BEFORE THE INDIANA
CASE REVIEW PANEL

In The Matter R.H	)	
Petitioner,	)	
	)	
and	)	
	)	**CAUSE NO. 151201-140**
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 6, 2015, RH's ("Petitioner") mother completed the student portion of the 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 Yorktown High School ("Yorktown") to Carmel High School ("Carmel"). On August 7, 2015, Yorktown, as the sending school, completed its portion of the Transfer Report. Carmel, as receiving school, completed its portion of the Transfer Report on August 13, 2015.

On August 20, 2015, the IHSAA Assistant Commissioner determined that Petitioner's transfer was a violation of Rules 19-4 and 3-8. The Petitioner was determined to be athletically ineligible at Carmel and he would have to serve his 30% athletic eligibility suspension from Yorktown while at Carmel. 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, 2015. Following the evidence presented at the November 6, 2015 hearing, the Review Committee issued its ruling on November 19, 2015, upholding the decision of the Assistant Commissioner declaring Petitioner was athletically ineligible pursuant to Rule 19-4 and Rule 3-8; as well as finding a violation of Rule17-7.4.

On December 14, 2015, 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 the record from the IHSAA and received it

on December 11, 2015. On December 16, 2015, the Panel held a meeting,[1] 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 lived with his mother and father in Daleville, Indiana. His transfer was accompanied by a change of residence by his mother to an apartment in Carmel, Indiana. Only the Petitioner, his mother and two siblings moved to the Carmel apartment. The family home in Daleville was never sold and is still occupied by the Petitioner's father, some of the Petitioner's siblings and all of the family on weekends. The change of address was not a bona fide change of residence.

2. Petitioner attended Yorktown his freshman - sophomore years. During the summer of 2015, Petitioner enrolled at Carmel, a public school in Carmel, Indiana. While at Yorktown, during his freshman (2013-14), sophomore (2014-15) Petitioner was on the varsity wrestling team. He last participated athletically at Yorktown on February 12, 2015.

3. Wrestling is a big part of the Petitioner's family and of Petitioner himself. The Petitioner's mother has been on the board of the Yorktown wrestling club for many years. At the Hearing, the Petitioner's parents admitted they left as a result of the wrestling program at Yorktown. There was reference to some inappropriate things happening in the Yorktown wrestling program but those were not listed as a reason for the move in the Transfer Report nor were those reasons articulated at the Hearing.

4. After enrolling in Carmel, the Petitioner's parents met with the Yorktown athletic director and principal and expressed their displeasure with the ruling and that they would bring out skeletons regarding the Yorktown wrestling program.

5. On August 7, 2015, Petitioner's parents completed the Transfer Report. On the Transfer Report, Petitioner's mother indicated that the transfer was because she transferred with her job. The Transfer Report also stated the family home was for sale. The Petitioner's family disputes some of the contents of the Report. But the report says the family home was for sale, and although the report is completed by the sending school, it is in fact signed by the Petitioner's mother. The Petitioner's mother explained at the hearing she was not in fact transferred but the territory she covered had been changed. She was still with the same employer covering a district in central Indiana. The family home was never listed for sale.

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

6. Yorktown recommended Petitioner be ineligible under Rule 19-4 and Rule 3-8. Carmel, as the receiving school, indicated the Petitioner began attendance at Carmel on August 6, 2015 and recommended limited eligibility under Rule 19-6.2.

CONCLUSIONS OF LAW

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.

1. 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).

2. 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 19, 2015, and Petitioner sought timely review on December 1, 2015.

3. 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.

4. 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. 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.

6. 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. Yorktown did not sign the *verification* on the Transfer Report, so Petitioner did not qualify for a limited eligibility waiver pursuant to Rule 17-8.5.

7. 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)). Petitioner failed to establish that there is any hardship that would compel a transfer.

8. The Panel finds this is not a bona fide change of residence under Rule 19-5.1.

9. Under Rule 19-4, a transfer primarily motivated by athletics or as a result of undue influence will cause a student to be athletically ineligible at the receiving school during the first 365 days following the student's enrollment at the receiving school. Considering the totality of the circumstances, the evidence supports the conclusion that Petitioner transferred from Yorktown to Carmel primarily for athletic reasons. If the parents wanted to make a change for the family and had a bona fide change of address, they would have listed the family home for sale and moved the entire family. The parents seemed concerned with some immoral behavior with the wrestling program at Yorktown, yet never disclosed what that was to Yorktown school officials so the problem could be addressed. The Petitioner's parents admitted at the Hearing, the main reason for leaving Yorktown was the wrestling program. The current coach at Carmel had coached the Petitioner's brothers in wrestling at Central Indiana Academy of Wrestling. The Petitioner's parents admitted a factor in picking Carmel was familiarity with the Carmel wrestling coach. It is clear the motivation to transfer schools was primarily for athletic reasons.

ORDER

The Panel finds by a vote of 8-0 that the decision of the IHSAA Review Committee, upholding the decision of the Commissioner that there was a violation of Rule 19-4, Rule 3-8 and Rule 17-7.4 is UPHELD. The Petitioner is athletically ineligible for 365 days following his enrollment at Carmel, up to and including August 5, 2016 and he is required to serve his 30% suspension imposed by Yorktown.

DATE: 12/18/2015

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.