

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter J.B.)
Petitioner,)
)
and)
) **CAUSE NO. 211208-239**
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 September 7, 2021, J.B.’s (“Petitioner”) parent 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 13, 2021, Charlotte Amalie High School (“Charlotte Amalie”), the sending school, completed its portion of the Transfer Report. The receiving school, Randolph Southern High School (“Randolph Southern”) completed its portion of the Transfer Report on September 13, 2021.

On October 29, 2021, the IHSAA Commissioner determined that Petitioner’s transfer was a Rule 19-4 transfer and ruled Petitioner had no eligibility at the receiving school until September 13, 2022. 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 18, 2021. Following the evidence presented at the November 18, 2021 hearing, the Review Committee issued its ruling on December 3, 2021 modifying the decision of the Commissioner declaring that according to Rule 19-6.2, Petitioner had limited eligibility.

On December 8, 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 December 13, 2021. On December 17, 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 junior, lives with a caregiver in Richmond, Indiana. Petitioner attended Charlotte Amalie his freshman year (2019-2020) and sophomore year (2020-2021). While at Charlotte Amalie he played varsity basketball. He last participated athletically with St. Thomas's Zero Tolerance Basketball Organization on July 15, 2021.² Record p. 2,4 6.
2. The Petitioner lived with his father in St. Thomas, U.S. Virgin Islands and attended Charlotte Amalie, a public school which served his father's residence. Petitioner transferred with a corresponding change of residence when transfer report was submitted. Record p. 44
3. The Petitioner transferred to Randolph Southern, a public school in Lynn, Indiana that does not serve his caretaker's residence in Richmond. Record p. 44.
4. On September 7, 2021, Petitioner's father completed the Transfer Report and the Petitioner indicated the transfer occurred "[f]or a better academic opportunity because his school does not provide in-person learning." Record p. 47
5. In fall of 2017, the Virgin Islands were hit by Hurricanes Irma and Maria, significantly affecting the island and the school system. Consequently, classroom instruction occurred in modular and deteriorating buildings. Additionally, Charlotte Amalie's classrooms were overcrowded during the Petitioner's freshman year. Record p. 88.
6. In the Spring of 2020, Charlotte Amalie only offered virtual learning due to the Covid-19 pandemic. Charlotte Amalie indicated that for the 2021-2022 school year they would continue only offering virtual learning for its students. Record p. 88, 91.
7. During the 2021-2022 school year, A.C., a friend of the Petitioner, transferred from Charlotte Amalie to Randolph Southern for a better academic environment. A.C.'s mother was aware that Petitioner's father was also interested in a better environment for

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

² The Petitioner's last athletic participation was as AAU team member of St. Thomas's Zero Tolerance Basketball Organization on July 15, 2021.

the Petitioner. Consequently, she assisted Petitioner's father with relocating and enrolling him at Randolph Southern. A.C.'s mother indicated that the move to Randolph Southern "was about a safe and meaningful learning environment for [J.B.], not about [A.C.] and [J.B.] playing basketball together." Record p. 88, 91-92.

8. Charlotte Amalie recommended Petitioner have full eligibility through the Rule 19-5. Randolph Southern also recommended Petitioner have full eligibility under Rule 19-6.1(j). Record p. 46-47
9. Neither Charlotte Amalie nor Randolph Southern signed the Verification under Rule 17-8.5. Record p. 46-47.

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 December 3, 2021 and Petitioner sought timely review on December 8, 2021.
4. The Panel may uphold, modify, or nullify the IHSAA Review Committee's decision. (Ind. Code § 20-26-14-6(c)(3)). 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).

5. 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.
6. 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)).
7. According to Rule 19-6.2, when a student's parents/guardians do not make a bona fide change of residence to a new district or territory, the student is eligible for limited eligibility at the receiving school, unless there is reason to believe the student transferred for athletic reasons or the result of undue influence.
8. The Panel finds there is no evidence of athletic motivation in the record. The record does not demonstrate any evidence of recruitment and undue influence. In addition, no communication occurred between the Petitioner and Randolph Southern's coaching staff before the Petitioner enrolled at the receiving school. According to Coach Roland Watts, the Petitioner's only contact with him occurred after the Petitioner enrolled at Randolph Southern. Additionally, Coach Watts indicated that the Petitioner has continued to express that his move to Randolph Southern was to obtain a better academic situation than Charlotte Amalie. Record p. 86. The Panel also notes that neither Charlotte Amalie nor Randolph Southern indicated athletic motivation by the Petitioner in the IHSAA transfer report.
9. The Panel finds that the Petitioner's decision to transfer to Randolph Southern was in his best interest. The Petitioner and his father indicated that the education situation in St. Thomas prompted his move to Randolph Southern. Additionally, the Petitioner's father noted that prior to the Covid-19 pandemic Charlotte Amalie already struggled to serve its students. Charlotte Amalie's problems included deteriorating buildings and overcrowded classrooms during the Petitioner's freshman year. The Covid-19 pandemic resulted in Charlotte Amalie offering classroom instruction solely through virtual learning and the Petitioner struggled with learning virtually. Moreover, virtual learning was affected by numerous power outages and unreliable internet access on the island. After being informed Charlotte Amalie would continue with virtual learning, the Petitioner's father became concerned for his student's academic progress. Subsequently, the father was

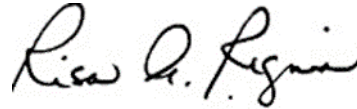
informed by a friend that she enrolled her student at Randolph Southern for a better academic environment. The Petitioner's father made the decision to enroll the Petitioner at Randolph Southern to afford him a better academic opportunity. At the Review Committee hearing, the Petitioner stated "I didn't come to Randolph Southern just for basketball, because there's other things I [would] like to do in the future...this school's record isn't good for me to be like... they got a good record, let me go there. No, I came for a better education so I can get a diploma to get this." Transcript p. 18. The Petitioner's father felt the move would be beneficial for his academic and personal growth.

10. The Petitioner and his family were questioned why the Petitioner would choose Randolph Southern over anywhere else in the United States. The Petitioner's father explained that enrolling at Randolph Southern afforded the Petitioner "the support as they settled into their new school. Moving so far away to a community where he knew no one was challenging enough. We wanted him to know at least one person...to help ease the transition." Record p. 88. In order for a smooth transition for the Petitioner, it would make sense that he would be enrolled in a school where a fellow student from the Virgin Islands also attended. Enrolling Petitioner at Randolph Southern would ensure that he would not be alone in his transition in this new environment. The Panel finds that the move to Randolph Southern considering the other factors such as a safe school environment, community support, and learning transition was done in the best interest of the student.
11. 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). In the absence of athletic motivation and when presented with evidence from the Petitioner that the move was in his best interest, the Review Committee should have found the move was in his best interest and given full eligibility by Rule 17-8.5.
12. The Panel finds that Petitioner is eligible for full eligibility at Randolph Southern under Rule 17-8.5.

ORDER

The Panel finds by a vote of 4-2 that the decision of the IHSAA Review Committee, upholding the decision of the Commissioner is NULLIFIED. The Petitioner has full eligibility as of December 17, 2021, at the receiving school, provided he meets all other eligibility requirements.

DATE: 1/04/2022



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.