

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter L.H.)
Petitioner,)
)
and)
) **CAUSE NO. 200203-197**
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 August 8, 2019, L.H.’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 August 18, 2019, Cathedral High School (“Cathedral”), the sending school, completed its portion of the Transfer Report. The receiving school, University High School (“University”), completed its portion of the Transfer Report on November 14, 2019.

On November 14, 2019, the IHSAA Commissioner determined that Petitioner’s transfer was a Rule 20-2 violation and ruled Petitioner was ineligible at the receiving school until August 12, 2020 due to the past link. 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 January 16, 2020. Following the evidence presented at the January 16, 2020 hearing, the Review Committee issued its ruling on January 23, 2020 upholding the decision of the Commissioner declaring that according to Rule 20-2 and 19-4, Petitioner would not be fully eligible until August 12, 2020.

On February 3, 2020, 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 February 7, 2020. On February 11, 2020, 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 his mother in Westfield, Indiana. Petitioner attended Cathedral his freshman (2017-18) and sophomore (2018-19) years. While at Cathedral he played junior varsity and varsity baseball and freshman basketball. He last participated athletically at Cathedral on June 1, 2019.
2. The Petitioner attended Cathedral, a private school which served his mother's address. Petitioner transferred without a corresponding change of residence.
3. The Petitioner transferred to University, a private school in Carmel, Indiana. The Petitioner began attending University on August 12, 2019.
4. On August 8, 2019, Petitioner's mother completed the Transfer Report and the Petitioner indicated the transfer occurred was due to "our family views and the position that Cathedral High School has taken in firing a [well-liked] and respected teacher simply because he is in a gay marriage is not acceptable to our family's values."
5. Cathedral recommended Petitioner have no eligibility under Rule 20-2 after being notified of a connection between Petitioner and coach Estep the head baseball coach at University. University recommended Petitioner have no eligibility under Rule 20-2.
6. The Petitioner and his family had a relationship with Mr. Estep prior to him attending University. Mr. Estep had coached the Petitioner in baseball since he was nine years old at Round Tripper.
7. Neither Cathedral nor University signed the 17-8.5 *Verification* limited eligibility waiver.

¹The following members participated in the meeting: Kelly Wittman (Chairperson), Mr. Brett Crousore, Ms. Meisha Wide, Ms. Laura Valle, Mr. Ben Ballou, Ms. Mary Quinn, Mr. Chuck Weisenbach, and Ms. Kelly Bauder, staff attorney, was also present as legal counsel to the Panel.

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 January 23, 2020 and Petitioner sought timely review on February 3, 2020.
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 Panel finds that there is compelling evidence that demonstrates there was a past link between the Petitioner and Coach Estep. The Petitioner's mother admitted at the Review Committee hearing "there had been a relationship" with coach Estep since the Petitioner was nine years old. There are a number of outstanding public and private schools in the area, yet the Petitioner's family chose one school where they knew and had been coached by the head baseball coach. The family was very concerned about firing of a gay teacher at Cathedral, which went against the morals and belief of Petitioner's family. This however, did not rise to the level of a hardship condition present that would allow for a waiver of Rules 19-6.2 or 20-2.
9. The Panel finds due to the Petitioner's past link to Coach Estep, there was a violation of the past link rule thus the Petitioner has no eligibility 365 days from the date of enrollment at University².

ORDER

The Panel finds by a vote of 7-0 that the decision of the IHSAA Review Committee, upholding the decision of the Commissioner is UPHELD. The Petitioner has no eligibility based on Rule 20-2 at the receiving school until August 12, 2020, provided he meets all other eligibility requirements.

DATE: 2/12/2020



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.

²The Panel continues to be concerned the language of Rule 20-2 is vague and can, in some circumstances, be unfairly applied to students. The Panel would encourage the IHSAA to continue to look at ways to allow some flexibility within this rule, while still protecting against transfers for the purpose of following a coach.