

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter B.L.)
Petitioner,)
)
and)
) **CAUSE NO. 161019-155**
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 15, 2016, B.L.’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 2016–2017 school year relating to the Petitioner’s transfer. On August 4, 2016 Silver Creek High School (“Silver Creek”), the sending school, completed its portion of the Transfer Report. The receiving school, Charlestown High School (“Charlestown”) completed its portion of the Transfer Report on August 4, 2016.

On August 4, 2016, the IHSAA 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 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 6, 2016. Following the evidence presented at the October 6, 2016 hearing, the Review Committee issued its ruling on October 18, 2016, upholding the decision of the Commissioner declaring that according to Rule 19-6.2, Petitioner have limited eligibility until May 30, 2017, and then on May 31, 2017, 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 October 19, 2016, 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 1, 2016. On November 15, 2016, 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 mother and father in Clark County, Indiana. Petitioner attended Silver Creek for his freshman year. While at Silver Creek, during his freshman year (2015-16) he played varsity baseball. He last participated athletically at Silver Creek on May 30, 2016.
2. The Petitioner lived in the Charlestown district during his freshman year. The Petitioner and his family chose to go to the Silver Creek schools. Silver Creek is not his boundary school but it is a public school that has open enrollment. On July 29, 2016, the Petitioner began attending Charlestown, a public school, in Clark County, Indiana. Charlestown serves his parents' residence and is closer to the family home.
3. Petitioner transferred without a corresponding change of residence by his parents to a new district or territory.
4. On August 1, 2016, Petitioner's parents completed the Transfer Report and the Petitioner indicated that the transfer to Charlestown was because "we have chosen to go to the school closer to our home and in our district." The Petitioner transferred to Charlestown along with his younger brother and another sibling will transfer at the end of the year. At the Review Committee hearing the Petitioner's parents provided documentation regarding the overcrowding of Silver Creek and the serious problems related to the conditions of the school building. The Petitioner, and his family, did not feel the conditions of the school fostered a good learning environment.
5. Silver Creek recommended Petitioner have limited eligibility under Rule 19-6.2, and neither recommended full eligibility under Rule 17-8.5 nor signed the *Verification*.

¹ The following members participated in the meeting: Dr. George Frampton (Chairperson), Mr. Bret Daghe, Mr. Chris Lancaster, Mr. Rick Donovan, Mr. Glenn Johnson and Ms. Mary Quinn. Ms. Kelly Bauder, staff attorney, was also present as legal counsel to the Panel.

Charleston 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 October 18, 2016, and Petitioner sought timely review on October 19, 2016.
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 and receiving schools 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 would have a safer and overall better educational experience at Charlestown. The Panel has consistently held that in order to establish a hardship, the Petitioner and his family had to have made efforts to have the school address their concerns. There was no evidence in the record that the Petitioner's parents brought their concerns to the school and requested accommodations for their son. It is apparent Silver Creek has some serious overcrowding and building maintenance issues that need to be addressed, but that appears to be something that has happened over a period of time and the Petitioner's family could have considered that before sending the Petitioner to Silver Creek his freshman year. The Panel finds transferring to Charlestown was the best choice for the Petitioner, but 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 5-1 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 May 30, 2017, and then on May, 31, 2017 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: _____

11/8/14



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.