

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter X.G.)
Petitioner,)
)
and)
) **CAUSE NO. 170209-161**
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 October 14, 2016, X.G.’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 October 26, 2016, Park Tudor High School (“Park Tudor”), the sending school, completed its portion of the Transfer Report. The receiving school, Cathedral High School (“Cathedral”) completed its portion of the Transfer Report on November 11, 2016.

On November 23, 2016, the IHSAA Commissioner determined that Petitioner’s transfer was a Rule 19-4 violation and ruled Petitioner had no eligibility for 365 days from enrollment at the receiving school. 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 12, 2017. Following the evidence presented at the January 12, 2017 hearing, the Review Committee issued its ruling on January 24, 2017 upholding the decision of the Commissioner declaring that according to Rule 19-4, Petitioner was athletically ineligible for 365 days following his enrollment at Cathedral.

On February 9, 2017, 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 February 10, 2017. On February 15, 2017, 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 freshman, lives with his mother and father in Fishers, Indiana. Petitioner attended Park Tudor for part of his freshman year. While at Park Tudor he practiced with the basketball team, but did not participate in any events or contests with the team.
2. The Petitioner lives in Fishers, Indiana but attended Park Tudor, a private school in Indianapolis. Petitioner transferred without a corresponding change of residence. The Petitioner transferred to Cathedral, which is also private school in Indianapolis.
3. On October 14, 2016, Petitioner's parents completed the Transfer Report and the Petitioner indicated Park Tudor was not a good fit for the Petitioner. Additionally, his parents indicated that the Petitioner became distant from his family while at Park Tudor and struggled with academics. The Petitioner was subjected to bullying and racial name calling at Park Tudor. The Petitioner nor his family notified Park Tudor about the bullying or gave the school an opportunity to address the behavior of other students.
4. The Petitioner's family often discussed athletics, particularly basketball, with Park Tudor staff. The Petitioner's father talked to school officials and coaching staff about the use of his son on the Park Tudor basketball team. Prior to admission at Park Tudor, the Petitioner's parents made it clear they wanted a school environment that was a good environment for him both academically and athletically. Park Tudor reported the majority of the conversations they had with the Petitioner's parents focused on the Petitioner's participation in the basketball program.
5. When the Petitioner began struggling academically at Park Tudor, the basketball coach requested that the Petitioner sit out on conditioning for several days to focus his attention on academics. The Petitioner's parents were upset with this and felt the Petitioner was being punished. Soon after, the Petitioner shadowed at Cathedral and then began the process to transfer.

¹The following members participated in the meeting: Kelly Wittman (Chairperson), Mr. Chris Lancaster, Mr. Glenn Johnson, Mr. Mickey Golembeski, Mr. Bret Daghe and Mr. Chuck Weisenbach, and Ms. Mary Quinn. Ms. Kelly Bauder, staff attorney, was also present as legal counsel to the Panel.

6. The Petitioner was also frustrated he could not practice his faith while at Park Tudor. Park Tudor, is a private school but is non-sectarian.
7. Park Tudor recommended Petitioner have no eligibility for 365 days under Rule 19-4. Cathedral recommended Petitioner have no eligibility for 365 days under rule 19-4.

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 24, 2017, and Petitioner sought timely review on February 9, 2017.
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. The Panel finds there is not a hardship condition that exists that would allow for full or limited eligibility. The Panel believes the Petitioner did experience some bullying and name calling at the sending school; however, he did not report the incidents to school officials or give the school the opportunity to address the concerns. The Panel has consistently held that in order to seek a hardship waiver, there has to be evidence that the Petitioner and/or his family have reported the incidents to the receiving school and given the school an opportunity to address them. The Petitioner admitted he kept most of the concerns to himself and did not even tell his parents.
9. The Petitioner and his family believe strongly that both academics and athletics should be part of his high school experience. There is evidence that the Petitioner was struggling academically at Park Tudor, but much like the bullying, there is no evidence the Petitioner sought any assistance from Park Tudor to assist him with his studies. There is also no evidence in the record that there is a significant difference in the academic instruction at Cathedral versus Park Tudor. There is evidence that the Petitioner's parents were concerned with his opportunities in the basketball program at Park Tudor. The Petitioner's parents had repeated conversations with school officials at Park Tudor about how the Petitioner should be utilized in the basketball program. After the coach at Park Tudor suggested the Petitioner take a couple days break from basketball conditioning because his grades were suffering, the Petitioner's parents became upset and began the process for shadowing at Cathedral. Several weeks later, the Petitioner transferred from Park Tudor to Cathedral after only a couple of months into his freshman year. The conversations with Park Tudor focused primarily around basketball and there is a lack of evidence the Petitioner or his parents sought help from Park Tudor to address his struggles academically or socially. Therefore, the Panel finds the transfer from Park Tudor to Cathedral was primarily for athletic purposes, which is a violation of Rule 19-4. The Panel would note that given the timing of his move to Cathedral, the Petitioner will be fully eligible to participate in the basketball program at Cathedral for the remaining three years of high school.

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 UPHELD. The Petitioner has no eligibility for 365 days from October 14, 2016 at the receiving school. As of October 15, 2017, the Petitioner has full eligibility at the receiving school, provided he is academically eligible and meets all other eligibility rules.

DATE: 2/20/17

Kelly Wittman
Kelly Wittman, 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.