

**BEFORE THE INDIANA  
CASE REVIEW PANEL**

**In The Matter W.J.** )  
**Petitioner,** )  
 )  
**and** )  
 ) **CAUSE NO. 171030-170**  
**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 March 31, 2017 and May 19, 2017, W.J.’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 May 22, 2017, Delta High School (“Delta”), the sending school, completed its portion of the Transfer Report. The receiving school, Monroe Central High School (“Monroe Central”) completed its portion of the Transfer Report on May 23, 2017.

On August 30, 2017, the IHSAA Commissioner determined that Petitioner’s transfer was a Rule 19-4 transfer and ruled Petitioner had no eligibility at the receiving school until August 9, 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 October 5, 2017. Following the evidence presented at the October 5, 2017 hearing, the Review Committee issued its ruling on October 24, 2017 reversing the decision of the Assistant Commissioner and declared that according to Rule 19-6.2, Petitioner had limited eligibility. The Review Committee also stated in the order if the IHSAA determined there was a bona fide move, the Petitioner would be fully eligible at Monroe Central.

On October 30, 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 November 9, 2017<sup>1</sup>. On November 15, 2017, the Panel held a meeting<sup>2</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, lived with his mother and father in Muncie, Indiana. Petitioner attended Delta his freshman year. While at Delta he played varsity basketball. He last participated athletically at Delta on February 24, 2017.
2. The Petitioner and his parents moved to Parker City, Indiana. Therefore, the Petitioner transferred to Monroe Central, a public school that serves his parents' new residence.
3. On May 19, 2017, Petitioner's parents completed the Transfer Report and the Petitioner indicated the transfer occurred because "the family has purchased a home in Parker City and relocated with the closing June 7, 2017." The Petitioner's parents placed the family home on Muncie for sale on May 24, 2017. The Petitioner and his family moved into the Parker City residence on August 7, 2017. A neighbor from Parker City testified he saw the Petitioner and his family live at the Parker City address full-time the first week of August, 2017.
4. When the family decided to move closer to the Petitioners mother's family farm, they gave the Petitioner and his brother the option of staying at Delta or transferring to Monroe Central. The Petitioner transferred to Monroe Central to be closer to school and his brother decided to stay at Delta. The Petitioner's parents notified Delta that the Petitioner's brother would like to continue attending Delta and would pay transfer tuition. Delta allowed the Petitioner's brother to continue attending Delta once he lived outside of the district in August, 2017.
5. Delta recommended Petitioner have limited eligibility under Rule 19-6.2. Monroe Central recommended Petitioner have full eligibility under Rule 19-5.
6. Neither Delta nor Monroe Central signed the 17-8.5 *Verification* limited eligibility waiver.

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<sup>1</sup> The record from the IHSAA states it is for another student, R.S., but this appears to be a typographical error.

<sup>2</sup>The following members participated in the meeting: Kelly Wittman (Chairperson), Mr. Mickey Golembeski, Mr. Karl Hand, 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.

## 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 24, 2017 and Petitioner sought timely review on October 30, 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 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

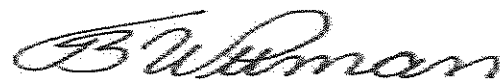
17-8.3 (Rule 17-8.1(d)).

8. According to Rule 19-5.1, when a student's parents/guardians make a bona fide change of residence to a new district or territory, the student has several options, including transferring and attempt to obtain full eligibility at the public school in the district serving the student's residence. The Panel acknowledges the Petitioner and his family continued to live in Muncie after the transfer report was submitted. However, the Panel finds that there is compelling evidence that demonstrates that there was a bona fide move. The Petitioner's family provided a purchase agreement for a home with the closing date of June 7, 2017. The Petitioner's parents pay transfer tuition to Delta for W.J. younger's brother, thus the school recognizes the Petitioner's and his family have moved outside their legal corporation of settlement. Petitioner's parents submitted documents establishing renovation and moving costs for the home in Parker City. The Petitioner also had a neighbor from Parker City testify at the hearing that he saw the family move in at the beginning of August, 2017. The Panel finds that the Petitioner and family have provided documentation demonstrating that there was bona fide move.
9. The Panel finds that according to Rule 19-5.1, that there was a bona fide change of address to a new district by the Petitioner's family. There is no need to make any determination regarding a 17-8.1 hardship condition given the finding of a bona fide change of address.
10. The Assistant Commissioner had ruled this a 19-4 violation due to a move that was motivated primarily for athletic reasons. There was a lack of any evidence presented at the Review Committee Hearing to substantiate such a finding. There were no witnesses present to verify any of the statements alleged to have been made. There were hearsay statements made by staff and families from Delta, but the Petitioner and his family denied making any of the statements. The Panel finds there is no evidence in the record that this transfer was primarily for athletic reasons.

### 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 NULLIFIED. The Petitioner has full eligibility as of November 15, 2017 at the receiving school, provided he meets all other eligibility requirements.

DATE: 11/22/2017



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.