

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter A.B.)
Petitioner,)
)
and)
) **CAUSE NO. 170901-166**
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 April 20, 2017, A.B.'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 2017–2018 school year relating to the Petitioner's transfer. On April 28, 2017, Central Christian Academy ("Central Christian"), the sending school, completed its portion of the Transfer Report. The receiving school, Beech Grove High School ("Beech Grove") completed its portion of the Transfer Report on April 17, 2017.

On April 28, 2017, the IHSAA Commissioner determined that Petitioner's transfer was a Rule 19-6.2 transfer and ruled Petitioner had limited eligibility at the receiving school until April 7, 2018. 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 22, 2017. Following the evidence presented at the August 22, 2017 hearing, the Review Committee issued its ruling on August 31, 2017 upholding the decision of the Commissioner declaring that according to Rule 19-6.2, Petitioner had limited eligibility.

On September 1, 2017, 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 7, 2017. On September 11, 2017, 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 sophomore, lives with her mother and father in Indianapolis, Indiana. Petitioner attended Central Christian her freshman and sophomore years. While at Central Christian she played varsity volleyball, track & field and basketball. She last participated athletically at Central Christian on April 7, 2017.
2. The Petitioner lives in Indianapolis, Indiana and attended Central Christian, a private school which served her parents' residence. Petitioner transferred without a corresponding change of residence.
3. The Petitioner transferred to Beech Grove a public school in Indianapolis, Indiana that does not serve her parents' residence.
4. On April 20, 2017, Petitioner's parents completed the Transfer Report and the Petitioner indicated the transfer occurred because "not all classes the student was seeking were offered at previous school or, if they were offered, it was through on line or other opportunities. Student is seeking classroom teacher interaction."
5. Central Christian recommended Petitioner have limited eligibility under Rule 19-6.2. Beech Grove recommended Petitioner have limited eligibility under Rule 19-6.2 and neither principal signed the 17-8.5 *Verification*.
6. Central Christian has had an ongoing problem with staffing that was known to the Petitioner's parents. Over the course of three years, there were three different principals at the school. Central Christian did not have a licensed educator teaching Spanish, instead the school utilized Rosetta Stone for on-line instruction. The Petitioner's parents were aware of this and continued allowing the Petitioner to attend Central Christian. The records shows that the Petitioner's parents did not report academic concerns until the spring of 2017.

¹The following members participated in the meeting: Kelly Wittman (Chairperson), Mr. Keith Pempek, Mr. Chris Lancaster, Mr. Karl Hand, Mr. Jess Williams, Mr. Bret Daghe and Mr. Chuck Weisenbach, and Ms. Mary Quinn. 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 August 31, 2017 and Petitioner sought timely review on September 1, 2017.
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 and receiving schools 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 the Petitioner's decision to transfer schools was choice and there is not a hardship condition that exists that would allow for full eligibility. The Petitioner's parents believed the Petitioner would be better served at Beech Grove High School because she would gain more classroom interaction. The lack of classroom instruction and interaction at Central Christian did not create a hardship condition for the petitioner. According to the record, classroom instruction at Central Christian appeared to be an ongoing problem and was not an "extremely negative non-athletic condition" that was peculiar to the student nor was it unforeseeable, unavoidable, or uncorrectable. The Petitioner and her parents had experienced this over the course of three years and continued to allow the Petitioner to attend Central Christian. The Panel finds this was a choice by her family and it did not rise to the level of a hardship. Therefore, all of the requirements of Rule 17-8.1 were not met.²

ORDER

The Panel finds by a vote of 7-1 that the decision of the IHSAA Review Committee, upholding the decision of the Commissioner is UPHELD. The Petitioner has limited eligibility until April 7, 2018 at the receiving school and then she will have full eligibility on April 8, 2018, provided she meets all other eligibility requirements.

DATE: 09/20/2017



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.

²The Panel continues to be concerned with the manner in which students and their families are treated during the Review Committee process. The manner of questioning the family and unnecessary commentary regarding their financial situation was inappropriate. As the Panel has stated previously, it is important to model professional behavior even when disagreeing about how to apply IHSAA Rules.