

**BEFORE THE INDIANA  
CASE REVIEW PANEL**

**In The Matter of D.T.** )  
**Petitioner,** )  
 )  
**and** )  
 ) **CAUSE NO. 211130-237**  
**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 31, 2021, D.T. (“Petitioner”) 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 September 9, 2021, the sending school, Maconaquah High School (“Maconaquah”) completed its portion of the Transfer Report. On September 14, 2021, the receiving school, Kokomo High School (“Kokomo”), completed its portions of the Transfer Report.

On September 20, 2021, the IHSAA Assistant Commissioner determined that Petitioner’s transfer was a Rule 19-4 transfer and ruled Petitioner ineligible for athletics at the receiving school until October 1, 2022. 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 for October 21, 2021. Following the evidence presented at the hearing, the Review Committee issued its ruling on November 11, 2021, which upheld the decision of the Assistant Commissioner.

On November 30, 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 December 1, 2021 and received it on December 8, 2021. On December 14, 2021, the Panel held

a meeting<sup>1</sup>, 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.<sup>2</sup>

### FINDINGS OF FACT

The Panel finds the following facts to be true and relevant to its decision.

1. Petitioner, a sophomore, lives with her parents in Peru, Indiana. Petitioner attended Maconaquah, a public school which serves her parents' residence, her freshman (2020-2021) year. While at Maconaquah, she participated in varsity basketball and last participated athletically on May 18, 2021.
2. On September 1, 2021, Petitioner enrolled at Kokomo, a public school that does not serve her parents' address. A corresponding change of residence was not made.
3. According to Transfer Report Petitioner transferred because "COVID policies/contact tracing and masks. Want our daughter in school physically and better academic program (IB)."
4. Maconaquah indicated that Petitioner transferred for an athletic reason and as a result of undue influence and recommended ineligibility pursuant to Rule 19-4. Kokomo indicated that the transfer was neither for an athletic reason nor a result of undue influence and recommended full eligibility through a general waiver pursuant to Rule 17-8.1.

### 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-

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

<sup>2</sup> On December 9, 2021, the Panel received additional information from Petitioner's parents via email. On December 14, 2021, the IHSAA submitted an objection, asking that the Panel deny consideration of said information. The Panel, over the IHSAA's objection, reviewed and considered the information pursuant to I.C. 20-26-14-6(c)(1), which requires the panel to collect information from *both the association and the parent*.

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 11, 2021 and Petitioner sought timely review on November 30, 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. *Carlberg* 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. This case is reviewed by not only evaluating the reasoning for leaving Maconaquah, but also by examining the circumstances surrounding how Petitioner chose Kokomo. There is no question that Petitioner’s family was displeased with Maconaquah’s administrative decisions and policies in response to the COVID pandemic. Further, regarding Petitioner’s mental health and well-being, the evidence supports her decision to transfer from Maconaquah. The problem with this transfer is not why she left Maconaquah; the issue is how she arrived at Kokomo.
7. The idea of transferring from Maconaquah originated by August 6, 2021, at the latest. (R. at 25; Tr. 27). As of August 25, 2021, Kokomo was not even “on [the family’s] radar” as a possible destination. (R. at 24; Tr. 25). In fact, at that time, when transferring was no longer just an idea but rather an inevitability, the decision was only between Northwestern and Lewis Cass. (R. at 24, 26, 66). It was not until August 29, 2021 that Kokomo became an option after being suggested by a family friend, Mr. Hicks. (R. at 24, 26, 107). Mr. Hicks’ daughter and Petitioner are “really good friends,” and both play AAU basketball. (R. at 25; Tr. 29). Mr. Hicks’ daughter also plays basketball for Kokomo. Following the conversation with Mr. Hicks, Petitioner’s father called the head coach for Kokomo’s girls’ basketball team, Coach Peckinpaugh. (R. at 107). Despite the assertion that basketball was not discussed, at the Review Committee hearing when Kokomo’s principal, Ms. Blessing, learned that this conversation took place and lasted

for approximately five minutes, she was concerned, albeit slightly. (R. at 33; Tr. 59). The Panel finds this action more than slightly concerning, especially upon learning that during the previous spring Petitioner's father, Coach Peckinpaugh, and Mr. Hicks all communicated with one another regarding the effort to start a new AAU basketball team in Kokomo. (R. at 26, 30; Tr. 46-48). When the creation of that team did not pan out, Coach Peckinpaugh suggested an alternative AAU team for Petitioner. (R. at 30; Tr. 47). This prior contact is how Petitioner's father had Coach Peckinpaugh's number. (R. at 27; Tr. 37). On the same day as the phone calls with Mr. Hicks and Coach Peckinpaugh, Petitioner also worked out with several of the Kokomo girls' basketball players "on the hardwood." (R. at 61-62). Two days later, on August 31, 2021, Petitioner formally toured Kokomo and initiated the transfer. (R. at 25; Tr. 26). After the transfer began, Petitioner's father publicly thanked Coach Peckinpaugh, among several others including Mr. Hicks, via a Facebook post, for the "assistance" in making the decision to transfer to Kokomo "rather simple." (R. at 64).

8. Considering the entirety of the evidence before the Panel, it is impossible to conclude that the decision to transfer to Kokomo was devoid of athletic motivation. Had Petitioner transferred to either Northwestern or Lewis Cass (or any school other than Kokomo, for that matter) the same could not be said.
9. Accordingly, Panel finds that the IHSAA's decision was neither arbitrary nor capricious.

### 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 athletic eligibility at the receiving school until September 1, 2022<sup>3</sup>, when she will be fully eligible, provided all other eligibility requirements are met.

DATE: December 20, 2021



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Risa Regnier, Chairperson  
Case Review Panel

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<sup>3</sup> Under Rule 19-4, Petitioner's date of eligibility is three-hundred sixty-five (365) days from the date she enrolled at Kokomo, which was Sept. 1, 2021, making her date of eligibility Sept. 1, 2022, not October 1, 2022.

## 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.