

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter E.T.)
Petitioner,)
)
and)
) **CAUSE NO. 201118-208**
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 October 2, 2020, E.T.’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 2020–2021 school year relating to the Petitioner’s transfer. On October 2, 2020, Anderson High School (“Anderson”), the sending school, completed its portion of the Transfer Report. The receiving school, Liberty Christian High School (“Liberty Christian”) completed its portion of the Transfer Report on October 6, 2020.

On October 15, 2020, the IHSAA Assistant Commissioner determined that Petitioner’s transfer violated past link Rule 20-2 and ruled Petitioner was ineligible at the receiving school until July 30, 2021. Additionally, she found that the Petitioner was ineligible academically for the first grading period in the fall 2020 under Rule 18-1. 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 November 6, 2020. Following the evidence presented at the November 6, 2020 hearing, the Review Committee issued its ruling on November 17, 2020 upholding the decision of the Commissioner declaring that according to Rule 20-2 and 18-1, Petitioner was ineligible at the receiving school.

On November 18, 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 23, 2020. On December 1, 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 sophomore, lives with his mother in Anderson, Indiana. Petitioner attended Anderson his freshman year. While at Anderson, he played junior varsity basketball. He last participated athletically at Anderson on February 25, 2020.
2. The Petitioner lives in Anderson, Indiana and attended a public school which served his mother's residence. The Petitioner transferred to a private school in Anderson, Indiana. Petitioner transferred without a corresponding change of residence when transfer report was submitted.
3. On October 2, 2020 Petitioner's mother completed the Transfer Report and the Petitioner indicated "the reason for transferring my kids was that they were not receiving the individual attention they needed at Anderson. They were getting Ds and Fs. Already at Liberty Christian, their grades have improved and they are on pace to pass all of their classes. At the start of the school year, Anderson was not offering in person education, My boys did not do well with virtual learning and I wanted them to receive a quality in person education. I also wanted them to be in a Christian environment that provides a family feel." (R. p. 34).
4. On June 30, 2020 Coach Anderson, who had previously been an assistant coach at Anderson, accepted a coaching position at Liberty Christian. There was no evidence that the Petitioner or his family knew about the coach transferring to Richmond and only learned about it on Facebook. Additionally, there was no evidence Coach Anderson had any contact with the Petitioner or his family or made any attempt to recruit Petitioner or use undue influence to get him to transfer to Liberty Christian. The Petitioner's mother testified her children would never go back to Anderson and she doesn't care who coaches them. (R. p. 18). Both schools agree there was no recruiting or undue influence. (R. p. 19).
5. In addition to the smaller classes and educational opportunities, the Petitioner's mother said she chose Liberty Christian because it was five minutes from her house and provided

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

a Christian environment for her children. (R. p. 19-20). Additionally, the Petitioner struggled with online learning that was offered in the spring of 2020 as a result of the COVID-19 pandemic. The Petitioner's mother wanted to find a school that would offer in person instruction for the 2020-21 school year.

6. There is no evidence in the record to show the transfer was athletically motivated or a violation of Rule 19-4. Commissioner Neidig even agreed "I think you made a good decision for your children. I think making an education decision of going to Liberty Christian is certainly a good decision." (R. p. 25).
7. Anderson recommended Petitioner have no eligibility under Rule 20-2. Liberty Christian recommended Petitioner have full eligibility under Rule 17-8.1. Neither Anderson nor Liberty Christian 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 November 17, 2020 and Petitioner sought timely review on November 18, 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 Petitioner established there was in fact a hardship condition that necessitated transferring schools. The Petitioner and his mother wanted to find in person instruction for the next school year since he struggled with the virtual learning platform at Anderson. Liberty Christian provided in person instruction in the fall semester. Families and schools across the country have had to make decisions regarding what type of instruction will be offered and what platforms are best for each student to learn during the COVID-19 pandemic. This pandemic has necessitated families moving, transferring and choosing the best possible options for each individual student, which created a hardship condition for many students, including the Petitioner. Additionally, the Petitioner struggled at Anderson obtaining D’s and F’s and losing athletic eligibility due to grades. The Petitioner’s mother wanted to find a school that offered in person instruction as well as hold her son accountable for his grades and academic achievements. The primary purpose of the IHSAA rule will still be accomplished and the ruling will not harm or diminish the purpose or spirit of the Rule. This decision is made specifically for the Petitioner and his specific circumstances. As the IHSAA is keenly aware, students are having to adapt within a world that is constantly changing during to the pandemic. Students should not be negatively impacted by so many factors that are outside of their family’s control. See In Re Matter J.A. v. IHSAA 200924-202 and In the Matter H.N. v. IHSAA 201006-203. Therefore, the Petitioner is fully eligible pursuant to Rule 17-8.1.
9. There is no evidence under Rule 20-2 to establish undue influence or recruitment. 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 sport participation. The rule holds students responsible for grown-up’s decisions that he/she can have no input or influence over. There is no evidence in the record Coach Anderson

contacted the Petitioner to get him to come to Liberty Christian to play basketball. While the Panel agrees Rule 20-2 is a necessary rule to prevent recruitment or undue influence of students, as it is written, it would prevent students who ever had contact in club/school sports to participate if both the coach/school staff and the student ever switched schools, regardless of undue influence or recruitment. The Rule, as written, unfairly punishes student athletes who participate in sports who subsequently have a parent move or transfer to another district. Therefore, the IHSAA failed to prove a violation of Rule 20-2. It is particularly troubling to the Panel that Rule 20-2 is not being consistently applied to all student athletes and additionally the Rule does not consider the particular circumstances of each individual student athlete. See In the Matter of Z.B. v. IHSAA 181018-181, In the Matter of M.S. v. IHSAA 180531-76 and In the Matter of A.K. v. IHSAA 181001-179.

ORDER

The Panel finds by a vote of 4-1 that the decision of the IHSAA Review Committee, upholding the decision of the Commissioner is NULLIFIED. The Petitioner has full eligibility as of December 1, 2020 at the receiving school, provided he meets all other eligibility requirements.

DATE: 12/3/2020



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.