

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter D.V.)	
Petitioner,)	
)	
and)	
)	CAUSE NO. 210421-222
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, AND ORDER

PROCEDURAL-HISTORY

On or about December 23, 2020, D.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 2020–2021 school year relating to the Petitioner's transfer. On January 14, 2021, Richmond High School ("Richmond"), the sending school, completed its portion of the Transfer Report. The receiving school, Bishop Chatard High School ("Bishop Chatard") completed its portion of the Transfer Report on January 15, 2021.

On February 2, 2021, 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 December 22, 2021. 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 April 2, 2021. Following the evidence presented at the April 2, 2021 hearing, the Review Committee issued its ruling on April 19, 2021 upholding the decision of the Commissioner declaring that according to Rule 19-6.2, Petitioner had limited eligibility.

On April 21, 2021, 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 May 7, 2021. On May 11, 2021, 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, attended Richmond his freshman year (2019-2020) and the fall semester of his sophomore year (2020-2021). While at Richmond he played varsity basketball and varsity football. He last participated athletically at Richmond on December 22, 2020. Record p. 52.
2. The Petitioner lived in Richmond, Indiana and attended Richmond, a public school which served his parents' residence. Petitioner transferred without a corresponding change of residence when transfer report was submitted. R. p7.
3. The Petitioner transferred to Bishop Chatard, a private school in Indianapolis, Indiana that does not serve his parents' residence in Richmond. In December of 2020, Petitioner's family purchased a home in Indianapolis so Petitioner could be within walking distance of Bishop Chatard. R p. 7.
4. On December 23, 2020, Petitioner's parents completed the Transfer Report and the Petitioner indicated the transfer occurred because "As 'Petitioner's parents we felt it important for him to reconnected to his Catholic faith in a school setting, and like Bishop Chatard's religious based curriculum." Tr. p. 52.
5. Richmond recommended Petitioner have full eligibility through the Rule 17-8.5 Limited Eligibility Waiver. Bishop Chatard also recommended Petitioner have full eligibility through the Limited Eligibility Waiver pursuant to Rule 17-8.5. Both principals did sign the 17-8.5 *Verification*. After their investigations, neither school found the move to be athletically motivated. Although the Review Committee discussed possible athletic motivation for a move, there was no evidence offered that the transfer for was primarily for athletic reasons and the Committee found no violation of Rule 19-4. R. p. 9, 53-54.

¹The following members participated in the meeting: Robin LeClaire (Chairperson), Mr. Brett Crousore, Ms. Laura Valle, Ms. Mary Quinn, Mr. Chuck Weisenbach, and Ms. Meisha Wide. Ms. Leslie-Ann James, 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 April 19, 2021 and Petitioner sought timely review on April 21, 2021.
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 sign the *Verification*, so Petitioner did qualify for a limited eligibility waiver pursuant to Rule 17-8.5. R. 52, 54.
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)).

6. The Petitioner's family searched for a faith-based environment for their student in Indianapolis and Dayton, Ohio, after Petitioner indicated that he was seeking a Catholic-based education. After seeking out advice from their Catholic community and school administrators, Petitioner's family purchased a residence in Indianapolis to support Petitioner attending Bishop Chatard. In January of 2021, Petitioner's family submitted additional documentation stating, "[a]s [Petitioner's] parents we listen to our son's concerns, frustrations, goals & desires for himself and his future. We and [Petitioner] felt like the best opportunity for him to continue to grow and develop as a young man needed to include a Catholic based education. [Petitioner] has a desire to reconnect to this Catholic faith in a school setting... We visited Bishop Chatard High School and found that it offers the academic and religious aspects we were looking for. R. p. 52. Petitioner's family indicated that they would maintain their Richmond residence in order to support Petitioner's younger sibling's academic needs and maintain their family business. Tr. p. 10. The Panel finds there was not a bona fide change of residence, which entitled the Petitioner to the Limited Eligibility Waiver Rule 17-8.5.
7. The Panel finds that the Petitioner's decision to transfer schools was not the result of primarily athletic motivation. The Petitioner's mother did mention athletics as part of Petitioner's unhappiness at Richmond but this did not rise to the level of a Rule 19-4 violation. Moreover, the evidence in the record shows that both schools investigated the transfer and expressed that the transfer was in the best interest of the Petitioner. Additionally, it was stated by Richmond's Principal stated that if transfer "were about athletics I would not have signed off on it. This is about [Petitioner]. This is about [Petitioner's] faith-based education." Tr. 28-29. The Panel finds that the transfer was in the best interest of the Petitioner as indicated by the sending and receiving schools. Furthermore, the Review Committee did not find a violation of Rule 19-4. R. 9. The Panel finds that Petitioner is entitled to full eligibility at Bishop Chatard under Rule 17-8.5.

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 May 11, 2021 at the receiving school, provided she meets all other eligibility requirements.

DATE: 05/20/2021


Robin LeClaire, 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.