

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter G.M.)	
Petitioner,)	
)	
and)	
)	CAUSE NO. 160811-151
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 April 18, 2016, G.M. (“Petitioner”) as an eighteen year old student and with the assistance of the principal from North Daviess Jr./Sr. High School (“North Daviess”) requested a waiver on Rule 17-9, waiving Rule 12-2. The waiver requested that the IHSAA make an athletic eligibility determination for the 2016–2017 school year relating to the Petitioner. On May 17, 2016, the IHSAA Commissioner determined that Petitioner’s waiver request was denied based on Rule 12-2 and ruled Petitioner has no eligibility to participate in athletics during the 2016-17 school year.

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 4, 2016. Following the evidence presented at the August 4, 2016 hearing, the Review Committee issued its ruling on August 9, 2016, upholding the decision of the Commissioner declaring that according to Rule 12-2, Petitioner has no eligibility to participate in athletics at North Daviess.

On August 11, 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 September 8, 2016.¹ On September 13, 2016, the Panel held a meeting,² 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 the family of one of his friends in Oden, Indiana.
2. The Petitioner is currently enrolled at North Daviess for the 2016-17 school year. The Petitioner attended Clark Middle School and Vincennes High School (“Vincennes”) in Vincennes, Indiana, and after completing his 8th grade (2011-12) year, enrolled at and began attending Vincennes his freshman (2012-13) year and the first half of his sophomore (2013-14) year. The Petitioner struggled at Vincennes academically and missed a significant number of days. After Christmas break of his sophomore year, in 2013, the Petitioner’s grandfather withdrew him from school and the Petitioner, a minor, began working full-time to support his grandfather and younger brothers.
3. The Petitioner’ parents struggled with drug addiction and eventually the Petitioner and his younger brothers began living with their grandfather, who could barely even walk. The Petitioner helped take care of his grandfather and younger brothers. When his grandfather withdrew him from high school, the Petitioner began working at the Vincennes City Street Department. The Petitioner considered pursuing a GED, but he never completed this process. In the spring of 2015, the Petitioner’s friend, whom he had played basketball with, encouraged him to enroll in North Daviess with him and finish high school. The Petitioner moved in with this friend and his family and began attending North Daviess.
4. While at North Daviess, the Petitioner excelled academically and socially and played on the varsity basketball team during the 2015-16 season. The Petitioner has been welcomed by the community at North Daviess and has the community’s support to finish high school and participate in athletics.

¹The IHSAA objected to the acceptance of this appeal because the Petitioner appealed by himself, with the assistance of the school, and not by his parents. Rule 17-10.1 does state an appeal comes to the Case Review Panel from a student’s parents. This case is unusual because the Petitioner is a legal adult and he is essentially without family. The Panel determined he should be able to appeal as he is a legal adult and does not have parents who will assist him. Additionally, the school has made every effort to step in as adults and help him during this process.

² The following members participated in the meeting: Dr. George Frampton (Chairperson), Mr. Bret Daghe, Mr. Glen Johnson, Mr. Keith Pempek, Mr. Rick Donovan and Ms. Mary Quinn. Mr. Chris Lancaster recused himself from participating in this case. Ms. Kelly Bauder, staff attorney, was also present as legal counsel to the Panel.

5. Under the IHSAA Eight Semester Rule, Rule 12-2, a student, after enrolling in high school for fifteen (15) or more days of school, has total athletic eligibility thereafter in high school of eight (8) consecutive semesters. The Petitioner enrolled in 9th grade in the fall of 2012, and according to a strict interpretation of the rule, his eligibility would end in the spring of 2016.
6. “The purposes of the Rule (12-2), according to the IHSAA, include discouraging redshirting, promoting competitive equality, protecting students’ safety, creating opportunities for younger students and promoting the idea that academics are more important than athletics.” “Redshirting is the practice of slowing a student’s pace and postponing his initial participation in competitive athletics in order to permit him to gain physical and athletic maturity before beginning his period of eligibility for competitive athletics.” Washington v. IHSAA, 181 F.3rd 840 (U.S. App) 1999.
7. In addition to the IHSAA Rules and Indiana law, the Panel is also bound by both the Indiana and United States’ Constitutions and Federal law. Similarly, the Panel should consider federal education laws and how they apply to state high school athletic associations.

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 9, 2016, and Petitioner sought timely review on August 11, 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.
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. However, Rule 17-8.1 specifically excludes some rules, specifically Rule 4, 12 and 18 from being waived entirely.
7. Rule 12 allows for an exception for an illness of a student. Specifically the rule states, “After enrollment in the 9th grade, if a student is injured or contracts an illness which necessitates the student’s complete withdrawal from the school or prohibits enrollment in the school for that semester, and the student does not receive any academic credit for that semester, then the semester shall not count as one (1) of the consecutive semester of enrollment.”
8. “Article 1, Section 23 of the Indiana Constitution imposes two requirements upon statutes that grant unequal privileges or immunities to differing classes of persons. First, the disparate treatment must be reasonably related to inherent characteristics which distinguish the unequally treated classes. Second, the preferential treatment must be uniformly applicable and equally available to all persons similarly situated. Finally, in determining whether a statute complies with or violates Section 23, courts must exercise substantial deference to legislative direction.” Collins v. Day, 644 N.E.2d 72, 80 (Ind. 1994).
9. After reviewing the entire record from the IHSAA, the Panel concludes the decision of the IHSAA and Rule 12, as applied to the Petitioner, are arbitrary and capricious and a violation of Petitioner’s rights under and equal protection clauses of the Fourteenth Amendment of the United States Constitution and Article 1 Section 23 of the Indiana Constitution. Rule 17-8.1 on its face violates equal protection as certain rules are allowed to be waived or granted an exception and a few are specifically excluded from being waived or granted an exception. Additionally, how IHSAA Rule 12-2 was applied to the Petitioner in its decision lead to disparate treatment. An injured student is afforded an exception to Rule 12, but a student whose family withdrew him from school so he could support them is not. Additionally, if a student moves and/or transfer schools, a waiver can be sought if a hardship condition exists, but a student who was displaced from his family, by no fault of his own, is not afforded the same opportunity to seek an exception or waiver. There is no rational basis for treating a homeless student different from an injured student or a student whose parents move.
10. Additionally, the Petitioner is now essentially homeless and is living with a friend’s family so that he may attend high school. The Petitioner went from his parent’s house, to his grandfather’s house and now a friend’s house in a matter of years. Under the McKinney-Vento Education of

Homeless Children and Youth Act, it establishes immediate enrollment and educational stability for homeless children and youth. 42 U.S.C. §11301. Being “enrolled” means attending classes and participating fully in school services. Under this federal law, school districts must review and revise policies that provide barriers to homeless students. North Daviess would be bound by the McKinney-Vento Act as a local education agency and therefore must assist in removing barriers for the educational success of the Petitioner. North Daviess has provided evidence that the Petitioner is succeeding in his academic studies and they attribute that, in part, to the self-esteem that he is developing as a result of his participation in the basketball program. The IHSAA as a quasi-governmental entity, is also bound by the McKinney-Vento Act. North Daviess has made every effort to support this homeless student that has presented himself to this school for enrollment.

11. 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)). In this situation, if Rule 17-8.1 did not exclude Rule 12-2, he would have been eligible for a waiver due to his hardship condition. The Petitioner was removed from the care of his parents and placed with his grandfather. His grandfather was not even able to take care of himself. The Petitioner’s grandfather withdrew him from Vincennes and the Petitioner began working full-time to support himself, his grandfather and his younger siblings. If the Panel were allowed to consider this as a waiver under Rule 17.8.1, it would have ruled it was in fact a hardship and awarded the Petitioner full eligibility. The Panel has concluded that by allowing certain exceptions to Rule 12-2 and allowing some rules to be waived under Rule 17-8.1 and not others violated the Petitioner’s constitutional rights. He should have been afforded at Rule 17-8.1 waiver.
12. The Panel considers each case presented for review on a case by case basis and takes careful notice of all facts and laws as it deliberates. This case presents a rare Rule 12-2 appeal. The Panel is not concerned this will create a “fundamental alteration of the eight semester rule” and additionally, “waivers do not always work fundamental alterations of the rule.” Washington v. IHSAA. Much like the athlete in the Washington case, the Petitioner enrolled in school because of basketball, and his grades have improved as a result of his participation in the basketball team. The Petitioner is not an elite athlete that was being watched or recruited by anyone. He merely is requesting the opportunity to play one more year and be part of a team. The Panel is not concerned this will open the flood gates of Rule 12-2 appeals or overly burden the IHSAA.

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 is immediately eligible to participate in athletics during the 2016-17 school year, provided he is academically eligible and meets all other eligibility rules.

DATE: 9/21/14



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.