

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter of E.S.)
Petitioner,)
)
and)
) **CAUSE NO. 211109-234**
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 14, 2021, E.S. (“Petitioner”) 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 September 16, 2021, both the sending school, McCutcheon High School (“McCutcheon”) and the receiving school, Lafayette Jefferson High School (“Lafayette Jeff”), completed their respective portions of the Transfer Report. McCutcheon recommended ineligibility pursuant to Rule 19-4 while Jefferson recommended full eligibility under Rule 19-6.1(b).

On September 27, 2021, the IHSAA Assistant Commissioner determined that Petitioner’s transfer was a Rule 19-4 transfer and ruled Petitioner ineligible for athletics at the receiving schools until September 13, 2022. The Petitioner appealed the Assistant Commissioner’s determination to the IHSAA Review Committee (“Review Committee”).

In response to Petitioner’s request to appeal, the matter was set for a hearing before the Review Committee on October 21, 2021. Following the evidence presented at the hearing, the Review Committee issued its ruling on November 5, 2021, which upheld the decision of the Assistant Commissioner.

On November 9, 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 the record from the IHSAA on November 10, 2021 and received it on November 22, 2021. On November 30, 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.²

FINDINGS OF FACT

The Panel finds the following facts to be true and relevant to its decision.

1. Petitioner, a junior, now lives with his father in Lafayette, Indiana. Petitioner attended McCutcheon his freshman (2019-2020), sophomore (2020-2021), and part of his junior (2021-2022) years. Petitioner lived with his mother while attending McCutcheon.
2. During Petitioner's freshman year, he received four A's and two B's each semester. R. at 125. During his sophomore year, the first semester he received two A's, three B's, and one C; in the second semester he received four A's, one B, and one C. Id. Petitioner's grades this year at McCutcheon, at the time of his transfer, included four A's and two B's. R. at 126-7.
3. While at McCutcheon, Petitioner played varsity basketball and football and last participated athletically on September 3, 2021 when he played as the starting varsity quarterback against Lafayette Jeff.³ R. at 122. Petitioner became the starting quarterback his sophomore year and held that position for ten games (the final seven of last season and the first three of this season). R. at 125.
4. On September 6, 2021, Petitioner was informed by McCutcheon's offensive coordinator and quarterback coach, Coach Craig, that he would not be the starting quarterback for the team's next game on September 10, 2021.
5. On September 8, 2021, Petitioner's mother emailed McCutcheon's Athletic Director, Mr. Walden, and Principal, Mrs. Grigsby, requesting a meeting "in the next week or so ... to discuss concerns regarding [Petitioner] and also his academic future at McCutcheon High School moving forward." R. at 131. In her Summary Statement of Testimony,

¹The meeting was originally scheduled for November 23, 2021 at 10:00 a.m. however, the Panel decided to reschedule the meeting due to the amount of information contained within the record from the IHSAA and the proximity in time in which it was received prior to the meeting. The following members participated in the meeting: Ms. Risa Regnier (Chairperson), Mr. Joe Hermann, Ms. Laura Valle, Mr. Chuck Weisenbach, Ms. Meisha Wide, and Mr. John Prifogle. Ms. Leslie-Ann James and Mr. Brandon Knight, staff attorneys, were also present as legal counsel to the Panel.

² Prior to the meeting, the Panel received a Supplemental Submission from Petitioner as well as an objection from the IHSAA regarding references to previous Panel decisions within said Supplemental. The Panel, over the IHSAA's objection, considered the Supplemental, recognizing that it is largely a persuasive document to which the Panel is not bound. The Panel believes prior decisions can be discussed and considered during meetings; however, every referral is evaluated independently and according to the unique facts and circumstances regarding each appeal.

³ *McCutcheon Football Schedule*. Maxpreps. Retrieved December 3, 2021 from [https://www.maxpreps.com/high-schools/mccutcheon-mavericks-\(lafayette.in\)/football/schedule.htm](https://www.maxpreps.com/high-schools/mccutcheon-mavericks-(lafayette.in)/football/schedule.htm)

Petitioner's mother explained that the "goal" of the meeting "was to inform them that we would be putting a transfer in to Lafayette Jeff because of the emotional and mental abuse that [Petitioner] was dealing with by the McCutcheon Staff and also his academic future moving forward." R. at 173.

6. From September 6 through September 10, 2021, Petitioner attended practices with McCutcheon as well as the game that Friday. He participated in the practices but did not receive playing time during the game. On September 11, 2021, Petitioner participated in watching film from the previous night's game; after watching film, he had a conversation with Coach Craig about playing in the junior varsity game the upcoming Monday, September 13, 2021.
7. On September 13, 2021, Petitioner withdrew from McCutcheon, enrolled at Lafayette Jeff, and moved in with his father. R. at 27, 120. Petitioner had not lived with his father since his parents separated seven (7) years prior. R. at 65. Lafayette Jeff is a public school that serves his father's residence. R. at 118.
8. According to Transfer Report, the reason provided for the transfer was because "[Petitioner] has decided to live with his dad." R. at 119. McCutcheon indicated that the transfer was for an athletic reason. R. at 122.

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 November 5, 2021 and Petitioner sought timely review on November 9, 2021.

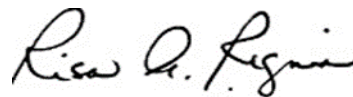
4. The Panel may uphold, modify, or nullify the IHSAA Review Committee's decision. Ind. Code § 20-26-14-6(c)(3).
5. The Panel reviews the IHSAA determination for arbitrariness or capriciousness. See *Carlberg*, 694 N.E.2d at 233. A rule or decision will be found to be arbitrary and capricious "only when 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. A transfer is primarily for athletic reasons if it is "to obtain relief from a conflict with the philosophy or action of a teacher, administrator, or coach relative to athletics." *2021-22 IHSAA By-Laws & Articles of Incorporation*, p. 18. The Panel finds that the evidence presented to the Review Committee supports the theory that Petitioner transferred primarily for athletic reasons. Accordingly, the Review Committee's decision to uphold the ruling of ineligibility pursuant to Rule 19-4 was neither arbitrary nor capricious.
7. Petitioner asserts that his grades were "slipping" and had "plummeted tremendously" because of the abuse by McCutcheon staff. R. 157, 164. However, according to the evidence presented, this alleged abuse started in the summer before his junior year and the lowest grades he received occurred the prior year, as a sophomore. R. 50. No abuse or mistreatment was reported to have occurred during his sophomore year and that is also the year he became the starting quarterback.
8. When Petitioner was asked to elaborate on the instances of "the cruel stuff that really got [him] down," he began by explaining a situation that occurred at football camp in June 2021 when, after messing up a play, he was asked by the head coach, "are you smart enough to do this?" R. at 50. While the Panel does not endorse this alleged question, it does not rise to the level of "abuse" or "over-the-top emotional and mental harassment." R. 33, 180.
9. Petitioner then described a conversation he had with Coach Craig that occurred the week of September 3, the week McCutcheon played Lafayette Jeff, where Coach Craig said to him that he "misses the old [Petitioner]." R. 51. However, the testimony of Mr. Walden was that he witnessed this conversation take place and that it was motivating, not abusive. R. 71. The Panel finds Mr. Walden's interpretation and perspective is consistent with the positive and supportive relationship between Petitioner and Coach Craig that is portrayed by the bulk of the evidence.
10. Petitioner's final example of cruel treatment he received occurred when he was "isolated

that whole week” after being informed he was no longer the starting quarterback. R. 74. To the contrary, the facts show that Petitioner still participated in practices, including warm-ups, drills, conditioning, etc. He received limited repetitions during practice but that is not surprising considering he was no longer a starter. Also, just like other players who did not play in the varsity game on September 10, the opportunity to participate in the upcoming JV game was presented to the Petitioner. While it is conceivable that Petitioner did, in fact, experience feelings of isolation after receiving such difficult news, there is no evidence that he was “intentionally isolated by the staff” at McCutcheon. R. 33.

11. The Panel finds it significant that the only reason for the transfer provided on the Transfer Report involved moving in with his father, despite the alleged “maltreatment, emotional abuse, isolation, and bullying.” R. 29. Likewise, considering the nature of these allegations and the impact they were described to have on Petitioner, the Panel cannot reconcile the fact that he continued to attend team functions and his parents allowed him to continue to do so.
12. Petitioner was understandably upset by losing the starting role. His family was also upset as evidenced by his mother’s social media comment.⁴ However, an emotional reaction to losing a starting position, no matter how subjectively traumatizing, cannot validate transferring to a new school and immediately receiving eligibility. Based on the evidence, the Panel agrees that the transfer was primarily for athletic reasons.

ORDER

The Panel finds by a vote of 4-2 that the decision of the IHSAA Review Committee, upholding the decision of the Commissioner, is UPHELD. The Petitioner is ineligible to participate in athletics at the receiving school until September 13, 2022, when he will be fully eligible, provided all other eligibility requirements are met.



Risa Regnier, Chairperson
Case Review Panel

DATE: 12/13/2021

⁴ Evidence presented during the Review Committee hearing included a comment posted on Twitter by Petitioner’s mother which stated “I guess playing against a third string makes you look like an amazing quarterback!!!! How about coaches punish kids who drop balls and fumble the ball instead of punishing just the quarterback!!!! Last time I checked football was a team sport not an individual sport!!!!” R. 144. The Panel was not persuaded that this comment was unrelated to McCutcheon as Petitioner’s mother suggested.

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.