

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter of R.J.,)	
Petitioner,)	
)	
and)	
)	
The Indiana High School Athletic Association,)	CAUSE NO. 130103-99
Respondent.)	
)	
Review Conducted Pursuant to Ind. Code ch. 20-26-)	
14)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PROCEDURAL HISTORY

On or about September 10, 2012, R.J. ("Petitioner") 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 2012–2013 school year relating to the Petitioner's transfer from Marion High School ("Marion") to Fort Wayne Bishop Luers High School ("Bishop Luers"). On September 27, 2012, Marion, as the sending school, completed its portion of the Transfer Report, and Bishop Luers, as the receiving school, completed its portion on October 9, 2012.

On November 13, 2012, the IHSAA Assistant Commissioner Sandra Walter determined that the Petitioner's transfer was subject to Rule 19-4, Transfer for Primarily Athletic Reasons or the Result of Undue Influence. Thus, Petitioner is ineligible to participate in athletics at Bishop Luers for 365 days from the date Petitioner enrolled at Bishop Luers, which was August 17, 2012. The Petitioner appealed Assistant Commissioner Walter'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 December 11, 2012. Based on the evidence presented at the December 11, 2012 hearing, the Executive Committee issued its ruling on December 20, 2012 upholding Assistant Commissioner Walter's ruling.

On January 3, 2013, the 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 the decision during a CRP meeting. The CRP requested and received the record from the IHSAA.

¹ According to Ind. Code § 20-26-14-6(c)(3), the CRP is a nine-member panel whose members are appointed by the Superintendent of Public Instruction, and his or her designee serves as the Chairperson.

On January 31, 2013, the CRP held a meeting,² and 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. The Petitioner attended Marion until the end of his junior year in high school (2011–2012) and participated on the basketball team. He lived in Marion’s school district but moved to Ft. Wayne, Indiana prior to his senior year. He now lives with his family in Ft. Wayne, Indiana and attends Bishop Luers, a private Catholic school in Ft. Wayne.

2. The Petitioner had history of disciplinary issues at Marion. Thus, Marion required the Petitioner to try out for the basketball team his senior year and implemented a “zero tolerance” policy regarding Petitioner’s behavior. The Petitioner also had issues with truancy at Marion, and academically, Petitioner was not scheduled to graduate.

3. The Petitioner’s mother is a single mother. Her mother, daughter, two grandchildren, and the Petitioner live together. As a result of the Petitioner’s struggles at Marion and other personal reasons, the Petitioner’s mother decided a change was needed for the entire family. The Petitioner’s mother decided that moving to Ft. Wayne and enrolling the Petitioner at Bishop Luers would benefit the Petitioner and the rest of the family. The Petitioner’s mother chose Ft. Wayne because living there allowed her to keep her current job.

4. The Petitioner’s mother contacted James Blackmon, the Bishop Luers basketball coach, to inquire about enrolling at Bishop Luers because he was the easiest person for her to contact. She said Coach Blackmon was a family friend. He coached the Petitioner in third grade and the coaching relationship ended at approximately the fifth grade. With respect to the Petitioner’s transfer to Bishop Luers, Mr. Blackmon directed the Petitioner’s mother to Bishop Luers’ principal.

5. The Petitioner’s mother made arrangements to rent a home in Ft. Wayne, but the owner of the home later decided to rent the home to another person. The Petitioner’s mother then contacted Coach Blackmon because she knew he owned rental properties in Ft. Wayne. Coach Blackmon rented a home to the Petitioner’s mother for \$500 per month, which is \$50 more than he charged the previous tenant. Coach Blackmon stated that \$500 is a fair price when considering the amount he paid for the home and its location.

6. According to the Petitioner and his mother, the Petitioner has no behavioral issues at Bishop Luers, his grades are good, and he is now scheduled to graduate on time. Their testimony is supported by the numerous statements submitted by the Petitioner’s teachers from Bishop

² The following members participated in the meeting: Ms. Angela Rapp Weber (Chairperson), Ms. Dana Cristee, Mr. Brett Daghe, Mr. Keith Pempek, Ms. Cathy Klink, and Mr. Mickey Golembeski.

Luers. The Petitioner testified that because of the environment at Marion, he is glad he transferred to Bishop Luers and would not have remained at Marion even if Coach Blackmon were the basketball coach there.

7. The Petitioner's mother testified that athletics played no part in her decision to move her family to Ft. Wayne, Indiana. She chose Bishop Luers because she felt the Petitioner did not perform well academically and behaviorally in a large public school setting like Marion.

8. As a result of Assistant Commissioner Walter's ruling, which the Executive Committee upheld, Petitioner is unable to participate in athletics during his senior year at Bishop Luers.

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 was established 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 December 20, 2012, and Petitioner sought timely review on January 3, 2013.

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. A full hearing to recreate the record is not required.

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 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).

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 Executive Committee found that the Petitioner's transfer was motivated primarily by athletics.

8. Marion indicated on its portion of the Transfer Report that the Petitioner moved for athletic reasons because he told friends he would be attending Bishop Luers and his Ft. Wayne address changed after the decision to move. Greg Peden, Marion's athletic director, testified at the hearing that because Petitioner was required to try out for the basketball team, "the feeling was that [the Petitioner] was leaving Marion to avoid any further disciplinary measures" Tr. at 000024-25. Marion's evidence is speculative and insufficient to support the conclusion that the Petitioner's transfer was for primarily athletic reasons or the result of undue influence.

9. Commissioner Cox questioned Bishop Luers' athletic director, Mr. Huth, about the IHSAA's bylaws, implying that they had been violated in this case. Specifically, he read to Mr. Huth Rule 20-1, which states, "The recruitment or attempted recruitment of a prospective student, through the use of undue influence, is prohibited. Undue influence is the act of encouraging or inducing a prospective student to attend a school for athletic purposes." Commissioner Cox then noted that the offer or acceptance of "[a] residence for the prospective student *with* a person connected with or who is a supporter of the school" is evidence of the presence of undue influence. Rule 20-1d.(5.) (emphasis added). According to the evidence presented, the Petitioner is not living *with* Coach Blackmon or anyone from Bishop Luers. Commissioner Cox added that "[f]ree or reduced rent for the prospective student or the prospective student's parent(s), guardian(s) or family" is also evidence of the presence of undue influence. Rule 20-1d.(7.). The evidence in this case indicates that the Petitioner's mother was not provided a home by Coach Blackmon for free or reduced rent. Rather, she is paying more than the previous tenant.

10. There is no evidence in the record to support the Executive Committee's determination that the Petitioner's move to Ft. Wayne and transfer to Bishop Luers was motivated primarily by athletics or the result of undue influence. The evidence instead indicates that the Petitioner transferred to Bishop Luers because it was in his and his family's best interests. Notably, Petitioner is now succeeding in school, behaviorally and academically, and is scheduled to graduate from high school.

ORDER

The CRP finds by a vote of 6-0 that Petitioner is eligible to participate in athletics at Bishop Luers for the 2012–2013 school year.

DATE: 2/4/13


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.