

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter L.W.)
Petitioner,)
)
and)
) **CAUSE NO. 180816-177**
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 16, 2018, L.W.’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 2018–2019 school year relating to the Petitioner’s transfer. On March 15, 2018, Lawrence North High School (“Lawrence North”), the sending school, completed its portion of the Transfer Report. The receiving school, Warren Central High School (“Warren Central”) completed its portion of the Transfer Report on March 15, 2018.

On March 16, 2018, the IHSAA Commissioner determined that Petitioner’s transfer was a Rule 19-4 transfer and ruled Petitioner ineligible at the receiving school until January 8, 2019. 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 7, 2018. Following the evidence presented at the August 7, 2018 hearing, the Review Committee issued its ruling on August 16, 2018 upholding the decision of the Commissioner declaring that according to Rule 19-4, Petitioner would not be eligible until January 8, 2019.

On August 16, 2018, 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. At the request of the Petitioner, an expedited meeting was convened pursuant to IC § 20-26-14-6. The Panel requested and received the record from the

IHSAA on August 22, 2018. On August 27, 2018, 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 in Indianapolis, Indiana. Petitioner attended Lawrence North his freshman and sophomore years. While at Lawrence North he played junior varsity and varsity football. He last participated athletically at Lawrence North on October 27, 2017.
2. The Petitioner lives in Indianapolis, Indiana and attended Lawrence North, a public school, which served his mother's residence. Petitioner transferred with a corresponding change of residence when transfer report was submitted.
3. On September 29, 2017, the Petitioner was playing for Lawrence North and became upset when he caused an interception. The Lawrence North coach criticized his efforts in the play and the Petitioner started to leave the field, while the game was still on-going. The Petitioner also began removing his uniform prior to leaving the field. The Petitioner and the Lawrence North athletic director had an exchange of words on the field as well as several of the Petitioner's family members. The Lawrence North athletic director told the Petitioner he was not leaving with his equipment. The Petitioner's family yelled that the Petitioner was done at Lawrence North. The Petitioner also said to coaching staff he was done playing here. After a period of time and after several members of the coaching staff talked to the Petitioner in the locker room, he returned to the game and stood on the sidelines. The Petitioner said this incident was the only disagreement he had with the Lawrence North coach.
4. The Petitioner returned to practice the next day and continued to play during the remainder of the season. There was another heated exchange between the Petitioner's family and the Lawrence North athletic director at the sectional game. This incident did not involve the Petitioner.
5. The Petitioner's mother could no longer stay in the apartment in the Lawrence North district due to her lease ending and the change in her financial situation. The family did consider moving the Petitioner to live with his father and attend another school, however,

¹The following members participated in the meeting: Kelly Wittman (Chairperson), Mr. Michael Golembeski, Mr. Karl Hand, Ms. Stacie Stoffregen, and Ms. Mary Quinn. Mr. Brett Crousore recused himself from consideration of this case. Ms. Kelly Bauder, staff attorney, was also present as legal counsel to the Panel.

ultimately, the Petitioner's parents decided to let him stay with his mother, who moved to live with a relative in the Warren Central school district.

6. Prior to the end of the school year, the Petitioner did not attend training for the next football season. As a result of this, the Petitioner was removed by the Lawrence North football coach from a weight lifting class and placed into a study hall for the remainder of the school year. The class was an elective course, which would have received a letter grade. The Petitioner was however allowed to take the final examination for the class.
7. The Petitioner transferred to Warren Central, a public school in Indianapolis, Indiana that serves his mother's residence. The Petitioner and his mother moved into a relative's house after his mother was unable, due to financial reasons, to remain in the apartment they were living in. The Petitioner's mother is suffering from cancer and had been receiving disability, which eventually ran out. The Petitioner and his mother moved into the new residence in October, 2017 and transported the Petitioner to Lawrence North to finish out the remaining semester.
8. While at Lawrence North, the Petitioner was a wide receiver and was an established player on the team. At Warren Central, the coaching staff have changed his position and he will have to work to establish himself as a player on the team. Warren Central, who defeated Lawrence North in the 2017 sectionals, is a strong football program with established players. The Petitioner will not be guaranteed a spot and will likely be a second string player if he is allowed to participate at Warren Central.
9. The Petitioner began attending Warren Central on January 6, 2018. On February 16, 2018, Petitioner's mother completed the Transfer Report and the Petitioner indicated the transfer occurred because the petitioner and his mother "moved into Warren [township]."
10. Lawrence North recommended Petitioner have no eligibility under Rule 19-4. Warren Central recommended Petitioner have full eligibility under Rule 19-5.
11. Neither Lawrence North nor Warren Central signed the 17-8.5 *Verification* limited eligibility 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 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 16, 2018 and Petitioner sought timely review on August 16, 2018.
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 and receiving schools 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. No waivers were sought by the Petitioner, therefore none were applicable to this situation.

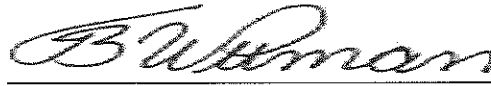
9. According to Rule 19-5, when a student's parents/guardians make a bona fide change of residence to a new district or territory, the student has several options, including transferring and attempt to obtain full eligibility at the public school in the district serving the student's residence. The Petitioner and his mother, due to a financial hardship, moved into a family member's home in the Warren Central district. The Panel finds the move was a bonafide move pursuant to Rule 19-5.
10. The Panel acknowledges the Petitioner had a behavioral incident at a football game on September 29, 2017. At this athletic event, petitioner's family expressed their desire to transfer Petitioner to another school district due to their displeasure with Lawrence North. However, after walking off the field and going to the locker room, the Petitioner returned to the field and watched the remainder of the game from the sidelines. After the September 29, 2017 incident, the Petitioner returned to the game and continued to participate in athletics at Lawrence North until the completion of the football season. Although there was an incident in which both the Petitioner and his family expressed displeasure with the Lawrence North football program, after that incident the Petitioner did continue to participate. After that incident, Petitioner's mother submitted documents establishing that a bona fide move occurred due to her health and financial burdens. The Panel does not find that there is compelling evidence that demonstrates that the move was the result of *primarily* athletic reasons.
11. The Panel finds that the incident that occurred on September 29, 2017, was a factor for the move. However, the panel does not find the move occurred for *primarily* athletic motivation, therefore there was not a violation of Rule 19-4. The primary motivation for the Petitioner moving was due to his mother's financial situation and the ability to live rent free with her children within the Warren Central school district.²

ORDER

The Panel finds by a vote of 3-2 that the decision of the IHSAA Review Committee, upholding the decision of the Commissioner is REVERSED. The Petitioner has full eligibility as of August 27, 2018 at the receiving school, provided he meets all other eligibility requirements.

² Under the provisions of 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. Under this federal law, school districts must review and revise policies that provide barriers to homeless students. Although the Panel did not need to address services that would need to be provided to the Petitioner under this act, it appears his situation would have fell within this federal law. Both Lawrence North and Warren Central would be bound by the McKinney-Vento Act as a local education agencies and therefore must assist in removing barriers for the educational success of the Petitioner. The IHSAA as a quasi-governmental entity, is also bound by the McKinney-Vento Act. The Case Review Panel must consider all applicable state, federal and constitutional laws when rendering a decision, including the McKinney-Vento Act in addition to the IHSAA Rules.

DATE: 8/30/2018



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.