

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter A.L.)
Petitioner,)
)
and)
) **CAUSE NO. 210112-216**
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 September 15, 2020, A.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 2020–2021 school year relating to the Petitioner’s transfer. On November 4, 2020, Avon High School (“Avon”), the sending school, completed its portion of the Transfer Report. The receiving school, North Central High School (“North Central”) completed its portion of the Transfer Report on September 29, 2020.

On November 13, 2020, the IHSAA Assistant Commissioner determined that Petitioner’s case was a Rule 19-4 and 20-2 transfer and ruled Petitioner was entitled to no eligibility at the receiving school until September 9, 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 19-4 and 20-2 Petitioner had no eligibility for 365 days.

On January 12, 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 22, 2021¹. On January 27, 2021, 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 junior, lives with his father in Indianapolis, Indiana. Petitioner attended Avon his sophomore (2019-20) year. While at Avon, he played varsity basketball. He last participated athletically at Avon on March 3, 2020.
2. The Petitioner lived in Avon, Indiana and attended a public school which served his mother's residence. Over the summer, the Petitioner moved in with his father, who lives in Indianapolis, Indiana. The move was due to the COVID pandemic to ensure the safety of the Petitioner and due to his mother traveling for her work. The Petitioner transferred to a public school in Indianapolis, Indiana which serves his father's address. The Panel finds there was a bonafide change of residence between divorced parents meeting the requirements of Rule 19-6.1.
3. On September 15, 2020 Petitioner's parents completed the Transfer Report and the Petitioner indicated he "lived with his mother who works at senior living facilities that has her travel to different buildings. With her travel and mom working with seniors that may have COVID, she must quarantine before she sees her children." Transcript p. 44. The Petitioner's mother sent both of her children to live with their father during the pandemic and to ensure that their academic needs could be met as she was traveling for work. Transcript p. 23.
4. Avon recommended Petitioner have no eligibility under Rule 19-4. North Central recommended Petitioner have full eligibility under Rule 19-6.1. Neither Avon nor North Central 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.

¹ The Panel notes the record submitted by the IHSAA lists the wrong student's name on the transcript. This is an on-going issue with the Review Committee consistently having errors in the record regarding student names.

²The following members participated in the meeting: Dr. Jennifer Jensen (Interim Chairperson), Mr. Brett Crousore, Mr. Ben Ballou, Mr. Marques Clayton, Mr. Mickey Golembeski, Ms. Laura Valle and Ms. Mary Quinn. Ms. Kelly Bauder, staff attorney, was also present as legal counsel to the Panel.

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 12, 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’s mother had to make the hard choice to send her children to live with their father during the COVID pandemic so she could protect them from the virus and travel to work in order take care of elderly patients. Transcript p. 21. The Panel has found in recent cases this has created a hardship condition for families and granted

eligibility on similar facts. However, in those situations the Panel has not found any athletic motivations present. In this case, the Panel does find there are athletic motivations present that distinguish this case from the recent rulings. The Petitioner's father had several text message exchanges with the head coach of Avon's basketball team. In one conversation he said, "I am waiting to hear what the end result will be but [JB] and [GM] seem pretty solid on being gone That situation puts [the Petitioner] at a huge disadvantage ... we saw a huge opportunity to win with that team." Transcript p. 55. The two students mentioned in the text message also transferred from Avon to other schools. See In the Matter J.B. 201123-209 and In the Matter G.M. 201204-213. In a phone call between the Avon basketball coach and the Petitioner's father he mentioned J.B and G.M. and it would not benefit the Petitioner to play at Avon without those guys. Transcript p. 20. He also stated that it put the Petitioner at a huge disadvantage. Transcript p. 20. The Petitioner's father indicated he said those things just to as a "way to kind of ease things over." Transcript p 34. He does not deny making the statements to the coach, but says it was to make the coach feel better. Transcript p. 24. The Panel does not find this compelling. Why mention the other players at all and instead simply say we are sorry we must make this move for our family? The Panel finds the evidence presented by Avon that the Petitioner's father conveyed in multiple ways that the Petitioner would succeed athletically at another school given the departure of several key basketball players from the Avon program as evidence the move was primarily for athletic reasons. The Panel finds the IHSAA has met their burden to establish a violation of Rule 19-4.

9. The Review Committee also found a violation of Rule 20-2 when an assistant coach of the Petitioner's moved to North Central. The evidence at the Hearing found the Petitioner started attending school September 8, 2020 and Coach Wagner was hired the first week of October 2020. There was no testimony that the Petitioner knew Coach Wagner was being hired by North Central and no testimony Coach Wagner had any contact with the Petitioner prior to being hired. North Central officials testified they had no contact with the Petitioner or his family prior to his enrollment and were not familiar with his athletic abilities. Transcript p. 27. Therefore, the Panel finds there is no violation of Rule 20-2.

ORDER

The Panel finds by a vote of 5-2 that the decision of the IHSAA Review Committee, upholding the decision of the Commissioner is UPHELD. The Petitioner has no eligibility at the receiving school until September 8, 2021.

DATE: 1/28/2021



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.