

**BEFORE THE INDIANA  
CASE REVIEW PANEL**

**In The Matter C.H.** )  
**Petitioner,** )  
 )  
**and** )  
 ) **CAUSE NO. 191024-193**  
**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 May 28, 2019, C.H.'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 May 31, 2019, Forest Park High School ("Forest Park"), the sending school, completed its portion of the Transfer Report. The receiving school, Barr-Reeve High School ("Barr-Reeve") completed its portion of the Transfer Report on June 4, 2019.

On July 12, 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 August 6, 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 October 10, 2019. Following the evidence presented at the October 10, 2019 hearing, the Review Committee issued its ruling on October 23, 2019 upholding the decision of the Commissioner declaring that according to Rule 19-4, Petitioner had no eligibility.

On October 24, 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 November 7, 2019. On November 13, 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 junior, lives with his parents in Cannelburg, Indiana. Petitioner attended Forest Park his freshman (2017-18) - sophomore (2018-19) years. While at Park Forest he played varsity basketball and was a starter on the team. He last participated athletically at Forest Park on March 1, 2019.
2. The Petitioner transferred to Barr-Reeve, a public school in Cannelburg, Indiana that serves his parent's residence. There was a corresponding and bonafide change of address at the time of the transfer.
3. On May 28, 2019, Petitioner's parents completed the Transfer Report and the Petitioner indicated the transfer occurred because his "parents wanted a more positive school environment. Parents believe that Barr-Reeve's school environment will allow [C.H.] to excel with a more enjoyable experience his last two years of high school."
4. Park Forest and Barr-Reeve recommended Petitioner have no eligibility under Rule 19-4.
5. Neither Park Forest nor Barr-Reeve signed the 17-8.5 *Verification* limited eligibility waiver.
6. While at Park Forest, the Petitioner reported to school officials that he was being bullied. The incidents involved the Petitioner being called "ugly" and "soft", making fun of his religious beliefs and disparaging comments about his basketball abilities. As a result of the bullying, the Petitioner became withdrawn and no longer enjoyed going to school. The Petitioner testified over ten students bullied him, including four members of the basketball team.
7. A Park Forest official testified the Petitioner's mother demanded the Petitioner play the point guard position in order to give him more exposure to Division 1 college teams. In July, 2018, the basketball head coach position became available and the Petitioner's mother questioned why a certain coach was not given a second interview. Petitioner's mother openly questioned the current coaching staff's abilities. According to Forest

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



Park, the Petitioner's mother told a school official they needed to hire a new coaching staff or the Petitioner would seek a transfer. Additionally, the Petitioner's mother asked if the school would be hiring new coaching staff within the next two years. The Petitioner's mother denied making these statements at the Review Committee Hearing. According to Dr. Pund, the Petitioner's mother told her that the coaching staff was doing nothing for the Petitioner and he should be treated differently because of his talents.

### 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 23, 2019 and Petitioner sought timely review on October 24, 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. The Petitioner is seeking a hardship waiver pursuant to Rule 17-8.1 due to the bullying incidents. The Petitioner has not met his burden to show there was a hardship condition, specifically bullying, that would outweigh the athletic motivation for the transfer to Barr-Reeve.
9. The Panel finds that there is compelling evidence that demonstrates that the move was primarily for athletic motivation and that would outweigh any hardship condition. The Petitioner's parents were vocal about the basketball program and how their son was coached and utilized by the team. The Panel finds that according to Rule 19-4, the Petitioner has no eligibility at Barr-Reeve for 365 days due to his transfer for athletic reasons.

**ORDER**

The Panel finds by a vote of 7-0 that the decision of the IHSAA Review Committee, upholding the decision of the Commissioner is UPHELD. The Petitioner has no eligibility until August 6, 2020 at the receiving school and has full eligibility on August 6, 2020, provided he meets all other eligibility requirements.

DATE: 11/15/2019



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.