

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter V.B.)
Petitioner,)
)
and)
) **CAUSE NO. 190909-189**
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 18th, 2019, V.B.’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 2019–2020 school year relating to the Petitioner’s transfer. On February 13, 2019, Lawrence North High School (“Lawrence North”), the sending school, completed its portion of the Transfer Report. The receiving school, Cathedral High School (“Cathedral”) completed its portion of the Transfer Report on February 18, 2019.

On March 26, 2019, the IHSAA Commissioner determined that Petitioner’s transfer was a Rule 19-4 transfer and ruled Petitioner ineligible at the receiving school until January 18, 2019. 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 27, 2019. Following the evidence presented at the August 27, 2019 hearing, the Review Committee issued its ruling on September 6, 2019 reversing the decision of the Commissioner and gave the Petitioner limited eligibility according to Rule 19-6.2, and said the Petitioner would have limited eligibility until January 18, 2020¹.

¹The Panel notes this date is incorrect because the Review Committee did not find a Rule 19-4 violation so the date should be calculated from the date of his last athletic participation at the sending school, which was January 9, 2019. Rule 19-6.2

On September 9, 2019 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 13, 2019². On September 18, 2019, the Panel held a meeting³, 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 family in Indianapolis, Indiana. Petitioner attended Lawrence North his freshman and part of his sophomore year. While at Lawrence North he played varsity basketball. He last participated athletically at Lawrence North on January 9, 2019.
2. The Petitioner lives in Indianapolis, Indiana and attended Lawrence North, a public school which served his parent's residence. Petitioner transferred without a corresponding change of residence when transfer report was submitted.
3. On January 18, 2019, Petitioner enrolled in Cathedral, a private school in Indianapolis, Indiana. The Petitioner's parents determined the transfer was necessary, but the Petitioner wanted to stay at Lawrence North and was disappointed he would no longer be coached by Mr. Keefer. Coach Keefer considered the Petitioner a very loyal young man who was a valued member of the school and basketball team.
4. On January 18, 2019, Petitioner's mother completed the Transfer Report and indicated the transfer occurred because the Petitioner "had been in private education prior to LN and due to an accident which put a financial burden on the family and they could not afford private education and went to LN instead. Due to a change in mom's recent job change, the start of school at LN is much later and V.[B.] must be dropped off too early – Cathedra[I]'s start time is more convenient."
5. Petitioner's mother expressed a concern with Lawrence North's academics and services for Petitioner's disability, however Petitioner's parents did not seek an Individualized

²The Panel is concerned the IHSAA continues to not meet deadlines or timelines established by their own procedures. The IHSAA must follow its own rules and deadlines, particularly when it regularly objects to students and/or their families from submitting untimely documents. The Panel will consider excluding all evidence submitted by IHSAA outside of their rules and deadlines. The IHSAA is represented by counsel who is aware of the necessity for meeting deadlines and requesting continuances, if needed.

³The following members participated in the meeting: Kelly Wittman (Chairperson), Mr. Ben Ballou, Mr. Mickey Golembeski, Ms. Laura Valle, Ms. Mary Quinn. Mr. Brett Crousore recused himself from consideration of this case. Ms. Kelly Bauder, staff attorney, was also present as legal counsel to the Panel.

Education Program/Plan (IEP) or 504 plan for their student and only requested that an informal plan be in place for Petitioner at Lawrence North. No formalized plan to accommodate Petitioner was ever sought for the 2017-2018 or 2018-2019 school years. However, even without a formalized IEP or 504 Plan, Lawrence North made accommodations for the Petitioner in his classes, when requested by his parents.

6. Lawrence North recommended Petitioner have no eligibility under Rule 19-4. Cathedral recommended Petitioner have full eligibility and 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 September 6, 2019 and Petitioner sought timely review on September 9, 2019.
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 school did not sign the *Verification*, the receiving school signed the *Verification*, and therefore, the Petitioner does 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 have a 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 for athletic reasons or as a result of undue influence. The Review Committee found there was not sufficient evidence to determine the move was primarily for athletic reasons and the Panel agrees. Therefore, the IHSAA not meet the burden of proving a violation of Rule 19-4⁴.
9. The Petitioner is asking the Panel to set aside Rule 19-6.2 due to the existence of a hardship condition, specifically that the Petitioner's parents believe Cathedral has superior academic programming and has more adequate accommodations for the Petitioner's disability. However, the Petitioner's parents knew they could seek accommodations for the Petitioner's disability by having an IEP or 504 Plan that would require not only require Lawrence North to make accommodations for the Petitioner's disability but also would provide a legal recourse against the school if they did not comply with all provisions of the IEP and/or 504 Plan. The Petitioner's parents said they did not want the stigma attached to having an IEP, however, the Petition was still being provided accommodations that he would have had with an IEP. He still was given extra time to complete tests, therefore students already knew he was receiving specialized accommodations. The Petitioner, despite his disability, is an exceptional student who had a 3.746 gpa at Lawrence North. Even while excelling academically at Lawrence North,

⁴The Panel would note however, the Petitioner should have been allowed to ask questions regarding other students and whether the sending school and/or the IHSAA was giving disparate treatment to other similarly situated students. Students should be allowed the opportunity to question both the sending school and the IHSAA staff about other students if there is evidence other similarly situated students were allowed full eligibility when the Petitioner was not. To deny this line of questioning would violate the due process rights of the Petitioner and could leave the Panel with little choice but to assume disparate treatment was given to other students or that decisions are being made arbitrarily. The IHSAA could object to the questions, but the Petitioner or his counsel should be afforded the opportunity to make a record for the Panel or a trial court to weigh that evidence. In this case, the Panel did not find athletic motivation for the transfer, therefore in this case his due process rights were not violated.

he did not participate in honors classes or any AP or dual credit classes. While at Lawrence North, he was on track for a Core 40 diploma and had not made efforts to obtain an Academic Honors diploma. The Panel finds he did not give Lawrence North the opportunity to provide a more rigorous academic program and therefore it was not a hardship condition. If Lawrence North had refused to or did not offer a more rigorous academic program, the Panel might have considered a hardship decision, but the Petitioner's family did not avail themselves of this opportunity at Lawrence North. Additionally, the Petitioner's family did not make an attempt to seek an IEP or 504 plan at Lawrence North, therefore there is no hardship because they did not give Lawrence North the opportunity to address his disability through the process established by federal law.

10. The Petitioner's family did have a change in circumstance, specifically his mom got a new job, which allowed for the opportunity to return the Petitioner to private school. This is a choice by the family based on new financial circumstances, but not a hardship condition.
11. The Petitioner's family testified the earlier start time at Cathedral made it much easier to transport the Petitioner to and from school. However, there was not sufficient evidence to show transportation caused any hardship condition for the Petitioner.
12. The Panel finds the Petitioner has not shown there was a hardship condition present that would cause him to suffer harm. The Panel finds that Petitioner is eligible for limited eligibility at the receiving school under 19-6.2.

ORDER

The Panel finds by a vote 5-0 that the decision of the IHSAA Review Committee, reversing the decision of the Commissioner is UPHELD. The Petitioner has limited eligibility as of January 9, 2019, he will then have full eligibility on January 9, 2020 at the receiving school, provided he meets all other eligibility requirements.

DATE: 9/20/2019



Kelly Wittman, 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.