

**BEFORE THE INDIANA  
CASE REVIEW PANEL**

**In The Matter L.P.** )  
**Petitioner,** )  
 )  
**and** )  
 ) **CAUSE NO. 190205-183**  
**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 December 6, 2018, L.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 2018–2019 school year relating to the Petitioner’s transfer. On December 10, 2018, Loogootee High School (“Loogootee”), the sending school, completed its portion of the Transfer Report. The receiving school, Shoals High School (“Shoals”) completed its portion of the Transfer Report on December 12, 2018.

On December 12, 2018, the IHSAA Commissioner determined that Petitioner’s transfer was a Rule 19-6.2 transfer and ruled Petitioner was had limited eligibility at the receiving school until December 1, 2019. 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 January 10, 2019. Following the evidence presented at the January 10, 2019 hearing, the Review Committee issued its ruling on January 17, 2019 upholding the decision of the Commissioner declaring that according to Rule 19-6.2, Petitioner would not be fully eligible until December 1, 2019.

On February 5, 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 February 8, 2019. On February 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 sophomore, lives with his mother and father in Shoals, Indiana. Petitioner attended Loogootee freshman through sophomore year. While at Loogootee he played varsity basketball and track and field. He last participated athletically at Loogootee on December 1, 2018.
2. The Petitioner lives in Shoals, Indiana and attended Loogootee, a public school which does not serve his parents' residence. Petitioner attended Loogootee from seventh grade until his sophomore year. Petitioner transferred without a corresponding change of residence when transfer report was submitted.
3. The Petitioner transferred to Shoals, a public school in Shoals, Indiana that does serve his parents' residence.
4. On December 6, 2018, Petitioner's parents completed the Transfer Report and the Petitioner indicated the transfer occurred was due to "A year and a half ago, parents noticed a decline in the student's mental/emotional state. The student became withdrawn, depressed...The student expressed his wishes to return to his hometown school, the school in which he attended for grades K-6." The Petitioner began attending Shoals on December 7, 2018. Additionally, the Petitioner's parents indicated transportation to school was becoming an issue since they lived out of district and had to provide all transportation to Loogootee, including to extra-curricular activities.
5. Loogootee recommended Petitioner have limited eligibility under Rule 19-6.2. Shoals recommended Petitioner have full eligibility under Rule 17-8.1.
6. Neither Loogootee nor Shoals recommended and signed the 17-8.5 *Verification* limited eligibility waiver.

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<sup>1</sup>The following members participated in the meeting: Cathy Danyluk (Chairperson), Mr. Mickey Golembeski, Mr. Chris Lancaster, Laura Valle, Mary Quinn, Stacie Stoffregen and Ms. Kelly Bauder, staff attorney, was also present as legal counsel to the Panel.

## 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 January 17, 2019 and Petitioner sought timely review on February 5, 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

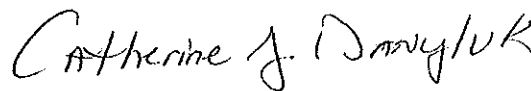
17-8.3 (Rule 17-8.1(d)).

8. According to Rule 19-6.2, when a student's parents/guardians do 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. However, a waiver under 17-8.1 can be sought.
9. The Panel finds that there is not a hardship condition that would allow for full eligibility. The Panel believes the Petitioner did experience emotional and academic struggles at the sending school; however, he nor his family reported any concerns to school officials or give the school the opportunity to address the concerns. The Panel has consistently held that in order to seek a hardship waiver, there has to be evidence that the Petitioner and/or his family reported the incidents to the sending school and give the school an opportunity to address them. The Petitioner's family admitted they kept most of the emotional concerns within the family. The Petitioner's family did meet with sending school officials on one occasion to address their concerns; however the focus was on athletics. There was also communication via text regarding concerns related to basketball from the Petitioner's family to Loogootee school officials.
10. 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 was a hardship condition that the sending school did not attempt to address. The Panel finds that Petitioner is eligible for limited eligibility at Shoals under Rule 19-6.2.

**ORDER**

The Panel finds by a vote of 6-0 that the decision of the IHSAA Review Committee, upholding the decision of the Commissioner is UPHELD. The Petitioner has limited eligibility until December 1, 2019 based on Rule 19-6.2 for 365 days from the date the student last participated in athletics at the sending school, provided he meets all other eligibility requirements.

DATE: 2/15/2019



Cathy Danyluk, 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.