

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter W.S.)
Petitioner,)
)
and)
) **CAUSE NO. 200924-201**
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 25, 2020, W.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 2020–2021 school year relating to the Petitioner’s transfer. On July 22, 2020, the sending school, Kuemper Catholic High School (“Kuemper”), the sending school, completed its portion of the Transfer Report. The receiving school, Brebeuf Jesuit Preparatory School (“Brebeuf”) completed its portion of the Transfer Report on July 22, 2020.

On August 12, 2020, the IHSAA Assistant Commissioner determined that Petitioner’s transfer was a Rule 19-5.1 (c) transfer and the Petitioner had limited eligibility until February 25, 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 September 10, 2020. Following the evidence presented at the September 10, 2020 hearing, the Review Committee issued its ruling on September 22, 2020 upholding the decision of the Commissioner declaring that according to Rule 19-5.1 (c), Petitioner had limited eligibility until February 25, 2021.

On September 24, 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 September 28, 2020. On September 29, 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 parents in Carmel, Indiana. The Petitioner attended Kuemper, a private catholic school in Iowa for his freshman (2018-19) and sophomore (2019-20) years. While at Kuemper, the Petitioner played junior varsity and varsity baseball and football. He last participated athletically at Kuemper on February 25, 2020.
2. The Petitioner and his parents moved to Indiana after his parents were offered and accepted jobs. The Petitioner’s parents had always sent their children to catholic schools and researched three schools in the area where they were moving. The family eventually decided that Brebeuf was the best fit for the Petitioner. Brebeuf is a private school that is about three miles from the Petitioner’s house located in Indianapolis, Indiana. The Petitioner lives in Carmel, Indiana and was accepted by Brebeuf for enrollment in their school. There was a bona fide change of address pursuant to Rule 19.
3. On June 25, 2020, Petitioner’s parents completed the Transfer Report indicated that the Petitioner “and his parents moved on June 4, 2020 from his parents’ Iowa residence to a Carmel Residence, and that the reason for the transfer was job relocation, moving to the area, wanted a Catholic environment.” (Record p. 5/Transfer Report).
4. Kuemper recommended Petitioner have full eligibility under Rule 19-5. Brebeuf recommended Petitioner have full eligibility under Rule 19-5.

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.

¹The following members participated in the meeting: Kelly Wittman (Chairperson), Mr. Marques Clayton, Mr. Ben Ballou, Ms. Laura Valle, Mr. Mickey Golembeski and Ms. Mary Quinn. Ms. Kelly Bauder, staff attorney, was also present as legal counsel to the Panel.

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 22, 2020 and Petitioner sought timely review on September 24, 2020.
4. The Panel may uphold, modify, or nullify the IHSAA Review Committee’s decision. (Ind. Code § 20-26-14-6(c)(3)). The Panel is not required to review the IHSAA determination *de novo*. The Panel review is similar to an appellate-level administrative review. A full hearing to recreate the record is not required.
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. The Petitioner and his family moved from Iowa to Carmel, Indiana. Rule 19-5.1 (c) discusses moves to a new district or territory and giving a student limited eligibility. Brebeuf is a private school, which could serve a “territory” of the entire state. According to the IHSAA Rules, a territory of a private school is defined as “the geographical areas from which students are drawn for attendance, as established by the Diocese or other governing board, and where no boundaries are established by a Private School, then the Territory shall be the city limit of the metropolitan area in which the School is located or the county lines of the county when the School is located outside the city limit. For Charter Schools, Territory is the state of Indiana.” During the hearing, the family testified that Brebeuf was three miles from their house. Brebeuf enrolled the Petitioner and accepted him living in Carmel, Indiana. There is evidence Brebeuf serves Carmel as they accepted the Petitioner as a student. The Panel finds on its face, the IHSAA definition of territory is arbitrary in capricious. The definition says a public charter school in Indiana has the territory of the entire state of Indiana. There is no rational basis

to conclude a private school should be treated any differently than a public charter school in Indiana. An IHSAA Rule or decision will be found to be arbitrary and capricious "only where 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."² There is no basis to treat an Indiana private school different than a public charter school in Indiana. According to Indiana Code § 20-24-5-1, "a charter school, including a conversion charter school, must be open to any student who resides in Indiana." There is no requirement in Indiana law that mandates a private school establish boundaries for admission/enrollment. The Indiana Legislature has established it is the "policy of state that the state recognizes that nonpublic schools provide education to children in Indiana."³ There are certainly restrictions on private schools if they seek to be accredited by the Indiana State Board of Education but there is no restriction imposed on private schools for establishing boundaries or restrictions on enrollment. If the Indiana Legislature and the Indiana State Board of Education do not require private schools to have "territories" for enrollment of Indiana students, there is no basis for the IHSAA to require it for participation in interscholastic athletics. This conclusion is consistent with the state legislature's authorization of a voucher system under the School Choice Scholarship Program⁴, which provides students in Indiana the opportunity to choose which school to attend regardless of an address. The Case Review Panel has previously found Rule 19-5.1(c) to be arbitrary and capricious in violation of Article 1 Section 23 of the Indiana Constitution and the Fourteenth Amendment to the United States Constitution.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 is fully eligible to participate in athletics at Brebeuf effective September 29, 2020 pursuant to Rule 19-5, provided he meets all other eligibility requirements.

DATE: September 30, 2020



Kelly Wittman, Chairperson
Case Review Panel

²[Department of Natural Resources v. Indiana Coal Council, Inc.](#), 542 N.E.2d 1000, 1007 (Ind. 1989).

³Indiana Code § 20-19-2-10

⁴Indiana Code § 20-51-1

⁵See In re the Matter of C.P. v. IHSAA 170406-164

APPEAL RIGHT

Any party aggrieved by the decision of the Case Review Panel has forty-five days from receipt of this written decision to seek judicial review in a civil court with jurisdiction, as provided by Ind. Code § 20-26-14-7.