

**BEFORE THE INDIANA  
CASE REVIEW PANEL**

**In The Matter O.P.** )  
**Petitioner,** )  
 )  
**and** )  
 ) **CAUSE NO. 201105-206**  
**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 August 4, 2020, O.P.’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 August 5, 2020 Bloomfield High School (“Bloomfield”), the sending school, completed its portion of the Transfer Report. The receiving school, Shakamak High School (“Shakamak”) completed its portion of the Transfer Report on August 14, 2020.

On August 14, 2020, the IHSAA Assistant Commissioner determined that Petitioner’s transfer was a Rule 19-6.2 transfer and the Petitioner had limited eligibility at the receiving school until March 7, 2021. The Petitioner appealed the Assistant 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 September 24, 2020. Following the evidence presented at the September 24, 2020 hearing, the Review Committee issued its ruling on October 6, 2020 upholding the decision of the Assistant Commissioner declaring that according to Rule 19-6.2, the Petitioner had limited eligibility.

On November 5, 2020, 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 16, 2020. On November 17, 2020, 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 Bloomfield, Indiana. Petitioner attended Bloomfield for his freshman year (2018-19) and sophomore year (2019-20). While at Bloomfield he played junior varsity and varsity baseball, basketball and soccer. He last participated athletically at Bloomfield on March 7, 2020.
2. Petitioner transferred without a corresponding change of residence when Transfer Report was submitted. Shakamak has open enrollment and accepted the Petitioner's transfer.
3. The Petitioner's grandfather passed away just prior to his freshman year. The Petitioner has struggled with "grief, stress and anxiety after the loss and has received some medical assistance since the first semester of his freshman year." (R. p.23). The Petitioner and his family did not disclose to Bloomfield his struggles with grief due to the loss of his grandfather.
4. On August 4, 2020, Petitioner's parents completed the Transfer Report and the Petitioner indicated he was transferring because the Petitioner "has always enjoyed school but he dealt with a lot of stress and anxiety while attending Bloomfield High School. He continued to show up and do the best he could, but he was just getting through it. Being out of school during the COVID-19 quarantine has given [Petitioner] the time to evaluate what is working for him and what is not. As his parents, we feel that the stress and anxiety related to school has taken too big of a toll on [his] overall health and well-being thus far. This change allows him a fresh start and is necessary to meet his social and emotional needs." (R. p. 48). The Petitioner's parents also liked the academic offerings at Shakamak, including dual credit classes. (R. P. 23)
5. Shakamak reached out to Bloomfield when completing the Transfer Report and indicated they believed the move was in the Petitioner's best interest. Both schools agreed the transfer was not primarily for athletic reasons. (R. p. 23). The Bloomfield principal said he does not agree to any full eligibility when there has been no change in residence. Bloomfield recommended Petitioner have limited eligibility under Rule 19-6.2.

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

Shakamak recommended Petitioner have full eligibility under Rule 17-8.5 and signed the Verification.

### 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 6, 2020 and Petitioner sought timely review on November 5, 2020.
4. The Panel may uphold, modify, or nullify the IHSAA Review Committee’s decision. (Ind. Code § 20-26-14-6(c)(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).
5. 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 the IHSAA Assistant Commissioner and the Review Committee ruled Petitioner did not qualify for a limited eligibility waiver pursuant to Rule 17-8.5.
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)).

7. There is no evidence in the record that the move was athletically motivated.
8. There is not sufficient evidence to show the existence of a hardship condition in this case. It is clear the Petitioner has struggled with the loss of his grandfather and that has certainly impacted his life. The Panel has consistently held that to establish a hardship condition, families must give the sending school the opportunity to address the family's concerns or there must be conditions that are completely outside the control of the Petitioner. Although being in the Bloomfield community was a trigger for the Petitioner and his grief, it was not specific to Bloomfield High School or the educational services they were providing. The family chose to keep the existence of the Petitioner's anxiety within the family and did not allow Bloomfield the opportunity to assist him at the school level. Schools have resources to assist students with social and emotional issues. The decision to transfer schools was a family choice but did not rise to the level of a hardship condition, therefore the conditions of Rule 17-8.1 have not been proven.
9. The Panel continues to be concerned and with the application of Rule 17-8.5. In Smock v. the Case Review Panel/Indiana Department of Education/Indiana High School Athletic Association, and Delphi Community School Corporation 08C01-1912-PL-000019, the trial court found that "the Limited Eligibility Waiver Rule (17-8.5) exists to allow non-athletically motivated transfers, which serve the best interest of the student, full eligibility. A school cannot simply unilaterally and erroneously misuse that discretion, and in turn, preclude a student athlete from participating in athletics with full eligibility." See also In the Matter of J.T. 091002-64 and IHSAA v. Durham, 748 N.E.2d 404 (Ind. Ct. App. 2001). The Panel has seen circumstances where schools have made bad faith decisions to not sign the 17-8.5 waivers. In recent cases where the Panel has found this rule to be applied in violation of student's due process rights, it has also found hardship conditions, bonafide changes of address or evidence of schools acting in bad faith. Those facts do not exist in this case. Therefore, the Panel does not find the conditions of Rule 17-8.5 were met.
10. The Panel finds that Petitioner is entitled to limited eligibility under Rule 19-6.2.

**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 limited eligibility at the receiving school, and then on March 7, 2021, he would be fully eligible to participate in varsity athletics at the receiving school, provided he is academically eligible and meets all other eligibility rules.

DATE: 11/18/2020



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.