

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter A.W.)
Petitioner,)
)
and)
) **CAUSE NO. 210302-220**
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 January 21, 2021, A.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 January 21, 2021, Calumet High School (“Calumet”), the sending school, completed its portion of the Transfer Report. The receiving school, 21st Century School-Gary (“21st Century”) completed its portion of the Transfer Report on January 21, 2021.

On February 4, 2021, 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 December 5, 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 February 19, 2021. Following the evidence presented at the February 19, 2021 hearing, the Review Committee issued its ruling on March 2, 2021 upholding the decision of the Commissioner declaring that according to Rule 19-6.2 Petitioner had limited eligibility at the receiving school until December 5, 2021.

On March 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 March 4, 2021. The Petitioner also submitted a supplemental submission on March 4, 2021.

On March 5, 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 sophomore, lives with his mother in Gary, Indiana. Petitioner attended Calumet his freshman (2019-20), and part of his sophomore (2020-21) year. While at Calumet, he participated in varsity basketball. He last participated athletically at Calumet on December 5, 2020. Record p. 2.
2. The Petitioner lived in Gary, Indiana and attended Calumet, a public school which did not serve his mother's residence. In the spring of 2021, Petitioner transferred without corresponding change of residence. Transcript p. 17.
3. The Petitioner transferred to 21st Century, a public charter school in Gary, Indiana, that does serve his mother's residence. Record p. 39
4. On January 21, 2021 Petitioner's mother completed the Transfer Report and the Petitioner indicated that "student transferred schools due to lack of special education services being provided at Calumet High School. Mom states that [the] student did not receive extra time on his PSAT which he is entitled to...which is stated in his IEP. Mom also states she has spent time during e-learning helping [Petitioner] with his school-work when he should be receiving 180 mins per week. [Mom,] who is the sole caregiver of her father who is sick says that helping [Petitioner] during e-learning is taking away from her ability to care for her father." Record p. 44.
5. The record shows that on or about January 5, 2021, Petitioner's mother filed a complaint with the Indiana Department of Education's Office of Special Education regarding her concerns about the Petitioner's IEP at Calumet. The investigation found there were two procedural errors by Calumet in servicing the Petitioner's IEP. Record p. 152-3. Petitioner's mother was interested in finding a school environment that would fulfill Petitioner's special education needs. Transcript p. 22
6. On or about December 18, 2021, Petitioner's mother met with Calumet school officials to discuss issues transporting Petitioner to school. Petitioner's mother became the primary caregiver to her father after experiencing a serious health condition. Petitioner's mother shared with school officials that due to her father needing 24/7 care it was becoming

¹The following members participated in the meeting: Dr. Jennifer Jensen (Interim Chairperson), Mr. Brett Crousore, Mr. Ben Ballou, Mr. Marques Clayton, Ms. Laura Valle and Ms. Mary Quinn. Ms. Leslie-Ann James, staff attorney, was also present as legal counsel to the Panel.

impossible for her to continue to transport Petitioner to Calumet thus she was considering transferring Petitioner to a school closer to her residence. Transcript p. 18-21

7. There is no evidence in the record that demonstrates that the transfer was athletically motivated or a violation of rule 19-4. Calumet and 21st Century found no violation of Rule 19-4.
8. Calumet recommended Petitioner have limited eligibility under Rule 19-6.2. 21st Century recommended full eligibility under rule 17-8.1. Neither Calumet nor 21st Century 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 March 2, 2021 and Petitioner sought timely review on March 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*, thus the 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 has a hardship condition that meets the conditions of Rule 17-8.1. The Petitioner and his mother wanted a school that would "provide the best transportation and academic environment at the high school he attends." Transcript p. 21 The Petitioner's mother was unable to continue transporting the Petitioner due to becoming the primary caregiver of the Petitioner's grandfather. Consequently, Petitioner enrolled at a school that was closer in proximity to their residence alleviating their transportation concerns. While the Panel is aware that transportation issues are not considered a hardship under IHSAA rules, the Panel does not agree with their foreseeability argument. Fn 2. Record. P4. It was not foreseeable for Petitioner or his mother to know that becoming the primary caregiver for Petitioner's grandfather would cause transportation issues. This would constitute an extremely negative non-athletic condition, peculiar to the Petitioner, caused by an unforeseen, unavoidable, and uncorrectable event beyond the control or creation of the Petitioner or his mother. Furthermore, 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.
9. In Brewer v. The Indiana High School Athletic Association 49D12-2101—MI—001316, the trial court found that IHSAA was dismissive and ignored the transportation issues experienced by the Petitioners. Moreover, the court noted that they could not "ignore, and will not ignore this fact: this "jury" that found a widowed African American mother's claim of hardship in transporting her son to be a mere "inconvenience" shares none of [Petitioner] or Mrs. Brewer's life experiences. Findings of Fact p. 15. The record shows that the IHSAA continues to be dismissive to transportation issues raised by students and their families. It is troubling to the Panel that the IHSAA does not recognize Petitioner's mother was doing her best to ensure Petitioner would adapt well to the changes in his educational environment caused by family illness and 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. The Panel finds the evidence presented by Petitioner's

mother that the transfer to 21st Century would better suit Petitioner's academic needs and was not for primarily athletic reasons. Therefore, the Petitioner is fully eligible pursuant to Rule 17-8.1.

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 at the receiving school as of March 5, 2021, provided he meets all other eligibility requirements.

DATE: 3/11/2021



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.