

**BEFORE THE INDIANA  
CASE REVIEW PANEL**

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|--|---|-----------------------------|
| <b>In The Matter M.M.</b>                            | ) |                             |
| <b>Petitioner,</b>                                   | ) |                             |
|  | ) |                             |
| <b>and</b>   | ) |                             |
|  | ) | <b>CAUSE NO. 140619-117</b> |
| <b>The Indiana High School Athletic Association,</b> | ) |                             |
| <b>Respondent.</b>                                   | ) |                             |
|  | ) |                             |
| <b>Review Conducted Pursuant to Ind. Code</b>        | ) |                             |
| <b>§ 20-26-14 <i>et seq.</i></b>                     | ) |                             |

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

**PROCEDURAL HISTORY**

On or about April 4, 2014, MM'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 2014-2015 school year relating to the Petitioner's transfer from Concord High School ("Concord") to Elkhart Central High School ("Elkhart"). On April 24, 2014 Concord, as the sending school, completed its portion of the Transfer Report. Elkhart, as receiving school, completed its portion of the Transfer Report on April 24, 2014.

On April 24, 2014, the IHSAA Assistant Commissioner determined that Petitioner was entitled to limited eligibility at Elkhart and would qualify for full eligibility after November 23, 2014, if all other participation criteria are met. The Petitioner appealed the Assistant Commissioner'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 May 28, 2014. Following the evidence presented at the May 28, 2014 hearing, the Executive Committee issued its ruling on June 5, 2014, upholding the decision of the Assistant Commissioner declaring Petitioner has limited or junior varsity eligibility at Elkhart until November 22, 2014 and then on November 23, 2014, he will be fully eligible to participate in athletics at Elkhart, provided he is academically eligible and meets all other eligibility rules.

On June 19, 2014, the Petitioner appealed the Executive 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 August 19, 2014, the Panel held a meeting,<sup>1</sup> 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 lives with his mother, his brothers and his step sister in a home on Londonberry Court in Elkhart, Indiana. Petitioner attended Concord his freshman – sophomore years. While at Concord, Petitioner was on the freshman basketball and football team. He was on the varsity football team his sophomore year. He last participated athletically at Concord on November 22, 2013.

2. Petitioner, his two brothers, mother, step sister, and step father lived in a home on Hidden Oak, until the owner, Petitioners' maternal grandfather, sent a letter in August 2013 telling the family to leave. Petitioner, his two brothers, mother and step sister moved from Hidden Oak into Petitioner's older brother's home on Londonberry Court. Around the same time, Petitioner's mother lost her job.

3. Petitioner, his two brothers and step sister continued going to Concord even after the move into the Elkhart school district. Petitioner's mother believed the move would only be temporary.

4. In November 2013, Concord received returned mail showing that Petitioner and his brothers were no longer at the Hidden Oak address, and discovered that they were no longer living in district. Concord treated them as transfer students seeking to enroll as out-of-district students. Petitioner was required to re-enroll for transfer tuition at Concord. The application was approved by Concord.

5. In March, 2014, Concord staff learned the Petitioner and his brothers were checking out Elkhart. Coach Koehler learned of trip to Elkhart and invited the Petitioner and his brothers to his house to discuss their possible transfer to Elkhart. Petitioner and his brothers explained it had become too difficult to attend Concord and their mother could not afford it. Upon questioning from Coach Koehler, the brothers did discuss the football program at Concord and their football prospects at Elkhart.

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<sup>1</sup> The following members participated in the meeting: Dr. George Frampton (Chairperson), Mr. Bret Daghe, Mr. Chuck Weisenbach, Mr. Michael Golembeski, Mr. Glenn Johnson, Mr. Keith Pempek, Mr. Chris Lancaster and Ms. Dana Cristee. Ms. Kelly Bauder, staff attorney, was also present as legal counsel to the Panel.

6. On March 25, 2014 Petitioner's mother called and asked to speak with Coach Dawson. Petitioner's mother and three sons met with Coach Dawson the next day and the family explained they were thinking about transferring to Elkhart because the mother could no longer afford to pay for gas money driving the boys to Concord. There was also a discussion about football in this meeting.

7. Petitioner withdrew from Concord, to transfer to Elkhart. Petitioner enrolled at Elkhart on April 2, 2014 for the remainder of the 2013-2014 academic school year. Petitioner intends to remain at Elkhart for his junior year during the 2014-15 academic school year.

8. On April 4, 2014, Petitioner's mother completed the Transfer Report. On the Transfer Report, Petitioner indicated that his transfer to Elkhart was because Petitioner's home was sold and the family moved in with Petitioner's older brother.

9. Concord, the sending school, recommended Petitioner have limited eligibility under rule 19-6.2 and did not sign the 17-8.5 verification. Elkhart, the receiving school, recommended Petitioner have full eligibility under 19-5, and did not sign the 17-8.5 verification.

#### 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 Executive Committee rendered a final determination of student-eligibility adverse to the Petitioner on June 5, 2014, and Petitioner sought timely review on June 19, 2014.

4. The Panel may uphold, modify, or nullify the IHSAA Executive Committee's decision. (Ind. Code § 20-26-14-6(c)(3)). The Panel is not required to review the IHSAA determination *de novo*. The Panel review is similar to an appellate-level administrative review. A full hearing to recreate the record is not required.

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. 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 Panel believes that there is no evidence that athletic motivation was a primary reason for the transfer. Thus, Petitioner is not athletically ineligible pursuant to Rule 19-4.

7. According to Rule 19-5.1, when a student's parents/guardians make a bona fide change of residence to a new district or territory, the student has several options, including transferring and attempt to obtain full eligibility at the public school in the district serving the student's residence. The Panel acknowledges the Petitioner and his brothers continued to attend Concord after their move in the fall (2013) until April 2014 even though they lived in Elkhart's district. The Petitioner and his mother explained it became too difficult financially to continue to stay at Concord. Petitioner's mother believed the move to Elkhart's district would be temporary due to her financial situation and when those circumstances did not change, she enrolled the Petitioner and his brothers in Elkhart. She was not legally allowed to transfer her step daughter from Concord to Elkhart as she was not her legally guardian.

8. The Panel finds that according to Rule 19-5.1, that there was a bona fide change of address to a new district by the Petitioner's mother.

### ORDER

The Panel rules that all of conditions of Rule 19-5.1 are met. The Panel finds by a vote of 7-1 that the decision of the IHSAA Review Committee, that a violation of 19-4 occurred, but because of the circumstances, assesses a lesser limitation on this student's eligibility, and therefore rules that Petitioner have limited or junior varsity eligibility at Elkhart Central High School until November 22, 2014, provided he is academically eligible and meets all other eligibility rules is REVERSED. Petitioner has full eligibility at Elkhart Central for the 2014-15 school year, should he be academically eligible and meet all other eligibility rules.

DATE:

*8/25/2014*

  
George Frampton, Ed.D., 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.