

**BEFORE THE INDIANA  
CASE REVIEW PANEL**

**In The Matter C.P.** )  
**Petitioner,** )  
 )  
**and** )  
 ) **CAUSE NO. 170406-164**  
**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 February 10, 2017, C.P.’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 February 10, 2017, Terre Haute North Vigo High School (“Terre Haute”), the sending school, completed its portion of the Transfer Report. The receiving school, Roncalli High School (“Roncalli”) completed its portion of the Transfer Report on February 15, 2017.

On February 15, 2017, the IHSAA Commissioner determined that Petitioner’s transfer was a Rule 19-4 violation and ruled Petitioner had no eligibility for 365 days from enrollment at the receiving school. 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 March 24, 2017. Following the evidence presented at the March 24, 2017 hearing, the Review Committee issued its ruling on April 5, 2017 upholding the decision of the Commissioner declaring that according to Rule 19-4, Petitioner was athletically ineligible for 365 days and under Rule 3-8 the Petitioner was temporarily ineligible for the 2016-17 school year. The Review Committee also found a Rule 20 violation and the Petitioner would be ineligible on February 15, 2017 and would

continue to be ineligible until February 15, 2018.

On April 6, 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 April 18, 2017. On April 20, 2017, the Panel held a meeting<sup>1</sup>, 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, lived with his mother in Terre Haute, Indiana. The Petitioner's parents are divorced. He attended Terre Haute, the public school that served his mother's residence. While at Terre Haute, the Petitioner played junior varsity and varsity baseball and football. He last participated athletically at Terre Haute on May 25, 2016.
2. After an incident at Terre Haute, the Petitioner eventually moved in with his father in Martinsville, Indiana. The Petitioner was enrolled in Roncalli on January 25, 2017. Roncalli is a private school that is located in Indianapolis. The Petitioner lives in Martinsville and was accepted by Roncalli for enrollment in their school.
3. On February 10, 2017, Petitioner's parents completed the Transfer Report and the Petitioner indicated that he "withdrew from Terre Haute on January 20, 2017 ... after withdrawing, he moved to Martinsville [to live] with his father." The Petitioner's parents wanted to move him from Terre Haute to Martinsville out of fear for his safety.
4. On Friday, January 13, 2017, the Petitioner took a selfie with several friends at a basketball game. The photograph was taken by the Petitioner but was on the phone of another student. After taking the picture, the Petitioner returned the phone to girl it belonged to. At some point, a racially insensitive caption was added to the photo and it was posted on Snapchat and viewed by both students and school officials at Terre Haute. School Officials learned about the photo on January 18, 2017 and investigated the circumstances around the picture. The Petitioner admitted to taking the picture but denies posting it or captioning the photo. The Petitioner's parents told school officials that the he was being threatened for taking the picture and were genuinely concerned for his safety.

---

<sup>1</sup>The following members participated in the meeting: Kelly Wittman (Chairperson), Mr. Keith Pempek, Mr. Glenn Johnson, Mr. Bret Daghe and Mr. Chris Lancaster, and Ms. Mary Quinn. Ms. Kelly Bauder, staff attorney, was also present as legal counsel to the Panel. Mr. Chuck Weisenbach recused himself from participating in the meeting.

5. Terre Haute determined the Petitioner's conduct violated several School Rules (7, 13, 23, 24 and 27). On January 19, 2017 the Petitioner was suspended by Terre Haute for 10 days, pending expulsion for the 2016-17 school year. On January 20, 2017, the Petitioner's parents decided they wanted to withdraw the Petitioner from Terre Haute and completed the paperwork to make this official on January 23, 2017. The Petitioner was enrolled at Roncalli on January 25, 2017. Terre Haute allowed the Petitioner to withdraw and no expulsion hearing was ever conducted. Terre Haute could have proceeded with an expulsion hearing even after his withdrawal. According to Terre Haute disciplinary rules, the first violation results in a 20% ineligibility of the students athletic participation.
6. After determining they wanted to withdraw the Petitioner from Terre Haute, his parents began the process of moving him to Martinsville to live with his father and find a new school in which to enroll him. Over the weekend of January 21-22, 2017, the Petitioner's father began contacting schools. The Petitioner's father made contact with Martinsville High School, which serves his residence, and spoke to the varsity baseball coach inquiring about his son. The Petitioner's father was concerned about the close-knit group of baseball players in the community and if his son would accepted given the incident in Terre Haute. The Petitioner's father made contact with the Martinsville High School dean and athletic director. The Petitioner's father tried to make contact with Mooresville High School, but was not able to reach anyone from the school to discuss his son transferring. The Petitioner's father also made contact with the Roncalli varsity baseball coach. Eventually, the Petitioner's father spoke with school officials from Roncalli and enrolled him on January 25, 2017. The Petitioner's parents wanted him back in the classroom as soon as possible and felt Roncalli moved the quickest to make that happen. The Petitioner's father explained the conversations with coaches and school officials of potential schools was to determine the perception of the Petitioner given the events at Terre Haute and how he might be treated at a new school.
7. Terre Haute recommended Petitioner have temporary ineligibility for 365 days under Rule 3-8 and Rule 19-6.1. Roncalli recommended Petitioner have full eligibility under Rule 19-6.1(b).

#### 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 April 5, 2017, and Petitioner sought timely review on April 6, 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. Under Rule 19-4 if a student transfers schools for primarily athletic reasons or undue influence, he would be ineligible for 365 days from the date he is enrolled at the receiving school. The Panel finds the transfer in this case was not primarily for athletic reasons. The incident that occurred at Terre Haute did not involve the baseball program at Terre Haute, in fact, his coach wrote a glowing recommendation of the Petitioner. If he had stayed at Terre Haute, he would have likely been a starter on the baseball team. The Terre Haute coach explained he was on the 2015 runner-up team as a freshman. Had the Petitioner stayed in Terre Haute, he would have maintained his position on the baseball team and certainly had the admiration of his coach. The Petitioner’s father did inquire with varsity baseball coaches he was considering transferring to but the contact was focused on how the Petitioner might be received given the incident at Terre Haute. There was no evidence the Petitioner’s parents were shopping for a baseball program or trying to gain an advantage, they were only inquiring about how his son might be treated at new school given the events in Terre Haute. There is no evidence the Petitioner would receive any advantage playing baseball at Roncalli. Actually, the Petitioner was upset

about leaving Terre Haute and his team.

7. Under Rule 20-1 a student cannot be recruited by a coach at a new school or use undue influence to encourage or induce him to attend for athletic purposes. The Petitioner's father did speak with the varsity baseball coach at Roncalli, but there is no evidence the Roncalli coach tried to recruit the Petitioner or use any undue influence. The Petitioner did know of some kids that had played club baseball that were on the school teams he was considering attending, but there is no evidence of a past-link or undue influence by coaches or staff. The majority of these conversations happened over the weekend when school would not have been in session or open to process an enrollment application.
  
8. The Petitioner moved from his mother's residence in Terre Haute to his father's home in Martinsville, Indiana. Under Rule 19-6.1(b), a student who transfers with a corresponding change of residence to reside with a parent will have full athletic eligibility at the receiving school. The Petitioner's move into his father's residence falls within Rule 19-6.1, which allows him to have full eligibility at Roncalli. Rule 19-6.1 discusses a change to a new district or territory. Roncalli is a private school, which could serve a territory. According to the IHSAA Rules, a territory of a private school is defined as "the geographical areas from which students are drawn for attendance, as established by the Diocese or other governing board, and where no boundaries are established by a Private School, then the Territory shall be the city limit of the metropolitan area in which the School is located or the county lines of the county when the School is located outside the city limit. For Charter Schools, Territory is the state of Indiana." During the hearing, the student testified Roncalli was the closest faith-based high school to his home and there are other students in his neighborhood who attend Roncalli. Petitioner's counsel explained Roncalli serves all children and parents. Roncalli enrolled the Petitioner and accepted him living in Martinsville, Indiana. The IHSAA noted in its order there was no testimony about the territory of Roncalli at the Review Committee Hearing. As noted in the record, the principal of Roncalli was unable to attend the hearing, but he did submit a statement both prior to the hearing and during the appeals process to the Case Review Panel. The Panel considered this information, but did not rely on it for its conclusion regarding Roncalli's territory. However, there is evidence Roncalli serves Martinsville as they accepted the Petitioner as a student and the Petitioner is aware of children in his neighborhood who also attend the school. Whether that is established by the Diocese or school policy is not clear. The Panel finds on its face, the IHSAA definition of territory is arbitrary and capricious. The definition says a public charter school in Indiana has the territory of the entire state of Indiana. There is no rational basis to conclude a private school should be treated any differently than a public charter school in Indiana. A IHSAA Rule or decision will be found to be arbitrary and capricious "only where 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."<sup>2</sup> There is no basis to treat an Indiana private school different than a public charter school in Indiana. According to Indiana Code § 20-24-5-1, "a charter school, including a conversion charter school, must be open to any student who resides in Indiana." There is no requirement in Indiana law that mandates a private school establish boundaries for admission/enrollment. The Indiana Legislature has established it is the "policy of state that the state recognizes that nonpublic schools provide education to children in Indiana."<sup>3</sup> There are certainly restrictions on private schools if they seek to be accredited by the Indiana State Board of Education but there is no restriction imposed on private schools for establishing boundaries or restrictions on enrollment. If the Indiana Legislature and the Indiana State Board of Education do not require private schools to have "territories" for enrollment of Indiana students, there is no basis for the IHSAA to require it for participation in interscholastic athletics. This conclusion is consistent with the state legislature's authorization of a voucher system under the School Choice Scholarship Program<sup>4</sup>, which provides students in Indiana the opportunity to choose which school to attend regardless of an address.

9. Under Rule 3-8 IHSAA member schools shall certify eligibility of students when a student transfers to another school. If a student is athletically ineligible at the sending school that ineligibility follows the student to the receiving school. Testimony at the Review Committee Hearing from Terre Haute school officials stated that for a first offense of school discipline rules, a student would be ineligible to participate in athletics for 20% of the season of the sport the child participates in. Once the Petitioner withdrew from Terre Haute, the school took no further disciplinary action against him. The school did not go forward with the expulsion hearing. Testimony from the school was this was the Petitioner's first disciplinary offense. Therefore, he would have been subjected to a 20% ineligibility in the 2016-17 baseball season at Terre Haute. If the school would have proceeded with the expulsion hearing and ultimately expelled the Petitioner, he likely would have been deemed ineligible for 365 days, but that never happened. The Panel finds there was a disciplinary suspension at Terre Haute and pursuant to Rule 3-8, Roncalli should honor that discipline, which would require the Petitioner to be ineligible for 20% of the 2016-17 baseball season. Once he has served that 20% ineligibility, the Petitioner would be fully eligible to participate in athletics at Roncalli, provided he meets all other eligibility requirements. There was no evidence in the record regarding Roncalli's baseball schedule, therefore the Panel would leave it to the discretion of Roncalli school officials to determine when the 20% ineligibility would be complete.

---

<sup>2</sup>Department of Natural Resources v. Indiana Coal Council, Inc., 542 N.E.2d 1000, 1007 (Ind. 1989).

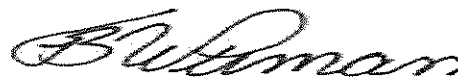
<sup>3</sup>Indiana Code § 20-19-2-10

<sup>4</sup> Indiana Code § 20-51-1

**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 UPHELD in part and reversed in part. The Petitioner is temporarily ineligible for 20% of the 2016-17 baseball season, to be determined by Roncalli. After the 20% temporary ineligibility, the Petitioner is fully eligible to participate in athletics at Roncalli, provided he meets all other eligibility requirements.

DATE: April 25, 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.