

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter J.W.)	
Petitioner,)	
)	
and)	
)	CAUSE NO. 161122-158
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 August 24, 2016, J.W.'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 September 2, 2016 Blue River Valley High School ("Blue River"), the sending school, completed its portion of the Transfer Report. The receiving school, Union High School ("Union") completed its portion of the Transfer Report on September 2, 2016.

On September 2, 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 November 3, 2016. Following the evidence presented at the November 3, 2016 hearing, the Review Committee issued its ruling on November 17, 2016, upholding the decision of the Commissioner declaring that according to Rule 19-6.2, Petitioner have limited eligibility until February 27, 2017, and then on February 28, 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 November 22, 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 December 5, 2016. On December 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 Henry County, Indiana. Petitioner attended Blue River for his freshman – sophomore years. While at Blue River, during his sophomore year (2015-16) he played junior varsity basketball. He last participated athletically at Blue River on February 27, 2016.
2. The Petitioner lived in the Blue River district during his freshman-sophomore years. Blue River was the public school which served his parent's residence. Union is not his boundary school but it is a public school that has open enrollment. On June 1, 2016, the Petitioner began attending Union, a public school, in Randolph County, Indiana.
3. Petitioner transferred without a corresponding change of residence by his parents to a new district or territory.
4. On August 24, 2016, Petitioner's parents completed the Transfer Report and the Petitioner indicated that the transfer to Union was because the Petitioner "wants to graduate early and his previous school did not allow it."² Additionally, once Blue River became aware of the possible transfer, the Petitioner was subjected to some hostility from the Blue River staff/coaches. A counselor at Blue River was heard saying she was glad to get rid of the Petitioner because he was weird. The counselor would have been the person who was in a position to assist him with any application to the school board for an early graduation request. Additionally, other teachers approached the Petitioner to question his possible transfer to another school.

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

² The Panel notes it is unfortunate that the Petitioner was not encouraged by the sending school to graduate early as there is a financial incentive for him to do so, if he qualifies. The Mitch Daniels Early Graduation Scholarship provides for a \$4,000 grant to students who graduate early. The scholarship information can be found at: <http://www.in.gov/che/4508.htm>.

5. Blue River did not have an early graduation program for students. The only procedure to graduate early required going to the school board and asking permission. The only circumstances where this was allowed at Blue River were if the student was pregnant or the student needed to leave school early to support his/her family.
6. Blue River recommended Petitioner have limited eligibility under Rule 19-6.2, and neither recommended full eligibility under Rule 17-8.5 nor signed the *Verification*. Union recommended Petitioner have limited eligibility under rule 19-6.2 and neither recommended full eligibility under Rule 17-8.5 nor signed the *Verification*.³

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 17, 2016, and Petitioner sought timely review on November 22, 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.

³Union school officials originally requested full eligibility and Blue River officials refused to meet with them to discuss this possibility. Once an athletic director was hired by Union, he was told by the IHSAA he could only recommend Rule 19-6.2. Union maintains, they would have recommended full eligibility if they had not been advised by the IHSAA that was not permissible.

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. The Panel finds that the Petitioner’s did meet the requirement for a waiver under 17-8.1. Blue River did not offer an option for early graduation. The Petitioner transferred to Union in order to be allowed the option of graduating early. The Petitioner appears to have the academic hours needed to graduate early. There was evidence the Petitioner was also subjected to some ridicule at Blue River for making this personal decision to expedite his high school career in order to advance to college earlier. The Panel finds transferring to Union was in the Petitioners best interest to meet his academic goals. The fact that the Petitioner was not afforded the option of graduating early at Blue River created a hardship condition. Therefore, all of the requirements of Rule 17-8.1 were met.

ORDER

The Panel finds by a vote of 6-0 that the decision of the IHSAA Review Committee, upholding the decision of the Commissioner is NULLIFIED. The Petitioner has full athletic eligibility as of December 15, 2016 at the receiving school, provided he is academically eligible and meets all other eligibility rules.

DATE: _____

12/14/14



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.