

**BEFORE THE INDIANA  
CASE REVIEW PANEL**

**In The Matter L.R.** )  
**Petitioner,** )  
 )  
**and** )  
 ) **CAUSE NO. 201203-211**  
**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 October 26, 2020, L.R.’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 October 28, 2020 Homewood-Flossmoor High School (“Homewood”), the sending school, completed its portion of the Transfer Report. The receiving school, Lake Station Edison High School (“Lake Station”) completed its portion of the Transfer Report on October 28, 2020.

On October 28, 2020 the IHSAA Assistant Commissioner determined that Petitioner’s transfer was a Rule 19-6.2 transfer and ruled Petitioner had limited eligibility at the receiving school until March 2, 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 November 19, 2020. Following the evidence presented at the November 19, 2020 hearing, the Review Committee issued its ruling on December 3, 2020 upholding the decision of the Assistant Commissioner declaring that according to Rule 19-6.2 Petitioner had limited eligibility.

On December 3, 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 December 7, 2020. The Panel also received a supplemental submission from the Petitioner.

On December 8, 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 senior, lives with her mother in Hammond, Indiana. Petitioner attended Homewood for her junior year (2019-2020) and attended Hammond Bishop Noll her freshman year (2017-18) sophomore year (2018-19). While at Homewood she played basketball. She last participated athletically at Homewood on March 2, 2020.
2. The Petitioner attended Homewood, a public school in Homewood, Illinois. Petitioner transferred with a corresponding change of residence when Transfer Report was submitted. The Petitioner's parents separated in March 2020 and her mother moved in with her parents in Hammond, Indiana. (R. p. 24) The original plan was for the Petitioner to continue living with her father and finish out her senior year at Homewood. The Petitioner came to stay with her mother when her brother and father got COVID in April 2020. (R. p. 25). The Petitioner went back to living with her father and but became depressed and asked her mother if she could move back to Hammond with her. (R. p. 25). At first the Petitioner's mother said no, but eventually let her move into her grandparent's house with her in Hammond, Indiana. (R. p. 25). The Petitioner testified she had a closer relationship with her mother and struggled emotionally living with her dad. The Petitioner enrolled in Lake Station and began attending August 17, 2020.
3. On August 14, 2020, Petitioner's parents completed the Transfer Report and the Petitioner indicated she was transferring because the Petitioner's parents separated and "mother and daughter (student) moved in with grandparents when father became ill with COVID and they decided to stay (parents became separated at this point), moving into a residence owned by the grandparents in Hammond."<sup>2</sup> After discussion about schools, they did not feel comfortable attending the school district they live in (School City of Hammond School District) as the mother had sent her two older children [there]

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

<sup>2</sup>Under the provisions of the McKinney-Vento Education of Homeless Children and Youth Act, it establishes immediate enrollment and educational stability for homeless children and youth. 42 U.S.C. §11301. Under this federal law, school districts must review and revise policies that provide barriers to homeless students. Although the Panel did not need to address services that would need to be provided to the Petitioner under this act, it appears this situation may have fell within this federal law as soon as the mother became homeless fleeing the marital home. The IHSAA as a quasi-governmental entity, is also bound by the McKinney-Vento Act. The Case Review Panel must consider all applicable state, federal and constitutional laws when rendering a decision, including the McKinney-Vento Act in addition to the IHSAA Rules.

previously and had bad experiences/problems [there]. Parent and student athlete looked at other alternatives, settling on Lake Station Edison because of the school districts open enrollment.” The Petitioner’s mother testified it was always her goal to move into Lake Station, but she had to save money for a deposit for rent. She told the Lake Station principal she intended to move into the district as soon as she was financially able. (R. p. 31). Lake Station verified the move and accepted her in open enrollment until the move was able to happen (R. p. 35). The Assistant Commissioner admitted that during her investigation she never contacted the Petitioner’s family to discuss the transfer with them or gather additional information from the family. (R. p. 37).

4. The Petitioner’s mother was unemployed when she separated from her husband and moved in with her parents (Petitioner’s grandparents). While living at her grandparent’s home, the Petitioner had to share a bedroom with her mother. As soon as the Petitioner’s mother found employment, she saved money for a deposit and moved into a home in the Lake Station district on or about November 14, 2020. The Petitioner, at the time of the Review Committee Hearing and present day, lives in the Lake Station school district boundaries and therefore has legal settlement in the district.
5. Homewood recommended Petitioner have full eligibility under Rule 17-8.5. Lake Station recommended Petitioner have full eligibility under Rule 17-8.1. After their investigations, neither school found the move to be athletically motivated. Although the Review Committee discussed possible athletic motivation for a move, there was an absence of any direct evidence of athletic motivation and they in fact found no violation of Rule 19-4.

#### 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 December 3, 2020 and Petitioner sought timely review on December 3, 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 and receiving schools 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)). The Panel does not address the presence of a hardship conditions as it finds there was a bonfire change of residence pursuant to Rule 19-5.
7. There is no evidence in the record that the move was athletically motivated. In fact, the Review Committee found no violation of Rule 19-4. The Review Committee noted that the Petitioner knew at least one member of the Lake Station basketball team and knew girls who played at almost all the schools in the surrounding area due to her involvement with AAU basketball.<sup>3</sup> There is no evidence this played any part in her decision to transfer. It is not uncommon for students to have friends or teammates from various schools in a community when they participate in recreational sports.<sup>4</sup>

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<sup>3</sup> The evidence was there was only one girl the Petitioner knew at Lake Station, yet the Review Committee order references two girls (R. p. 13 and p. 38). The Panel would remind the Review Committee that facts matter.

<sup>4</sup> The Panel is also concerned that the Review Committee decision and conclusions regarding athletic motivations were based on conjecture. The Panel operates under the guidance of the Indiana Rules of Evidence and the Indiana Administrative Orders and Procedures Act (AOPA). AOPA specifically states in IC § 4-21.5-3-27(d) that “findings must be based exclusively upon the evidence of record in the proceedings and on matters officially noticed in that proceedings. Findings must be based upon the

8. The Petitioner moved with her mother, who was separating from her husband. The Petitioner's mother notified school officials at Lake Station that she was attempting to secure housing in the district, and she in fact found housing in the district. (R. p. 25 & 32). The Petitioner's mother lived for a short period of time in Hammond, Indiana but was only staying there to save money for a deposit and to get a divorce. (R. p. 32-33). Lake Station has open enrollment and allowed the Petitioner to attend the district until legal settlement was established.<sup>5</sup> The Panel finds that Petitioner is entitled to full eligibility at Lake Station under Rule 19-5.

### 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 NULLIFIED. The Petitioner has full eligibility as of December 8, 2020 at the receiving school, provided she meets all other eligibility requirements.

DATE: 12/9/2020



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.

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kind of evidence that is substantial and reliable.” Hearsay evidence is admissible, but an order cannot be based solely upon the hearsay evidence. IC § 4-21.5-3-26. The Panel has repeatedly reminded the Review Committee of these basic evidentiary principals to no avail. The Review Committee focused whether there was a bonafide change of address or whether there was a hardship condition present under 17-8.1, however considerable time and the hearing and paragraphs of the Review Committee order only discuss possible athletic motivation to which there was eventually found to be none supported by evidence. Any student who participates in recreational or travel sports will inevitably know students at schools in the surrounding area, and that fact alone, is not sufficient for any finding of athletic motivation

<sup>5</sup> The panel would remind the Review Committee of decisions like In Re the Matter of W.S. 200924-201 that establish clearly settled principals in Indiana law that allow for open enrollment in many public school districts and almost all private schools. See also IC §20-19-2-10, IC §20-26-11-2.5 and IC §20-26-11-32. If Indiana law allows for students to transfer without moving into a territory or district, IHSAA rules cannot interfere with or have preference over Indiana law.