

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter J.B.)
Petitioner,)
)
and)
) **CAUSE NO. 201123-209**
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 July 27, 2020, J.B.’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 August 26, 2020 Avon High School (“Avon”), the sending school, completed its portion of the Transfer Report. The receiving school, Ben Davis High School (“Ben Davis”) completed its portion of the Transfer Report on October 12, 2020.

On October 21, 2020, the IHSAA Assistant Commissioner determined that Petitioner’s transfer was a Rule 19-4 transfer and the Petitioner had no eligibility at the receiving school until August 11, 2021. The Petitioner appealed the Assistant 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 5, 2020. Following the evidence presented at the November 5, 2020 hearing, the Review Committee issued its ruling on November 17, 2020 reversing the decision of the Assistant Commissioner and declaring that according to Rule 19-6.2, the Petitioner had limited eligibility.

On November 23, 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 30, 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 senior, lives with his mother in Indianapolis, Indiana. Petitioner attended Avon for his freshman year (2017-18), sophomore year (2018-19) and junior year (2019-20). While at Avon he played basketball. He last participated athletically at Avon on March 3, 2020. Petitioner was Avon's leading scorer his sophomore and junior years. He has been recruited by several colleges and been offered scholarships. (R. p. 29).
2. Petitioner transferred without a corresponding change of residence when Transfer Report was submitted. The Petitioner enrolled in Ben Davis, a public school, which serves his mother's address. The Petitioner's older brothers had attended Ben Davis and both have been successful in obtaining scholarships and performing at college level basketball. His brothers encouraged him to attend Ben Davis.
3. On July 27, 2020, Petitioner's mother completed the Transfer Report and the Petitioner indicated he was transferring because "due to COVID, mom's work schedule has changed and can no longer transport [Petitioner] to and from Avon High School, so they have decided to move [Petitioner] back to his home school. This will allow [Petitioner] to utilize the school bus for transportation to/from school." (R. p.72).
4. The Petitioner's mother works for Franciscan Health in Mooresville, Indiana. As a result of the COVID-19 pandemic, her work hours changed and she now begins work at 8:15 a.m. and it became more difficult to drop off her son at school.
5. The Petitioner struggled academically at Avon. His mother consistently communicated with school officials to seek assistance with the Petitioner's grades and performance in class. Avon placed him in full-time academic coaching and later moved him to part-time coaching when his grades improved.
6. Avon recommended the Petitioner have no eligibility under Rule 19-4. Ben Davis recommended the Petitioner have full eligibility under Rule 17-8.1. Neither school signed the Verification under Rule 17-8.5.

¹The following members participated in the meeting: Kelly Wittman (Chairperson), Ms. Mary Quinn, Ms. Laura Valle, Mr. Chuck Weisenbach and Mr. Mickey Golembeski. 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 November 17, 2020 and Petitioner sought timely review on November 23, 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 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).
5. 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 schools did not sign the *Verification*, and the Review Committee ruled Petitioner did not qualify for a limited eligibility waiver pursuant to Rule 17-8.5.
6. 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)).

7. There is no evidence in the record that the move was athletically motivated. His brothers may have suggested he transfer to Ben Davis, but that is not sufficient to prove a violation of Rule 19-4. In fact, the Review Committee found there was no violation of Rule 19-4.
8. There is not sufficient evidence to show the existence of a hardship condition in this case. It is clear the Petitioner struggled academically at Avon. Avon offered academic coaching, and as a result, the Petitioner's grades improved. When the Petitioner was moved to part-time academic coaching, his grades declined. Additionally, the Petitioner struggled behaviorally at Avon, including 12 discipline referrals the first semester of his junior year. (R. p. 28.). There were additional referrals for cutting class and disruptions in class. (R. p. 28). Avon offered one-on-one help with his geometry teacher, but he declined to take advantage of that help. (R. p. 29). The Panel has consistently held that to establish a hardship condition, families must give the sending school the opportunity to address the family's concerns or there must be conditions that are completely outside the control of the Petitioner. The Petitioner and his mother thought the study tables at Ben Davis would offer him more support with his classes. (R. p. 36). Those study tables are once a week on Friday. (R. p. 36). Although the study tables might be helpful, the Panel does not find the tables offer more support than he was afforded at Avon. The Petitioner has to be willing to put in the time and effort he needs for each of his classes in order to succeed academically. It is not the sole responsibility of the school to ensure he meets the academic requirements to graduate and achieve NCAA eligibility, the Petitioner bears the most responsibility for ensuring his success in school. And, if he does not avail himself of the resources the school is offering, the Panel does not find it compelling that a hardship condition exists that is outside of his control. The Petitioner's mother did have a change in the time her work started, but Avon has many students come to the school early when being dropped off by parents. The school even has a holding place for students who need to come early. (R. p. 38). There was no evidence in the record that Avon was unwilling to accommodate the Petitioner coming into school early. While transportation certainly was an issue for the family, they had found a way to make it work for three years and the change in start time for the Petitioner's mother, while very inconvenient, did not itself create a hardship condition. The decision to transfer schools was a family choice but did not rise to the level of a hardship condition, therefore the conditions of Rule 17-8.1 have not been proven.
9. The Panel finds that Petitioner is entitled to limited eligibility under Rule 19-6.2. The Petitioner would obtain full eligibility at Ben Davis on March 3, 2021.

ORDER

The Panel finds by a vote of 5-0 that the decision of the IHSAA Review Committee is UPHELD. The Petitioner has limited eligibility at the receiving school, and then on March 3, 2021, he would be fully eligible to participate in varsity athletics at the receiving school, provided he is academically eligible and meets all other eligibility rules.

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.