

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter M.V.)
Petitioner,)
)
and)
) **CAUSE NO. 190917-190**
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 May 31, 2019, M.V.’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 2019–2020 school year relating to the Petitioner’s transfer. On June 10, 2019, Rock Creek Academy (“Rock Creek”), the sending school, completed its portion of the Transfer Report. The receiving school, Providence High School (“Providence”) completed its portion of the Transfer Report on May 31, 2019.

On July 24, 2019, the IHSAA Commissioner determined that Petitioner’s transfer was a Rule 19-6.2 transfer. Petitioner had limited eligibility at the receiving school until October 13, 2019. 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 26, 2019. Following the evidence presented at the August 26, 2019 hearing, the Review Committee issued its ruling on September 6, 2019 upholding the decision of the Commissioner declaring that according to Rule 19-6.2, Petitioner had limited eligibility.¹

¹The Panel remains concerned with the amount of errors in the Review Committee orders. On page 5 paragraph 14 the final sentence ends in the middle of a sentence, the Panel is not sure what point was being made or what evidence the Review Committee relied on. On page 14, it says the Review Committee found the move was athletically motivated and a violation of Rule 19-4, however the final ruling was not a Rule 19-4, but instead limited eligibility under 19-6.2 and there was absolutely no testimony regarding an athletic motivation for the move. Finally, on page 7 the Review Committee order refers to another student’s eligibility in the final sentence of paragraph 2. The Panel is concerned the Review Committee is confusing students.

On September 17, 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 September 25, 2019. On September 27, 2019, the Panel held a meeting², 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 his mother and father in Sellersburg, Indiana. Petitioner attended Rock Creek his freshman (2017-18) and sophomore (2018-19) years. While at Rock Creek, he played varsity football and junior varsity basketball. He last participated athletically at Rock Creek on October 13, 2018.
2. The Petitioner lives in Sellersburg, Indiana and attended, a public school which served his parents' residence. Petitioner transferred without a corresponding change of residence when the Transfer Report was submitted.
3. The Petitioner transferred to Providence, a private school in Clarksville, Indiana that does not have a residency requirement for enrollment/attendance.
4. On May 31, 2019, Petitioner's parents completed the Transfer Report and the Petitioner indicated "[M.V. had] been asking his parents to send him to another school for the past two years. Since the change from a Christian school to a Charter school, [M.V.] has not been happy. It's not been enjoyable for him. He misses the religious aspect of school and wants that comfort back again in his life. Parents have been in to speak with the Dean of students and certain Faculty members about [M.V.]'s feelings and issues several times since his freshman year."
5. While at Rock Creek, the Petitioner was the subject of discipline at school including an incident where he bullied another student and participating in making fun of a student who had been molested. As a result of those incidents, the Petitioner had to give a presentation to the whole school about the incident and his behavior. Additionally, his

Every case should be decided on the specific facts and circumstances of the particular student appealing, and the Panel feels compelled to point out these errors and cautions the Review Committee that if orders continue to be based on facts not in evidence or not related to the student who is actually appealing, the Panel will be left with no choice but to disregard the entire final order of the Review Committee because it cannot reasonably be relied upon for actual evidence and facts.

²The following members participated in the meeting: Kelly Wittman (Chairperson), Mr. Ben Ballou, Mr. Chris Lancaster, Ms. Laura Valle, Ms. Mary Quinn and Mr. Chuck Weisenbach, and Ms. Meisha Wide. Ms. Kelly Bauder, staff attorney, was also present as legal counsel to the Panel.

disciplinary issues resulted in the entire football team being punished by having to run because of his actions.

6. The Petitioner is a member of the First Christian Church in Jeffersonville, Indiana. He attends church services when he is able to based on his parent's work schedule. He also participates in mission projects/trips with the church.
7. Rock Creek recommended Petitioner have limited eligibility under Rule 19-6.2.
8. Providence recommended Petitioner have full eligibility under Rule 17-8.1.
9. Neither Rock Creek nor Providence signed the 17-8.5 Verification limited eligibility waiver. Although a Providence school official testified he believed the move was in the Petitioner's best interest, Rock Creek informed Providence that they do not sign the 17-8.5 waivers. Rule 17-8.5 requires both schools sign the waivers, if the move is in the best interest of a student.

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 September 6, 2019 and Petitioner sought timely review on September 17, 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 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 Rule 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. According to Rule 19-6.2, when a student’s parents/guardians does 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. In this case, the Petitioner transferred without a corresponding change of address to a private school in Indiana, which does not have a residency requirement for enrollment.
9. The Panel finds that there is not any evidence that demonstrates that the move to Providence was for athletic reasons, therefore there was no Rule 19-4 violation.
10. Providence recommended full eligibility under General Waiver Rule 17-8.1. Providence’s recommendation for the waiver was on the basis of a lack of JV football team for the 2019-2020 school year. Thus, Petitioner would not be able to participate in a football game until the last game of the regular season. Additionally, both Providence and the Petitioner’s family believed the move was in the best interest of the Petitioner. A Providence school official was told by Rock Creek they were not in the habit of signing waivers.
11. The Petitioner had previously attended Restoration Christian School (“Restoration”). In 2009, Restoration transitioned to become a public charter school, which was named Rock Creek. After the school transitioned to a public school, the Petitioner told his parents he

missed the structure and instruction at a religiously based school. He had asked for the opportunity to attend a religious-based school that would provide him with more structure and access to religious instruction on a daily basis.

12. The Panel finds that the Petitioner and family met the burden of proof demonstrating that a hardship condition was present that would allow for a waiver of Rule 19-6.2, specifically that the absence of a JV team would mean he has no eligibility at Providence. That is a condition that is outside of his control. Secondly, the Petitioner wanted and had asked his parents for a fresh start after being embarrassed in front of the whole school and football team, who then knew his disciplinary history with Rock Creek. He was humiliated in front of his peers who were then all aware of his misdeeds and discipline at school. Rule 19-6.2 does not take into consideration that students transferring to private schools do not have a change of address because there are no residency requirements for students attending private schools.³ The IHSAA Rules, create a difficult situation for students who are denied eligibility on the basis of transferring to a private religious school that do not have residency requirements. The Panel does not find this fact to be a hardship condition, however it notes this continues to be an issue with transferring students.
13. The Panel finds that according to Rule 17-8.1, the Petitioner should have full eligibility at Providence.

ORDER

The Panel finds by a vote of 4-3 that the decision of the IHSAA Review Committee, upholding the decision of the Commissioner is NULLIFIED. The Petitioner has full eligibility as of September 27, 2019 at the receiving school, provided he meets all other eligibility requirements.

DATE: 9/30/2019



Kelly Wittman, Chairperson
Case Review Panel

³ IHSAA definitions of “new district” and “territory” imply there are residency requirements for private schools, however private schools in Indiana do not have defined districts or territories for attendance purposes.

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.