

**BEFORE THE INDIANA  
CASE REVIEW PANEL**

**In The Matter Z.B.** )  
**Petitioner,** )  
 )  
**and** )  
 ) **CAUSE NO. 181018-181**  
**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 July 16, 2018, Z.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 2018–2019 school year relating to the Petitioner’s transfer. On August 6, 2018, Churubusco High School (“Churubusco”), the sending school, completed its portion of the Transfer Report. The receiving school, Fort Wayne Blackhawk Christian High School (“Fort Wayne”) completed its portion of the Transfer Report on September 6, 2018.

On September 7, 2018, 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 March 2, 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 October 4, 2018. Following the evidence presented at the October 4, 2018 hearing, the Review Committee issued its ruling on October 15, 2018 upholding the decision of the Commissioner declaring that according to Rule 19-6.2, Petitioner had limited eligibility.

On October 18, 2018, 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 November 8, 2018. On November 15, 2018, 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 sophomore, lives with his mother and father in Fort Wayne, Indiana. Petitioner attended Churubusco for his freshman year. While at Churubusco he played varsity basketball. He last participated athletically at Churubusco on March 2, 2018.
2. The Petitioner is an accomplished basketball player. He ended last basketball season as the leading scorer and was the co-MVP. The Petitioner is a strong academic student, achieving straight As his freshman year.
3. The Petitioner lives in Fort Wayne, Indiana and attended a public school which did not serve his parents' residence. Petitioner transferred without a corresponding change of residence when transfer report was submitted.
4. The Petitioner transferred to Blackhawk, a private school in Fort Wayne, Indiana that serves his parents' residence.
5. The Petitioner did not have any issues with the Churubusco basketball program and did not discuss leaving the school with his coach because he knew his coach would be upset.
6. Prior to the Review Committee Hearing on October 4, 2018, the IHSAA set a deadline of September 27, 2018 at 12:00 p.m. for submissions of materials to be considered by the Committee at its Hearing. The Petitioner and his family submitted their materials prior to the deadline, however the IHSAA submitted their documents on a later date<sup>2</sup>. The Petitioner objected to those documents being considered and that issue does not appear to have been addressed by the Review Committee. The exact date the materials were submitted by the IHSAA was not provided in the record. According to a letter in the Record (p. 84) from Commissioner Cox, the family "will receive the entire packet of

---

<sup>1</sup>The following members participated in the meeting: Kelly Wittman (Chairperson), Mr. Karl Hand, Mr. Chris Lancaster, 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.

<sup>2</sup>The Panel is concerned there is an appearance or practice of unfairness if the IHSAA's counsel is permitted to submit materials after the family is required to submit their materials. If the IHSAA is supposed to submit its materials on the same day as the Petitioner, that should occur or risk exclusion at the Review Committee Hearing or the Case Review Panel. The materials are then submitted to the Petitioner's family via mail, which leaves them at a disadvantage to the IHSAA to review the materials prior to the Review Committee Hearing. All parties should be given the same deadline to submit materials.

materials for this hearing via the address listed above on Friday September 28, 2018.”

7. On July 16, 2018, Petitioner’s parents completed the Transfer Report and the Petitioner indicated “[t]he location and schedule of Jason’s former employer allowed transportation to Churubusco which will not be possible with new employment.” The Petitioner’s parents indicated that the transfer occurred because “transportation was taxing as well as need an environment that is academically challenging.”
8. The Petitioner and his family researched schools for him to attend prior to his freshman year and ultimately chose Churubusco. At that time, the Petitioner’s parents could not afford to pay private school tuition. After beginning of the school year at Churubusco, Petitioner’s parents made contact with the counselor’s office to express frustration that he was not receiving challenging curriculum. They were reassured he would be provided with grade appropriate learning instruction. Over the next several months, the curriculum did not improve and the Petitioner was not challenged in his classes. He was interested in more rigorous academic classes/instruction. Petitioner claimed to his parents he was bored and not challenged. The Petitioner believed teachers were spending more time on students who were failing and did not have the opportunity to assist students like him who wanted to be challenged on a higher level. The family reached out the guidance department at Churubusco in December and discussed possible schedule modifications to accommodate the Petitioner in the spring. The Petitioner was, as a freshman, already in Algebra II and Spanish II. Even with the addition of an advanced nutrition class in the spring, the Petitioner was still not challenged. The Petitioner’s parents began researching other area schools that might be a better fit academically for him.
9. The Petitioner’s father obtained new employment, which resulted in an increase in the family’s income and which put them in a position to afford tuition at a private school. The Petitioner’s family considered Blackhawk as well as Leo High School (“Leo”). The Petitioner was accepted by Leo and attended an open facility basketball event over the summer at Leo.
10. The Petitioner’s parents also had some safety concerns at Churubusco however those were secondary to the academic challenges and did not appear to be anything outside some of the normal concerns in a school setting.
11. Churubusco recommended Petitioner have limited eligibility under Rule 19-6.2. Blackhawk recommended Petitioner have full eligibility under Rule 17-8 and signed the 17-8.5 *Verification* limited eligibility 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 October 15, 2018 and Petitioner sought timely review on October 18, 2018.
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 there is a hardship condition that exists that would allow for full eligibility. The Petitioner and his family researched possible options that might provide him with the opportunity to challenge himself as a student. They thought Churubusco could provide that challenge, but discovered after his freshman year the school did not fit his personal academic needs. The Petitioner is on track to receive an Academic Honors diploma. The Panel finds the transfer to Blackhawk was in in the Petitioner's best interests, academically. A hardship condition existed, the lack of academic opportunities at Churubusco that would specifically meet the needs of this student. While at Churubusco, the Petitioner was given lots of busy work to challenge him. The Petitioner needed and desired more opportunities than busy work to challenge him to succeed in school. Those academic opportunities existed at Blackhawk, and it was in his best interest to transfer to that particular school. This ruling is specific to this student and his personal needs as a student. The primary purpose of the Rule will still be accomplished and the ruling will not harm or diminish the purpose or spirit of the Rule by allowing the Petitioner to have full eligibility at Blackhawk.

### 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 NULLIFIED. The Petitioner has full eligibility as of November 15, 2018 at the receiving school, provided he meets all other eligibility requirements.

DATE: 11/20/2018



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.