

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter S.J.)
Petitioner,)
)
and)
) **CAUSE NO. 190909-188**
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 20, 2019, S.J.’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 2019–2020 school year relating to the Petitioner’s transfer. On June 21, 2019, Lawrence Central High School (“Lawrence Central”), the sending school, completed its portion of the Transfer Report. The receiving school, Arsenal Technical High School (“Arsenal”) completed its portion of the Transfer Report on July 26, 2019.

On August 5, 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 June 6, 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 26, 2019. Following the evidence presented at the August 26, 2019 hearing, the Review Committee issued its ruling on September 6, 2019 upholding the decision of the Commissioner declaring that according to Rule 19-4, Petitioner had no eligibility.

On September 9, 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 13, 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 sophomore, lives with his father in Indianapolis, Indiana. Petitioner attended Lawrence Central his freshman year. While at Lawrence Central he played freshman football. He last participated athletically at Lawrence Central on October 13, 2018.
2. The Petitioner lived in Indianapolis, Indiana with his uncle/guardian and attended Lawrence Central, a public school which served his uncle's address. The Petitioner's mother is addicted to drugs and the state filed a Child in Need of Services (CHINS) action involving the Petitioner. While the CHINS action was pending and his father attempted to get custody, he lived with his uncle/guardian.
3. The Petitioner transferred to Arsenal, a public school in Indianapolis, Indiana that serves his father's residence. There was a bona fide change of address to his father's address.
4. On June 20, 2019, Petitioner's father completed the Transfer Report and the Petitioner indicated the transfer occurred because "*S.J. moved to new address which resides another district. Father received a new job and can no longer provide transportation to sending school.*"²
5. Lawrence Central recommended Petitioner have no eligibility under Rule 19-4. Arsenal recommended Petitioner have full eligibility under Rule 19-5.
6. Neither Lawrence Central nor Arsenal signed the 17-8.5 *Verification* limited eligibility waiver.
7. Petitioner made posts on his Instagram account that reference his transfer from Lawrence Central to Arsenal was for athletic reasons. The posts were later deleted by the Petitioner. The date of the Instagram post could not be ascertained because it had been deleted.

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.

²There was discussion during the Review Committee Hearing (p. 83 transcript) that the coach of Lawrence Central offered or could have provided transportation for the Petitioner. Most schools have policies that prohibit staff members from transporting children alone in their personal vehicles and there are a number of other reasons why this would not be advisable and should not be recommended by the IHSAA.

8. The IHSAA's attorney file proposed findings after the deadline set by the Review Committee. The attorney did not request an extension of time from the Review Committee, instead telling Petitioner's counsel he would be filing them late.³ There is no evidence before the Panel that the Review Committee did not consider the Petitioner's proposed findings.

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 6, 2019 and Petitioner sought timely review on September 9, 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).

³ The Panel would caution the IHSAA counsel and Review Committee to ensure that all IHSAA Rules and deadlines are strictly followed. The IHSAA and Review Committee holds parents and students responsible for following rules and procedures and all efforts should be made for them to do the same. If this continues to be a pattern of missing deadlines and not following rules, established by the IHSAA, the Panel may consider that as a denial of student's due process rights. Additionally, the Panel is troubled by the tone and lack of professionalism exhibited by IHSAA's counsel. The communications with the Petitioner's counsel are inappropriate and unprofessional. As with any dispute, people can disagree but still remain professional. An organization focused on student athletes should strive to serve as role models for students in every interaction and in every case.

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. According to Rule 19-5.1, 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 attempting to obtain full eligibility at the public school in the district serving the student's residence. The Panel acknowledges the Petitioner moved into his father's residence located in the Arsenal Tech district; therefore there was a bona fide change of address. However, the Panel finds that there is compelling evidence that demonstrates that the move was for primarily athletic motivation. The Petitioner posted the following message on his Instagram account, "*First off I would like to thank God for giving me the ability to play football, I been thinking about this decision for a very long time I think it's best for me and my family I would like to thank the whole Lawrence [C]entral coaching staff & my family, friends, & [t]he Whole City colts for supporting me all through this journey I have talked it over with my family, I have decided to transfer to Arsenal Tech! To further my education and football career extremely excited!!!*" The message was later deleted from the Petitioner's Instagram account. The Panel is concerned specifically with the comment he was thinking about it for a long time and he wanted to further his football career at Arsenal. Additionally, the Petitioner began playing football at Arsenal prior to an eligibility decision, which was a violation of Rule 15-3.1. Arsenal admitted that was a mistake and the IHSAA discussed that violation with them.
9. There was also discussion at the Review Committee Hearing about a student transferring from Pike who was also a quarterback, like the Petitioner, and could jeopardize his playing time. This was entirely speculative hearsay that the Panel did not consider. There is no evidence that the Petitioner know about this student and no witness testified that the Petitioner or his family knew about this student.

10. The Panel finds that according to Rule 19-4, the Petitioner has no eligibility at Arsenal due to his transfer being for primarily athletic reasons.

ORDER

The Panel finds by a vote of 4-3 that the decision of the IHSAA Review Committee, upholding the decision of the Commissioner is UPHELD. The Petitioner has no eligibility until June 6, 2020 at the receiving school and has full eligibility on June 6, 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.