

**BEFORE THE INDIANA  
CASE REVIEW PANEL**

**In The Matter L.M.** )  
**Petitioner,** )  
 )  
**and** )  
 ) **CAUSE NO. 161230-160**  
**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 October 4, 2016, L.M.'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 2016–2017 school year relating to the Petitioner's transfer. On October 11, 2016, Chesterton High School ("Chesterton"), the sending school, completed its portion of the Transfer Report. The receiving school, Michigan City High School ("Michigan City") completed its portion of the Transfer Report on October 11, 2016.

On October 12, 2016, the IHSAA Commissioner determined that Petitioner's transfer was a Rule 19-4 violation and ruled Petitioner had no eligibility for 365 days from enrollment at the receiving school. 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 December 14, 2016. Following the evidence presented at the December 14, 2016 hearing, the Review Committee issued its ruling on December 23, 2016, upholding the decision of the Commissioner declaring that according Rule 19-4, Petitioner was athletically ineligible for 365 days following his enrollment at Michigan City.

On December 30, 2016, 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 January 11, 2017. On January 18, 2017, 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.

### 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 in Michigan City, Indiana. Petitioner attended Chesterton for his freshman – sophomore years. While at Chesterton, during his freshman (2014-15) and sophomore year (2015-16) he played varsity football. He last participated athletically at Chesterton on September 30, 2016.
2. The Petitioner lived in the Chesterton district with his father during his freshman-sophomore years. Chesterton was the public school which served his father's residence. The Petitioner moved in the beginning October, 2016 from his father's house to his mother's house, by agreement of his parents. On October 7, 2016, the Petitioner was enrolled in Michigan City, which serves his mother's residence in Michigan City, Indiana.
3. Petitioner transferred with a corresponding change of residence to his mother's in a new district or territory.
4. On October 4, 2016, Petitioner's parents completed the Transfer Report and the Petitioner indicated they transferred there son because he is "moving in with his mother and other siblings, The Petitioner's parents also noted the transfer was due to incidents at Chesterton. Those incidents included racial discrimination, a hostile interaction between the Petitioner and a coach at Michigan City as well has harassment by students at Chesterton after they learned he was considering a transfer to Michigan City.
5. The Petitioner's father has been very involved in his son's growth as a football player and student. During the football season in the fall of 2016, the Petitioner's father expressed his displeasure with how his son was utilized on the Chesterton football team. There was evidence presented at the Review Committee Hearing detailing the Petitioner's father's frustration with some of the coaching decisions on social media. After the comments on social media and comments in person to the coaching staff, the Petitioner continued playing football at Chesterton until incidents on October 3, 2016.

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<sup>1</sup>The following members participated in the meeting: Kelly Bauder (Chairperson), Mr. Chris Lancaster, Mr. Glenn Johnson, Mr. Keith Pempek and Mr. Chuck Weisenbach, and Ms. Mary Quinn.

6. On October 3, 2016, one of the Chesterton football coaches confronted the Petitioner about his possible transfer to Michigan City. When the Petitioner confirmed that possibility, the coach told him to “get the hell out of my classroom” and that he was “sick of all this Michigan City bullshit.”
7. On October 3, 2016 The Petitioner’s Hudl account (a tool used for the college recruitment process) was hacked by someone and the account was changed to “Trader” and the Petitioner’s name was changed to “freaking jerk”. Only the Petitioner, his family and coaching staff had the account information in order to log in to his account. Petitioner and his family deny making these changes to the account.
8. Chesterton recommended Petitioner have no eligibility for 365 days under Rule 19-4. Michigan City recommended Petitioner have full eligibility under rule 19-6.1(b). Neither school recommended full eligibility under rule 17-8.5 nor signed the 19-8.5 *Verification*.

#### 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 23 2016, and Petitioner sought timely review on December 30, 2016.
4. The Panel may uphold, modify, or nullify the IHSAA Review Committee’s decision. (Ind. Code § 20-26-14-6(c)(3)). The Panel is not required to review the IHSAA determination *de novo*. The Panel review is similar to an appellate-level administrative review. A full hearing to recreate the record is not required.

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. The Panel finds that the Petitioner’s move with his mother’s residence in Michigan City was a bonafide move under Rule 19-5. After the events on October 3, 2016, the Petitioner and his family were concerned with how the Petitioner would be treated at Chesterton if he continued to attend school there. The Petitioner’s family made a decision after several events on October 3, 2016.
7. It is clear that the Petitioner’s father is very passionate about this son and his academic and athletic achievements.<sup>2</sup> The Petitioner’s father, as any parent, wants the best opportunities for his son to achieve success. Although the Panel found the Petitioner’s move from his father’s house to his mother’s was a bonafide move, there was concern that there was evidence there was some athletic motivation for the transfer. The Petitioner’s father had been unhappy with how his son was utilized on the Chesterton team and made that know to the coaching staff and on social media. The Panel did not find the move was primarily for athletic reasons. The Petitioner’s father was clearly upset about how his son was utilized on the Chesterton team and the events on October 3, 2016 were entirely about the Petitioner and football; therefore, the Panel finds this had to be a consideration at least on some level when deciding to transfer. The Panel finds the primary reason for the move was because the Petitioner felt that after the events at Chesterton on October 3, 2016, he was going to continue to receive harassment and teasing from the coaching staff and students, which created a hardship condition. Therefore the panel did not find a violation of Rule 19-4.
8. The Panel found The IHSAA Rules do not adequately address a situation with the facts of this case, but felt it was important to find a balance in addressing the conduct of the coaches and students at Chesterton and its impact on the Petitioner as well as the evidence that athletics had, at least some part, in the decision to transfer. Therefore, the Panel finds that the Petitioner should be granted a waiver under rule 17-8.1. Generally a waiver under 17-8.1 would provide for full eligibility, but given the fact athletics played a

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<sup>2</sup>The Review Committee decision unnecessarily disparaged the Petitioner’s father in its order on December 23, 2016. Name calling or characterizing the Petitioner’s father as “narcissistic” is unprofessional in an IHSAA order, and is unfair to the Petitioner and his family. The Panel has made similar notes in previous opinions and felt it was important to acknowledge this language is unnecessary and not appropriate when discussing a student athlete’s future. It is important to model professional behavior even when disagreeing about how to apply IHSAA Rules.

part in this transfer, the Panel finds that the Petitioner should be given limited eligibility for 365 days.

**ORDER**

The Panel finds by a vote of 5-1<sup>3</sup> that the decision of the IHSAA Review Committee, upholding the decision of the Commissioner is NULLIFIED. The Petitioner has limited athletic eligibility as of January 18, 2017 at the receiving school, provided he is academically eligible and meets all other eligibility rules. The Petitioner would have full eligibility at Michigan City on October 6, 2017.

DATE: \_\_\_\_\_

4/23/17

  
\_\_\_\_\_  
Kelly M. Bauder, Interim Chairperson  
Case Review Panel

**APPEAL RIGHT**

Any party aggrieved by the decision of the Case Review Panel has forty-five days from receipt of this written decision to seek judicial review in a civil court with jurisdiction, as provided by Ind. Code § 20-26-14-7.

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<sup>3</sup>The Panel member who voted against this ruling would have awarded the Petitioner full eligibility at Michigan City.