

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter J.M.)
Petitioner,)
)
and)
) **CAUSE NO. 161121-156**
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 8, 2016, J.M.'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 2016–2017 school year relating to the Petitioner's transfer. On August 8, 2016 Crown Point High School ("Crown Point"), the sending school, completed its portion of the Transfer Report. The receiving school, Portage High School ("Portage") completed its portion of the Transfer Report on August 10, 2016.

On August 24, 2016, the IHSAA Commissioner determined that Petitioner's transfer was a Rule 20-2 and ruled Petitioner had no eligibility for 365 days from enrollment (August 8, 2016) at the receiving school.¹ 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 November 4, 2016. Following the evidence presented at the November 4, 2016 hearing, the Review Committee issued its ruling on November 17, 2016, upholding the decision of the Commissioner (although not for a 20-2 violation) of a Rule 19-4 violation, but because of the Petitioner's circumstances,

¹The Review Committee Decision states there was a violation of Rule 19-4 found by the Commissioner, but Rule 17-3.2 states the Commissioner must state the Rule relied upon for his decision, and according to the August 29, 2016 letter, Commissioner Cox only said only Rule 20-2 was violated. The Assistant Commissioner's ruling was a Rule 20-2 violation. This was incorrectly stated in the Review Committee decision. Additionally, the Original Order, received from the IHSAA as part of the record is dated November 21, 2016. However, the Original Order was done on November 17, 2016 with the amended order on November 21, 2016.

the Petitioner would be given a waiver of the ineligibility ruling under 17-8.1 and gave him limited athletic eligibility at Portage for a period of 365 days with the period of limited eligibility beginning on August 7, 2016 and continuing until August 7, 2017, provided he is academically eligible and meets all other eligibility rules. The amended order stated there was a Rule 19-4 violation; however, the circumstances in the Petitioner's case permitted a waiver of his ineligibility ruling, under 17-8.1 and he should be granted limited eligibility at Portage beginning the date of enrollment, and continue until August 8, 2017, at which time he would have full eligibility.

On November 21, 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 and received the record from the IHSAA on December 5, 2016. On December 15, 2016, the Panel held a meeting,² 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 Porter County, Indiana. Petitioner attended Crown Point for his freshman – junior years. While at Crown Point, during his junior (2015-16) year he played varsity wrestling. He last participated athletically at Crown Point on February 20, 2016.
2. The Petitioner lived in the Crown Point district during his freshman-junior years while living at his parent's home in Crown Point, Indiana. He lived in the home with his younger brother and younger sister as well. During July, 2016, the Petitioner's father rented a lot in a trailer park in Portage, Indiana. The Petitioner's father placed a recreational vehicle on the lot and began living there alone. There were marital problems that precipitated the father's move to the RV. The Petitioner and his brother eventually also moved in to the RV with their father. The Petitioner's mother and sister remained in the Crown Point home.
3. Petitioner transferred with a corresponding change of residence by his father to a new district or territory after a separation from the Petitioner's mother. After the appeal sought by the Petitioner, the entire family now resides in the RV in Portage and the family home in Crown Point is still listed for sale. The Panel notes that once the Petitioner's parents reunited, they

² The following members participated in the meeting: Dr. George Frampton (Chairperson), Mr. Bret Daghe, Mr. Chris Lancaster, Mr. Rick Donovan, Mr. Keith Pempek and Mr. Mickey Golembeski. Ms. Kelly Bauder, staff attorney, was also present as legal counsel to the Panel.

chose, as a family of five, to stay in the RV and not return to the family home.

4. The Petitioner is a very accomplished wrestler. As a junior, the Petitioner was a qualifier at the state finals. The Petitioner also competes in club wrestling at numerous wrestling tournaments across the United States. There was some interaction during the US Nationals between the Petitioner's family and the Coach Vega (Portage coach). In the summer of 2016 the coach at Crown Point retired. A new coach was chosen at Crown Point that same summer.
5. In July, 2016 the Petitioner's father heard from another family that there were drug and alcohol problems with several of the members of the Crown Point wrestling team.
6. On August 8, 2016, Petitioner's parents completed the Transfer Report and the Petitioner indicated that the transfer to Crown Point was because the Petitioner and his brother had moved with their father to Portage.
7. Crown Point recommended Petitioner have no eligibility under Rule 19-4, and neither recommended full eligibility under Rule 17-8.5 nor signed the *Verification*. Portage recommended Petitioner have limited eligibility under rule 19-6.2 and neither recommended full eligibility under Rule 17-8.5 nor signed the *Verification*.

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 November 17, 2016, and Petitioner sought timely review on November 21, 2016.

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 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)).
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.
9. The Panel finds that the Petitioner's decision to transfer schools was a choice and he was not compelled to transfer. Therefore no hardship existed and the requirements of Rule 17-8.1 were not met. The Review Committee found there was a hardship condition but did not articulate what factors they considered a hardship. Additionally, Rule 17-8.1 requires an analysis under Rule 17-8.3(b), which states a waiver cannot be granted if the move is for athletic reasons. The IHSAA's own rules do not permit a waiver and the Panel has consistently upheld the IHSAA rules in its decisions. There no facts or circumstances that compelled the Panel to find, as the Review Committee did, that the IHSAA Rules should not be followed.
10. In the spring of 2016 the Petitioner's brother was coached during Nationals by Coach Vega. The Petitioner's coach retired and a new coach replaced him. The Petitioner's father had concerns about drug and alcohol problems with Crown Point wrestlers. After those three events occurred, the Petitioner then moved from his family home to an RV

with his father and brother and enrolled in Portage. The Petitioner is a very accomplished wrestler and all of the factors that occurred starting in the spring of 2016 lead the Panel to the conclusion the move to Portage was athletically motivated. The combination of a series of events leads the Panel to the conclusion the move was athletically motivated in violation of Rule 19-4. If the move by the Petitioner, his father and his brother was precipitated by marital problems, that problem ceased. His parents reconciled. Instead of reuniting the family in the Crown Point home, the Petitioner and his family, who admitted to be struggling financially, decided to continue to maintain two residences.

11. There was a complete lack of evidence there were any academic reasons or motivations that might have compelled the Petitioner to switch schools.

ORDER

The Panel finds by a vote of 6-0 that the decision of the IHSAA Review Committee, upholding the decision of the Commissioner is MODIFIED. The Petitioner has no eligibility based on Rule 19-4 for 365 days from the date of his enrollment at the receiving school, which was August 8, 2016, provided he is academically eligible and meets all other eligibility rules.

DATE: _____

12/20/16



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.