

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter B.L.)
Petitioner,)
)
and)
) **CAUSE NO. 171116-172**
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 May 30, 2017, B.L.’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 2017–2018 school year relating to the Petitioner’s transfer. On June 9, 2017, Perry Meridian High School (“Perry Meridian”), the sending school, completed its portion of the Transfer Report. The receiving school, Roncalli High School (“Roncalli”) completed its portion of the Transfer Report on June 9, 2017.

On June 9, 2017, the IHSAA 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 18, 2018. 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 3, 2017. Following the evidence presented at the November 3, 2017 hearing, the Review Committee issued its ruling on November 14, 2017 upholding the decision of the Commissioner declaring that according to Rule 19-6.2, Petitioner had limited eligibility.

On November 16, 2017, 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 November 22, 2017. On November 28, 2017, 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.²

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 and father in Indianapolis, Indiana. Petitioner attended Perry Meridian his freshman year. While at Perry Meridian he played varsity wrestling. He last participated athletically at Perry Meridian on February 18, 2017. The Petitioner is an accomplished wrestler and finished in third place in the 2017 IHSAA Wrestling Tournament Series in the 106 pound division for Perry Meridian.
2. The Petitioner lives in Indianapolis, Indiana and attended Perry Meridian, a public school which served his parents' residence. Petitioner transferred without a corresponding change of residence.
3. The Petitioner transferred to Roncalli, a private religious school in Indianapolis, Indiana, with no district boundaries that accepts students from across the state.
4. On May 30, 2017, Petitioner's parents completed the Transfer Report and the Petitioner indicated the transfer occurred because the Petitioner "has a diagnoses of Attention Deficit Disorder [ADD]. He has had challenges with the block scheduling and academic environment at Perry Meridian. Per his psychiatrist, an education atmosphere with consistent schedules, smaller class sizes and less distraction, would provide a better learning environment for [him]."
5. The record shows that the Petitioner's parents reported their concerns regarding the block schedule to Perry Meridian's principal, a family friend, on a number of occasions. They were told by the principal that "because [the Petitioner] is not failing, we can't offer him any resources." The parents were under the impression they were receiving good advice from the principal, thus they did not seek further assistance from Perry Meridian's guidance counselling staff. The Petitioner's parents did keep in contact with the Petitioner's teachers and sought assistance from them in the event he was having any on-going issues in each individual class. Roncalli does not have a block schedule and instead has an eight (8) period day, which is the same schedule every day of the school week.

¹The following members participated in the meeting: Cathy Danyluk (Chairperson), Mr. Chris Lancaster, Mr. Karl Hand, Mr. Mickey Golembeski, Mr. Keith Pempek and Ms. Mary Quinn. Ms. Kelly Bauder, staff attorney, was also present as legal counsel to the Panel.

²Mr. Chuck Weisenbach recused himself from the meeting and discussion.

6. The Petitioner's confusion regarding the block schedule was causing him anxiety and necessitated his parents taking action to ensure he was thriving both mentally and academically. The Petitioner's older brother continued to attend Perry Meridian for his senior year and has been able to thrive in the school. The Petitioner's parents were interested in finding the best atmosphere for both of their children to succeed based on their individual needs.
7. Perry Meridian recommended Petitioner have limited eligibility under Rule 19-6.2 and did not sign the 17-8.5 *Verification*. Roncalli recommended Petitioner have full eligibility under Rule 19-6-2 but the principal did not sign the 17-8.5 *Verification*.³

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 November 14, 2017 and Petitioner sought timely review on November 16, 2017.
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

³ Roncalli indicated they wanted to check 17-8.5 but have been ridiculed by the IHSAA for checking that if the sending school does not agree. The Panel is concerned with the IHSAA dictating to member schools how to fill out the transfer report. The IHSAA Rules do not bar a school from checking the 17-8.5 verification, it simply states for the waiver to apply the sending and receiving schools must both agree. Schools should not be discouraged from indicating they believe the transfer is in a student's best interests.

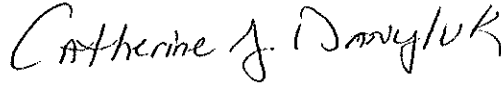
capricious “only when it is willful and unreasonable, without consideration and in disregard of the facts or circumstances in the case, or without some basis which would lead a reasonable and honest person to the same conclusion.” *Id.* (citing Dep’t of Natural Resources v. Indiana Coal Council, Inc.), 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 Panel finds that the Petitioner’s decision to transfer schools due to a hardship condition. The Petitioner was succeeding academically but was struggling with organization skills. Perry Meridian’s block schedule and the Petitioner’s diagnosis of ADD resulted in the student being unable to remember which class he was supposed to attend each day. The Panel finds that Petitioner’s parent did not seek further assistance from Perry Meridian guidance staff after being informed there were no other resources the school could provide to their honor student by the principal. The Petitioner’s parents believed they were fully advocating for their student’s success by transferring him to Roncalli because it offered a non-block schedule that would be more accommodating to the Petitioner’s ADD and organizational struggles. The Panel finds there was a hardship condition present. While the Petitioner was not struggling academically, he was struggling daily with trying to determine which classes he was supposed to be attending. The Panel further finds there was no evidence of athletic motivation in this case, the Petitioner will suffer if the waiver is not granted and the waiver will not diminish the purpose of the Rule. Therefore, all of the requirements of Rule 17-8.1 were met.

ORDER

The Panel finds by a vote of 5-1 that the decision of the IHSAA Review Committee, upholding the decision of the Commissioner is NULLIFIED. The Petitioner has full eligibility as of November 28, 2017 at the receiving school, provided he meets all other eligibility requirements.⁴

DATE: 12/1/2017



Cathy Danyluk, 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.

⁴ The Panel believes this case should have not come before this body or even the Review Committee. It is clear from the record that this transfer was in the student's best interest. Extraordinary resources were used to consider this transfer, which was not athletically motivated.