

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter of D.H.)
Petitioner,)
)
and)
) **CAUSE NO. 211116-236**
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 June 7, 2021, D.H. (“Petitioner”) 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 June 7, 2021, the sending school, Henryville High School (“Henryville”) completed its portion of the Transfer Report. On June 17, 2021, the receiving school, Silver Creek High School (“Silver Creek”), completed its portions of the Transfer Report.

On June 17, 2021, the IHSAA Assistant Commissioner determined that Petitioner’s transfer was a Rule 19-4 transfer and ruled Petitioner ineligible for athletics at the receiving school until July 1, 2022. The Petitioner appealed the Assistant Commissioner’s determination to the IHSAA Review Committee (“Review Committee”).

In response to Petitioner’s request to appeal, the matter was set for a hearing before the Review Committee for November 5, 2021. Following the evidence presented at the hearing, the Review Committee issued its ruling on November 16, 2021, which upheld the decision of the Assistant Commissioner.

On November 16, 2021, 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 the record from the IHSAA on November 22, 2021 and received it on December 6, 2021. On December 14, 2021, 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.²

FINDINGS OF FACT

The Panel finds the following facts to be true and relevant to its decision.

1. Petitioner, a senior, lives with his parents in Sellersburg, Indiana. Petitioner attended Henryville, a public school that serves his parents' address, his freshman (2018-2019), sophomore (2019-2020), and junior (2020-2021) years. While at Henryville, Petitioner played varsity baseball and last participated athletically on May 26, 2021.
2. On June 1, 2021, Petitioner enrolled at Silver Creek, a public school that does not serve his parents' address despite being approximately three miles from Petitioner's residence compared to the fourteen miles away that is Henryville.
3. According to the Transfer Report, Petitioner transferred because he was "[l]ooking for a more stable environment. In addition, courses needed for graduation are no longer offered at Henryville, but are offered at Silver Creek."
4. At the end of his junior year, Petitioner was informed by his high school counselor that Henryville was going to discontinue their use of the Apex credit recovery program. Petitioner needed a credit recovery program to graduate on time. A separate credit recovery program, Edmentum, was available to Petitioner at Henryville but this was not explained to Petitioner or his family.
5. According to Petitioner's physician who treated him for anxiety he suffered while attending Henryville, transferring to Silver Creek was in Petitioner's best interest.
6. Petitioner transferred without a corresponding change of residence when the transfer report was submitted and sought full eligibility through a waiver of the limited eligibility rule.
7. Henryville indicated that the transfer was for an athletic reason and recommended

¹The following members participated in the meeting: Ms. Risa Regnier (Chairperson), Mr. Joe Hermann, Ms. Laura Valle, Ms. Mary Quinn, Mr. Chuck Weisenbach,, Mr. Ben Ballou, and Mr. John Prifogle. Ms. Leslie-Ann James and Mr. Brandon Knight, staff attorneys, were also present as legal counsel to the Panel.

² Prior to the meeting, the Panel received a Supplemental Submission from Petitioner as well as an objection from the IHSAA regarding references to previous Panel decisions within said Supplemental. The Panel, over the IHSAA's objection, considered the Supplemental, recognizing that it is largely a persuasive document to which the Panel is not bound. The Panel believes prior decisions can be discussed and considered during meetings; however, every referral is evaluated independently and according to the unique facts and circumstances regarding each appeal.

ineligibility pursuant to Rule 19-4. Henryville's Assistant Principal and Athletic Director, Mr. Lewis, recommended ineligibility based on a letter he received from Henryville's head baseball coach, Coach Schroeder, which alleged two conversations he had with Petitioner where Petitioner expressed a desire to transfer to Silver Creek to play baseball. Additionally, Coach Schroeder wrote that Petitioner's claims of transferring due to "emotional/mental reasons" are "hogwash."

8. Silver Creek indicated that the transfer was not for an athletic reason and recommended limited eligibility pursuant to Rule 19-6.2. However, following the evidence presented at the Review Committee hearing, Silver Creek's Athletic Director, Mr. Dablow, testified that he would probably recommend full eligibility if given the opportunity to do it again.

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 November 19, 2021 and Petitioner sought timely review on December 2, 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. *Carlberg* 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 from 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 only evidence provided that suggests this transfer was at all athletically motivated came from letters written by Coach Schroeder. However, Coach Schroeder was not present and did not testify at the Review Committee hearing where the information contained within his letter was unequivocally refuted by Petitioner's live testimony. The Panel finds that the commentary within Coach Schroeder's letter diminishing Petitioner's mental health issues, in turn, weakens the credibility of his letters. Petitioner's mental health issues, which long preceded the transfer, were verified by the doctor treating him for the same. Further, the Panel agrees with the IHSAA's comment during the Review Committee hearing that the "crux" of this case involves the credit recovery program and Petitioner's ability to graduate. R. at 30, Tr. 43. Petitioner being able to graduate on time has nothing to do with athletics. However, the issue is not simply whether Petitioner could have graduated on time if he stayed at Henryville; the true crux is whether Petitioner was advised that he had options at Henryville that would allow him to graduate timely.
7. Having found the transfer was not primarily for athletic reasons, according to Rule 19-6.2, since Petitioner's parents/guardians did not make a bona fide change of residence to a new district or territory, Petitioner would be eligible for limited eligibility at Silver Creek, subject to a waiver under Rule 17.
8. 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. See also In the Matter of J.T. 091002-64 and IHSAA v. Durham, 748 N.E.2d 404 (Ind. Ct. App. 2001).
9. The Panel finds that transferring to Silver Creek served Petitioner's best interest. It is compelling that this is also the opinion of the doctor treating him for the anxiety he suffered during his time at Henryville. In addition to providing a new and different environment than Henryville, Silver Creek is not only significantly closer to Petitioner's residence but, more importantly, offers the Apex credit recovery program which will allow Petitioner to graduate on time. Even though Henryville does, in fact, offer the Edmentum program which would have offered the opportunity to graduate timely, neither Petitioner nor his family were advised of that option. This fact is not only supported by the testimony of Petitioner and family, but also by the letter provided by his former guidance counselor at Henryville, and the testimony of Mr. Lewis, who, at the time of Petitioner's transfer, was Henryville's Dean of Students. In fact, on the last day of school

when Mr. Lewis asked Petitioner's family why he was transferring, Mr. Lewis was informed it was due to Petitioner's mental health as well as the Apex program being discontinued by Henryville. At that time, Mr. Lewis had the opportunity to inform the Petitioner and family of the Edmentum program; however, he admitted at the Review Committee hearing that he "never offered that" because he "did not know for sure about [Henryville's] Edmentum program or Apex program." R. at 37, Tr. 72-73. This Panel believes Henryville had an obligation to Petitioner and his family to fully inform them of the programs offered by Henryville and that they failed to satisfy that obligation. As Petitioner and family assert, knowing the Edmentum program was an option at Henryville could have impacted the decision to transfer. The benefit of any doubt regarding whether the transfer would have occurred and the motives behind the transfer should go to the student when the sending school fails to satisfy their obligation to the student. Penalizing a student for transferring from a school that failed to inform the student of necessary information regarding the transfer is unreasonable. Accordingly, the Panel finds the Review Committee's decision arbitrary and capricious.

10. Not only was transferring to Silver Creek in Petitioner's best interest but the Panel also finds, as did Silver Creek, that the transfer was non-athletically motivated.

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 athletic eligibility at the receiving school as of December 14, 2021, provided he meets all other requirements for eligibility.



DATE: December 28, 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.