

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter A.S.)
Petitioner,)
)
and)
) **CAUSE NO. 210903-226**
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 2, 2021, A.S.’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 2021–2022 school year relating to the Petitioner’s transfer. On June 12, 2021, Carroll Ft. Wayne High School (“Carroll”), the sending school, completed its portion of the Transfer Report. The receiving school, Fort Wayne Blackhawk Christian High School (“Blackhawk Christian”) completed its portion of the Transfer Report on June 17, 2021.

On June 18, 2021, 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 January 26, 2022. 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 August 24, 2021. Following the evidence presented at the August 24, 2021 hearing, the Review Committee issued its ruling on upholding the decision of the Commissioner declaring that according to Rule 19-6.2, Petitioner had limited eligibility.

On September 3, 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 September 7, 2021. On September 17, 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 her mother and father in Fort Wayne, Indiana. Petitioner attended Carroll her freshman year (2019-2020) and sophomore year (2020-2021). While at Carroll she played varsity basketball and unified flag football. She last participated athletically at Carroll on January 26, 2021. Record p.104.
2. The Petitioner lived in Fort Wayne, Indiana and attended Carroll, a public school which served her parents' residence. Petitioner transferred without a corresponding change of residence when transfer report was submitted. Record p. 102
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3. The Petitioner transferred to Blackhawk Christian, a private school in Fort Wayne, Indiana that does serve her parents' residence in Fort Wayne. Transcript p.102.
4. On June 2, 2021, Petitioner's parents completed the Transfer Report and the Petitioner indicated the transfer occurred because "[f]amily wants to foster an educational growth with Christian beliefs." Record p. 101.
5. Carroll recommended Petitioner have limited eligibility under Rule 19-6.2. Blackhawk Christian recommended Petitioner have limited eligibility pursuant to Rule 19-6.2. Neither school signed the Verification under Rule 17-8.5. Record p. 104, 105.

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).

¹The following members participated in the meeting: Ms. Risa Regnier (Chairperson), Mr. Ben Ballou, Mr. Joe Hermann, Mr. John Prifogle, Ms. Laura Valle, and Mr. Chuck Weisenbach. Ms. Leslie-Ann James, staff attorney, was also present as legal counsel to the Panel.

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 3, 2021, and Petitioner sought timely review on September 3, 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. According to Rule 19-6.2, when a student's parents/guardians do not make a bona fide change of residence to a new district or territory, the student is eligible for limited eligibility at the receiving school, unless there is reason to believe the student transferred primarily for athletic reasons or because of undue influence. At the Review Committee hearing, Mr. Joel Cotton, Blackhawk Christian's AD, stated that he would have granted the Petitioner full eligibility if he was afforded the opportunity. However, it was not an option due to the sending school's recommendation for limited eligibility per Rule 19-6.2. It was revealed at the hearing that Carroll's eligibility decision was the result of district policy not to recommend full eligibility when a student's family does not move

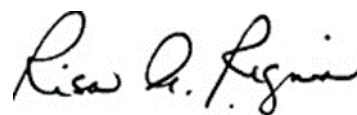
out of the district. Consequently, the decision to award limited eligibility was not due to concerns of athletic motivation or undue influence. Furthermore, Blackhawk Christian's admission policy includes an interview and investigation into a student's athletic transfer. Upon the completion of the investigation, Blackhawk's AD determined that the Petitioner's transfer lacked any athletic motivation and was in the best interest of the student. Tr. 53. Additionally, it was noted at the hearing when Petitioner left Carroll, she walked away from a guaranteed spot on the varsity basketball "team that was ranked seventh in the state...to go to Blackhawk Christian, ranked 134th in the state." Tr. 19. The Panel does not find the move was the result of primarily athletic reasons or as a result of undue influence.

9. In Smock v. the Case Review Panel/Indiana Department of Education/Indiana High School Athletic Association, and Delphi Community School Corporation 08C01-1912-PL-000019, the trial court found that "the Limited Eligibility Waiver Rule (17-8.5) exists to allow non-athletically motivated transfers, which serve the best interest of the student, full eligibility. A school cannot simply unilaterally and erroneously misuse that discretion, and in turn, preclude a student athlete from participating in athletics with full eligibility." See also In the Matter of J.T. 091002-64 and IHSAA v. Durham, 748 N.E.2d 404 (Ind. Ct. App. 2001). In the absence of athletic motivation and when presented with evidence from the Petitioner that the move was in her best interest, the Review Committee should have found the move was in her best interest and given full eligibility by Rule 17-8.5. The Panel does not find the move was the result of primarily athletic reasons or as a result of undue influence.
10. The Panel finds that Petitioner's transfer to Blackhawk Christian was in her best interest. The Petitioner was seeking an environment that would help her grow spiritually, academically and support her mental health. After speaking with several Blackhawk Christian students in her youth group, Petitioner found that Blackhawk Christian would best serve her spiritual, academic, and mental health needs. Petitioner's mother stated at the hearing that the transfer occurred "to enhance [Petitioner's] spiritual growth, improve her mental state, and in turn, her academic performance, demonstrated by the decline in her grades every semester." Tr. 13. The Petitioner and her family made a decision that was in the best interest of student's academic, spiritual, and mental health. The Panel finds the Petitioner eligible for full eligibility at Blackhawk Christian under Rule 17-8.5.

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 September 17, 2021, at the receiving school, provided she meets all other eligibility requirements.

DATE: 09/27/2021



Risa Regnier, 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.