

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter of S.M.,)
Petitioner,)
)
and)
) **CAUSE NO. 121003-91**
The Indiana High School Athletic Association,)
Respondent.)
)
Review Conducted Pursuant to Ind. Code ch. 20-26-14)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PROCEDURAL HISTORY

On or about August 14, 2012, S.M. (“Petitioner”) and his parents initiated 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 2012–2013 school year relating to Petitioner’s transfer from Lapel High School (“Lapel”) to Pendleton Heights High School (“Pendleton Heights”). On August 16, 2012, Lapel, as the sending school, completed its portion of the Transfer Report, and Pendleton Heights, as the receiving school, completed its portion on the same day.

On August 17, 2012, the IHSAA Assistant Commissioner Robert Faulkens determined that Petitioner’s transfer was subject to Rule 19-6.2, Limited Eligibility When Transfer Without Change of Residence by Parent(s)/Guardian(s). Thus, Petitioner was entitled to limited eligibility until March 1, 2013. Petitioner appealed Assistant Commissioner Faulkens’s determination to the IHSAA Executive Committee (“Executive 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 Executive Committee for September 14, 2012. Based on the evidence presented at the September 14, 2012 hearing, the Executive Committee issued its ruling on September 25, 2012, upholding Assistant Commissioner Faulkens’s ruling.

On or about October 3, 2012, Petitioner appealed the Executive Committee’s decision to the Indiana Case Review Panel (“CRP”),¹ and the CRP notified the parties that it would review

¹ According to Ind. Code § 20-26-14-6(c)(3), the CRP is a nine-member panel established by the IHSAA. The Superintendent of Public Instruction appoints the members and his designee serves as the Chairperson. The CRP reviews final student-eligibility decisions of the IHSAA when a parent or guardian so requests. The CRP may uphold, modify, or nullify any student eligibility decision made by the IHSAA.

the decision during a CRP meeting. The CRP requested and received the record from the IHSAA. On November 9, 2012, the CRP held a meeting where a quorum of members was present.² Based on a review of the record and applicable rules and laws, the CRP made the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Petitioner lives with his parents in Alexandria, Indiana within the Highland High School district. In 2010, Highland High School merged with Anderson High School. Petitioner attended Lapel from 2011–2012 because his parents did not want to send him to Anderson High School. Pendleton Heights and Lapel are approximately the same distance from Petitioner's home.

2. Petitioner played on the junior varsity and varsity basketball teams for Lapel. Petitioner last participated in athletics at Lapel on March 1, 2012.

3. Petitioner's parents intended to participate in carpools to transport Petitioner and his brother to and from Lapel. But the carpools never developed and they transported their sons to and from Lapel.

4. Petitioner transferred to Pendleton Heights on approximately August 14, 2012 without a change of residence. Petitioner stated that Pendleton Heights offers courses in broadcasting and communications and a radio station. Although Lapel has a communications course, it does not have broadcasting courses and a radio station. He explained that he has been interested in broadcasting since his eighth-grade year and would like to work as a broadcaster in the future.

5. Petitioner's mother met with Lapel's principal and athletic director and informed them that her sons were transferring to Pendleton Heights for financial reasons. Mr. Jimmie Howell,³ Lapel's athletic director, testified at the hearing before the Executive Committee that he did not doubt that Petitioner's family was having financial troubles.

6. Assistant Commissioner Searcy testified at the hearing before the Executive Committee that Lapel received two transfer reports: one indicated that the transfer was so Petitioner could take Pendleton Heights's broadcasting and communications courses, while the other indicated that the transfer was for financial reasons.

7. According to Mr. Howell, Petitioner is not as physically mature and strong as the other players on the Lapel basketball team. He was sharing equal playing time with a few teammates and may have competed for playing time if he had stayed at Lapel.

² The following members were present at the meeting: Angela Rapp Weber (Chairperson), Ms. Dana Cristee, Mr. Keith Pempek, Mr. Earl Smith, Mr. Michael Golembeski, and Mr. Chuck Weisenbach. Mr. Chris Greisl attended the meeting as counsel to the CRP.

³ The CRP notes that Mr. Howell is a Member of the IHSAA Board of Directors and is surprised that he did not recuse himself from participation in this matter.

8. Mr. Howell testified that Pendleton Heights is larger than Lapel, has the best basketball team in Madison County, and has been a top twenty team in recent years. Many of Pendleton Heights's opponents have college-caliber players on their teams. Pendleton Heights also lost several players the previous year.

9. At the hearing before the Executive Committee, Petitioner's mother provided detailed information concerning the family's financial difficulties, which started in January 2010. To make money, Petitioner's parents have taken part-time jobs at a golf course, pulling weeds in a farmer's bean field, and cleaning bathrooms at the Anderson Sports Center. Petitioner's father also works part-time as a driver for UPS. Petitioner's mother also described numerous financial difficulties with respect to automobiles, the house, and sustained employment experienced by the family.

10. Petitioner's mother testified that various neighbors and friends send their children to Pendleton Heights. As a result of carpooling arrangements to and from Pendleton Heights, the family saved \$300 in one month. She said that saving \$300 per month is significant for her family.

11. Petitioner's mother denied that the transfer to Pendleton Heights was athletically-motivated. She stated Petitioner's position on the Pendleton Height's basketball team is uncertain. She and her husband believed that, based on statements made by Coach Howell, Petitioner would have played on the varsity team at Lapel.

12. Petitioner's mother testified that Pendleton Heights lost four starters the previous year, while Lapel lost three. She also stated it would be foolish to believe that if Petitioner were not strong enough to start on the varsity team at Lapel, a 2A school, he would start on the varsity team at Pendleton Heights, a 4A school with a much more difficult schedule.

13. Lapel did have a bus driver who could take Petitioner to school if Petitioner's family could drive him to the bus driver's home. Petitioner's mother testified extensively as to why this option was not financially and logistically the best option for her family.

14. Petitioner's mother testified that the goal was to choose a school that was the best academic and financial option for her family, which is why the children are now enrolled in Pendleton Heights instead of the schools closer to their home.

15. Petitioner's mother admitted that basketball plays a significant role in the family's life. Nevertheless, she insisted when questioned at the hearing that basketball was not the reason Petitioner transferred to Pendleton Heights.

16. As a result of Assistant Commissioner Faulkens's ruling, which the Executive Committee upheld, Petitioner has limited athletic eligibility and gains full athletic eligibility on March 2, 2013. As indicated above, Petitioner appealed the Executive Committee's determination to the

CRP. Since Lapel did not sign the verification required under Rule 17-8.5, Petitioner seeks a general waiver pursuant to Rule 17-8.1.

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 CRP has jurisdiction in this matter. The CRP is established by the IHSAA to review final student eligibility decisions with respect to interscholastic athletic competition. Ind. Code ch. 20-26-14. The CRP has jurisdiction when a student’s parent or guardian refers the case to the CRP not later than thirty days after the date of the IHSAA decision. Ind. Code § 20-26-14-6(b). In this matter, the Executive Committee rendered a final determination of student-eligibility adverse to the Petitioner on September 25, 2012, and Petitioner sought timely review on October 3, 2012.

4. The CRP may uphold, modify, or nullify the IHSAA Executive Committee’s decision. Ind. Code § 20-26-14-6(c)(3).

5. The CRP is not required to review the IHSAA determination *de novo*. The CRP review is similar to an appellate-level administrative review. If the CRP upholds the IHSAA decision, pursuant to Ind. Code § 20-26-14-7(c), a court of jurisdiction may consider the IHSAA decision as opposed to the CRP decision. The Executive Committee hearing process provides students with due process protection. Carlberg, 694 N.E.2d at 241.

6. The CRP 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 or 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).

7. According to Rule 19-4, a student is athletically ineligible if his or her transfer was for primarily athletic reasons or the result of undue influence. The CRP agrees with the Executive Committee’s determination that Petitioner’s transfer to Pendleton Heights was not primarily for athletic reasons. Thus, Petitioner is not athletically ineligible pursuant to Rule 19-4.

8. The Executive Committee determined that because Petitioner's transfer was without a corresponding change of residence by his parents or guardian to Pendleton Heights's district, he qualified for limited athletic eligibility at Pendleton Heights pursuant to Rule 19-6.2. Rule 19-6.2 provides that transfers which are not primarily motivated by athletics and do not correspond to a change in residence qualify a student for limited athletic eligibility.

9. 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 Rule 17-8-1. The CRP agrees with the Executive Committee that because Lapel did not sign the verification on the Transfer Report, Petitioner does not qualify for a Limited Eligibility Waiver pursuant to Rule 17-8.5. The CRP disagrees with the Executive Committee that Petitioner also does not qualify for a General Waiver of an IHSAA Rule under Rule 17-8.1.

10. 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; a waiver will not harm or diminish the Rule's purpose or spirit; the student will suffer or be harmed if a waiver of the Rule is not granted; and a hardship condition exists as defined in Rule 17-8.3. The Petitioner has proved by clear and convincing evidence that a Rule 17-8.1 waiver should be granted.

11. The Executive Committee points to Philosophy – Rule 19 in the IHSAA's bylaws to explain Rule 19-6.2's purpose as principally to deter athletically-motivated transfers, to promote the family unit (when a change of address occurs), and to protect the opportunities of bona fide students to participate in sports at the receiving school.

12. The Executive Committee relies on the testimony of Jimmie Howell when concluding that Petitioner's transfer was motivated by athletics. But Mr. Howell's testimony arises to vague allegations and supposition based on rumors. There is no evidence in the record that Petitioner spoke to the coach at Pendleton Heights before transferring or was recruited by Pendleton Heights. No witnesses or documentation were produced supporting Mr. Howell's belief that Petitioner's transfer was motivated by athletics. Neither Petitioner nor his parents testified that athletics played any role in the decision to transfer to Pendleton Heights. Notably, Petitioner and his family effectively refuted the allegations and rumors at the hearing, insisting that the transfer was motivated by academic offerings at Pendleton Heights and financial circumstances. For example, when Mr. Howell was challenged by Petitioner's mother regarding some of his assertions Mr. Howell responded, "Then I don't know my history." Tr. at 000084. Based on the evidence presented, the CRP finds that Petitioner did not transfer for athletic reasons but for academic and financial reasons.

13. The Executive Committee also states that Petitioner's participation in sports at Pendleton Heights will displace bona fide students. According to the Executive Committee's logic, no student will ever qualify for a General Waiver because any student who transfers will displace a bona fide student. An argument could also be made that once Petitioner was accepted at and

enrolled in Pendleton Heights, he became a bona fide student. Regardless, there is no evidence in the record to support the Executive Committee's conclusion that bona fide student's at Pendleton Heights have been displaced by Petitioner's presence.

14. The CRP also notes that the Executive Committee ignores other purposes listed in IHSAA's bylaws describing Rule 19's philosophy. The purpose of Rule 19 is to also ensure that participation in athletics is a privilege that should not dominate school programs and that the focus of students and educators remains on academics. Petitioner's focus is on academics and his parent's focus is on finding an academically-strong school that is financially viable for the family. The CRP finds that based on the evidence presented, strictly enforcing Rule 19 will not serve its primary purpose.

15. The Executive Committee states the spirit or purpose of the Rule is to deter athletically-motivated transfers. As discussed at above, Petitioner has provided clear and convincing evidence that his transfer was motivated by academics and financial circumstances, which were outside of his and his family's control. The transfer is in the Petitioner's and his family's best interests. The CRP finds that the spirit and purpose of Rule 19 will not be offended by granting a General Waiver under Rule 17-8.1.

16. The Executive Committee states that Petitioner failed to show that he would suffer an undue burden or harm if he is only permitted to play on the junior varsity basketball team. The evidence clearly indicates that Petitioner's focus is on his future and the possibility of a career in broadcasting. The academic offerings at Pendleton Heights will help him determine at a young age his future career path. The CRP also notes that limiting Petitioner's athletic eligibility punishes or harms him for circumstances outside of his control—his family's financial struggles. The CRP thus finds that according to the evidence of record, Petitioner will suffer harm or an undue burden if he is permitted to participate in athletics only on a limited-basis.

17. The Executive Committee states Petitioner failed to show that a hardship condition existed. According to Rule 17-8.3, a hardship condition is defined as:

an extremely negative non-athletic condition peculiar to the student, which is caused by unforeseen, unavoidable and uncorrectable events, which is beyond the election, control or creation of the student, the student's family, the student's supporters, the student's coaches and the student's school, and which causes the student to be ineligible or not fully eligible, or which objectively compels some action which results in the student being ineligible or not fully eligible, or which objectively compels some action which results in the student being or results in the student not having full eligibility.

The financial circumstances vividly described in detail by Petitioner's mother are extremely negative, non-athletic, and unique to Petitioner and his family. The financial circumstances were unforeseeable and unavoidable; the transfer to Pendleton Heights corrected them to a degree,

providing the family with \$300 a month, which is considered significant to Petitioner's parents. The financial situation compelled Petitioner's transfer and caused him to be athletically eligible only on a limited-basis. The CRP finds that based on the evidence presented in this matter, a hardship condition exists.

18. In accordance with the findings above, Petitioner is granted a General Waiver pursuant to Rule 17-8.1.

ORDER

The CRP finds by a vote of 4-2 that Petitioner is granted a General Waiver of an IHSAA Rule under Rule 17-8.1 and is fully eligible to participate in athletics at Pendleton Heights.

DATE: 11/23/12


Angela Rapp Weber, 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.