

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter K.H.)
Petitioner,)
)
and)
) **CAUSE NO. 160108-146**
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 21, 2015, KH's ("Petitioner") father 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 Anderson High School ("Anderson") to Crispus Attucks High School ("Crispus Attucks"). On September 8, 2015, Anderson, as the sending school, completed its portion of the Transfer Report. Crispus Attucks, as receiving school, completed its portion of the Transfer Report on September 1, 2015.

On November 2, 2015, the IHSAA Assistant Commissioner determined that Petitioner's transfer was a violation of Rule 19-4. The Petitioner was determined to be athletically ineligible for 365 days following his enrollment at Crispus Attucks. 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 December 10, 2015. Following the evidence presented at the December 10, 2015 hearing, the Review Committee issued its ruling on December 21, 2015, upholding the decision of the Assistant Commissioner declaring Petitioner was athletically ineligible pursuant to Rule 19-4 and 20-2.

On January 8, 2016, 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 January 25, 2016. On February 11, 2016, 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 lives with his father. His transfer was accompanied by a corresponding change of residence by his father to a rental home in Indianapolis, Indiana. Petitioner attended Anderson his freshman - sophomore years. During the summer of 2015, Petitioner enrolled at Crispus Attucks, a public school in Indianapolis, Indiana. While at Anderson, during his freshman (2014-15) year, Petitioner was on the varsity basketball and track and field teams. He last participated athletically at Anderson on April 21, 2015.

2. In March 2015, at the conclusion of the Anderson basketball season, the varsity coach resigned. Anderson began a search to replace the varsity basketball coach. There were over thirty-five applicants, of which, twelve were selected for an interview with the search committee.

3. One of applicants interviewed by the search committee was Crispus Attucks varsity boys' basketball coach, Phil Washington. Mr. Washington was originally from Anderson and he continued to live there even after coaching and teaching at Crispus Attucks.

4. A group of Anderson players and supporters, including the Petitioner's father, lobbied the search committee to hire Coach Washington as the new Anderson basketball coach.

5. Prior to even being offered a position in Anderson, Coach Washington, had already begun recruiting players to come to Anderson to play. Coach Washington was not in the list of finalists for the coaching position and was ultimately not offered the position.

6. The group of parents, including Petitioner's father, were very vocal about their disappointment Mr. Washington was not hired at Anderson, including posting grievances on social media. Eventually there was a meeting with the Petitioner's father, two Anderson

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

Assistant Coaches, the Anderson Superintendent and other Anderson representatives to discuss the decision not to hire Coach Washington. The Anderson Superintendent was told the school would be losing several players if Coach Washington was not hired.

7. On May 19, 2015, the Petitioner's uncle executed a residential lease for the Petitioner and his father to live in a property owned by him in Indianapolis.

8. The Petitioner's father attended a meet-and-greet for the new Anderson basketball coach. At the meeting, he asked the new coach what his feelings were about students that wanted to leave Anderson and go play somewhere else. The coach declined to comment on the question.

9. Prior to his enrollment at Crispus Attucks, the Petitioner participated in open facilities at Crispus Attucks and in the basketball team's workouts beginning in June 2015.

10. Anderson and Crispus Attucks signed the transfer verification forms. Anderson recommended Petitioner be ineligible under Rule 19-4. Crispus Attucks, as the receiving school, indicated the Petitioner began attendance on August 10, 2015 and recommended he have full eligibility under Rule 19-5.

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 December 21, 2014, and Petitioner sought timely review on January 8, 2016.

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. 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 Anderson to Crispus Attucks primarily for athletic reasons. The Petitioner's family advocated for Anderson to hire Coach Washington and when that did not happen, the Petitioner transferred to the school where Mr. Washington coached the boys' basketball team.
7. Although the Petitioner and his family have claimed to have a bona fide change of address, the Panel finds it suspect the Petitioner and his father would sign a lease for a home owned by the Petitioner's uncle and the family made no attempts to sell their Anderson home.
8. Under Rule 20-2 if there is recruitment or undue influence of a student which results in a student transferring schools, the student will be ineligible at that receiving school. The Petitioner's family advocated for Coach Washington to receive the head coaching position in Anderson, and when he did not get that position the Petitioner transferred to the school where Mr. Washington would be his basketball coach. The Panel finds this is undue influence.

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 and 20-2 is UPHELD. The Petitioner is athletically ineligible for 365 days following his enrollment at Crispus Attucks.

DATE:

2/16/2016


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.