

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter H.N.)
Petitioner,)
)
and)
) **CAUSE NO. 201006-203**
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 19, 2020, H.N.’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 12 & 24, 2020 Morrison Community High School (“Morrison”), the sending school, completed its portion transfer Report. The receiving school, Harrison High School (“Harrison”) completed its portion of the Transfer Report on August 19, 2020.

On August 24, 2020 the IHSAA Assistant Commissioner determined that Petitioner’s transfer was a Rule 19-6.2 transfer and ruled Petitioner had limited eligibility at the receiving school until February 8, 2021. 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 24, 2020. Following the evidence presented at the September 24, 2020 hearing, the Review Committee issued its ruling on October 6, 2020 upholding the decision of the Assistant Commissioner declaring that according to Rule 19-6.2 Petitioner had limited eligibility.

On October 6, 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 October 12, 2020. On October 14, 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, lived with his parents in Morrison, Illinois. Petitioner attended Morrison for his freshman year (2018-19) and sophomore year (2019-20). While at Morrison, he played varsity and junior varsity basketball, football, track & field and wrestling. He last participated athletically at Morrison on February 8, 2020. The Petitioner is a starter on the football team and hopes he might have a chance to play football in college. Morrison's football team had an 11-1 record last season and could likely make a run for the state championship this year. (R. p. 31).
2. The Petitioner attended a public school in Morrison, Illinois that served his parents address. Petitioner transferred with a corresponding change of residence when the Transfer Report was submitted. The Petitioner's parents sent him to live with his godfather and "uncle" Chris Lyons in West Lafayette, Indiana. Mr. Lyons is the Petitioner's father's best friend and has been referred to by the family as Uncle Chris (R. p. 25 & 29). The Petitioner's parents filed an action for Chris Lyons to become the Petitioner's legal guardian, which was granted by a trial court in cause 79C01-2008-FU-000061 on August 28, 2020. (R. p. 94). The Petitioner has been living with his legal guardian in West Lafayette, Indiana and has been attending Harrison, the public school that serves his guardian's address, since August 20, 2020. Harrison accepted the guardianship as proof of legal settlement for attendance purposes. The legal guardianship was not sought for athletic reasons. The Petitioner had a bone fide change of residence.
3. On August 19, 2020, Petitioner's parents completed the Transfer Report and the Petitioner indicated he was transferring because the Petitioner "wanted in person learning. Former school was offering only virtual learning. Parents are giving his uncle legal guardianship." The Petitioner's family also noted that Harrison offers more AP classes, which will help prepare him for college. (R. p. 27).
4. After the outbreak of COVID-19, Morrison went to virtual instruction in the spring of 2020. The Petitioner, a 4.0 gpa student, admitted he struggled to learn via the remote learning platform. He admitted his schoolwork was not as good in the virtual platform

¹The following members participated in the meeting: Kelly Wittman (Chairperson), 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.

and he didn't have the same focus or concentration (R. p. 31). The Petitioner and his family were concerned his grades might slip if he continued with virtual instruction and started looking for options of schools offering in person instruction the next school year. The Petitioner's parents noted he was sad and withdrawn during the virtual instruction in the spring. (R. p. 34). On July 29, 2020, Morrison announced it would offer a hybrid learning plan (three days a week virtual/two days a week in person). (R. p. 25). On August 1, 2020, the Petitioner's family notified Morrison they would be transferring, and the Petitioner would be moving in with his uncle Chris Lyons and attending Harrison. (R. p. 102). Since starting back with in person instruction, the Petitioner is "more upbeat and more like himself." (R. p. 35).

5. Morrison recommended Petitioner have full eligibility under Rule 19-5. Harrison recommended Petitioner have full eligibility under Rule 17-8.1. Both schools agreed it was in the Petitioner's best interest to transfer. Neither school found any athletic motivation for the transfer.²

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.

² The IHSAA Review Committee order notes the "IHSAA has advanced another reason why [the Petitioner] was leaving Morrison ... the IHSAA as experienced an up-tick in out-of-state transfers into Indiana, including from Illinois, and that in many of those cases the transfers involved student athletes coming from states where fall sports had been cancelled or paused (Illinois, Michigan, Ohio), and because of Indiana's decision to play fall 2020 high school sports, the students were coming to Indiana to play the sports which their sending schools had paused or cancelled." (R. p. 8-9). The IHSAA found there was inadequate evidence of a Rule 19-4 violation, yet there is speculation throughout the order and a complete lack of any actual evidence to show the transfer had anything to do with athletics. That should have ended any discussion about athletics or violation of the requirements of Rule 19-6.2(c). Orders and decisions must be based on facts and evidence and not speculation or references to what other students might be doing. Each case is decided by the facts and evidence for that particular child.

Code § 20-26-14-6(b). In this matter, the Review Committee rendered a final determination of student-eligibility adverse to the Petitioner on October 6, 2020 and Petitioner sought timely review on October 6, 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 school signed the *Verification*, but the receiving school did not sign *Verification*. However, the sending school noted at the hearing, the transfer to Harrison was in the Petitioner's best interest. 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. Both the sending and receiving school found no evidence and the Review Committee found there was no violation of Rule 19-4.
8. The Panel finds that Petitioner's decision to transfer to Harrison was done in his best interest and additionally that a hardship condition existed under Rule 17-8.1. Families and schools across the country have had to make decisions regarding what type of instruction will be offered and what platforms are best for each student to learn during the COVID-19 pandemic. This pandemic has necessitated families moving, transferring and choosing the best possible options for each individual student, which created a hardship condition for many students, including the Petitioner. 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. The Petitioner struggled with virtual learning and wanted a chance to attend school in person. The family reached out to a friend, who is considered family to them, and asked if the Petitioner could live with him if he transferred to a school that offered in person instruction. This was a heart-breaking decision for the family, but it created an "extremely negative non-athletic condition, peculiar to the student, which is caused by unforeseen, unavoidable and uncorrectable events, which is beyond the election, control or creation of the student." Rule 17-8.3.

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, In the Matter of J.A. 200924-202 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 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 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 Harrison under Rule 17-8.1 and Rule 17-8.5.

ORDER

The Panel finds by a vote of 5-0 that the decision of the IHSAA Review Committee, upholding the decision of the Commissioner is NULLIFIED. The Petitioner has full eligibility as of October 14, 2020 at the receiving school, provided he meets all other eligibility requirements.

DATE: 10/15/2020



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.