

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter C.B.)	
Petitioner,)	
)	
and)	
)	CAUSE NO. 200826-199
The Indiana High School Athletic Association,)	
Respondent.)	
)	
Review Conducted Pursuant to Ind. Code)	
§ 20-26-14 <i>et seq.</i>)	

FINDINGS OF FACT, CONCLUSIONS OF LAW

PROCEDURAL HISTORY

On or about January 16, 2020, C.B.'s ("Petitioner") mother 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 2020–2021 school year relating to the Petitioner's transfer. On January 22, 2020, Evansville Central School ("Evansville"), the sending school, completed its portion of the Transfer Report. The receiving school, Heritage Hills High School ("Heritage"), completed its portion of the Transfer Report on January 21, 2020 and January 31, 2020.

On June 3, 2020, the IHSAA Assistant Commissioner determined that Petitioner's transfer was a Rule 20-2 violation and ruled Petitioner was ineligible at the receiving school until January 14, 2021 due to the past link. 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 August 6, 2020. Following the evidence presented at the August 6, 2020 hearing, the Review Committee issued its ruling on August 18, 2020 upholding the decision of the Assistant Commissioner declaring that according to Rule 20-2, Rule 20-1, Rule 20-5 and 19-4, Petitioner would not be fully eligible until January 14, 2021.

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on September 9, 2020. On September 10, 2020, 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 in Evansville, Indiana. Petitioner attended Evansville his freshman (2017-18) and sophomore (2018-19) years and part of his junior year (2019-20). While at Evansville, he played junior varsity and varsity football and basketball. He last participated athletically at Evansville on December 10, 2019.
2. The Petitioner attended Evansville, a public school which served his mother's address. Petitioner transferred without a corresponding change of residence.
3. The Petitioner transferred to Heritage, a public school in Lincoln City, Indiana that has open enrollment. The Petitioner began attending Heritage on January 14, 2020.
4. On January 16, 2020, Petitioner's mother completed the Transfer Report and the Petitioner indicated the transfer was due to "[the Petitioner] is having trouble at his former school. His mom believes that this problem is causing anxiety, emotional stress and causing his grades to fall. [The Petitioner] and his mom feel that the move to Heritage Hills will help him in the classroom and alleviate his emotional stress."
5. Evansville recommended Petitioner have no eligibility under Rule 20-2 after being notified of a connection between Petitioner and a basketball coach at Heritage. Heritage recommended Petitioner have full eligibility under Rule 17-8.5.
6. Evansville indicated on the transfer report that the Petitioner's mother met with school administrators at least three times regarding disciplinary issues and athletics. Evansville did not have any documented reports that the Petitioner was suffering from emotional distress or anxiety. Additionally, Evansville noted that the Petitioner has a past link with Coach Messmer who has helped coach the Petitioner at Pocket City Basketball League and is also a basketball coach at Heritage.

¹The following members participated in the meeting: Kelly Wittman (Chairperson), Mr. Brett Crousore, Ms. Laura Valle, Mr. Marques Clayton, Ms. Mary Quinn, Mr. Chuck Weisenbach, and Ms. Kelly Bauder, staff attorney, was also present as legal counsel to the Panel.

7. The Petitioner was upset during the football season in 2019 that he was going to be moved by the coach from the quarterback position to a position on defense that he did not want to play. The Petitioner texted his mother at some point saying "I don't wanna be at central if I'm not playing qb next year. (Record p. 84). During his junior year, the Petitioner did not follow the instructions of the football coach and did not play for three games, which upset the Petitioner. On December 10, 2019 the Petitioner was upset after a basketball game and quit the team.
8. After the disciplinary issues at Evansville and her concerns about the Petitioner's emotional well-being, the Petitioner's mother began looking at options for transferring him to another school. After considering several schools, the Petitioner and his mother thought Heritage would be good fit and positive environment for him.
9. The Petitioner admitted to being asked by basketball coaches to be a leader for the team and he felt the head coach was in his corner and respected him. He admitted there was an assistant coach that was younger and often blurred the lines between coach/friend/player and would get into it with the coach. The Petitioner was kicked out of practice at least twice for "getting into it with that coach." Coach Walker was frustrated with the Petitioner's conduct including being disrespectful and offensive language to coaching staff and had expressed that to the Petitioner and his mother.
10. Evansville's Coach Walker testified he had a conversation with Coach Messmer from Heritage regarding the Petitioner. Coach Messmer told him he had talked to the Petitioner "about some things that he disliked at Central, some hardships that he was going through." Coach Messmer also knew the Petitioner had quit the team at Evansville and was likely moving to Heritage. Coach Messmer did not testify at the Review Committee Hearing but submitted a statement and confirms he talked to Coach Walker on January 14, 2020, but denies that he recruited the Petitioner to play at Heritage or discussed transferring so he could play at his school (Record page 135).
11. Evansville did not sign the 17-8.5 *Verification* limited eligibility waiver, however Heritage did sign the waiver.

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 August 18, 2020 and Petitioner sought timely review on August 26, 2020.
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 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 school 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 that there is compelling evidence that demonstrates the Petitioner's transfer was primarily for athletic reasons in violation of Rule 19-4. The Petitioner's frustrations, as articulated by him, to his mother and coaches was primarily related to his participation in athletics. There is evidence that Coach Walker tried working with the Petitioner and his mother to address these so he could continue to participate in both basketball and football at Evansville. During the football season, the Petitioner was frustrated he was not utilized by the team in the quarterback position and only being played in defense. It is unclear from the record whether the football coach simply did not play the Petitioner for several games or if he did not play on his own due to not playing the position he wanted. After getting into disagreements with the basketball coaches at Evansville, the Petitioner quit the team on December 10, 2019. There is no evidence that Evansville was told by the Petitioner or his mother that he was having emotion distress or anxiety caused by anything outside of sports. Evansville was therefore not given the opportunity to assist the Petitioner to alleviate any distress or anxiety not related to participation in sports. Several weeks after quitting the basketball team, the Petitioner enrolled at Heritage on January 14, 2020. There was no other evidence or issue presented by the Petitioner that necessitated the move in the middle of his junior year. The Petitioner's move to Heritage was likely a good opportunity for a change of environment that might be in his best interest long-term. This however, did not rise to the level of a hardship condition that would allow for a waiver or disregard of Rule 19-4.

9. The Panel finds there was not sufficient evidence to prove violations of Rule 20-1, 20-2 or 20-5. The burden of proof in those matters falls on the IHSAA and there was not sufficient evidence in the record to find violations of those rules². A phone call to an AAU coach to express frustrations about basketball is not enough to show a past link or undue influence.

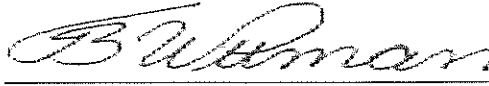
²The Panel continues to be concerned the language of Rule 20-2 is vague and can, in some circumstances, be unfairly applied to students. The Panel would encourage the IHSAA to continue to look at ways to allow some flexibility within this rule, while still protecting against transfers for the purpose of following a coach. It appears from the record and other cases that member schools are frustrated as well with the language in the rule.

The Panel also notes that even after repeated concerns listed in orders and from communications to the IHSAA from the Chairperson, counsel for the IHSAA continues to conduct himself in a manner at hearings that is unprofessional. As the Panel has expressed, these hearings are opportunities for schools, administrators and IHSAA staff to serve as role models for children. While the Panel understands the nature of adversarial administrative proceedings, the biggest complaint from families appealing to the Panel is how poorly they were treated by IHSAA staff and particularly, the attorney representing the IHSAA.

ORDER

The Panel finds by a vote of 6-0 that the decision of the IHSAA Review Committee, upholding the decision of the Commissioner is UPHeld in part and NULLIFIED in part. The Petitioner has no eligibility based on Rule 19-4 at the receiving school until January 14, 2021, provided he meets all other eligibility requirements.

DATE: 9/15/2020



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.