

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter L.B.)
Petitioner,)
)
and)
) **CAUSE NO. 180110-174**
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 8, 2017, L.B.’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 September 1, 2017, Lebanon High School (“Lebanon”), the sending school, completed its portion of the Transfer Report. The receiving school, Zionsville Community High School (“Zionsville”), completed its portion of the Transfer Report on August 31, 2017 and November 8, 2017.

On November 9, 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 June 8, 2018. 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 December 14, 2017. Following the evidence presented at the December 14, 2017 hearing, the Review Committee issued its ruling on December 23, 2017 upholding the decision of the Commissioner declaring that according to Rule 19-6.2, Petitioner had limited eligibility.

On January 10, 2018, 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 January 16, 2018. On January 24, 2018, 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 senior, lives with his mother and step-father in Zionsville, Indiana. Petitioner attended Lebanon his freshman through junior years. While at Lebanon he played varsity golf. He last participated athletically at Lebanon on June 8, 2017.
2. In May, 2016, the Petitioner's mother and step-father moved to Zionsville, Indiana just prior to his junior year. During his junior year, the Petitioner attended, Lebanon, a public school which did not serve his parents' residence. His senior year, Petitioner transferred to Zionsville without a corresponding change of residence. Zionsville does serve his parent's residence.
3. In August 2017, Petitioner's parents completed the Transfer Report and the Petitioner indicated "that the transfer occurred because "they felt that transition to a bigger school would assist in his preparation and transition to the collegiate academic setting."
4. Lebanon recommended Petitioner have limited eligibility under Rule 19-6.2. Zionsville recommended Petitioner have full eligibility under Rule 19-6.1 and signed the 17-8.5 *Verification* limited eligibility waiver.

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).

¹The following members participated in the meeting: Kelly Wittman (Chairperson), Mr. Karl Hand, Mr. Keith Pempek and Mr. Chuck Weisenbach, and Ms. Mary Quinn. Ms. Kelly Bauder, staff attorney, was also present as legal counsel to the Panel.

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 December 23, 2017 and Petitioner sought timely review on January 10, 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. According to Rule 19-6.1, when a student transfers without a change of residence that student will have full eligibility at the receiving school as long as there is no evidence of the transfer being athletically motivated or the result of undue influence and the IHSAA has been provided "reliable, credible and probative" evidence that fulfills one or more of the eleven criteria outlined in the Rule. The Panel finds that there is no evidence that the Petitioner's transfer from Lebanon to Zionsville was athletically motivated or the result of undue influence. The Panel finds that Petitioner fulfills Rule 19-6.1 criteria (b) "The student transfers with a corresponding change of residence by the student into a New District or Territory." This rule recognizes move between divorced parents which is

present in the Petitioner's case. The Panel finds that the Petitioner and family have met the burden demonstrating that there was a corresponding change of residence by the student in to a new district to reside with his mother and fulfills one of the criteria under 19-6.1.

ORDER

The Panel finds by a vote of 3-2 that the decision of the IHSAA Review Committee, upholding the decision of the Commissioner is NULLIFIED. The Petitioner has full eligibility as of January 24, 2018 at the receiving school, provided he meets all other eligibility requirements.

DATE: 1/29/2018



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.