to an arbitrary and capricious decision. The Committee requires the Petitioner to “establish that strict enforcement of the Transfer Rule will not serve to accomplish some or all the purposes of the Transfer Rule.” The Committee defines the “purposes of the Transfer Rule” as the “philosophies” enumerated in Rule 19 by quoting the philosophies as the goal or by referencing the philosophies directly. For example, the Committee determines in Conclusion 6(a)(1)-(5) that the goals, or purposes, of the Transfer Rule are to protect the “opportunities of bona fide resident students;” “provide a fair and equitable framework;” “provide(s) standards for maintaining athletic competition;” serve as a deterrent to students “run(ning) away,” or “avoid(ing)” an athletic conflict or discipline; “serve as a deterrent to individuals who would recruit student athletes;” and protecting schools from losing a student who “has established an identity.” These purposes are directly quoted from the Transfer Rule Philosophies 1,2,3,8,9, and 10.

The Committee analyzed six of the 10 “philosophies” and determined that because six of the philosophies will be served, the Petitioner failed to prove the condition. This is an illogical application of the rule. The Committee interprets Rule 17-8.1(a) to require that the Petitioner prove that “some or all” of the purposes will not be served. Even if some of the purposes will be served, the Petitioner may still be able to demonstrate that some of the purposes will not be served. Unless the Committee demonstrates that all of the purposes will be served, then Petitioner may be able to meet the condition of rule as set forth by the Committee.

Most importantly, the Committee inadvertently shifted the burden to the IHSAA to demonstrate the purposes have been served, as opposed to requiring that Petitioner demonstrate that a purpose will not be served. This is a dispositive error, as the burden is on Petitioner to establish all the conditions of Rule 17-8.1 have been met and the “burden is on the party seeking the hardship,” Rule 17-8.4(e). Thus, because Petitioner may be able to prove that at least some of the purposes will not be served and because the Committee’s interpretation of the Rule shifts the burden of proof to the IHSAA, the Committee’s holding relative to Rule 17-8.1 is arbitrary, capricious, and not a fair and logical interpretation of the rule.

Even if the IHSAA had the burden to prove the purposes of the Rule have been met, which it does not, the Committee arbitrarily analyzed only six of the 10 “philosophies” listed in Rule 19 and avoided analyzing the philosophies relied upon by the Petitioner. The philosophies analyzed by the Committee include only 1,2,3,8,9, and 10. The remaining philosophies listed in Rule 19, and those omitted in the Committee’s analysis, appear to be the most favorable to Petitioner. Absent any ascertainable standard as to why the Committee defined the “purpose” of the Transfer Rule as a subset of the whole number of philosophies listed in the rule, the Committee arbitrarily and capriciously defined the purposes of the Transfer Rule.

The philosophies enumerated in Rule 19, but omitted in the Committee’s analysis, include philosophies 4, 5, 6, and 7. These philosophies state that Transfer Rules are

necessary because “they support the educational philosophy that athletics is a privilege which must not be permitted to assume a dominant position in a student’s or school’s program . . .,” Rule 19 Philosophy (4); “they keep the focus of educators and students on the fact that students attend school to receive an education first and participate in athletics second . . .,” Philosophy (5); “they maintain the fundamental principle that . . . student(s) should live at home with [their] parents . . .,” Philosophies (6); and “they reinforce the view that the family is a strong and viable unit in our society, and, as such, is the best place for students to live . . .,” Philosophies (7).

Petitioner sought to establish that strict enforcement of the Transfer Rule will not serve to accomplish keeping the “focus of . . . students on the fact that students attend school to achieve an education first and participate in athletics second” or “the educational philosophy that athletics . . . must not be permitted to assume a dominant position in a student’s . . . program” (Petitioner provided evidence that Petitioner transferred schools for reasons related to her educational experience, the transfer was not for athletic reasons, and Petitioner filed for a transfer to Leo before Petitioner requested that Carroll approve the IHSA Transfer Report). The Committee, however, withheld analyzing the Transfer Rule philosophies relied upon by Petitioner.

Additionally, the Committee’s decision misstates rules and includes conclusions unsupported by substantial evidence:

- (i) The Committee determines in Conclusion 6(a)(1) that Philosophy (1) applies to bona fide resident students who participate in “varsity” athletics, not junior varsity athletics. Therefore the Committee finds, by granting Petitioner limited eligibility to play junior varsity, the decision protects bona fide varsity students. The Committee, however, misstates Philosophy (1), which reads that the Transfer Rules “protect the opportunities of bona fide students to participate.” The rule does not distinguish between varsity and junior varsity athletics. Contrary to the Committee’s interpretation, any decision awarding limited eligibility and

junior varsity play does not serve Philosophy (1) because a junior varsity player may be displaced.

Even if the philosophy did make a varsity/junior varsity distinction, which it does not, the Committee's Philosophy (1) analysis is not supported by substantial evidence. The Committee concludes that granting Petitioner full eligibility would "result in the displacement of an existing bona fide varsity student athlete who had invested time, energy, and talent in Leo's varsity athletic program." No substantial evidence of such displaced student exists in the record.

(ii) The Committee concludes in Conclusion 6(a)(3) that Philosophy (3) seeks to prevent a disproportionate talent pool at any particular school and that strict enforcement of the Transfer Rule prevents Leo's girls' varsity basketball pool from being deepened. Rule 19 Philosophy (3) states that the Transfer Rules "provide uniform standards for all schools to follow in maintaining athletic competition" and does not make a distinction between varsity talent pool and the junior varsity talent pool. The Committee seeks to grant Petitioner junior varsity status, thus deepening Leo's total talent pool at the expense of Carroll. Therefore, the philosophy is not being served by strict enforcement as concluded by the Committee. Additionally, even if the philosophy made the varsity/junior varsity distinction, no substantial evidence exists on the record regarding the respective depths of the Leo and Carroll athletic pools of talent.

(iii) The Committee determines in Conclusion 6(a)(4) that Philosophy (9) seeks to deter students from running away from or avoiding an athletic conflict or discipline imposed at a prior school. Philosophy (8) states that the Transfer Rules deter individuals who would recruit student athletes. The Committee relies upon these philosophies but there is no evidence in the record to support the Committee's conclusions based on these philosophies.

- (b) The Committee's interpretation of Rule 17-8.1(b) is not logical and creates a floating evidentiary standard that leads to an arbitrary application of the rule. Because "hardship" is not defined, the Committee incorrectly reads a 17-8.4(a) hardship element into the spirit of the Transfer Rule.

Rule 17 does not adequately define what constitutes a "hardship." Rule 17-8.4 states that hardships are not "ordinary" and occur when circumstances leading to the failure to meet eligibility requirements are beyond the student's control. A few examples include injury, illness, accidents, or a change in the financial condition of the student. This vague definition of what constitutes a "hardship" leads to an arbitrary and capricious application and interpretation of the rules.

For example, a hardship requires that the circumstances be "beyond the student's control," thus, the requirement could be considered part of the "spirit" of the Hardship Rule. See Rule 17-8.4(a). But, the Committee's decision does not require that the circumstances be "beyond the student's control" when determining whether a hardship exists. Rather, the Committee applies "beyond the control" as a requirement of the Transfer Rule,<sup>3</sup> essentially holding that the spirit of the Hardship Rule and the spirit of the Transfer Rule are synonymous. While the "control" requirement exists in the Hardship Rule, the requirement does not generally exist in the Transfer Rule; to read it into the spirit of the Transfer Rule creates contradictory and illogical results.

According to the Committee, the spirit of the Transfer Rule is to discourage recruitment and "school jumping" by determining whether circumstances leading to the transfer were beyond the student's control. To be sure, the spirit of the Transfer Rule is, at least in part, to discourage recruitment and "school jumping" for athletic purposes. However, one has a more difficult time finding in the Transfer Rule the

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<sup>3</sup> The spirit of any rule is defined within that rule, or by reading the rule as a whole to determine the intent of the rule. The Committee, we assume, is not suggesting that a required hardship element is the *de facto* spirit of all other rules in the By-laws. Therefore, we analyze whether "control" is an element within the spirit of the Transfer Rule according to the language of the Transfer Rule.

requirement that circumstances must be “beyond the student’s control” in order to be granted full eligibility through the Transfer Rule.

On the contrary, the Transfer Rule does not require that circumstances always be beyond the student’s control. Limited eligibility granted under Rule 19-6.2 does not require uncontrollable circumstances. Neither do other grants of eligibility: Rule 19-5.1 grants a student full eligibility if a student chooses to move into a different school district (the student receives full eligibility even though the circumstances were within the student’s control); and Rule 19-3, which allows the receiving school and the IHSAA to award full eligibility with no requirement that circumstances be beyond the student’s control. Throughout the entire Rule 19, the “control” element is only applied when a student moves between divorced parents or moves to guardian or foster homes. The Committee, however, would define the spirit of the Transfer Rule to include a control element for all Rule 19 transfers, including Petitioner’s current case, even though these transfers are motivated by neither divorce nor guardianship.

Moreover, the Transfer Rule had previously included a broad “control of the student” requirement, but the IHSAA has recently removed such requirements from the Transfer Rule. As late as 1992, Rule 19-6 had required a student to establish the occurrence of “event(s) outside the control of the student . . .” if the student transferred with a corresponding change of address. See Crane v Indiana High School Athletic Ass’n, 975 F.2d 1315, 1321 (7<sup>th</sup> Cir. 1992). The IHSAA has since removed this requirement from the Transfer Rule. To read into the “spirit of the Transfer Rule” a requirement that an otherwise transfer-eligible student establish that circumstances were beyond his or her control is to read back into the By-laws that which had been previously written out.

Thus, because no definition of hardship exists, the Committee pirouettes around the Petitioner’s circumstances, and applies them to the spirit of the Transfer Rule in lieu of determining whether the circumstances themselves led to a hardship under Rule 17-8.1(c). As will be discussed, the distinction is of critical importance in properly applying state case law. Petitioners should be required to prove a hardship exists

based on clearly defined criteria rather than attempting to nest one hardship requirement into the spirit of another rule to circumvent a vague hardship definition.

- (c) The Committee interpretation of Rule 17-8.1(c) is not a fair and logical interpretation. Rule 17-8.1(c) requires the party to establish that “there exists in the particular case circumstances showing an undue hardship that would result from enforcement of the Rule.” In applying this requirement to the Transfer Rule, Indiana courts require a Petitioner to demonstrate that he or she:

“would face a hardship if [Petitioner] had to [play] at the junior varsity level because through no fault of his own and without any athletic motivation, [Petitioner] was forced to transfer schools because of [the circumstances leading to the transfer].

Indiana High School Athletic Ass’n v. Durham, 748 N.E.2d 404,414 (Ind. Ct. App. 2001).

In Durham, the court found that the Rule 17 hardship exemption applied and the IHSAA determination to be arbitrary and capricious, after a student moved as a result of his mother’s financial burden from a divorce. The court did not require that the student demonstrate that harm occurred from receiving limited eligibility as opposed to full eligibility. Rather, the court relied on the circumstances that caused the Transfer Report to be filed to establish a hardship.

The Committee disregards the court’s application and ignores the circumstances leading to the transfer when determining whether this matter is a hardship case under Rule 17-8.1(c). Instead the Committee holds that the “decision which simply restricts athletic eligibility from full to limited, for a short period of time, does not result in an undue hardship.” Essentially, the Committee holds that because their order for limited eligibility does not create too much of a harm, the hardship determination resulting in limited eligibility is supported by substantial evidence.<sup>4</sup>

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<sup>4</sup> The IHSAA, however, is not required under Rule 19-6.2 to apply limited eligibility in this case, as Rule 19-6.2 is permissive, not required. See Conclusion of Law 6, herein. The IHSAA and the receiving school could agree to full eligibility through Rule 19-3.

The Committee's interpretation of Rule 17-8.1(c) adds a burden not required by the courts. In Durham, the court did not require the party to establish harm as a result of the IHSAA decision **after** the transfer. Rather, the court exclusively considered the circumstances leading to filing of the Transfer Report. The court analysis parallels Rule 17-8.4: illness, injury, accidents, and financial conditions may lead to a hardship regardless as to whether an IHSAA limited eligibility holding creates any harm at all. By requiring Petitioner to demonstrate in Rule 17-8.1(c) that a hardship existed after the transfer, paired with requiring Petitioner to demonstrate in Rule 17-8.1(b) that circumstances before the transfer were beyond the student's control, the Committee placed a burden on the Petitioner to prove two hardships: one before and one after the determination.

In fact, if the Committee's interpretations of Rule 17-8.1(b) and (c) were logical, which they are not, a student could almost never prove a hardship. First, if the IHSAA granted limited eligibility, then the circumstances creating a "post transfer" hardship would be beyond the student's control, except when the IHSAA wished to claim the spirit of the Transfer Rule was previously violated. Second, if a student could prove that playing junior varsity sports instead of varsity sports constituted a hardship, then that very demonstration proves that the request is made for athletic purposes, and the hardship is precluded. The student thus experiences Escher's Relativity: the direction they must step to demonstrate a condition disproves another condition.

8. The IHSAA Review Committee interpretation and application of Rule 17-8.4(d) is unsupported by substantial evidence. The Committee concludes that some evidence exists that Petitioner transferred due to athletic motivation. Rule 17-8.4(d) states that if a move is motivated "in part, by athletic reasons, albeit not for primarily athletic reasons, it is unlikely that the student will qualify for a hardship," but the rule does not require disqualification. In their Conclusion 7, the Committee determines that there is some evidence of athletic motivation, but does not describe which evidence, if any, supports the determination. It is important to note, as well, that the IHSAA's practice of including some evidence of athletic motivation when the IHSAA Transfer Report did not initially

reference athletic motivation, or when the Committee determines that the transfer was not primarily motivated by athletics, has come under scrutiny:

*“This practice was denounced in Martin, 731 N.E.2d at 11, which noted that the IHSAA uses the possibility of an athletically-motivated transfer, although admittedly not primarily athletically motivated, as a ‘poison pill’ to keep students from receiving a hardship exception even if there is no substantial evidence to that effect.”*

*Durham*, 748 N.E.2d at 414 (citing *IHSAA v. Martin*, 731 N.E.2d 1, 11 (Ind. Ct. App. 2000)).

9. Petitioner met the burden of establishing the conditions of a General Hardship, Rule 17-8.1, even though confusing burdens imposed and the IHSAA misinterpretation of the rules prevented Petitioner from understanding the required evidence.<sup>5</sup> Petitioner demonstrated that some purposes of the Transfer Rule were not served, specifically: (i) Philosophy 5, which states that the Transfer Rules “keep the focus of educators and students on the fact that students attend school to receive an education first and participate in athletics second;” (ii) Philosophy 4, which states that the Rules support an “education philosophy;” and (iii) Philosophy 7, which states that “the family is a strong and viable unite in our society. . . .” Petitioner demonstrated that the transfer was a result of an educational decision: Petitioner’s grades consistently declined over a two (2) year period and Petitioner’s parents believed the school population was a direct cause. No athletic motivation existed and no recruitment occurred even though Petitioner was receiving advice from a life coach that was also a basketball instructor. The life coach did not attempt to recruit Petitioner to the coach’s school, Wayne High School, nor did the coach attempt to recruit Petitioner to Leo for athletic purposes. Thus the spirit of the Transfer Rule, to deter recruitment and “school jumping” for athletic reasons, was not violated. Lastly, Petitioner demonstrated that an undue hardship existed. Illness may cause a hardship consideration, Rule 17-8.4(b), and Petitioner demonstrated that Petitioner was in a depression-like state evidenced by weight gain from overeating, hours

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<sup>5</sup> This particular case presented a burden on Petitioners not required in the rules. The vague definition of hardship and the IHSAA misapplication of the rule in this particular case call into question the ability of Petitioner to discern exactly what evidence the IHSAA and Committee required for the distinct conditions of Rule 17-8.1. This additional burden is taken into consideration when weighing the evidence in the record. This Conclusion of Law, as are all Conclusions of Law, is specific to Petitioner and applies only to this case before the Panel. I.C. 20-26-14-6(d)(1).

alone in her room, and statements made to Petitioner parent's and life coach. Considering the totality of the circumstances, Petitioner met the conditions of the General Hardship 17-1.

ORDER

The IHSAA Review Committee order is hereby nullified by a vote of 6-0 and Petitioner hereby receives full athletic eligibility from the date of this order.

DATE: November 19, 2010

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Matthew Tusing, Chair  
Case Review Panel

APPEAL RIGHT

Any party aggrieved by the decision of the Case Review Panel has forty-five (45) days from receipt of this written decision to seek judicial review in a civil court with jurisdiction, as provided by I.C. 20-26-14-7.