

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter T.H.)
Petitioner,)
)
and)
) **CAUSE NO. 211014-230**
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 13, 2021, T.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 2021–2022 school year relating to the Petitioner’s transfer. On August 17, 2021, Richmond High School (“Richmond”), the sending school, completed its portion of the Transfer Report. Indianapolis Arsenal Technical High School (“Arsenal Tech”), the receiving school, also completed its portion of the Transfer Report on August 17, 2021.

On August 20, 2021, the IHSAA Assistant Commissioner ruled that Petitioner had limited eligibility at Arsenal Tech until March 3, 2022, pursuant to Rule 19-5.1(c). The Petitioner appealed the Assistant Commissioner’s determination to the IHSAA Review Committee (“Review Committee”).

In response to Petitioner’s request to appeal, the matter was set for a hearing before the Review Committee on September 23, 2021. Following the evidence presented at the hearing, the Review Committee issued its ruling on October 13, 2021, which upheld the decision of the Assistant Commissioner.

On October 14, 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 the record from the IHSAA on October 15,

2021 and received it on October 26, 2021. On October 28, 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 mother and father in Indianapolis, Indiana. Petitioner attended Traders Point Christian his freshman year (2018-19) and attended Richmond his sophomore (2019-20) and junior (2020-21) years. While at Richmond, Petitioner played varsity basketball. He last participated athletically at Richmond on March 3, 2021.
2. Members in the community of Richmond created a hostile environment for Petitioner which caused his family to make the decision to move from Richmond to Indianapolis. Arsenal Tech is a public school in Indianapolis that, while it does not serve his parents' Indianapolis address, accepted Petitioner for enrollment on July 29, 2021.
3. Petitioner transferred with a bona fide change of residence when the transfer report was submitted.
4. On August 13, 2021, Petitioner's parents completed the Transfer Report which indicated the transfer occurred because "[f]amily is moving back to Indianapolis. [Petitioner] has experienced some threats and family is concerned for his safety." Record 73.
5. Richmond and Arsenal Tech both recommended that Petitioner have full eligibility pursuant to Rule 19-5. Neither signed the Verification under Rule 17-8.5. Both schools confirmed that the transfer was neither for an athletic reason, nor the result of undue influence. Record 76, 77.

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-

¹The following members participated in the meeting: Ms. Risa Regnier (Chairperson), Mr. Joe Hermann, Ms. Laura Valle, Ms. Mary Quinn, Mr. Brett Crousore, Mr. Chuck Weisenbach, and Mr. John Prifogle. Ms. Leslie-Ann James and Mr. Brandon Knight, staff attorneys, were also present as legal counsel to the Panel.

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 October 13, 2021 and Petitioner sought timely review the next day.
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. The Review Committee ruled that "even if [Petitioner] could establish that the transfer was in his best interests and that there were no athletic motives surrounding the transfer, neither this Committee nor any other review panel could give a 17-8.5 waiver since 1) [Petitioner] transferred schools with a change of residence; and 2) having a signed *Verification* containing the written affirmation from both principals is absolute prerequisite for a rule 17-8.5 waiver." Record 6.
7. The Panel finds that precluding Petitioner from consideration of a limited eligibility waiver because he moved back to Indianapolis to be arbitrary and capricious. According to the Committee's ruling, had the family stayed in Richmond then Petitioner could have been considered for full eligibility at Arsenal Tech pursuant to the 17-8.5 waiver but because his family chose to move from a hostile environment, he no longer qualifies for such consideration. Requiring Petitioner to stay in Richmond as opposed to moving back into the Indianapolis home the family already owned prior to and during the time they lived in Richmond is unreasonable and lacks consideration and any regard for the facts and circumstances involved in this case.
8. Likewise, the Panel finds that precluding Petitioner from consideration of a limited eligibility waiver because neither principal signed the *Verification* is arbitrary and capricious. Here, both schools recommended full eligibility pursuant to Rule 19-5.

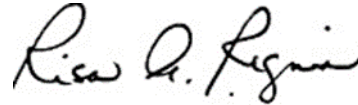
These selections on the Transfer Report were made by the respective athletic directors and such selections do not prompt or invoke the requirement that the principals then sign the *Verification*. See Transfer Report, Record 76-77. The testimony presented at the Review Committee hearing illustrates that both schools erroneously recommended Rule 19-5. Richmond's Athletic Director, Warren Cook, testified that he recommended 19-5 because he thought Petitioner's new address was within Arsenal Tech's territory (despite the Transfer Report clearly stating the contrary) and had he known it was not, he "wouldn't have been able to go on a 19-5." Record 48. Additionally, Mr. Cook testified regarding a conversation he had with Arsenal Tech's Athletic Director, Mosi Barnes, prior to the Transfer Report being completed which suggested Mr. Barnes believed that because Petitioner was generally moving back to Indianapolis, "that's a 19.5." Record 47. The record also suggests that Mr. Cook did not even consider a Rule 17-8.5 waiver. When he was asked what his recommendation would have been knowing that Petitioner's address was not within Arsenal Tech's territory, he responded by saying "that's probably where I would have called [Arsenal Tech's athletic director] and said -- and we would have talked a little more about it, I'm sure." Record 48. Since both schools erroneously completed their respective sections of the Transfer Report, it is evident that neither school ever considered Petitioner for the limited eligibility waiver. Accordingly, it is unreasonable to rule, in this case, that because neither principal signed the 17-8.5 *Verification*, that is yet another reason why Petitioner should not receive full eligibility.

9. In Smock v. the Case Review Panel/Indiana Department of Education/Indiana High School Athletic Association, and Delphi Community School Corporation 08C01-1912-PL-000019, the trial court found that "the Limited Eligibility Waiver Rule (17-8.5) exists to allow non-athletically motivated transfers, which serve the best interest of the student, full eligibility. A school cannot simply unilaterally and erroneously misuse that discretion, and in turn, preclude a student athlete from participating in athletics with full eligibility." See also In the Matter of J.T. 091002-64 and IHSAA v. Durham, 748 N.E.2d 404 (Ind. Ct. App. 2001).
10. Just as both schools indicated on their respective sections of the Transfer Report, the Panel finds Petitioner's transfer to be void of any athletic motivation.
11. The Panel finds that leaving Richmond indisputably served the Petitioner's best interests. It is clear from the record that Petitioner and his family researched Arsenal Tech and ultimately chose to enroll there due to academics. Specifically, because Petitioner aspires to become a sportscaster, they assert that Arsenal Tech's Radio/Television Program is one of the best in the state. The record lacks any evidence that contradicts Arsenal Tech's superiority in terms of that specific educational program. Additionally, Arsenal Tech provides a unique counseling program available to not only the Petitioner, but also the family, that could aid in dealing with the trauma experienced while living in Richmond. Accordingly, the Panel finds that the decision to enroll at Arsenal Tech was done so to serve the best interests of the Petitioner.

12. The Panel finds the Petitioner is fully eligible for athletics at Arsenal Tech pursuant to Rule 17-8.5.

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 as of October 28, 2021 at the receiving school, provided he meets all other eligibility requirements.



DATE: 11/10/2021

Risa Regnier, 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.