

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter A.T.)
Petitioner,)
)
and)
) **CAUSE NO. 171201-173**
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 21, 2017, A.T.'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 August 24, 2017, Clinton Central High School ("Clinton Central"), the sending school, completed its portion of the Transfer Report. The receiving school, Rossville High School ("Rossville") completed its portion of the Transfer Report on August 25, 2017.

On August 27, 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 May 28, 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 November 3 2017. Following the evidence presented at the November 3, 2017 hearing, the Review Committee issued its ruling on November 14, 2017 upholding the decision of the Assistant Commissioner and declared that according to Rule 19-6.2, Petitioner had limited eligibility.

On December 1, 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 December 11, 2017. On December 13, 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 junior, lives with his mother and father in Forest, Indiana. Petitioner attended Clinton Central his freshman-sophomore years as well as a couple of days of his junior year. While at Clinton Central he played varsity baseball and junior varsity basketball. He last participated athletically at Clinton Central on May 29, 2017.
2. The Petitioner transferred without a corresponding change of residence. There was no evidence the transfer was for athletic reasons.
3. On August 21, 2017, Petitioner's parents completed the Transfer Report and the Petitioner indicated the transfer occurred because he "wishes to pursue a career in a technology field. Rossville offers courses a student ran technology program that allows for the student to gain certification upon complete of high school program." Clinton Central does not offer these technology classes.
4. Clinton Central recommended Petitioner have limited eligibility under Rule 19-6.2. Rossville recommended Petitioner have full eligibility under Rule 17-8.5. Rossville signed the 17-8.5 *Verification* waiver.

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

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

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 14, 2017 and Petitioner sought timely review on December 1, 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 there was a hardship condition that existed, namely Clinton Central did not offer the technology classes that the Petitioner sought in order to obtain a certification prior to graduation. The Panel finds the waiver will not harm or diminish the purpose or spirit of the Rule and the Petitioner will suffer harm if the waiver is not granted. The Petitioner wanted to obtain a very specific set of courses that would enable him to academically achieve a certification that he could not obtain if he continued attending Clinton Central. Students are encouraged to take advantage of opportunities that set them apart from others in order to be admitted to college or attain post-graduation employment opportunities. The Panel notes as the proposed graduation pathways are finalized by the Indiana State Board of Education and the Indiana General Assembly, these types of transfers will become more prevalent and will necessitate an increase in transfers for academic reasons.

ORDER

The Panel finds by a vote of 5-2 that the decision of the IHSAA Review Committee, upholding the decision of the Commissioner is NULLIFIED. The Petitioner has full eligibility as of December 13, 2017 at the receiving school, provided he meets all other eligibility requirements.

DATE: 12/15/2017



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 their written decision to seek judicial review in a civil court with jurisdiction, as provided by Ind. Code § 20-26-14-7.