

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter T.G.)
Petitioner,)
)
and)
) **CAUSE NO. 210102-215**
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 22, 2020, T.G.’s (“Petitioner”) father 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 29, 2020, Brownsburg High School (“Brownsburg”), the sending school, completed its portion of the Transfer Report. The receiving school, Traders Point High School (“Traders Point”) completed its portion of the Transfer Report on October 30, 2020.

On November 5, 2020, the IHSAA Assistant Commissioner determined that Petitioner’s case was a Rule 19-6.2 transfer and ruled Petitioner was entitled to limited eligibility at the receiving school until February 25, 2021. 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 December 17, 2020. Following the evidence presented at the December 17, 2020 hearing, the Review Committee issued its ruling on December 31, 2020 upholding the decision of the Commissioner declaring that according to Rule 19-6.2 Petitioner had limited eligibility.

On January 2, 2021, 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 January 8, 2021. On January 12, 2021, 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 father in Brownsburg, Indiana. Petitioner attended Brownsburg his freshman (2018-19) and sophomore (2019-20) years. While at Brownsburg, he played freshman and varsity basketball. He last participated athletically at Brownsburg on February 25, 2020.
2. The Petitioner lives in Brownsburg, Indiana and attended a public school which served his grandmother's residence. Over the summer, the Petitioner moved in with his father, who also lives in Brownsburg, Indiana. The move was due to the COVID pandemic to ensure the safety of his grandparents during the crisis. (R. p. 67). The Petitioner transferred to a private school in Whitestown, Indiana which has open enrollment.
3. On October 22, 2020 Petitioner's father completed the Transfer Report and the Petitioner indicated he "moved between residences to live with father ... change of address by student only. Mr. [G] wanted the [Petitioner] to be in a safe school environment based on previous racial issues at previous school. Father stated he wanted [Petitioner] to be in a Christian school with small class sizes for son." (R. p. 49).
4. In May 2020, there was an incident with several Brownsburg students who posted a picture on social media showing the students kneeling over the N-word scrawled in chalk on pavement. (R. p. 78). Three of the students were Brownsburg students and were given the strongest punishment allowable under discipline Brownsburg Rule 20-34. (R. p. 24). Although the Petitioner did not interact with these students on a regular basis, one of the girls was a cheerleader so he would see her at school functions. (R. p. 29). After the offensive social media post and extensive media coverage of the incident, the Petitioner received several messages personally regarding discussions about the racial tensions at school. (R. p. 27). The messages were offensive and racially motivated. The Petitioner and his father testified the tensions because of the racial incident took a toll emotionally, mentally and physically on the family. (R. p. 22). The Petitioner and his parents did not contact any member of the Brownsburg athletic or administrative staff to discuss their concerns regarding the racial incidents or report the direct messages to the Petitioner on

¹The following members participated in the meeting: Dr. Jennifer Jensen (Interim Chairperson), Mr. Brett Crouso, Mr. Ben Ballou, Ms. Meisha Wide, Mr. Mickey Golembeski, Ms. Laura Valle and Ms. Mary Quinn. Ms. Kelly Bauder, staff attorney, was also present as legal counsel to the Panel.

Snap Chat (R. p. 24). The Petitioner and his family believed the school handed the situation poorly and did not notify families about what actions were taken against students (R. p. 27). The family did say that prior to these actions by students, they had no other issues with Brownsburg or any school officials.

5. There is no evidence in the record to show the transfer was athletically motivated or a violation of Rule 19-4. Brownsburg and Traders Point found no violation of Rule 19-4. Additionally, Brownsburg was a division 4A school and Traders Point is a division 1A school.
6. Brownsburg recommended Petitioner have limited eligibility under Rule 19-6.2. Traders Point recommended Petitioner have full eligibility under Rule 17-8.1. Neither Brownsburg nor Traders Point 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 December 31, 2020 and Petitioner sought timely review on January 2, 2021.
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. This decision is made specifically for the Petitioner and his specific circumstances. As the IHSAA is keenly aware, students are having to not only adapt to the unprecedented difficulties of the COVID pandemic, but the events across the country and racial divide have created an environment in communities and on social media that has brought about an atmosphere where racial tensions are high. The killing of black men and women by law enforcement as well as the protests across the country forced students to confront racial issues and conflicts in their communities. Brownsburg took immediate action against the students involved in this despicable racist act. There is no question they took action to ensure the students were punished to the full extent of the school’s code of conduct. However, given the on-going racial tensions in the country, the Brownsburg community and the school had no way of ensuring that the Petitioner would not be subject to further harassment. While the school can continue to punish students for inappropriate conduct, there is little they can do to make sure the Petitioner would personally feel safe in school or would not be subject to further racists taunts. Students should not be negatively impacted by so many factors that are outside of their family and school’s control. See In Re Matter J.A. v. IHSAA 200924-202 and In the Matter H.N. v. IHSAA 201006-203. The IHSAA rules will not be harmed or diminished by this ruling. The Petitioner could suffer further harm or be subject to further racial harassment. Therefore, the Petitioner is fully eligible pursuant to Rule 17-8.1.

ORDER

The Panel finds by a vote of 6-1 that the decision of the IHSAA Review Committee, upholding the decision of the Commissioner is NULLIFIED. The Petitioner has full eligibility as of January 12, 2021 at the receiving school, provided he meets all other eligibility requirements.

DATE: 1/13/2021



Dr. Jennifer Jensen, Interim 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.