

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter A.M.)
Petitioner,)
)
and)
) **CAUSE NO. 151210-142**
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 11, 2015, A.M.'s ("Petitioner") parents 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 2015–2016 school year relating to the Petitioner's transfer from South Vermillion High School ("Vermillion") to Rockville High School ("Rockville"). On August 17, 2015, Vermillion, as the sending school, completed its portion of the Transfer Report. Rockville, as receiving school, completed its portion of the Transfer Report on September 11, 2015.

On October 14, 2015, the IHSAA Assistant Commissioner determined that Petitioner's transfer was a violation of Rule 19-4. 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 19, 2015. Following the evidence presented at the November 19, 2015 hearing, the Review Committee issued its ruling on November 30, 2015, upholding the decision of the Assistant Commissioner declaring Petitioner was athletically ineligible pursuant to Rule 19-4.

On December 10, 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 14, 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.

¹ The following members participated in the meeting: Dr. George Frampton (Chairperson), Mr. Chuck Weisenbach, Mr. Rick Donovan, 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.

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. His transfer was not accompanied by a corresponding change of residence. Petitioner attended South Vermillion his freshman year. During the summer of 2015, Petitioner enrolled at Rockville, a public school in Rockville, Indiana. While at South Vermillion during his freshman (2014-15) year, Petitioner was on the varsity basketball team and junior varsity baseball team. He last participated athletically at South Vermillion on May 27, 2015.

2. The Petitioner was teased and harassed by students at South Vermillion related to his father being an assistant coach and alleging that the only reason the Petitioner played varsity basketball his freshman year was due to his father being an assistant coach. The Petitioner reported these incidents to his father and not school officials. There was an incident where Coach Leonard received an anonymous letter complaining about the Petitioner, this letter was not shared with school administration at South Vermillion.

3. At the end of the Petitioner's freshman year, his father resigned as an assistant basketball coach for South Vermillion. Petitioner's father thought this might lessen the teasing and harassing by other students if he were no longer associated with the basketball program at South Vermillion. There were allegations by South Vermillion that the Petitioner's father was critical of their basketball program when he resigned, but there was no evidence to suggest this was true and the Petitioner's father categorically denied he ever made such statements.

4. The Petitioner's sister, a senior, decided to stay at South Vermillion to finish high school with her friends. The Petitioner's brother, who is in middle school, also decided to stay at South Vermillion.

5. On August 11, 2015, Petitioner's parents completed the Transfer Report. On the Transfer Report, Petitioner indicated that the transfer to Rockville "was in the best interest of our son's emotional well-being."

6. South Vermillion recommended Petitioner be ineligible under Rule 19-4. Rockville, as the receiving school, indicated the Petitioner began attendance on August 11, 2015 and recommended the Petitioner have full eligibility under rule 17-8.5 signed the *Verification*.

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 30, 2015, and Petitioner sought timely review on December 10, 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. South Vermillion 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

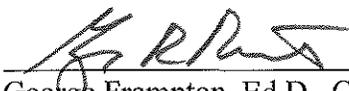
Rule is not granted (Rule 17-8.1(c)); and a hardship condition exists as defined in Rule 17-8.3 (Rule 17-8.1(d)).

8. Petitioner failed to establish that the primary and secondary purposes of the rule would still be accomplished if the Rule is not strictly enforced and there is no evidence of a hardship condition. There was certainly teasing and harassing by students at South Vermillion, but those did not rise to the level of bullying that would constitute a hardship condition.
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 does not support the conclusion that the Petitioner transferred from South Vermillion to Rockville primarily for athletic reasons. The Panel finds none of the conditions listed in the definition of a Transfer For Primarily Athletic Reasons listed in Rule 19 have been met. It is clear the motivation to transfer schools was the reason stated by the family, to help the Petitioner's well-being. Because the transfer was not primarily for athletic reasons and there was not a corresponding change of address, the Petitioner is entitled to limited eligibility pursuant to Rule 19-6.2.

ORDER

The Panel finds by a vote of 5-3 that the decision of the IHSAA Review Committee, upholding the decision of the Commissioner that there was a violation of Rule 19-4 is MODIFIED. The Panel finds the Petitioner has limited eligibility under Rule 19-6.2. The Petitioner is entitled to limited eligibility from December 16, 2015 until May 26, 2016. The Petitioner will be fully eligible to participate in athletics at Rockville on May 27, 2016, provided he is academically eligible and meets all other eligibility Rules.

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.