

**BEFORE THE INDIANA  
CASE REVIEW PANEL**

<b>In The Matter G.C.</b>	)	
<b>Petitioner,</b>	)	
	)	
<b>and</b>	)	
	)	<b>CAUSE NO. 190821-185</b>
<b>The Indiana High School Athletic Association,</b>	)	
<b>Respondent.</b>	)	
	)	
<b>Review Conducted Pursuant to Ind. Code</b>	)	
<b>§ 20-26-14 <i>et seq.</i></b>	)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

**PROCEDURAL HISTORY**

On or about April 12, 2019, G.C.'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 April 12, 2019, Muncie Central High School ("Muncie Central"), the sending school, completed its portion of the Transfer Report. The receiving school, Delta High School ("Delta") completed its portion of the Transfer Report on April 12, 2019.

On April 14, 2019, 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 February 9, 2020. 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 8, 2019. Following the evidence presented at the August 8, 2019 hearing, the Review Committee issued its ruling on August 19, 2019 upholding the decision of the Commissioner declaring that according to 19-6.2 Petitioner had limited eligibility until February 9, 2020.

On August 20, 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 6, 2019. On September 11, 2019, 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 stepfather in Muncie, Indiana. Petitioner attended Muncie Central his freshman year. While at Muncie Central he played junior varsity soccer, varsity wrestling and freshman football. He last participated athletically at Muncie Central on February 9, 2019.
2. The Petitioner lives in Muncie, Indiana and attended Muncie Central, a public school which served his mother's residence. Petitioner transferred without a corresponding change of residence when transfer report was submitted.
3. The Petitioner transferred to Delta, a public school in Delta, Indiana that does not serve his mother's residence but accepts students living in the area.
4. On April 12, 2019, Petitioner's mother completed the Transfer Report and the Petitioner indicated the transfer occurred because "G.C. was having panic and anxiety attacks at Muncie Central and [G.C.'s] psychologist recommended that [G.C.] transfer out of Muncie Central to Delta."
5. Muncie Central recommended Petitioner have limited eligibility under Rule 19-6.2. Delta recommended Petitioner have full eligibility under Rule 17-8.1.
6. Neither Muncie Central nor Delta signed the 17-8.5 *Verification* limited eligibility waiver.
7. The Petitioner has been diagnosed with anxiety and panic attacks, which has caused him to also suffer from mental illness. Due to his medical disorders, the Petitioner received accommodations through a 504 Plan. A 504 Plan ensures a student who has a disability receive accommodations to ensure success in the school environment. Muncie Central was aware of and had made provisions to accommodate the Petitioner. Despite all of the efforts that Muncie Central took to assist the Petitioner, the anxiety and panic attacks continued. The Petitioner's condition worsened, and after consultation with his doctor

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<sup>1</sup>The following members participated in the meeting: Kelly Wittman (Chairperson), Mr. Ben Ballou, Mr. Brett Crousore, Ms. Meisha Wide, Ms. Mary Quinn and Ms. Laura Valle. Ms. Kelly Bauder, staff attorney, was also present as legal counsel to the Panel.

and psychologist, they all recommended transferring schools to see if that could assist in management of his conditions. According to the Petitioner's mother, the move did improve his condition.

8. Muncie Central was aware of the Petitioner's continued anxiety and panic attacks, and specifically, that the Petitioner had locked himself in a bathroom for over an hour. A coach was able to stay with him during this attack and was able to get him out of the bathroom. The Muncie Central coach was very concerned about the Petitioner's well-being during and after that incident. The coaching staff at Muncie Central were very supportive of the Petitioner and took extra care in concern in working with him.
9. The Petitioner had complained that he felt unsafe at Muncie Central because there were fights that broke out between students and that triggered his anxiety and panic attacks. There was an incident where he was attacked with several other students.
10. The Petitioner wanted to go to Delta and thought that might be the best fit for him and provide a place to help lessen the effects of his disorder. His doctor and psychologist agreed it would be in his best interest to transfer to Delta. At the Review Committee Hearing, Muncie Central staff testified the move was not athletically motivated and appeared in the best interest of the Petitioner.

#### 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 19, 2019 and Petitioner sought timely review on August 20, 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 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. According to Rule 19-6.2, when a student's parents/guardians do not have a 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. The Panel finds that there is a hardship condition that would allow for full eligibility under Rule 17-8.1. The Panel believes the Petitioner did experience emotional struggles at the sending school, as a result of his medical condition. Petitioner and his family reported concerns to school officials about his anxiety and panic attacks. Petitioner's family worked with the school to develop a 504 plan to address those concerns. The Panel has consistently held that in order to seek a hardship waiver, there has to be evidence that the Petitioner and/or his family reported the incidents to Muncie Central given the school an opportunity to address them. The Petitioner's family did meet with sending school officials on multiple occasions, the focus was the Petitioner's emotional well-being. Muncie Central did follow the 504 Plan that was established and made efforts to mitigate the Petitioner's anxiety and panic attacks, but some factors within the school were outside the control of school officials and the Petitioner. The 504 Plan was not reviewed again at Delta, they simply followed

the plan as Muncie Central had established.<sup>2</sup>

9. The Panel finds that Petitioner's decision to transfer compelled due an extremely negative non-athletic condition. The Panel finds that there is a hardship condition present that would allow for a waiver of Rules 19-6.2. The Panel finds that under a hardship condition exists pursuant to rule 17-8.1 and therefore the Petitioner is entitled to full eligibility at the receiving school.

### ORDER

The Panel finds by a vote of 5-1 that the decision of the IHSAA Review Committee, upholding the decision of the Commissioner is NULLIFIED. The Petitioner has full eligibility as of September 11, 2019 at the receiving school, provided he meets all other eligibility requirements.

DATE: 9/16/2019



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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.

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<sup>2</sup>The Panel would note that when a student has a 504 Plan, it is not necessary to have it reviewed at the sending school. The 504 Plan can be good for a school year or longer, depending on the disability or medical necessity. Additionally, students with 504 Plans or Individualized Educational Program/Plan(s) (IEP) have greater protections and special considerations that must be factored in when making decisions that meet the student's individual needs academically and with regard to extra-circular activities. The Panel also cautions the Review Committee from minimizing the Petitioner's condition as merely an inability to make friends, when there is a medical diagnosis that necessitates special accommodations for a student resulting a 504 Plan. A student's disability should not be minimized or ignored.