

**BEFORE THE INDIANA  
CASE REVIEW PANEL**

**In The Matter D.W.** )  
**Petitioner,** )  
 )  
**and** )  
 ) **CAUSE NO. 170905-167**  
**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 31, 2017, D.W.’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 2017–2018 school year relating to the Petitioner’s transfer. On June 5, 2017, Tippecanoe Valley High School (“Tippecanoe Valley”), the sending school, completed its portion of the Transfer Report. The receiving school, Whitko High School (“Whitko”) completed its portion of the Transfer Report on June 6, 2017.

On June 6, 2017, 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 October 23, 2017. 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 22, 2017. Following the evidence presented at the August 22, 2017 hearing, the Review Committee issued its ruling on August 31, 2017 upholding the decision of the Commissioner declaring that according to Rule 19-6.2, Petitioner had limited eligibility.

On September 5, 2017, 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 7, 2017. On September 11, 2017, 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 father in Akron, Indiana. Petitioner attended Tippecanoe Valley his freshman year. While at Tippecanoe Valley he played varsity football. He last participated athletically at Tippecanoe Valley on October 23, 2016.
2. The Petitioner lives in Akron, Indiana and attended Tippecanoe Valley, the public school which served his parents' residence. Petitioner transferred without a corresponding change of residence.
3. The Petitioner transferred to Whitko, a public school in South Whitley, Indiana that does not serve his parents' residence.
4. On May 31, 2017, Petitioner's parents completed the Transfer Report and the Petitioner indicated the transfer occurred because of his "desire to take a welding certification course offered at Whitko." The Petitioner's secondary reason for transfer was "bullying and hazing" experienced at Tippecanoe Valley.
5. Tippecanoe Valley recommended Petitioner have limited eligibility under Rule 19-6.2 and the principal did not sign the 17-8.5 *Verification*. Whitko recommended Petitioner have full eligibility and signed the 17-8.5 *Verification*.
6. While at Tippecanoe Valley, the Petitioner's father was an assistant coach on the football team, was an alumni of school, and previously played football for the school. The head coach of the Tippecanoe Valley football team resigned his position and the school began the process of hiring a new head coach. Once a new head coach, Mr. Moriarty, was selected, it was made clear that he would hire his own staff and did not intend on keeping the current assistant coaches.

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<sup>1</sup>The following members participated in the meeting: Kelly Wittman (Chairperson), Mr. Keith Pempek, Mr. Chris Lancaster, Mr. Karl Hand, Mr. Jess Williams, Mr. Bret Daghe and Mr. Chuck Weisenbach, and Ms. Mary Quinn. Ms. Kelly Bauder, staff attorney, was also present as legal counsel to the Panel.

7. Coach Shoemaker was introduced to the players as one of the assistant football coaches, and when the Petitioner shook his hand, he gripped his hand in a strong manner, which caused it to be bruised. Coach Shoemaker referred to the Petitioner as a “disgrace” and “fucking pussy” and would purposefully run into the Petitioner when walking near him. When the Petitioner complained of the bullying behavior to his parents, they contacted school officials. The Petitioner’s parents had contact with school officials in January, February and March of 2017 regarding the conduct of coaching staff and students. Coach Shoemaker told the Petitioner if, “he didn’t keep his mouth shut, he will kick his teeth out.” Coach Shoemaker, while off campus, blocked the Petitioner’s truck with his vehicle.
8. After the behavior of Coach Shoemaker, students then began to exhibit some of the same behavior towards the Petitioner. The Petitioner, who loved weight lifting, eventually stopped working out and lost thirty pounds.
9. After the bullying continued, the Petitioner began looking for schools he could attend and eventually convinced his parents to allow him to transfer schools in order to avoid the continued bullying and to go a school that offered a welding certification program on school grounds.
10. Coach Shoemaker did not attend the Review Committee hearing, therefore no testimony under oath was submitted for consideration or to refute any of the allegations.
11. Once the Petitioner was enrolled at Whitko, his father was offered an assistant coaching position. There is no evidence however that Whitko recruited the Petitioner to be a player or for his father as a coach.

#### 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 31, 2017, and Petitioner sought timely review on September 5, 2017.

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 school 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 Panel finds that the Petitioner experienced a hardship condition as he was a victim of bullying/harassment while at Tippecanoe Valley. The Panel finds that the Petitioner and parents did report bullying behavior by coaching staff and sought assistance from the school to intervene in the situation. The treatment experienced by the Petitioner led him to research other schools in the Akron area to attend in order to be free of the bullying at Tippecanoe Valley. The primary purpose of the Rule is still accomplished and there is no harm or diminishment of the purpose or spirit of the IHSAA Rule by giving the Petitioner full eligibility. Therefore, all of the requirements of Rule 17-8.1 were met.
9. There is no evidence that demonstrates that athletic motivation was the reason for the transfer to Whitko.

**ORDER**

The Panel finds by a vote of 7-1 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, 2017 at the receiving school, provided he meets all other eligibility requirements.

DATE: 09/20/2017



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.