

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter C.B.)
Petitioner,)
)
and)
) **CAUSE NO. 210929-228**
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 11, 2021, C.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 2021–2022 school year relating to the Petitioner’s transfer. On July 9, 2021, Lakewood Park Christian High School (“Lakewood”), a sending school, completed its portion of the Transfer Report. On August 18, 2021 Elevation Prep (Elevation), a sending school, completed its portion of the Transfer Report. The receiving school, Leo High School (“Leo”) completed its portion of the Transfer Report on July 27, 2021.

On August 12, 2021, the IHSAA Commissioner determined that Petitioner’s transfer was a Rule 19-6.3(c) transfer and ruled Petitioner had limited eligibility at the receiving school until March 1, 2022. 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 September 9, 2021. Following the evidence presented at the September 9, 2021 hearing, the Review Committee issued its ruling on September 24, 2021 upholding the decision of the Commissioner declaring that according to Rule 19-6.3 (c), Petitioner had limited eligibility until January 9, 2022.¹

¹ The date of last athletic participation by Petitioner at a IHSAA member school occurred at Lakewood Park Christian High School on January 9, 2021.

On September 29, 2021, 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 29, 2021. On October 12, 2021, the Panel held a meeting², 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 senior, lives with his mother and father in Spencerville, Indiana. Petitioner attended Lakewood his freshman year (2018-2019), sophomore year (2019-2020), and the fall semester of his junior year (2020-2021). While at Lakewood he played varsity basketball. He last participated athletically at Lakewood on January 9, 2021. Record p. 122-3.
2. The Petitioner lives in Spencerville, Indiana and attended Lakewood, a private school which served his parents' residence.
3. The Petitioner transferred to Elevation, a preparatory basketball academy and a non-IHSAA member school, located in Fort Wayne. Petitioner attended Elevation the spring semester of his junior year (2020-2021). While at Elevation he played varsity basketball. Petitioner last participated athletically at Elevation on March 1, 2021. Record p. 122.
4. On June 11, 2021, Petitioner's parents completed the Transfer Report and the Petitioner indicated the transfer occurred because "[Petitioner] began having anxiety issue due to issues of other families getting involved in the basketball team at Lakewood Park and diversity concerns. This became a serious concern as [Petitioner's sibling] needed to be transferred to another school due to anxiety issues as well. [Petitioner] is transferring from Elevation Prep due to academic hardships. The student was unable to receive needed educational services and the school was not accredited. Elevation Prep began incurring financial hardships as well. In addition, the safety and well-being became an issue." Record p. 119.
5. Lakewood recommended Petitioner have full eligibility under General Waiver Rule 17-8.1. Elevation recommended Petitioner have full eligibility under Rule 19-5. Neither school signed the Verification under Rule 17-8.5. Record p. 119, 122.

²The following members participated in the meeting: Ms. Risa Regnier (Chairperson), Mr. Ben Ballou, Mr. Brett Crousore, Mr. Joe Hermann, Ms. Mary Quinn, Ms. Laura Valle, and Mr. Meisha Wide. Ms. Leslie-Ann James and Mr. Brandon Knight, staff attorneys, were also present as legal counsel to the Panel.

6. The Petitioner transferred to Leo, a public high school, which does not serve his parent's residence.

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 September 24, 2021, and Petitioner sought timely review on September 29, 2021.
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.
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. According to Rule 19-6.2, when a student's parents/guardians do not make a bona fide change of residence to a new district or territory, the student is eligible for limited eligibility at the receiving school, unless there is reason to believe the student transferred primarily for athletic reasons or as a result of undue influence. The Panel does not find the move was the result of primarily athletic reasons or as a result of undue influence.
9. The Panel finds there is compelling evidence that the move to Leo was in the best interest of the Petitioner. While attending Lakewood, Petitioner's sibling experienced some serious and significant mental health issues that resulted in a mental health emergency. The Petitioner was repeatedly asked by fellow classmates about the emergency resulting in additional trauma at school. In written testimony, the Petitioner noted, "I was constantly reminded of it by those around me at school. It got so bad I couldn't think through simple things while in class. I began hating to go to school...And worse. I asked the school guidance counselor for someone to talk to about my mental health problems, but I never received help." Record p. 156. Consequently, the Petitioner and his family felt that removing him from Lakewood was necessary. The Petitioner's family expressed "[w]e had to remove [Petitioner] from the LPCS environment, which was not conducive to Petitioner's mental health. We didn't want Petitioner to succumb to the same experience as his sibling, leaving our family with no choice but to extract him from LPCS." Record p. 152. The Panel finds that the environment at Lakewood necessitated a transfer for the Petitioner. The Petitioner's mental and social well-being would continue to be at risk if he remained at Lakewood.
10. The Petitioner's family indicated the move to Leo was due to Petitioner's mental health declining at Lakewood. The Petitioner, a biracial student of African American and Hispanic parentage adopted by Caucasian parents, experienced difficulties attending Lakewood. The Petitioner and his siblings were involved in racial incidents with fellow students that affected their mental and emotional health. These racial incidents included comments about the color of his skin and racial jokes at the Petitioner's expense. Tr. 51. At the Review Committee Hearing, Petitioner's parents stated "[w]e've been enrolled at Lakewood, which is a predominately white school. We didn't realize the many pressures that this caused [Petitioner] and his siblings over time, especially in high school." Tr. 16. The Petitioner's family sought a more diverse and positive environment that Lakewood could not provide. The Petitioner's transfer to Elevation was intended to provide a fresh start and offer a diverse environment that would better serve Petitioner's needs. Unbeknownst to the family, significant academic and safety issues would arise at

Elevation. The Petitioner's family decision to transfer the Petitioner to Leo was because they felt it offered an environment that allowed for their student to not feel like an outsider. Leo is more diverse than Eastside Junior/Senior High (Eastside), the public school that serves the Petitioner's address. Record p. 6. Eastside's student population is similar to Lakewood's student population, thus Petitioner's parents were concerned that Petitioner would struggle with the same mental health and social issues he experienced at Lakewood. Furthermore, Leo is closer in proximity to the family's residence than Eastside and is located right across from the church the family attends. Transcript p. 21. The Petitioner's family seeking a diverse and welcoming community for the Petitioner further demonstrates this transfer was not motivated by athletics.

11. The Panel finds that Petitioner experienced a hardship condition that meets the conditions of Rule 17-8.1. The Petitioner and his family wanted a school environment that would better serve the Petitioner's academic, mental, and social needs. The Petitioner's parents researched and spoke with Elevation's administration and based on the representations of the school administration, Petitioner was enrolled. The Petitioner and his family soon found out that the transfer to Elevation was not in the best interest of the Petitioner. The family discovered there were serious academic and financial deficiencies shortly after they enrolled the Petitioner. Notably, the sending school delayed enrolling the Petitioner into classes and misled the family on the curriculum offered by Elevation. In addition, the Petitioner began to struggle academically at the sending school because academic instruction was done virtually due to concerns for the Petitioner's physical safety. Additionally, Elevation did not enroll the Petitioner in required classes for his junior year thus he now has a heavier senior course load at Leo to graduate on time. Mr. Bob Long, a former director at Elevation, indicated that past students had to return to their former high school to completed course requirements to graduate with their academic cohort. The Petitioner stated at the hearing, "I feel like my anxiety and mental health issue is stable right now...I'm just happy to go to school. I'm doing very well academically. I feel like my grades are just going to get better." Transcript p. 32-3. The Petitioner would have suffered more academic harm and decline if he remained at Elevation.
12. At the Review Committee Hearing, the Petitioner shared that there were safety concerns at Elevation that necessitated the transfer to Leo. These safety concerns involved multiple robberies on campus and illicit drug use by students in the residential dorm. The Petitioner even witnessed one of the armed robberies that occurred on Elevation's campus. Transcript p. 19. Mr. Long in his written testimony noted the following "as our students walked from the dorms to the gym two masked, armed men chased and robbed several of our students. The lack of safety and the out-of-control environment for these young men were certainly an issue at Elevation." Record p. 158. Mr. Long eventually resigned from Elevation after seeing various concerns raised with Elevation's

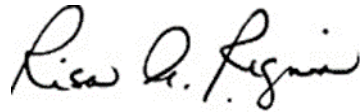
administration not be addressed. The lack of safety for the Petitioner was also an issue off campus with Elevation staff. The Petitioner's mother noted that when Petitioner participated in a basketball tournament in Florida, "the coach left the team alone four hours alone at a hotel without any supervision, so he could spend time with his girlfriend." Record p. 160. Mr. Long concluded his testimony with the following, "[n]ow that I have seen firsthand the manner in which Elevation was run, I would not recommend that a student enroll at Elevation. [Petitioner's] family made the absolute necessary decision in removing him from this unsafe, poorly run, and disorganized environment." Record p. 158. The Panel finds the evidence presented by Petitioner's family that the transfer to Leo better suits the Petitioner's academic, mental, and social need. It was not foreseeable for Petitioner and his family to know there would be significant issues at Elevation. This would constitute an extremely negative non-athletic condition, peculiar to the Petitioner, caused by an unforeseen, unavoidable, and uncorrectable event beyond the control or creation of the Petitioner or his family. Furthermore, the primary purpose of the IHSAA rule will still be accomplished and the ruling will not harm or diminish the purpose or spirit of the Rule.

13. In Smock v. the Case Review Panel/Indiana Department of Education/Indiana High School Athletic Association, and Delphi Community School Corporation 08C01-1912-PL-000019, the trial court found that "the Limited Eligibility Waiver Rule (17-8.5) exists to allow non-athletically motivated transfers, which serve the best interest of the student, full eligibility. A school cannot simply unilaterally and erroneously misuse that discretion, and in turn, preclude a student athlete from participating in athletics with full eligibility." See also In the Matter of J.T. 091002-64 and IHSAA v. Durham, 748 N.E.2d 404 (Ind. Ct. App. 2001). In the absence of athletic motivation and when presented with evidence from the Petitioner that the move was in his best interest, the Review Committee should have found the move was in his best interest and given full eligibility by Rule 17-8.5. Lakewood and Elevation both recommended full eligibility for the Petitioner. The sending schools did not indicate in the record that athletics was the primary motivation for Petitioner's transfer. Furthermore, the Panel did not find evidence in the record that the transfer was athletically motivated or a violation of Rule 19-4.
14. The Panel finds the Petitioner eligible for full eligibility at Leo under Rule 17-8.1.

ORDER

The Panel finds by a vote of 7-0 that the decision of the IHSAA Review Committee, upholding the decision of the Commissioner is NULLIFIED. The Petitioner has full eligibility as of October 12, 2021, at the receiving school, provided he meets all other eligibility requirements.

DATE: 10/25/2021



Risa Regnier, 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.