

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter K.W.)
Petitioner,)
)
and)
) **CAUSE NO. 201211-214**
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 9, 2020, K.W.’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 15, 2020, Anderson High School (“Anderson”), the sending school, completed its portion of the Transfer Report. The receiving school, Liberty Christian High School (“Liberty Christian”) completed its portion of the Transfer Report on October 15, 2020.

On October 30, 2020, the IHSAA Assistant Commissioner determined that Petitioner’s transfer violated Rule 20-2 and ruled Petitioner was ineligible at the receiving school until August 5, 2021. Additionally, she found that the Petitioner was ineligible academically for the first grading period in the fall under Rule 18-1. 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 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 Commissioner declaring that according to Rule 20-2, 18-1 and 19-4, Petitioner was ineligible at the receiving school.

On December 11, 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 15, 2020. The Petitioner also provided a Supplemental Submission on December

16, 2020. On December 17, 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 sophomore, lives with his mother in Anderson, Indiana. Petitioner attended Anderson his freshman year. While at Anderson, he played junior varsity basketball. He last participated athletically at Anderson on February 25, 2020.
2. The Petitioner lives in Anderson, Indiana and attended a public school which served his mother's residence. The Petitioner transferred to a private school in Anderson, Indiana. Petitioner transferred without a corresponding change of residence when the Transfer Report was submitted.
3. The Petitioner testified that the head coach from Anderson verbally abused him as well as other players. The Petitioner's father testified it was the school's fault his son was allowed to be verbally abused by a coach, but the move had nothing to do with basketball. (R. p. 30). In fact, that coach at Anderson resigned therefore he is no longer the head coach at Anderson. (R. p. 26).
4. On October 9, 2020 Petitioner's parents completed the Transfer Report and the Petitioner indicated "[the Petitioner] attended Liberty Christian. After leaving Liberty, we realized that we wanted him at a small Christian school so that he could received more individualized attention. We want to make sure that he receives the academic support that he needs. One other reason was that Anderson High School made the decision to only offer virtual education. We believe [Petitioner] needs in person education." (R. p. 38). The Petitioner's parents explained he attended Liberty Christian in 7th grade but after their divorce and financial resources changing, he began attending Anderson. (R. p. 24). When he left Anderson, his GPA was 0.797 and he had at least 20 referrals for discipline. (R. p. 23). Since transferring to Liberty Christian, the Petitioner has increased his GPA to 2.72 and his behavior has improved. (R. p. 24, 55 & 66).
5. On June 30, 2020 Coach Anderson, who had previously been an assistant coach at Anderson, accepted a coaching position at Liberty Christian. There was no evidence that the Petitioner or his family knew about the coach transferring to Liberty Christian.

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

Additionally, there was no evidence Coach Anderson had any contact with the Petitioner or his family or made any attempt to recruit Petitioner or use undue influence to get him to transfer to Liberty Christian. (R. p. 23 & 25).

6. Anderson recommended Petitioner have no eligibility under Rule 20-2. Liberty Christian recommended Petitioner have full eligibility under Rule 17-8.1. Neither Anderson nor Liberty Christian signed the 17-8.5 Verification limited eligibility waiver. Anderson, Liberty Christian and the Assistant Commissioner all agreed there was no athletic motivation for the move.

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 11, 2020.
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 established there was in fact a hardship condition that necessitated transferring schools. The Petitioner and his parents wanted to find in person instruction for the next school year since he struggled with the virtual learning platform at Anderson. (R. p. 28). Liberty Christian provided in person instruction in the fall semester. 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. Additionally, the Petitioner struggled at Anderson obtaining D's and F's and losing athletic eligibility due to grades. The Petitioner's parents wanted to find a school that offered in person instruction as well as hold their son accountable for his grades and academic achievements. The primary purpose of the IHSAA rule will still be accomplished and the ruling will not harm or diminish the purpose or spirit of the Rule. This decision is made specifically for the Petitioner and his specific circumstances. As the IHSAA is keenly aware, students are having to adapt within a world that is constantly changing during 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, In the Matter H.N. v. IHSAA 201006-20, In Re the Matter of E.T. v. IHSAA 201118-207 and In Re the Matter of E.T. v. IHSAA 201118-208. Therefore, the Petitioner is fully eligible pursuant to Rule 17-8.1.
9. There is no evidence under Rule 20-2 to establish undue influence or recruitment. The IHSAA enacted Rule 20-2 to prohibit recruiting of student athletes. The past link rule in 20-2, as written, would prohibit any student from ever moving to a school where any person may have coached or had contact with them at school or in club sport participation. The rule holds students responsible for grown-up's decisions that he/she can have no input or influence over. There is no evidence in the record Coach Anderson contacted the Petitioner to get him to come to Liberty Christian to play basketball. While the Panel agrees Rule 20-2 is a necessary rule to prevent recruitment or undue influence

of students, as it is written, it would prevent students who ever had contact in club/school sports to participate if both the coach/school staff and the student ever switched schools, regardless of undue influence or recruitment. The Rule, as written, unfairly punishes student athletes who participate in sports who subsequently have a parent move or transfer to another district. Therefore, the IHSAA failed to prove a violation of Rule 20-2. It is particularly troubling to the Panel that Rule 20-2 is not being consistently applied to all student athletes and additionally the Rule does not consider the particular circumstances of each individual student athlete. See In the Matter of Z.B. v. IHSAA 181018-181, In the Matter of M.S. v. IHSAA 180531-76, In the Matter of A.K. v. IHSAA 181001-179, In Re the Matter of E.T. v. IHSAA 201118-207 and In Re the Matter of E.T. v. IHSAA 201118-208.

10. The Panel does not find sufficient evidence of a violation of Rule 19-4. The Petitioner's father was questioned extensively about the verbal abuse of his son by the head basketball coach at Anderson. There is no evidence in the record that aside from this verbal abuse, the Petitioner or his family had any problem with the basketball program at Anderson. In fact, the Petitioner played the majority of the games for the junior varsity team. (R. p. 23). While the Petitioner and his family wanted the issue of the verbal abuse addressed, there is insufficient evidence to show the transfer was primarily for athletics. If the family wanted to get away from anyone associated with Anderson athletics, they certainly would not have picked or stayed at a school that hired an assistant coach from that very school. The primary purposes of transferring schools was academics and in-person instruction; therefore, the Panel finds no violation of Rule 19-4.
11. As for Rule 18-1, the first grading period is over and therefore the Panel believes Liberty Christian will have to review his current grades and decide if he meets the academic requirements to participate in athletics.
12. The Panel has consistently, for years, cautioned the Review Committee about the quality of the final orders prepared by them. Despite all the Panel's requests, the orders continue to be full of errors and cite facts that are not in evidence. In the Petitioner's Review Committee order, it references the wrong student's name a total of fifty-eight (58) times. While clerical errors can occur as a matter of course, this situation, as well as the countless others the Panel has noted in previous orders, leads the Panel to the conclusion that the Review Committee is not concerned with the quality of their orders or the requirement to provide families with the basic principles of a fair hearing process. As the Panel has noted, families deserve a right to be heard and the Review Committee has the responsibility to ensure that the hearings are conducted in a manner that complies with the requirements for presentation of evidence and due process. The Panel can only imagine how parents must feel when the orders cannot even get something as basic as

their child's name correct. The Panel operates under the guidance of the Indiana Rules of Evidence and the Indiana Administrative Orders and Procedures Act (AOPA). AOPA specifically states in IC § 4-21.5-3-27(d) that "findings must be based exclusively upon the evidence of record in the proceedings and on matters officially noticed in that proceedings. Findings must be based upon the kind of evidence that is substantial and reliable." Hearsay evidence is admissible, but an order cannot be based solely upon the hearsay evidence. IC § 4-21.5-3-26. Although the IHSAA is a private membership organization, it operates only with the participation of Indiana schools. Students and schools that fall under the IHSAA should be afforded every protection under the Indiana and United States Constitutions, specifically the due process rights afforded in Article 1 Section 12 and the 14th Amendment. In this case, the Panel had to go line by line of the Review Committee final order to determine if the facts alleged matched not only the evidence admitted during the hearing, but whether they even were for the right student athlete. Facts and evidence matter when reaching a conclusion that impacts a student's participation in athletics. When the Review Committee takes away the opportunity for a student to participate in athletics it should be done fairly, consistently and with actual evidence that establishes a clear violation of a rule. Although the Panel is not issuing a finding of the denial of due process rights of the Petitioner, we caution the Review Committee that future cases may warrant such a conclusion.

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 December 17, 2020 at the receiving school, provided he meets all other eligibility requirements.

DATE: 12/18/2020



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.