

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter T.B.)
Petitioner,)
)
and)
) **CAUSE NO. 170915-168**
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 June 26, 2017, T.B.’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 2017–2018 school year relating to the Petitioner’s transfer. On June 26, 2017, Center Grove High School (“Center Grove”), the sending school, completed its portion of the Transfer Report. The receiving school, Park Tudor High School (“Park Tudor”) completed its portion of the Transfer Report on June 29, 2017.

On July 1, 2017, the IHSAA Commissioner determined that Petitioner’s transfer was a Rule 19-6.2 transfer and ruled Petitioner had limited eligibility at the receiving school until February 23, 2018. 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 August 22, 2017. Following the evidence presented at the August 22, 2017 hearing, the Review Committee issued its ruling on September 18, 2017¹ upholding the decision of the Commissioner declaring that according to Rule 19-6.2, Petitioner had limited eligibility.

¹ The IHSAA Review Committee issued an initial decision on August 31, 2017, finding that the petitioner would be fully eligible on May 24, 2018. The IHSAA Review Committee issued an amended decision on September 12, 2017, finding the Petitioner would be fully eligible on February 24, 2018. The IHSAA Review Committee issued a second amended decision on September 18, 2017, establishing that petitioner would be fully eligible on February 23, 2018.

On September 15, 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 October 4, 2017. On October 18, 2017, the Panel held a meeting², 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 junior, lives with his mother and father in Greenwood, Indiana. Petitioner attended Center Grove his freshman and sophomore years. While at Center Grove he played junior varsity basketball. He last participated athletically at Center Grove on February 23, 2017.
2. The Petitioner lives in Greenwood, Indiana and attended Center Grove, a public school which served his parents' residence. Petitioner transferred without a corresponding change of residence.
3. The Petitioner transferred to Park Tudor, a private school in Indianapolis, Indiana. Park Tudor is a private school that accepts students from across the State of Indiana.
4. On June 26, 2017, Petitioner's parents completed the Transfer Report and the Petitioner indicated the transfer occurred because they were seeking "more opportunities for T.B. academically, along with a smaller school and classroom environment, atmosphere, and community. Parents feel a smaller environment will help with his focus and preparation for college."
5. Center Grove recommended Petitioner have limited eligibility under Rule 19-6.2.³ Park Tudor recommended Petitioner have full eligibility under Rule 17-8.5 and the principal did sign the 17-8.5 *Verification*.

²The following members participated in the meeting: Mark Keen (Chairperson), Mr. Michael Golembeski, Mr. Keith Pempek, Mr. Chris Lancaster, Mr. Karl Hand, Mr. Jess Williams and Mr. Chuck Weisenbach, and Ms. Mary Quinn. Ms. Kelly Bauder, staff attorney, was also present as legal counsel to the Panel.

³ The Panel is concerned with Center Grove's ambiguity regarding the athletic motivation alleged against the Petitioner. There was no evidence of athletic motivation in the record yet Center Grove continued to infer there had to be in order for the Petitioner to transfer. In addition, the discussion by Center Grove officials regarding transferring to a religious private school is troubling. There should not be even an appearance that there are different rules or considerations for students transferring to religious schools over non-religious or non-denominational private schools.

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 August 31, 2017 and Petitioner sought timely review on September 15, 2017.
4. The Panel may uphold, modify, or nullify the IHSAA Review Committee’s decision. (Ind. Code § 20-26-14-6(c)(3)).
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 decision to transfer schools was a choice and there is not a hardship condition that exists that would allow for full eligibility. The Petitioner's parents applied for the Petitioner to be admitted to Park Tudor prior but held off admission until Petitioner would be able to transport himself to Park Tudor. The Petitioner was unable to do so until the fall of 2017. Petitioner's parents believed their student would be better served at Park Tudor High School because he would gain focus and preparation for college. According to the record, focus and college preparation was not an issue at Center Grove since the petitioner was a part of Center Grove's Early College learning community which offered smaller class sizes and had access to tutoring through the students, teachers, and relationship period. Consequently, there appears to be no "extremely negative non-athletic condition" peculiar to the student nor was it unforeseeable, unavoidable, or uncorrectable to grant full eligibility. The Panel finds this was a choice by his family and it did not rise to the level of a hardship. Therefore, all of the requirements of Rule 17-8.1 were not met.⁴

ORDER

The Panel finds by a vote of 8-0 that the decision of the IHSAA Review Committee, upholding the decision of the Commissioner is UPHELD. The Petitioner has limited eligibility until February 22, 2018 and then full eligibility on February 23, 2018 at the receiving school, provided he meets all other eligibility requirements.

DATE: 10/25/2017



Mark Keen, Chairperson
Case Review Panel

APPEAL RIGHT

Any party aggrieved by the decision of the Case Review Panel has forty-five days from receipt of their written decision to seek judicial review in a civil court with jurisdiction, as provided by Ind. Code § 20-26-14-7.

⁴The Panel continues to be concerned with the IHSAA definition of territory. The Panel has found in a previous order that the definition is arbitrary and capricious. The definition says a public charter school in Indiana has the territory of the entire state of Indiana, however a private school is bound by city limits or connection to a religious organization. There is no rational basis to conclude a private school should be treated any differently than a public charter school in Indiana. The Panel feels this definition needs to be changed to reflect the climate of open enrollment in Indiana schools.