

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter K.S.)
Petitioner,)
)
and)
) **CAUSE NO. 170221-162**
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 October 7, 2016, K.S.’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 October, 2016, Clinton Central High School (“Clinton Central”), the sending school, completed its portion of the Transfer Report. The receiving school, University High School (“University”) completed its portion of the Transfer Report on December 12, 2016.

On December 13, 2016, the IHSAA Commissioner determined that Petitioner’s transfer was a Rule 196.2 transfer and ruled Petitioner had limited eligibility at the receiving school until May 26, 2017. 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 January 11, 2017. Following the evidence presented at the January 11, 2017 hearing, the Review Committee issued its ruling on January 24, 2017 upholding the decision of the Commissioner declaring that according to Rule 19-6.2, Petitioner had limited eligibility.

On February 21, 2017, 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 March 6, 2017. On March 14, 2017, the Panel held a meeting¹, 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, a sophomore, lives with his mother and father in Kirklint, Indiana. Petitioner attended Clinton Central his freshman year. While at Clinton Central he played junior varsity and varsity baseball. He last participated athletically at Clinton Central on May 26, 2017.
2. The Petitioner lives in Kirklint, Indiana and attended Clinton Central, the public school which served his parents' residence. Petitioner transferred without a corresponding change of residence. The Petitioner transferred to University, which is a private school in Carmel, Indiana.
3. On October 7, 2016, Petitioner's parents completed the Transfer Report and the Petitioner indicated the transfer occurred because he is "seeking a more aggressive academic curriculum as he was not being academically challenged at Clinton Central."
4. Clinton Central recommended Petitioner have limited eligibility under Rule 19-6.2. University recommended Petitioner have full eligibility under Rule 17-8.5 and the principal signed the 17-8.5 *Verification*.
5. There is a lack of any evidence the transfer was for athletic reasons. Additionally, University did not have a junior varsity baseball team so limited eligibility, as it relates to baseball, would mean the Petitioner would have no eligibility to play baseball. The evidence showed that the Petitioner was seeking academic opportunities that were more aligned with his personal goals and interests.
6. The Petitioner is a very talented student maintaining a 3.88 - 4.0 grade point average. While at Clinton Central he was evaluated for high ability and placed in high ability classes.

¹The following members participated in the meeting: Kelly Wittman (Chairperson), Mr. Keith Pempek, Mr. Rick Donovan, Mr. Mickey Golembeski, Mr. Bret Daghe and Mr. Chuck Weisenbach, and Ms. Mary Quinn. Ms. Kelly Bauder, staff attorney, was also present as legal counsel to the Panel.

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 January 24, 2017, and Petitioner sought timely review on February 21, 2017.
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. The Panel finds there is a hardship condition that exists that would allow for full eligibility. The Petitioner and his family researched possible options that might provide him with the opportunity to challenge himself as a student. The Petitioner, who had the courage to be the main spokesperson for himself at the Review Committee Hearing, had the insight at his young age to explore opportunities that would help him achieve his personal academic goals. After his research, he determined University would be a better fit for him as an individual. As a sophomore, the Petitioner is currently in classes at University that challenge him, including an AP European history class. The Petitioner is on track to receive an Academic Honors diploma. The Panel finds the transfer to University was in in the Petitioner's best interests, academically. The hardship condition the lack of academic opportunities at Clinton Central that would specifically meet the needs of this student. While at Clinton Central, the Petitioner was given lots of busy work and extra homework to challenge him. The Petitioner needed and desired more opportunities than busy work to challenge him to succeed in school. Those academic opportunities existed at University, and it was in his best interest to transfer to that particular school. This ruling is specific to this student and his personal needs as a student, the primary purpose of the Rule will still be accomplished and the ruling will not harm or diminish the purpose or spirit of the Rule.

ORDER

The Panel finds by a vote of 4-3 that the decision of the IHSAA Review Committee, upholding the decision of the Commissioner is NULLIFIED. The Petitioner has full eligibility as of March 14, 2017 at the receiving school, provided he meets all other eligibility requirements.

DATE: 03/16/2017



Kelly Wittman, 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.