

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter J.L.)
Petitioner,)
)
and)
) **CAUSE NO. 190829-187**
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 March 28, 2019, J.L.’s (“Petitioner”) mother 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 2019–2020 school year relating to the Petitioner’s transfer. On June 3, 2019, Fort Wayne Snider High School (“Snider”), the sending school, completed its portion of the Transfer Report. The receiving school, Fort Wayne North high School (“North”) completed its portion of the Transfer Report on June 3, 2019.

On June 6, 2019, the IHSAA Commissioner determined that Petitioner’s transfer was a Rule 19-4 transfer and ruled Petitioner had no eligibility at the receiving school until March 28, 2020. 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 8, 2019. Following the evidence presented at the August 8, 2019 hearing, the Review Committee issued its ruling on August 19, 2019 upholding the decision of the Commissioner declaring that according to Rule 19-4, Petitioner had no eligibility.

On August 29, 2019, 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 5, 2019. On September 18, 2019, 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 Fort Wayne, Indiana. Petitioner attended Snider his freshman (2017-18) - sophomore (2018-19) years. While at Snider he played football and track & field. He last participated athletically at Snider on November 9, 2018.
2. The Petitioner transferred to North, a public school in Fort Wayne, Indiana that serves his mother's residence. There was not a corresponding change of address at the time of the transfer. The Petitioner's mother had moved several years ago and had been providing transportation to school to Snider.
3. On March 28, 2019, Petitioner's mother completed the Transfer Report and the Petitioner indicated the transfer occurred because "student and parent moved out of Snider's attendance area three years ago and recently found it more and more difficult for transportation reasons."
4. Snider recommended Petitioner have no eligibility under Rule 19-4. North recommended Petitioner have full eligibility under Rule 19-5 or 19-6.2.
5. Neither Snider nor North signed the 17-8.5 *Verification* limited eligibility waiver.
6. Snider's athletic director talked to the Petitioner about the transfer and the Petitioner indicated he thought he would have a better opportunity to play at North. The football coach called the Petitioner's mother to discuss the transfer and she indicated there were no problems at Snider and she too expressed there is a better opportunity to play football at North. Further, she said they thought there's a better opportunity to get on the field at North. The Petitioner's mother denies she and the Petitioner made these comments, but offered no reason the athletic director and coach would lie about such comments. The Petitioner had been a valued member of the Snider football team. There does not appear to be any issues between the coaching staff at Snider and the Petitioner and the Petitioner admitted he was happy at Snider.

¹The following members participated in the meeting: Kelly Wittman (Chairperson), Mr. Ben Ballou, Mr. Brett Crousore, Mr. Chuck Weisenbach, Ms. Laura Valle, Mr. Mickey Golembeski and Ms. Mary Quinn. Ms. Kelly Bauder, staff attorney, was also present as legal counsel to the Panel.

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 19, 2019 and Petitioner sought timely review on August 29, 2019.
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. The Petitioner is seeking a hardship waiver pursuant to Rule 17-8.1 due to transportation issues. Snider does not provide transportation to students living within a two mile radius of the school. Therefore, the Petitioner and his mother had to provide transportation to and from school. The Petitioner had accumulated over sixty tardies from August, 2018 – March, 2019. It wasn't that the Petitioner could not get to school, it was the Petitioner who admittedly got to school late because he woke up late. The Petitioner had to walk to school because his mother worked. The Petitioner's mother was able to find reliable transportation to North from a student in the neighborhood. This appears to have helped the Petitioner get to school, however the Panel finds transportation was not a hardship condition. It was the Petitioner himself who failed to get to school on time. It certainly would have taken extra effort to walk to school, but the Panel does not find this a hardship because all students at Snider in the no transportation zones have to do this. It wasn't that he didn't get to school, it was that he got there late. The Petitioner has not met his burden to show there was a hardship condition.
9. The Panel finds that there is compelling evidence that demonstrates that the move was primarily for athletic motivation. The Petitioner and his mother both discussed athletics as the reason for the move. The Panel finds that according to Rule 19-4, the Petitioner has no eligibility at North due to his transfer for athletic reasons.

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 UPHELD. The Petitioner has no eligibility until March 28, 2020 at the receiving school and has full eligibility on March 28, 2020, provided he meets all other eligibility requirements.

DATE: 09/20/2019



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.