

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter B.M.)
Petitioner,)
)
and)
) **CAUSE NO. 190514-184**
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 fall of 2017, B.M. enrolled at University High School (University) to repeat his junior year after transferring from Carmel High School (Carmel) in the 2017-2018 school year. Prior to B.M.'s spring 2017 enrollment at Carmel, he was enrolled at Terre Haute South (Terre Haute) for his initial junior year in the fall of 2016. In April 2019, Petitioner requested that the IHSAA make a determination for the spring 2019 semester relating to the Petitioner's athletic eligibility.

On April 19, 2019, the IHSAA Commissioner determined that Petitioner no longer had athletic eligibility per the IHSAA's 12-3 Eight Semester Rule and ruled Petitioner's athletic eligibility at University ended at the completion of fall semester of the 2018-2019 school year. 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 April 29, 2019. Following the evidence presented at the April 29, 2019 hearing, the Review Committee issued its ruling on May 9, 2019 upholding the decision of the Commissioner declaring that according to Rules 12-3 and 17-9, Petitioner had no eligibility.

On May 14, 2019, 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 May 23, 2019. On June 5, 2019, 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 father in Carmel, Indiana. Petitioner has attended University for his second junior year (2017-18) and senior year (2018-19).
2. The Petitioner played baseball at Carmel during his sophomore year (2015-16). While at University he played varsity baseball for his second junior year (2017-18) school year.
3. The Petitioner began high school at Carmel, a public school which served his parent's residence, in the fall of 2014. In the fall of 2016, Petitioner's parents divorced. The Petitioner wanted to live with his mom, who had moved to Terre Haute and had been recently diagnosed with breast cancer. He transferred to Terre Haute South, a public school which served his mother's residence, for his junior year (2016-17). Petitioner then returned to Carmel to complete the spring semester of his junior year (2016-17).
4. The Petitioner then transferred to University, a private school in Carmel, Indiana that does serve his father's residence. Petitioner repeated his junior year at University after poor academic performance at Terre Haute and after Carmel would not allow Petitioner to repeat his junior year.
5. In April 2019, Petitioner requested a determination of his athletic eligibility status for the spring 2019 semester in accordance with the IHSAA's Eight Semester Rule. Petitioner's father indicated in his summary of testimony that he believed, "B.M. should have 1 semester of eligibility left due to no credits received [in] fall of 2016, B.M. was held back and repeated junior year due to academics."
6. The Petitioner has committed to play baseball next year and Rend Lake Junior College in Illinois.

¹The following members participated in the meeting: Kelly Wittman (Chairperson), Mr. Karl Hand, Mr. Mickey Golembeski, Ms. Laura Valle, Ms. Mary Quinn, Ms. Stacie Stoffregen and Mr. Chuck Weisenbach, and Ms. Kelly Bauder, staff attorney, was also present as legal counsel to the Panel.

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 April 29, 2019 and Petitioner sought timely review on May 14, 2019.
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. There are waivers available to students under the IHSAA Rules: General Waiver of an IHSAA Rule pursuant to 17-8.1, an Exception for Illness or Injury pursuant to Rule 12-3 and an Eight Semester Eligibility Waiver of an IHSAA Rule pursuant to 17-9.
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)). There were not conditions which constituted a hardship

condition for the Petitioner.

8. A student seeking a Rule 12-3 waiver must show that an injury or contracted illness required the student to completely withdraw from the School or prohibited enrollment in the School for that particular semester. In addition, the student did not receive any academic credit for that semester, resulting in that semester not counting as one of the eight consecutive semesters of enrollment. This waiver requires notice to the IHSAA, supporting documentation from the treating physician, and the student's principal or principal's designee. Moreover, a student seeking a Rule 17-9 waiver must offer evidence that shows that the student has a disability defined in the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1401(3), the student will be unable to graduate within eight semesters after entering the ninth grade due to the particular disability, and the student's participation would not constitute an undue risk to the safety and health of other participants or the student's team an undue competitive advantage.
9. According to Rule 12-2, when a student enrolls in the 9th grade and the passage of fifteen days occurs, the student shall be eligible for no more than four consecutive years or eight consecutive semesters. The Panel finds that the when Petitioner enrolled in Carmel High School in the fall of 2014 his four consecutive years or eight consecutive semesters period began and continued when he transferred to Terre Haute in the fall of 2016. The four consecutive years or eight consecutive semesters period was not tolled because he did not receive credits at Terre Haute. When Petitioner returned to Carmel and transferred to University to repeat his junior year his eight consecutive semesters ended with the completion of the spring 2018 semester.
10. The Panel finds that the Petitioner not receiving credits at Terre Haute in the fall of 2016 did not meet the exception in Rule 12-3. Moreover, the Panel finds that the Petitioner did not meet the elements for the Rule 17-9 Eight Semester Eligibility Waiver to be applied. The Panel finds that Petitioner has no remaining athletic eligibility at University under Rule 12-2.

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 after the end of the spring 2018 semester.

DATE: 6/7/2019



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 their written decision to seek judicial review in a civil court with jurisdiction, as provided by Ind. Code § 20-26-14-7.