

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter R.S.)
Petitioner,)
)
and)
) **CAUSE NO. 171016-169**
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 31, 2017, R.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 2017–2018 school year relating to the Petitioner's transfer. On September 1, 2017, Shelbyville High School ("Shelbyville"), the sending school, completed its portion of the Transfer Report. The receiving school, Triton Central High School ("Triton Central") completed its portion of the Transfer Report on September 5, 2017.

On September 5, 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 January 31, 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 October 5, 2017. Following the evidence presented at the October 5, 2017 hearing, the Review Committee issued its ruling on October 13, 2017 upholding the decision of the Commissioner declaring that according to Rule 19-6.2, Petitioner had limited eligibility.

On October 16, 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 24, 2017. On October 30, 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 her mother and father in Shelbyville, Indiana. Petitioner attended Shelbyville her freshman year. While at Shelbyville Petitioner played varsity basketball. She last participated athletically at Shelbyville on January 31, 2017.
2. The Petitioner lives in Shelbyville, Indiana and attended Shelbyville High School, a public school which served her parents' residence. Petitioner transferred without a corresponding change of residence.
3. The Petitioner transferred to Triton Central, a public school in Fairland, Indiana that does not serve her parents' residence, but has open enrollment.
4. The Petitioner and her family consulted with Shelbyville when she was in fifth grade about social and emotional issues. However, the Petitioner and her family did not consult or seek any assistance from Shelbyville from fifth grade to her freshman year about her on-going social and emotional issues. Instead, the family sought outside help and treatment.
5. On August 31, 2017, Petitioner's parents completed the Transfer Report and the Petitioner indicated the transfer occurred because it was in the Petitioner's best interest "to help support her emotional, social, and academic needs."
6. Shelbyville recommended Petitioner have limited eligibility under Rule 19-6.2. Triton Central recommended Petitioner have full eligibility under Rule 17-8.5 and the principal did sign the 17-8.5 *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.

¹The following members participated in the meeting: Cathy Danyluk (Chairperson), Mr. Michael Golembeski, Mr. Keith Pempek, Mr. Chris Lancaster, Mr. Karl Hand, Mr. Jess Williams, Mr. Chuck Weisenbach, and Ms. Mary Quinn. Ms. Kelly Bauder, staff attorney, was also present as legal counsel to the Panel.

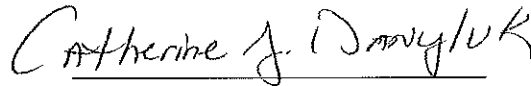
2. Although the IHSAA is a voluntary not-for-profit corporation and is not a public entity, its decisions with respect to student eligibility to participate in interscholastic athletic competition are considered a “state action” making the IHSAA analogous to a quasi-governmental entity. IHSAA v. Carlberg, 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 13, 2017 and Petitioner sought timely review on October 16, 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 school 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 and her parents researched schools in the Shelbyville area and felt that Triton Central would be better equipped to address their student’s need. The Panel has consistently held that a student and/or a parent has to provide the sending the school the opportunity to

assist a student. If the sending school refuses to or cannot assist a student in addressing their specific needs, at that point a hardship condition could exist. The Petitioner and her parents admitted they did not seek any assistance from Shelbyville to help her with her social and emotional issues. Thus, there appears to be no “extremely negative non-athletic condition” peculiar to the student at Shelbyville nor was it unforeseeable, unavoidable, or uncorrectable to grant full eligibility. The Panel finds changing schools and not involving Shelbyville was a choice by the Petitioner and her 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.² It does appear from the record this move was likely in the best interest of the Petitioner and the Panel hopes this move provides her with the opportunity to thrive both academically and socially.

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 January 31, 2018 and then full eligibility on February 1, 2018 at the receiving school, provided she meets all other eligibility requirements.

DATE: 11/1/2017



Cathy Danyluk, 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.

²The Panel continues to be concerned with the manner in which students and their families are treated during the Review Committee process. As the Panel has stated previously, it is important to model professional behavior even when disagreeing about how to apply IHSAA Rules.