

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter J.A.)
Petitioner,)
)
and)
) **CAUSE NO. 200924-202**
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 7, 2020, J.A.’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 2020–2021 school year relating to the Petitioner’s transfer. On August 7, 2020 Liberty Christian High School (“Liberty”), the sending school, completed its portion of the Transfer Report. The receiving school, Eastern High School (“Eastern”) completed its portion of the Transfer Report on August 10, 2020.

On August 14, 2020 the IHSAA Assistant Commissioner determined that Petitioner’s transfer was a Rule 19-5.1 transfer and ruled Petitioner had limited eligibility at the receiving school until October 19, 2020. The Petitioner appealed the Assistant 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 10, 2020. Following the evidence presented at the September 10, 2020 hearing, the Review Committee issued its ruling on September 24, 2020 upholding the decision of the Assistant Commissioner declaring that according to Rule 19-5.1 Petitioner had limited eligibility.

On September 24, 2020, 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 28, 2020. On September 29, 2020, 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 parents in Windfall, Indiana. Petitioner attended Liberty for his freshman year (2018-19) and sophomore year (2019-20). While at Liberty he played varsity baseball, cross country and track & field. He last participated athletically at Liberty on October 19, 2020.
2. The Petitioner attended a private school in Anderson, Indiana. Petitioner transferred with a corresponding change of residence when Transfer Report was submitted. The Petitioner and his family sold their home in Anderson and moved into the Eastern district living with another family as they searched for a home that would fit their needs as a family and their financial situation. The Petitioner and his family lived in the residence in Alexandria from June 8, 2020 until July 20, 2020. Eastern is a public school with open enrollment in Alexandria, Indiana. After a search, the family ultimately purchased a home in Windfall, Indiana. The Petitioner was enrolled in Eastern on August 7, 2020.
3. The Petitioner's family lived at the same address in Alexandria for 17 years. The family outgrew their house and could no longer afford sending all their kids to private school. (R, p. 18). The family intended on finding a home in Greentown, Indiana to be within Eastern's district after they researched the school's academic reputation. Due to the pandemic involving COVID, there were limited options for homes in the Greentown area. They made several offers on houses, which were not accepted. (R. 18). The home they ultimately purchased outside Eastern's district is "two and half miles from the district line between Tri-Central and Eastern. (R., p. 18). Eastern approved the Petitioner to attend through open enrollment.
4. On August 7, 2020, Petitioner's parents completed the Transfer Report and the Petitioner indicated he was transferring because the Petitioner "and his family moved from one residence to another residence."

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

5. Liberty recommended Petitioner have full eligibility under Rule 19-5. Eastern recommended Petitioner have full eligibility under Rule 17-8.1.

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 22, 2020 and Petitioner sought timely review on September 24, 2020.
4. The Panel may uphold, modify, or nullify the IHSAA Review Committee’s decision. (Ind. Code § 20-26-14-6(c)(3)). 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).
5. 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 the IHSAA Assistant Commissioner and the Review Committee ruled Petitioner did not qualify for a limited eligibility waiver pursuant to Rule 17-8.5.
6. 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)).

7. There is no evidence in the record that the move was athletically motivated.
8. The Panel finds that Petitioner's decision to transfer to Eastern was done in his best interest and additionally that a hardship condition existed under Rule 17-8.1. The Petitioner's family made every attempt to move into the Eastern District. Schools in Indiana can offer open enrollment to allow families the opportunity for school choice². The Petitioner's family attempted to move into the Eastern District and was unable to due to the lack of housing available during the COVID pandemic, which created a hardship condition. The IHSAA's rules will not be diminished and the student will suffer harm not being able to participate athletics. As the IHSAA is keenly aware, students are having to adapt within a world that is constantly changing during to the pandemic. Students should not be negatively impacted by so many factors that are outside of their family's control.
9. Additionally, there is evidence that both schools agreed the move was in the Petitioner's best interest. 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 and both the sending and receiving school the move was in his best interest, the Review Committee could have found the move was in his best interest and given full eligibility by Rule 17-8.5, even though the forms were not signed. The Review Committee had a signed letter from Liberty stating the move was not athletically motivated and was in the best interest of the student. (R. 29). Eastern testified it should at least be determined it was a hardship. (R. p. 22). The Panel is aware that the IHSAA has recently amended Rule 17.8.5 (c) to state the following "This rule provides a process wherein a student with limited eligibility can obtain a waiver and full eligibility. The process requires that all the principals involved must be in agreement, that all the principals involved must recommend full eligibility and that all the principals involved must confirm in writing, through their respective Rule 17-8.5 Verifications, that the transfer is in the best interest of the students and there are no athletic related motives surrounding the transfer. A signed Rule 17-8.5 Verification from each principal involved is a condition precedent to obtaining a Rule 17-8.5 waiver and full eligibility. A principal's decision to sign or not sign the Rule 17.8.5 Verification is

²See IC § 20-26-11-31 and § 20-26-11-32

not subject to review by the Commissioner, his designee, the Review Committee, the Case Review Panel or any other reviewing body.” The IHSAA should not be in the business of limiting appeals or denying the due process rights of students. Student athletes should be able to review/appeal decisions by member schools, school officials, IHSAA staff and the Review Committee. While the Panel understands the need for rules and procedures, those rules cannot, by application, deny students and their families the opportunity to question school officials regarding motives for not signing documents or outright denying appellate rights because a form was mistakenly not signed or a box wasn’t checked. Students and families should be afforded the opportunity to gather evidence to determine why decisions are being made by school officials that impact their ability to participate in athletics. Additionally, considerations should be made that these families are often without legal representation to assist them in this process. The Panel has seen circumstances where schools have made bad faith decisions to not sign the 17-8.5 waivers and families should be able to explore those decisions. Additionally, families and students should be afforded opportunities to make arguments that allow for evidence to be presented or preserved. Although the Indiana Rules of Evidence do not explicitly apply to these proceedings, any agency or governing body should afford families with due process and the chance to offer evidence at the hearings. The Panel is concerned that the IHSAA is limiting family’s abilities to appeal decisions made about students’ participation in sports. The IHSAA and the Case Review Panel should want schools and decision-makers to consider what is the best interest of students, it frankly should be our mission.

10. The Panel finds that Petitioner is entitled to full eligibility at Eastern under Rule 17-8.1 and Rule 17-8.5.

ORDER

The Panel finds by a vote of 6-0 that the decision of the IHSAA Review Committee, upholding the decision of the Commissioner is NULLIFIED. The Petitioner has full eligibility as of September 29, 2020 at the receiving school, provided he meets all other eligibility requirements.

DATE: 9/30/2020



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.