

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter G.B.)	
Petitioner,)	
)	
and)	
)	CAUSE NO. 170504-165
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 January 12, 2017, G.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 2016–2017 school year relating to the Petitioner's transfer. On January 12, 2017, Noblesville High School ("Noblesville"), the sending school, completed its portion of the Transfer Report. The receiving school, Eastern Greentown High School ("Eastern") completed its portion of the Transfer Report on January 21, 2017.

On January 21, 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.

On May 4, 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 May 11, 2017. On May 16, 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, lived with his father and step-mother in Noblesville, Indiana. The Petitioner's parents are divorced. He lives with his father and attended Noblesville, which served his father's residence. While at Noblesville, the Petitioner played freshman and junior varsity basketball, football and track and field. He last participated athletically at Noblesville on December 29, 2016.
2. In January 4, 2017, the Petitioner's parents enrolled him in Eastern. The Petitioner's step-mother is a teacher in the Eastern school district. After his enrollment, the Petitioner's parents began the process of looking for a house in the Eastern school district. On February 21, 2017 the Petitioner's parents signed a purchase agreement for a home in Kokomo, Indiana, which is in the Eastern district. The Petitioner's parents intended to then place their home for sale in Noblesville, Indiana. The Petitioner's parents received a loan from a family member in order to purchase the new house prior to selling the home in Noblesville. At the time of the Review Committee hearing, the Petitioner, his step-mother and a younger sibling were living with family in Kokomo, Indiana.
3. During middle school, the Petitioner lived with his mother out of state. For a period of time, the Petitioner had an Individualized Education Plan (IEP) to address a speech difficulty. Prior to entering high school, the Case Conference Committee agreed he did not need to continue with his IEP, therefore it was terminated.
4. While at Noblesville, in 8th grade he had a 2.5 gpa, in 9th grade he had at 2.0-2.2 gpa and his first semester of his sophomore year he had 2.0-2.5 gpa and also had a failing grade in Geometry. His parents began to be concerned with his academic performance, which now included a failing grade in a required course. After the Petitioner's continued poor academic performance, social and disciplinary issues at Noblesville, a recurrent speech

¹The following members participated in the meeting: Kelly Wittman (Chairperson), Mr. Keith Pempek, Mr. Chuck Weisenbach, Mr. Glenn Johnson, Mr. Bret Daghe and Mr. Rick Donovan, Mr. Mickey Golembeski, and Ms. Mary Quinn. Ms. Kelly Bauder, staff attorney, was also present as legal counsel to the Panel.

impediment, and lack of parental time for supervision over free time and extracurricular activities, the Petitioner's parents determined he could be better supervised by his step-mom at Eastern.

5. Prior to transferring to Eastern, the Petitioner's father did approach the Noblesville JV basketball coach and questioned him about the Petitioner's playing time. During the in-person conversation and a follow-up text the Petitioner's father wanted an assurance that the Petitioner was not in being played because of disciplinary issues at school. There was discussion in the text that the Petitioner's confidence was impacted by his lack of playing time on the team.
6. The Petitioner's step-mom did email Noblesville to inquire why Noblesville was going recommend no eligibility for her son at Eastern, but she wanted clarification as to their reasons when the family's intention was focused on academics and on-going non-athletic disciplinary issues.
7. The move to Eastern was in the Petitioner's best interests personally, academically and socially. The Petitioner is a junior varsity player. Eastern is a smaller district than Noblesville and does not have a junior varsity team for all of its teams.
8. On January 12, 2017, Petitioner's parents completed the Transfer Report and the Petitioner indicated that he "has had some academic issues at Noblesville and with his [step] mother current a teacher at Eastern, she believes it is in his best interest to be in a smaller class setting where [he] can be watched a little more closely."
9. Noblesville recommended Petitioner have temporary ineligibility for 365 days under Rule 19-4. Eastern recommended Petitioner have limited eligibility under Rule 19-6.2.

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 May 4, 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 Petitioner's parents did inquire with Noblesville about his playing time in basketball and why, after the transfer, Noblesville was recommending no eligibility pursuant to Rule 19-4. The inquiries by the Petitioner's parents alone was not sufficient to show the move to Eastern was primarily for athletic reasons. Aside from the inquiries from his parents, there was no other evidence presented by Noblesville that proved the Petitioner's move was primarily for athletic reasons. There is no evidence that the Petitioner was moving to a better team, stronger athletic program or that he would have any advantage playing sports at Eastern. There was evidence however that the Petitioner was struggling at Noblesville academically and socially.
7. At the time of the Review Committee hearing the Petitioner's parents submitted as evidence a purchase agreement for a home in the Eastern district. If a home was purchased and the Petitioner can show there was a bona fide move into the Eastern District, he would be fully eligible to participate in athletics.

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 NULLIFIED. The Petitioner has limited eligibility as of May 16, 2017, provided he meets all other eligibility requirements. If Eastern determines the Petitioner has made a bona fide move into the Eastern district, he would have full eligibility as of the date that is verified by the receiving school.

DATE: May 18, 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.