

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter S.H.)
Petitioner,)
)
and)
) **CAUSE NO. 210120-217**
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 November 26, 2020, S.H.’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 2020–2021 school year relating to the Petitioner’s transfer. On December 4, 2020, Blackford High School (“Blackford”), the sending school, completed its portion of the Transfer Report. The receiving school, Frontier High School (“Frontier”) completed its portion of the Transfer Report on December 4, 2020.

On December 11, 2020, the IHSAA Assistant Commissioner determined that Petitioner’s case was a Rule 19-4 transfer and ruled Petitioner was entitled to no eligibility at the receiving school until November 24, 2021. The Petitioner appealed the 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 January 6, 2021. Following the evidence presented at the January 6, 2021 hearing, the Review Committee issued its ruling on January 19, 2021 upholding the decision of the Commissioner declaring that according to Rule 19-4 Petitioner had no eligibility for 365 days.

On January 20, 2021, 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 and received the record from the IHSAA

on January 25, 2021. On January 27, 2021, the Panel held a meeting¹, 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, a senior, lives with his parents in Brookston, Indiana. Petitioner attended Blackford his freshman (2017-18), sophomore (2018-19), junior (2019-20) and part of his senior (2020-21) years. While at Blackford, he played soccer and basketball. He last participated athletically at Blackford on October 6, 2020.
2. The Petitioner lived in Hartford City, Indiana and attended a public school which served his parent's residence. The Petitioner and his whole family moved to Brookston, Indiana and he began attending Frontier, which serves his parent's new address. Both the sending school and receiving school found there was bonafide change of residence. The Panel finds there was a bonafide change of residence meeting the requirements of Rule 19-5.
3. On November 26, 2020 Petitioner's parents completed the Transfer Report and the Petitioner indicated the transfer was due to a "change of residence. Family has moved into Frontier School District." Transcript. P. 55. The Petitioner's family has obtained a realtor to sell their home in Hartford City and will list the home as soon as renovations are completed. R. p. 31. The entire family moved into an apartment in Brookston, Indiana and are searching for a permanent home in the area. R. p. 31. The Petitioner's family has spent nearly every evening sleeping at the new apartment in Brookston.
4. The Petitioner's father was an assistant coach with the Blackford basketball program. When the Petitioner's grandfather resigned as the head coach, the school hired a new head basketball coach. That coach did not keep the Petitioner's father as an assistant on the varsity team and instead offered him a position with the freshman team. R. p. 30. After losing his position on the varsity team, the Petitioner's father started looking for an assistant varsity position with another school. R. p. 119. He was hired by Frontier as an assistant basketball coach and the family moved to the Frontier school district. R. p. 119. Blackford did give some clarifying information to the IHSAA that explained the Petitioner's father was removed as the assistant varsity basketball coach and that at some point there was a discussion about his sons losing playing time at Blackford. R. p. 6. The Petitioner's father denies making any statements regarding playing time. R. p. 26. The Petitioner's grandfather had been the head coach but when he retired, a new head coach was hired and he did not put the Petitioner's father in an assistant coaching position. The Petitioner's father had hoped he could take over upon his father's

¹The following members participated in the meeting: Dr. Jennifer Jensen (Interim Chairperson), Mr. Brett Crousore, Mr. Ben Ballou, Mr. Marques Clayton, Mr. Mickey Golembeski, Ms. Laura Valle and Ms. Mary Quinn. Ms. Kelly Bauder, staff attorney, was also present as legal counsel to the Panel.

resignation, and when that didn't happen, and he began searching for other opportunities to coach at the varsity level. R. p. 7.

5. Blackford recommended Petitioner have full eligibility under Rule 19-5. Frontier recommended Petitioner have full eligibility under Rule 19-5. Both schools found no violation of Rule 19-4. Transcript p. 39. Neither Blackford nor Frontier signed the 17-8.5 Verification limited eligibility waiver.

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 January 19, 2021 and Petitioner sought timely review on January 20, 2021.
4. The Panel may uphold, modify, or nullify the IHSAA Review Committee's decision. (Ind. Code § 20-26-14-6(c)(3)).
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. 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. The sending and receiving schools did not sign the *Verification*, 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)). The Panel did not address this issue due to additional findings.
8. The Petitioner's father took a new position as an assistant varsity basketball coach with Frontier in the fall of 2020. This position was not related to his sons but instead an opportunity to advance his coaching career. The Petitioner's move went from a highly ranked basketball program to an inferior basketball program at Frontier. R. p. 24. Both schools signed a verification that the move was not athletically motivated. R. p. 25. The Petitioner and his brother testified they really liked the head basketball coach hired by Blackford and looked forward to being coached by him. R. p. 35-36. Blackford and Frontier school officials both testified the Petitioner and his brother should be given the chance to play basketball at Frontier. R. p. 40-41. The IHSAA should not be in the business of denying eligibility of students where there is no evidence or any witness to say this was a move *primarily* for athletic reasons. The Petitioner and his brother have missed most of the basketball season even after both schools conducted an investigation and agreed they should be playing. The IHSAA has not their burden to prove a violation of Rule 19-4.

ORDER

The Panel finds by a vote of 7-0 that the decision of the IHSAA Review Committee, upholding the decision of the Commissioner is NULLIFIED. The Petitioner has full eligibility at Frontier beginning on January 27, 2021, provided he meets all other eligibility requirements.

DATE: 1/28/2021



Dr. Jennifer Jensen, Interim Chairperson
Case Review Panel

APPEAL RIGHT

Any party aggrieved by the decision of the Case Review Panel has forty-five days from receipt of their written decision to seek judicial review in a civil court with jurisdiction, as provided by Ind. Code § 20-26-14-7.