

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter A.F.)
Petitioner,)
)
and)
) **CAUSE NO. 201123-210**
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 14, 2020, A.F.’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 September 17, 2020 Madison Consolidated High School (“Madison”), the sending school, completed its portion of the Transfer Report. The receiving school, Franklin Community High School (“Franklin”) completed its portion of the Transfer Report on September 22, 2020.

On September 22, 2020 the IHSAA Assistant Commissioner determined that Petitioner’s transfer was a Rule 19-6.2 transfer and ruled Petitioner had limited eligibility at the receiving school until February 8, 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 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 Assistant Commissioner declaring that according to Rule 19-6.2 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 December 2, 2020. The Panel also received a supplemental submission from the Petitioner.

On December 8, 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 her parents in Franklin, Indiana. Petitioner attended Madison for her freshman year (2017-18) sophomore year (2018-19) and junior year (2019-2020). While at Madison she played junior varsity and varsity basketball and soccer and junior varsity volleyball. She last participated athletically at Madison on February 8, 2020.
2. The Petitioner attended Madison, a public school in Madison, Indiana. Petitioner transferred with a corresponding change of residence when Transfer Report was submitted. The Petitioner and her family ultimately rented an apartment and have been attempting to buy a home in Franklin, Indiana. The Petitioner was enrolled in Franklin and began attending on August 6, 2020. The Petitioner's brother remained in Madison with his grandparents due to his disability and need to continue at his current school. (R. p. 32).
3. The Petitioner's family lived in Madison, Indiana and began looking for housing in Franklin, Indiana so the Petitioner could attend Franklin and her father could begin transferring his trucking business to the area. The family was not able to find a house, but eventually found a rental property. The family moved to Franklin and did not have any intention to move back to Madison, Indiana. (R. p. 38). The family leased their home in Madison because it was not financially in their best interest so sell the home. Additionally, the home (land) may have some value or use with the father's business. (R. p.32). The family did search for houses in Franklin to purchase but the market and current COVID pandemic made it difficult to find something. (R. p. 40). The Petitioner's father operates his business out of the rental home in Franklin, Indiana. (R. p. 35). The Petitioner's mother sought employment close to the home in Franklin and eventually secured a job in the area. (R. p. 33). The Panel finds the move was a bonafide change of residence, which entitled the Petitioner to full eligibility pursuant to Rule 19-5.

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

4. On August 14, 2020, Petitioner's parents completed the Transfer Report and the Petitioner indicated she was transferring because the Petitioner's parents "believed it was in the best interest for [Petitioner] to transfer both emotionally and academically." (R. p. 59). The Petitioner testified she was bullied by her friends and family at Madison (R. p. 25). This bullying caused her to suffer emotionally and feel isolated. The family determined it would be in her best interest to transfer schools and Franklin met her specific academic and emotional needs. (R. p. 32).
5. Madison recommended Petitioner have full eligibility under Rule 19-5. Franklin 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.
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 sending and receiving schools did not sign the *Verification*, so the IHSAA Assistant Commissioner 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)). The panel does not address the issue of a hardship condition as the requirements were met pursuant to Rule 19-5 for a bonafide change of residence.
7. There is no evidence in the record that the move was athletically motivated. In fact, the Review Committee found no violation of Rule 19-4. However, the Review Committee order and much of the discussion during the Hearing focused on athletic motivation. The Petitioner's parents may have discussed athletics with school personnel at Madison, but that is not unusual for parents and did not rise to the level of a Rule 19-4 violation.²
8. The Panel finds that Petitioner is entitled to full eligibility at Franklin pursuant to Rule 19-5.

ORDER

The Panel finds by a vote of 5-0 that the decision of the IHSAA Review Committee, upholding the decision of the Commissioner is NULLIFIED. The Petitioner has full eligibility as of December 8, 2020 at the receiving school, provided she meets all other eligibility requirements.

DATE: 12/9/2020



Kelly Wittman, Chairperson
Case Review Panel

² The Panel is also concerned that the Review Committee decision and conclusions regarding athletic motivations were based on 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. The Panel has repeatedly reminded the Review Committee of these basic evidentiary principals to no avail. The Review Committee even commented that the sole basis for the Hearing was to determine if there was a bonafide change of residence, however considerable time at the hearing and paragraphs of the Review Committee order only discuss possible athletic motivation to which there was eventually found to be none supported by evidence.

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.