

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter E.G.,)
Petitioner)
)
and)
)
)
)
The Indiana High School Athletic Association,)
Respondent)
)
)
Review Conducted Pursuant to Ind. Code)
§ 20-26-14 et seq.)

**CAUSE NO. 140926-122
49C01-1412-MI-039656**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PROCEDURAL HISTORY

On or about June 10, 2014, E.G.'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 2014–2015 school year relating to the Petitioner's transfer from North Central High School ("North Central") to Cathedral High School ("Cathedral"). On June 10, 2014, North Central, as the sending school, completed its portion of the Transfer Report. Cathedral, as the receiving school, completed its portion of the Transfer Report on June 10, 2014.

On July 16, 2014, the IHSAA Assistant Commissioner determined that Petitioner's transfer was a Rule 19-4 transfer and ruled it was athletically motivated. The Petitioner was declared athletically ineligible for 365 days following his enrollment at Cathedral, or up to and including August 8, 2015¹. The Petitioner appealed the Assistant Commissioner's determination to the IHSAA Executive 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 August 19, 2014. Following the evidence presented at the August 19, 2014 hearing, the Review Committee issued its ruling on August 28, 2014, upholding the decision of the Assistant Commissioner that Petitioner was athletically ineligible for 365 days following his enrollment.

On September 26, 2014, 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

¹ The IHSAA Review Committee opinion lists the date as August 8, 2105, but the Case Review Panel believes this was a typographical error.

decision during a Panel meeting. The Panel requested and received the record from the IHSAA on November 10, 2014. On November 19, 2014, the Panel held a meeting, and based on a review of the record and applicable rules and laws, ruled the finding that the Petitioner was athletically ineligible for 365 days following his enrollment at Cathedral was NULLIFIED. Further, the Panel found that pursuant to Rule 19-6.2, the Petitioner should receive limited eligibility beginning August 8, 2014. The Petitioner had full eligibility on March 7, 2015, provided he was academically eligible and met all other eligibility rules.

The Petitioner appealed the decision of the Case Review Panel and the case was filed in Marion Superior Court 1 on December 5, 2014. On January 16, 2015, Judge Rosenberg ordered the Case Review Panel to do the following: “to collect such information and take such sworn testimony as may be necessary to determine whether Petitioner’s application for a waiver of limited eligibility was treated in a manner consistent with the treatment of similarly situated, prior applicants; and based on the above information and testimony make such additional findings as is warranted and reconsider its decision in the light of said findings.”

After several continuances by the parties, the Hearing requested by the Trial Court was held on September 9, 2015. The Panel held a meeting,² heard five hours of recorded depositions and direct testimony, received supporting evidence from both parties, 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 and father in a home in Indianapolis, Indiana. Petitioner attended North Central his freshman – sophomore years. While at North Central, during his freshman (2012-2013) and sophomore (2013-2014) years Petitioner was on the varsity basketball team. He last participated athletically at North Central on March 7, 2014.
2. The Petitioner’s transfer was without a change of residence by his parents.
3. On June 9, 2014, Petitioner’s parents completed the Transfer Report. On the Transfer Report, Petitioner indicated that the transfer to Cathedral was because “The G.’s are seeking a smaller, private school experience for E.G. They would like smaller classes and more individualized attention. They have tremendous respect for North Central but feel they

² The following members participated in the meeting: Dr. George Frampton (Chairperson), Mr. Bret Daghe, Mr. Michael Golembeski, Mr. Chuck Weisenbach, Ms. Dana Cristee and Mr. Rick Donovan*. Ms. Kelly Bauder, staff attorney, was also present as legal counsel to the Panel. *Mr. Rick Donovan abstained from voting on this case.

perhaps should have enrolled E.G. at Cathedral to start high school. Mr. and Mrs. G. had met with our Director of Admissions, Duane Emery, before his freshman year and expressed their desire to have E.G. come to Cathedral. The Petitioner shadowed at Cathedral as well. It was a surprise to Cathedral Administration when E.G. chose to go to North Central. They now believe E.G.'s specific educational interests will be better served at Cathedral."

4. The Petitioner is an elite high school basketball player. He is ranked as one of the best high school basketball players in the state and nationally. His older brothers were also great basketball players for North Central, and one brother currently plays in the NBA.
5. North Central and Cathedral are both in the IHSAA's class 4A, both play a highly competitive schedule and both have strong basketball programs.
6. The Petitioner's parents were concerned with his grades that had gone from a 3.5 gpa in middle school to a 2.555 gpa in 10th grade. The transfer from North Central to Cathedral was to address his academic performance.
7. North Central recommended full eligibility under Rule 17-8.5 when it signed the transfer *Verification* forms. Cathedral recommended full eligibility under Rule 17-8.5, and signed the *17-8.5 Verification*.
8. There are no written policies or procedures for assistant commissioners at the IHSAA to follow when conducting an investigation regarding athletic eligibility. All assistant commissioners determine who they want to contact during their investigation. Additionally, they are not required to provide any written findings to parents/students.
9. At some point, Commissioner Cox became aware of the Petitioner's appeal filed with the IHSAA and he participated in the investigation. Commissioner Cox said it was not unusual but not frequent that he investigates cases. Commissioner Cox could not however name any other case in which he had participated in the investigation by personally interviewing witnesses while he has been serving as the Commissioner.
10. After reading an article in the Indianapolis Star where the Petitioner commented about his "rocky" season at North Central, Commissioner Cox was contacted to give a statement. Commissioner Cox in fact gave a comment to the media (August 8, 2014) before a final decision had been made by the IHSAA Review Committee. Commissioner Cox said the Petitioner's move was a "blatant athletic transfer." In addition to commenting on a pending case to the press, Commissioner Cox also posted several items regarding the Petitioner on his personal Twitter account (July 22, 2014).
11. Commissioner Cox met with North Central Basketball Coach Mitchell sometime after June 4, 2014. They had a two hour private discussion in an Elk's Club regarding the Petitioner.

During that meeting, no notes were taken and it was not recorded. At no point while the case was pending before the IHSAA did Commissioner Cox and/or any staff or Review Committee member of the IHSAA reveal the nature of the conversation with Coach Mitchell or in fact that a meeting had occurred until during the Review Committee Hearing itself. Assistant Commissioner Walter met with Commissioner Cox and he revealed to her the conversation with Coach Mitchell and she relied on that information to reach her decision. Assistant Commissioner Walter did not reveal to the Petitioner or his parents the nature of that conversation or any information that Coach Mitchell shared with Commissioner Cox prior to the Review Committee Hearing. Even at the Review Committee Hearing, the IHSAA failed to provide the Petitioner with information that would have allowed him to conduct meaningful cross-examination of witnesses.

12. At the Review Committee Hearing, the Petitioner's counsel had sought a written copy of the Assistant Commissioners basis for the decision she reached. None was ever provided.
13. Assistant Commissioner Walter said she had reached out to the Petitioner's parents for information during her investigation. She provided no notes from that conversation. However, the Petitioner's mother recalls Ms. Walter only called her after she had already reached a decision about the student's eligibility. Additionally, the Petitioner's mother testified she was not asked by Assistant Commissioner Walter about the specific academic reasons for the transfer. The Petitioner's parents had provided that information to North Central and Cathedral as well as in a written statement in the appeal to the IHSAA.
14. According to Commissioner Cox and Assistant Commissioner Walter, Coach Mitchell revealed to them he thought there was athletic motivation for the transfer. Coach Mitchell provided a written statement for the IHSAA Review Committee. In that statement he detailed some conversations he had with the Petitioner and his parents and a conversation about how Petitioner was not having fun playing basketball and a heated conversation following a basketball game. During the Review Committee Hearing Coach Mitchell detailed those meetings but did not offer his opinion that the transfer was athletically motivated or that he disagreed with North Central's recommendation of full eligibility.
15. The IHSAA did provide several lists of cases where the schools agreed on the eligibility of a student and it was overridden by the IHSAA commissioner or assistant commissioner. Only one of the cases was factually similar to this case and in all the cases cited, Commissioner Cox did not interject himself into the investigative process as he did in this case.
16. At the Review Committee Hearing both Mr. Branigan (North Central's Principal) and Mr. Worland (Cathedral's Principal) testified they did not find this transfer to be athletically motivated. At no point during the entire process have they changed their positions on this fact. Assistant Commissioner Walter testified they had expressed to her some concerns about

athletic motivation but none of those conversations were recorded; during their sworn testimony before the IHSAA, both principals maintained the transfer was not athletically motivated. Assistant Commissioner Walter had the opportunity to cross-examine both Mr. Branigan and Mr. Worland at the Review Committee Hearing, yet she never questioned them about the discrepancy between unrecorded statements they made to her and their sworn statements at the Hearing. Both North Central and Cathedral did their own investigations as to whether this transfer was athletically motivated and both concluded it was not.

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 August 28, 2014 and Petitioner sought timely review on September 26, 2014. The Case Review Panel rendered its decision on November 21, 2014 and the Petitioner sought timely review by the Marion County Superior Court on December 5, 2014.
4. The Panel may uphold, modify, or nullify the IHSAA Review 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 IHSAA v. Carlberg, 694 N.E.2d at 233 (Ind. 1997). 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). “An administrative agency’s decision will be affirmed unless it is: (1)

arbitrary, capricious, and abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; or (5) unsupported by substantial evidence. Ind. Code § 4-21.5-5-14(d); see also Indianapolis Downs, LLC v. Ind. Horse Racing Comm'n, 827 N.E.2d 162, 170 (Ind. Ct. App. 2005).

6. “Article 1, Section 23 of the Indiana Constitution imposes two requirements upon statutes that grant unequal privileges or immunities to differing classes of persons. First, the disparate treatment must be reasonably related to inherent characteristics which distinguish the unequally treated classes. Second, the preferential treatment must be uniformly applicable and equally available to all persons similarly situated. Finally, in determining whether a statute complies with or violates Section 23, courts must exercise substantial deference to legislative direction.” Collins v. Day, 644 N.E.2d 72, 80 (Ind. 1994).
7. After reviewing the entire record from the IHSAA, the presentation of evidence on September 9, 2015 as well as the exhibits admitted at the Hearing, the Panel concludes the decision of the IHSAA was rendered in an arbitrary and capricious manner and was a violation of Petitioner’s rights under and equal protection clauses of the Fourteenth Amendment of the United States Constitution and Article 1 Section 23 of the Indiana Constitution. Rule 17-8.5 on its face does not violate the principles of equal protection, but how the IHSAA applied it to the Petitioner in its decision lead to disparate treatment.
8. Commissioner Cox failed to act impartially during the entire IHSAA process. Commissioner Cox determined he would interview witnesses even though the case was assigned to Assistant Commissioner Walter. This was the only case where he decided to intervene in this manner where the issue was identical to the Petitioner’s. Commissioner Cox interjected himself further by commenting about a pending IHSAA case in the newspaper and in social media before a final decision by the IHSAA Review Committee was made.³

³ Commissioner Cox said he did not regret making comments to the media about a pending appeal and would do so in the future. The Panel is concerned that the Commissioner of the IHSAA feels it is appropriate to publically discuss a minor child’s pending case at the IHSAA. There is not an IHSAA rule that prohibits this type of behavior, but it would be discouraged by the Panel and could lead to further cases such as the Petitioners.

9. Commissioner Cox and Assistant Commissioner Walter failed to provide the Petitioner with written findings of fact prior to the Review Committee Hearing⁴. They also failed to ever fully disclose the nature of their conversations with Coach Mitchell until depositions were conducted after the Case Review Panel decision on November 21, 2014.
10. The totality of evidence supports the conclusion that Petitioner was treated in an arbitrary and capricious manner throughout the entire IHSAA process. The denial of his constitutional rights warrants a reversal as the entire process deprived him of the opportunity for a fair proceeding. The Petitioner was treated unequally to other similarly situated student athletes. The Petitioner was denied access to or even knowledge of a meeting between Coach Mitchell and Commissioner Cox. The Petitioner was denied the opportunity to see or be provided a written explanation for the denial of his appeal. The IHSAA Commissioner uncharacteristically interjected himself in the investigation and commented on the pending appeal before a final decision from the IHSAA Review Committee. Assistant Commissioner Walter and Commissioner Cox determined the transfer was motivated primarily because of athletics based on a secret meeting between Commissioner Cox and Coach Mitchell while the parents, the transferring school, and the receiving school all agreed it was for academic reasons. The sworn testimony from the schools and the parents was that this was for academic reasons. The only basis the IHSAA had to determine it was athletically motivated was a secret unrecorded private conversation with a coach which was never revealed to the Petitioner. Additionally, while this was an elite athlete, there was no reasonable basis for this athlete to be treated differently than any other student. There was no reason the IHSAA Commissioner should have interjected himself in the process and conduct secret meetings. There is no reasonable basis to conclude this was a transfer primarily for athletic purposes; all sworn testimony was to the contrary.
11. In reaching its decision, the IHSAA acted in an arbitrary and capricious manner in singling out this student athlete. The action taken and the IHSAA decision violated the Fourteenth Amendment to the United States Constitution and Article 1 Section 23 of the Indiana Constitution. Finally, the decision was unsupported by the substantial evidence provided at the Review Committee Hearing. Therefore, according to Indiana Code § 4-21.5-5-14(d), the IHSAA Review Committee decision should be nullified.

⁴ The Panel believes the IHSAA consistently refuses or is unwilling to provide findings of fact for their decisions in cases. The Panel believes in order to be fair to all students; the IHSAA should consistently provide written findings as well as provide written documentation to students/parents of the reasons for their decisions. The process with the IHSAA should be transparent and not conducted in private where no effort is made to record or document the discussions with witnesses/school officials.

ORDER

The Panel finds by a vote of 3-2 that the decision of the IHSAA Review Committee, declaring Petitioner is athletically ineligible for 365 days following his enrollment at Cathedral is NULLIFIED. The Panel further finds its decision on November 21, 2014 granting limited eligibility pursuant to Rule 19-6.2 is also NULLIFIED. Pursuant to Rule 17.85, the Petitioner shall receive full eligibility beginning August 8, 2014, provided he is academically eligible and meets all other eligibility rules.

DATE:

9/29/2015



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.