

**BEFORE THE INDIANA  
CASE REVIEW PANEL**

**In The Matter M.H.** )  
**Petitioner,** )  
 )  
**and** )  
 ) **CAUSE NO. 191120-195**  
**The Indiana High School Athletic Association,** )  
**Respondent.** )  
 )  
**Review Conducted Pursuant to Ind. Code** )  
**§ 20-26-14 et seq.** )

**7FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

**PROCEDURAL HISTORY**

On or about June 3, 2019, M.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 June 6, 2019, Hagerstown High School (“Hagerstown”), the sending school, completed its portion of the Transfer Report. The receiving school, Shenandoah High School (“Shenandoah”) completed its portion of the Transfer Report on June 6, 2019.

On September 12, 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 June 1, 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 November 8, 2019. Following the evidence presented at the November 8, 2019 hearing, the Review Committee issued its ruling on November 18, 2019 upholding the decision of the Commissioner declaring that according to Rule 19-6.2, Petitioner had limited eligibility.

On November 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 November 26, 2019. On December 10, 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 mother and father in Hagerstown, Indiana. Petitioner attended Hagerstown for one class his freshman (2017-18) and sophomore (2018-19) years. While at Hagerstown he played varsity basketball and baseball, and junior varsity basketball. He last participated athletically at Hagerstown on June 1, 2019.
2. The Petitioner lives in Hagerstown, Indiana and attended, a public school which did serve his parents' residence. Petitioner transferred without a corresponding change of residence when transfer report was submitted.
3. The Petitioner transferred to Shenandoah, a public school in Middletown, Indiana that does not serve his parents' residence.
4. In June 2019, Petitioner's parents completed the Transfer Report and the Petitioner indicated, "Academics. [M.H.] has been home-schooled k thru 7. He has participated in one class at Hagerstown since 7th grade to make him eligible to receive 21st century scholarship status. [M.H.] needs to graduate from a public school to earn this. Fully enrolling at Shenandoah fulfills this. Hagerstown is on a block schedule and parents prefer a more traditional 7 period day. The last class [M.H.] took at Hagerstown the certified teacher left and that teacher was replaced by a special education teacher. [M.H.'s] parents feel it is in his best interest to attend a different school."
5. The Petitioner is an exceptional student maintaining an A average in his classes, was admitted to the National Honor Society and is in contention of being valedictorian of his class.
6. Hagerstown recommended Petitioner have limited eligibility under Rule 19-6.2.
7. Shenandoah recommended Petitioner have full eligibility signing the 17-8.5 *Verification* limited eligibility waiver. Hagerstown did not sign the 17-8.5 *Verification* limited eligibility waiver.

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

8. Hagerstown indicated on the transfer report that there should be an investigation of a violation of Past Link Rule 20-2. The Petitioner previously played on an AAU basketball team coached by Shenandoah's head coach. The IHSAA found that Petitioner did not violate Rule 20-2, thus he was given limited eligibility at Shenandoah. The Panel does not find any evidence the Petitioner's move was primarily for athletic reasons.

### 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 November 18, 2019 and Petitioner sought timely review on November 20, 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 school did not sign the *Verification*, so Petitioner did

not qualify for a limited eligibility waiver pursuant to Rule 17-8.5

5. 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. According to Rule 19-6.2, when a student's parents/guardians does not make a bona fide 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 Petitioner's parents indicated that the transfer occurred because they felt that Hagerstown's block scheduling, staff turnover, and school environment would not assist Petitioner in his preparation and transition to the collegiate academic setting. The Panel does not find compelling evidence that Shenandoah would better assist and prepare the Petitioner for the collegiate academic setting simply because of their more traditional scheduling. Students at the collegiate level have a block schedule, therefore such a schedule may actually better prepare him for the rigors of college. The Panel believes the Petitioner did experience some social struggles at the sending school. When the Petitioner attended Hagerstown, he was only taking one class a year and was not fully immersed in the school and the social aspects of attending high school. Additionally, the Petitioner was concerned his math teacher left and was replaced with a special education teacher. Many schools experience staffing changes that necessitate moving teachers around to fill positions and the Panel finds this, in itself, is not a hardship condition. The Petitioner was also concerned about the safety of the school building due to the open floor plan. Many schools are faced with similar concerns and are required to have safety plans to address how those concerns will be managed by the school. The Petitioner's concerns as a whole do not rise to the level of a hardship condition that would allow for full eligibility.
7. The Panel finds that Petitioner's decision to transfer was a choice and he was not compelled to transfer due an extremely negative non-athletic condition. The Panel finds that the Petitioner and family did not meet the burden of proof demonstrating that there is a hardship condition present that would allow for a waiver of Rules 19-6.2. The Panel finds that Petitioner is eligible for limited eligibility at Shenandoah under rule 19-6.2.

**ORDER**

The Panel finds by a vote of 5-0 that the decision of the IHSAA Review Committee, upholding the decision of the Commissioner is UPHELD. The Petitioner has full eligibility as of June 1, 2020 at the receiving school, provided he meets all other eligibility requirements.

DATE: 12/12/2019



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.