

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter E.H.)
Petitioner,)
)
and)
) **CAUSE NO. 201028-205**
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 19, 2020, L.E.'s ("Petitioner") mother 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 2020-21 school year relating to the Petitioner's transfer. On June 22, 2020, Emmerich Manual High School ("Manual"), the sending school, completed its portion of the Transfer Report. The receiving school, George Washington High School ("George Washington") completed its portion of the Transfer Report on June 22, 2020.

On June 22, 2020, the IHSAA Assistant Commissioner determined that Petitioner's transfer was Rule 17-8.5 transfer and he was given full eligibility. On July 9, 2020, Manual revised its recommendation and indicated there was a past link. On September 3, 2020, the Assistant Commissioner found a violation of Rule 20-2 and ruled Petitioner had no eligibility for 365 days from enrollment at the receiving school. 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 October 8, 2020. Following the evidence presented at the October 8, 2020 hearing, the Review Committee issued its ruling on October 20, 2020, upholding the decision of the Commissioner declaring that according to Rule 20-2, Petitioner was athletically ineligible for 365 days following his enrollment at George Washington.

On October 28, 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 November 4, 2020. On November 10, 2020, the Panel held a meeting,¹ 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 Indianapolis, Indiana. Petitioner attended Manual for his freshman and sophomore years. While at Manual, during his freshman (2018-19) and sophomore years (2019-20) he played varsity basketball. He last participated athletically at Manual on March 6, 2020.
2. The Petitioner lived in the Manual district with his mother during his freshman-sophomore years. Manual was the public school which served his mother’s residence. Both Manual and George Washington are schools within the same school corporation, Indianapolis Public Schools. High school students in the corporation can choose which high school they want to attend. On June 10, 2020, the Petitioner was enrolled in George Washington and he began attending classes on August 17, 2020. The Petitioner is a 21st Century Scholar. (R. p. 20).
3. Petitioner transferred without a corresponding change of residence.
4. The Petitioner’s mother completed the Transfer Report and indicated his transfer was because “Manual does not offer classes that are geared towards my son’s skill set and we want him to be academically challenged. We are looking for a school that offers a variety of course work, community engagement and apprenticeship.” (R. p.36 & p. 20). The Petitioner considered Arsenal Tech High School and was wait listed at Crispus Attucks High School (R. p. 23).
5. The Petitioner and his friend, L.H. discussed transferring schools and that they wanted to play basketball together. The Petitioner’s mother wanted to ensure he was academically challenged by coursework, community engagement and apprenticeship while also focusing on accounting classes. She wanted a stable school for his junior and senior year. The Petitioner’s mother was frustrated by the lack of response to questions or concerns from Manual. (R. p. 20). There were days when the Petitioner was not picked up and

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

taken to school and the family lacked personal transportation to get him to school at Manual. (R. p. 23).

6. It was widely known that Manual has been undergoing changes, might close and has been taken over by a charter school, Christel House Schools. (R. p. 20). Many students have left the school in anticipation of the closure and/or changes. On June 15, 2020, George Washington hired Coach Hogg to be the head basketball coach. (R. p. 25). Coach Hogg had previously coached at Manual during the 2019-20 school year. Mr. Orkman, the newly appointed athletic director at Manual, discovered Coach Hogg had sent a text to a student regarding transferring to Manual. (R. p. 20). Mr. Orkman also noticed there were several transfers of basketball players to Manual and contacted the IHSAA to reopen the Transfer Report involving the Petitioner. Coach Hogg never approached the Petitioner regarding transferring to Manual and the Petitioner did not know that Coach Hogg was the new head basketball coach until he showed up for practice at George Washington and saw him. (R. p. 24).
7. Originally, both schools recommended the Petitioner have full eligibility at George Washington and signed the Rule 17-8.5 waiver. After receiving additional information in July 2020, Manual later changed its recommendation to say the Petitioner have no eligibility for 365 days under Rule 20-2. George Washington did not change its recommendation under Rule 17-8.5.

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.
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 October 20, 2020, and Petitioner sought timely review on October 28, 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. There was not sufficient evidence under Rule 20-2 to establish there was undue influence. The IHSAA enacted Rule 20-2 to prohibit recruiting of student athletes. The past link Rule in 20-2, as written, would prohibit any student from ever moving to a school where any person may have coached or had contact with them at school or in club participation. This rule holds students responsible for grown-up's decisions that he/she can have no input or influence over. There was no evidence in the record that in any way Coach Hogg or any other George Washington staff recruited or used undue influence to get the Petitioner to George Washington. While the Panel agrees Rule 20-2 is a necessary rule to prevent recruitment of students, as it is written, it would prevent students who ever had contact in club or school sports to participate if a both the coach/school staff and the student ever switched schools, regardless of any undue influence or recruitment. The Rule, as written, unfairly punishes student athletes who participate in club sports who subsequently have parents who move or transfer to another district. Although there was limited evidence that Coach Hogg contacted one other student about transferring to Manual, there is a lack of evidence of any recruitment or undue influence of the Petitioner. The Panel finds Rule 20-2 arbitrary and capricious in violation of Article 1 Section 23 of the Indiana Constitution and the Fourteenth Amendment to the United States Constitution.² Therefore, the IHSAA failed to prove a violation of Rule 20-2.³

² See In the Matter of M.S. v. IHSAA 180531-176 and In the Matter of C.B. v. IHSAA, 200826-199.

³ The Panel is also concerned that the Review Committee decision was based predominantly on hearsay evidence or conjecture. The Panel operates under the guidance of the Indiana Rules of Evidence and the Indiana Administrative Orders and Procedures Act (AOPA). AOPA specifically states in IC § 4-21.5-3-27(d) that "findings must be based exclusively upon the evidence of record in the proceedings and on matters officially noticed in that proceedings. Findings must be based upon the kind of evidence that is substantial and reliable." Hearsay evidence is admissible, but an order cannot be based solely upon the hearsay evidence. IC § 4-21.5-3-26.

7. There was not sufficient evidence under Rule 19-4 to establish the transfer was athletically motivated. The burden of proof is on the IHSAA to prove a violation of this rule. The undisputed evidence is that the Petitioner's mother wanted to find a school that better fit the needs of her son and his academic interests. Additionally, the uncertain nature of Manual's standing made the Petitioner concerned about whether he would continue attending that school in the future. The Petitioner admitted he wanted to play basketball with his friend L.E., but that alone is not sufficient to prove the move was athletically motivated. The parents of both E.H. and the Petitioner considered several different schools, some of which differed from each other. Although they both ended up at the same school, that is insufficient to prove the transfer was athletically motivated or that the families purposefully picked that school specifically for athletic reasons. Therefore, the IHSAA failed to prove a violation of Rule 19-4.

8. 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)). The Petitioner wanted to transfer due to the uncertainty of the future of Manual and to better suit his personal educational goals. (R. p. 20). He chose George Washington. The Petitioner's mother wanted to ensure he was academically challenged by coursework, community engagement and apprenticeship while also focusing on accounting classes. She wanted a stable school for his junior and senior year. The Petitioner's mother was frustrated by the lack of response to questions or concerns from Manual. (R. p. 20). There were days when the Petitioner was not picked up and taken to school and the family lacked personal transportation to get him to school at Manual. (R. p. 23). The Petitioner picked Manual for its academic programming, specifically accounting classes. The waiver will not harm or diminish the IHSAA or its rules. The Petitioner should not be denied the ability to play sports because he decided to find a school that fit his personal educational needs. Therefore, a hardship condition existed, particular to the Petitioner and he should be afforded full athletic eligibility at George Washington.

The Case Review Panel has noted this concern regarding Rule 20-2 and the chairperson has asked to meet with the IHSAA regarding concerns with this rule as well as several others, however the IHSAA and its staff have failed to acknowledge those requests or address the concerns while appeals continue to the Panel.

ORDER

The Panel finds by a vote of 4-3 that the decision of the IHSAA Review Committee, upholding the decision of the Commissioner under Rule 19-4 and Rule 20-2 is NULLIFIED. The Petitioner has full athletic eligibility as of November 10, 2020 at the receiving school, provided he is academically eligible and meets all other eligibility rules.

DATE: November 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 this written decision to seek judicial review in a civil court with jurisdiction, as provided by Ind. Code § 20-26-14-7.