

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter N.A.)
Petitioner,)
)
and)
) **CAUSE NO. 201203-212**
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 October 13, 2020, N.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 October 22, 2020 Elmwood Park High School (“Elmwood”), the sending school, completed its portion of the Transfer Report. The receiving school, North Posey High School (“North Posey”) completed its portion of the Transfer Report on October 22, 2020.

On October 28, 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 November 19, 2020. Following the evidence presented at the November 19, 2020 hearing, the Review Committee issued its ruling on December 3, 2020 upholding the decision of the Assistant Commissioner declaring that according to Rule 19-6.2 Petitioner had limited eligibility. Additionally, the Review Committee found a violation of Rule 17-7.4.

On December 3, 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 December 7, 2020. The Panel also received a supplemental submission from the Petitioner.

On December 8, 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 grandmother in Poseyville, Indiana. North Posey is the public school that serve's the grandmother's residence. Petitioner attended Elmwood for his freshman year (2018-19) sophomore years (2019-20). While at Elmwood he participated in varsity wrestling. He last participated athletically at Elmwood on February 8, 2020. The Petitioner's father is the wrestling coach at Elmwood and a former state wrestling champion himself. (R. p. 22).
2. The Petitioner attended Elmwood, a public school in Elmwood Park, Illinois. Petitioner transferred with a corresponding change of residence when Transfer Report was submitted. The Petitioner transferred to help care for his elderly grandmother during the COVID pandemic. The Petitioner shops for his grandmother and picks up her prescriptions so she can stay at home during the pandemic. (R. p. 34).
3. On August 14, 2020, Petitioner's parents completed the Transfer Report and the Petitioner indicated she was transferring because the Petitioner's "family made the decision to move back to the North Posey District to take care of ... [grandmother] during this time of the COVID pandemic." (R. p. 47). The Petitioner's family considered moving the entire family to the area, however that never happened (R. p. 26) Additionally, the family was interested in finding in-person instruction for the Petitioner as he struggled in the spring when the pandemic necessitated virtual instruction in schools across the country, including in Illinois and Indiana. The Petitioner's family decided to stay in Elmwood Park with another son, a senior in high school. The Petitioner moved nearly six hours from his family in order to help take care of his grandmother.
4. Elmwood recommended Petitioner have full eligibility under Rule 19-5. North Posey recommended Petitioner have full eligibility under Rule 19-5. After their investigations, neither school found the move to be athletically motivated. Although the Review Committee discussed possible athletic motivation for a move, there was an absence of any direct evidence of athletic motivation and they in fact found no violation of Rule 19-

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

4. Both schools provided documentation and recommendations that the move was in the best interest of the Petitioner. (R. p. 80, 81, 82).

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 December 3, 2020 and Petitioner sought timely review on December 3, 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. However, both schools submitted documents to the Review Committee in agreement that the move was in the Petitioner’s best interest.

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. In fact, the Review Committee found no violation of Rule 19-4.
8. The Panel finds that Petitioner's decision to transfer to North Posey was done in his best interest and additionally that a hardship condition existed under Rule 17-8.1. The Petitioner's family considered moving the whole family to Poseyville and when that became unworkable, the Petitioner alone moved to care for his elderly grandmother. The Petitioner also wanted to attend school that was in-person after his grades suffered during virtual instruction in the spring of 2020. North Posey offered in-person instruction in the fall of 2020. The IHSAA's rules will not be diminished and the student will suffer harm not being able to participate athletics. In fact, this young man should be applauded for leaving his friends and family behind to care for a family member in need. This decision is made specifically for the Petitioner and his specific circumstances. The family needed someone to care for an elderly grandmother during the COVID pandemic and the Petitioner stepped up to the plate to do this for the family. Thus, a hardship condition existed. 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. See In Re Matter J.A. v. IHSAA 200924-202 and In the Matter H.N. v. IHSAA 201006-203. Therefore, the Petitioner is fully eligible pursuant to Rule 17-8.1.
9. Additionally, there is evidence that both schools agreed the move was in the Petitioner's best interest. Both schools provided documentation and recommendations that the move was in the best interest of the Petitioner (R. p. 36, 80, 81, 82). This is a commendable young man who will likely learn more in these months caring for a grandmother than many of us can even imagine. These are situations that make kids into kind, loving and self-sacrificing human beings. 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 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 Review Committee found a violation of Rule 17-7.4, which prohibits parties from submitting false information. The Panel finds no such evidence. The Petitioner’s family testified that on August 3, 2020 they fully intended to move the whole family to Poseyville, Indiana. The Athletic Director from North Posey, Waylon Schenk, took full responsibility for how the forms were submitted and filled out. Mr. Schenk courageously admitted he made a series of mistakes and errors in submitting the Transfer Report. Mr. Schenk admitted the family told him they did intend to move to the area (R. p. 26). Mr. Schenk went on to say, “[Mr. A] is here a lot with his son. They’re back and forth. I took that as [Mr. A] was living here, splitting time between here and there. Knowing what I know now, I should have never filled out the form the way I did. I shouldn’t have listed it as bonafide move. He – it was my mistake, 100 percent my mistake and I want to take responsibility for that. And, I feel bad on behalf of the [family] that I filled it out as a bonafide move.” (R. p. 26). Mr. Schenk went on to explain to the Review

Committee that his wife is going through cancer. (R. p. 32). “I’ve been through five surgeries. I’ve been through weeks and months of chemo, radiation. Honestly my mind was other places. I was trying to coach a football team, trying to be a father to four kids and with my wife ill.” (R. p. 32). Mr. Schenk knew the circumstances had changed for the Petitioner’s family and admitted he did not change the Transfer Report. He admitted he filed the Transfer report it later in October due to his personal circumstances. He admitted he made mistakes in providing information to the Assistant Commissioner and the Review Committee. He admitted he should have changed the forms and that the family had kept him apprised of their circumstances. There is no evidence however that he did so intentionally or with any purpose to provide false information. The IHSAA Commissioner told Mr. Schenk he did not believe him. (R. p. 26). Multiple witnesses asked him over and over about how the Transfer Report was completed and he admitted again and again, he made a mistake and did not correct the forms. The Panel finds this was a situation of a school official under tremendous work and personal stress and not someone who intentionally provided false information. It took courage to admit his mistakes and personal circumstances. The Panel found him to be credible and honest. Therefore, the Panel finds no violation of Rule 17-7.4.

11. 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 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 December 8, 2020 at the receiving school, provided he meets all other eligibility requirements.

DATE: 12/09/2020



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.