

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter L.K.)
Petitioner,)
)
and)
) **CAUSE NO. 181001-179**
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 June 1, 2018, L.K.'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 2018–2019 school year relating to the Petitioner's transfer. On June 20, 2018, Fort Wayne North Side High School ("Fort Wayne"), the sending school, completed its portion of the Transfer Report. The receiving school, Richmond High School ("Richmond") completed its portion of the Transfer Report on June 1, 2018.

On July 17, 2018, the IHSAA Commissioner determined that Petitioner's transfer violated past link Rule 20-2 and ruled Petitioner was ineligible at the receiving school until June 1, 2019. 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 September 13, 2018. Following the evidence presented at the September 13, 2018¹ hearing, the Review Committee issued its ruling on September 21, 2018 upholding the decision of the Commissioner declaring that according to Rule 20-2, Petitioner was ineligible at the receiving school.

¹ On August 10, 2018, the Petitioner's parents requested an emergency alternative appeal hearing date. The decision of the Assistant Commissioner was on July 17, 2018, yet the Review Committee conducted a hearing on September 13, 2018. The Case Review Panel has met with IHSAA staff requesting that appeals move forward in a timely manner when a sport is on-going or just beginning. On August 13, 2018, the IHSAA set this matter for a Hearing on September 13, 2018, knowing the petitioner wanted to participate in fall sports. There is no mention in the record why an alternative date was not set in this matter.

On October 1, 2018, 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 13, 2018. The Panel also received a Supplemental Submission on Behalf of the Petitioner on October 15, 2018 and a Reply to the Supplemental Submission from the Respondents on October 16, 2018. On October 17, 2018, the Panel held a meeting², 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 senior, lives with his mother and father in Richmond, Indiana. Petitioner attended Fort Wayne his freshman – junior years. While at Fort Wayne, he played varsity basketball. He last participated athletically at Fort Wayne on March 12, 2018.
2. The Petitioner lives in Richmond, Indiana and attends a public school which serves his parents' residence. Petitioner transferred with a corresponding change of residence when transfer report was submitted. This move was a bonafide change of residence. The Petitioner's parents put their house in Fort Wayne up for sale and purchased a new home in Richmond. The home in Fort Wayne was eventually sold.
3. In June 2018, Petitioner's parents completed the Transfer Report and the Petitioner indicated "[s]tudent's father accepted a new job," as the reason for transfer. The Petitioner's father was offered a new job with a significant increase in salary, which was near the Richmond area. Additionally, the company intended to expand into the Richmond area market. The Petitioner's parents, who also have a bi-racial daughter, researched schools that would provide an opportunity for her to attend a school with racial diversity.
4. The Petitioner is an accomplished basketball player and prior to moving to Richmond, had committed to play basketball at Ball State University. The Petitioner has an interest in obtaining a degree in architecture, which was one reason he chose to commit to Ball State.
5. At the beginning of May, 2018 coach Shabaz Khaliq, who had previously been a coach at Fort Wayne, accepted a coaching position at Richmond. There was no evidence that the Petitioner or his family knew about the coach transferring to Richmond and only learned

²The following members participated in the meeting: Kelly Wittman (Chairperson), Mr. Karl Hand, Mr. Chris Lancaster, Ms. Stacie Stoffregen, Ms. Mary Quinn, and Mr. Chuck Weisenbach. Ms. Kelly Bauder, staff attorney, was also present as legal counsel to the Panel.

about it in the newspaper. Additionally, there was no evidence Coach Khaliq 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 Richmond.

6. Fort Wayne recommended Petitioner have full eligibility under Rule 19-5. Richmond recommended Petitioner have full eligibility under Rule 19-5. Neither Fort Wayne nor Richmond signed the 17-8.5 Verification limited eligibility waiver.

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 21, 2018 and Petitioner sought timely review on October 1, 2018.
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)). The Petitioner did not seek a waiver.
8. According to Rule 19-5, when a student's transfers with a change of residence he will have full eligibility at the receiving school as long as there is no evidence of the transfer being athletically motivated, the result of undue influence or recruitment.
9. The Panel finds that according to Rule 19-5, that there was a corresponding change of residence by student to reside with Petitioner's parents, which was a bonafide move. The Petitioner's parents moved to Richmond for a better opportunity for their family and a significant increase in salary. The Petitioner's mother had to also change jobs so that the family could stay together. The Petitioner's parents sold their house in Fort Wayne and purchased a new house in Richmond.
10. 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 Khaliq contacted the Petitioner to get him to come to Richmond to play basketball. While the Panel agrees Rule 20-2 is a necessary rule to prevent recruitment 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, and with a bonafide change of residence, the Petitioner would be fully eligible to participate in athletics at Richmond. 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.

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 October 17, 2018 at the receiving school, provided he meets all other eligibility requirements.

DATE: 10/18/2018



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.