

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter A.M.)	
Petitioner,)	
)	
and)	
)	CAUSE NO. 190822-186
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 April 9, 2019, A.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 2019–2020 school year relating to the Petitioner's transfer. On June 6, 2019, Fort Wayne Snider High School High School ("Snider"), the sending school, completed its portion of the Transfer Report. The receiving school, Fort Wayne North High School ("North") completed its portion of the Transfer Report on June 4, 2019.

On June 6, 2019, the IHSAA Commissioner determined that Petitioner's transfer was a Rule 19-4 transfer and ruled Petitioner had no eligibility at the receiving school until March 28, 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 reversing the decision of the Commissioner declaring that the Petitioner had limited eligibility until November 10, 2019.

On August 21, 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 5, 2019. On September 11, 2019, 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 junior, lives with his mother. The Petitioner attended Snider his freshman and sophomore years. While at Snider he played junior varsity and varsity football and track & field. He last participated athletically at Snider on November 10, 2018.
2. The Petitioner lives in Fort Wayne, Indiana and attended Snider, a public school which served his parent's residence. Petitioner transferred with a corresponding change of residence when transfer report was submitted. The Petitioner's mother and father separated and he moved with his mom and sister to an apartment in the North district.²
3. The Petitioner transferred to the North Side district, a public school in Fort Wayne, Indiana that serves his mother's residence and began attending March 28, 2019.
4. On April 9, 2019, Petitioner's parents completed the Transfer Report and the Petitioner indicated the transfer occurred because "[m]arital issues. Student moved in with mom."
5. Snider recommended Petitioner have no eligibility under Rule 19-4. North Side recommended Petitioner have limited eligibility under Rule 19-6.2.
6. Neither Snider nor North Side signed the 17-8.5 *Verification* limited eligibility waiver.
7. A threat of violence made by a fellow classmate against the Petitioner resulted in Snider officials instituting a lockdown at the school. The Petitioner was later involved in altercation with the same student who previously threatened him. There were continued threats of violence against the Petitioner, by the student who had made the initial threat of violence and his friends, which had led to the lockdown at school. The Petitioner said testified he no longer felt safe at Snider. Therefore, the continued threats and fear of harm caused the Petitioner to transfer schools.

¹The 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.

²The Review Committee decision (p.6) found as a finding that the Petitioner did not move with his mother to her new address. The testimony during the hearing (p.58-59) indicates the Petitioner moved with his mom and sister to an apartment and a younger brother remained with his father. There is absence of any evidence to the contrary and that is a pivotal fact in this case.

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).
1. 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 21, 2019.
2. The Panel may uphold, modify, or nullify the IHSAA Review Committee’s decision. (Ind. Code § 20-26-14-6(c)(3)).
3. 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).
4. 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.
5. According to Rule 19-5.1, when a student’s parents/guardians make a bona fide change of residence to a new district or territory, the student has several options, including transferring and attempt to obtain full eligibility at the public school in the district serving the student’s residence. The Panel finds the Petitioner and his mother made a bona fide change of residence to the Hazelwood address before the transfer report was submitted.

There was no evidence the move was not genuine or the family engaged in any fraud or deceit. Furthermore, the Panel did not find any evidence that the move was for primarily athletic reasons. The Panel finds that the Petitioner has established there was bona fide move.


6. 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)). The Panel did not need to address the existence of a hardship condition as the Petitioner had established there was a bona fide move pursuant to Rule 19-5.1.

7. The Panel finds that according to Rule 19-5.1 that there was a corresponding change of residence by student to reside with Petitioner's parent.

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



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.