

**BEFORE THE INDIANA  
CASE REVIEW PANEL**

**In The Matter C.M.** )  
**Petitioner,** )  
 )  
**and** )  
 ) **CAUSE NO. 210819-225**  
**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 January 25, 2021, C.M.’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 2021–2022 school year relating to the Petitioner’s transfer. On February 24, 2021, Avon High School (“Avon”), the sending school, completed its portion of the Transfer Report. The receiving school, Danville High School (“Danville”) completed its portion of the Transfer Report on March 18, 2021.

On March 30, 2021, 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 9, 2021. 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 5, 2021. Following the evidence presented at the August 5, 2021 hearing, the Review Committee issued its ruling on August 18, 2021 upholding the decision of the Commissioner declaring that according to Rule 19-6.2, Petitioner had limited eligibility.

On August 19, 2021, 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 August 30, 2021. On September 7, 2021, 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 his mother and father in Avon, Indiana. Petitioner attended Avon his freshman year (2018-2019), sophomore year (2019-2020), and the fall semester of his junior year (2020-2021). While at Avon he played junior varsity and varsity football. He last participated athletically at Avon on October 9, 2020. Record p. 99.
2. The Petitioner lived in Avon, Indiana and attended Avon, a public school which served his parents' residence. Petitioner transferred without a corresponding change of residence when transfer report was submitted. Record p. 97
3. The Petitioner transferred to Danville, a public school in Danville, Indiana that does not serve his parents' residence in Avon. Transcript p. 97.
4. On January 25, 2021, Petitioner's parents completed the Transfer Report and the Petitioner indicated the transfer occurred because "[w]e decided to transfer [Petitioner] to get him into a smaller school with smaller class sizes. He needs more one on one teacher/learning time." Record p. 100.
5. Avon recommended Petitioner have no eligibility under Rule 19-4. Danville recommended Petitioner have full eligibility through the Limited Eligibility Waiver pursuant to Rule 17-8.1. Neither school signed the Verification under Rule 17-8.5. Record p. 99, 100.

### 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

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<sup>1</sup>The following members participated in the meeting: Ms. Risa Regnier (Chairperson), Mr. Brett Crousore, Mr. Joe Hermann, Mr. John Prifogle, Ms. Mary Quinn, Ms. Laura Valle, and Mr. Chuck Weisenbach. Ms. Leslie-Ann James, staff attorney, was also present as legal counsel to the Panel.

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).

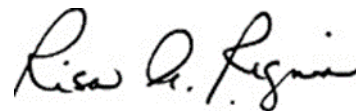
3. The Panel has jurisdiction in this matter. The Panel was established to review final student eligibility decisions with respect to interscholastic athletic competition. Ind. Code § 20-26-14. The Panel has jurisdiction when a student’s parent or guardian refers the case to the Panel not later than 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 18, 2021, and Petitioner sought timely review on August 19, 2021.
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, unless there is reason to believe the student transferred primarily for athletic reasons or as a result of undue influence. The Panel does not find the move was the result of primarily athletic reasons or as a result of undue influence.

9. The Panel finds there is evidence that the move to Danville was in the best interest of the Petitioner. The Petitioner's parents indicated the move to Danville was due to concerns for Petitioner's academic success at Avon. At the Review Committee hearing, the Petitioner's mother stated that "[t]he learning environment was not conducive for [Petitioner's] learning style. He struggled with virtual learning and I knew I had to do something about it. Danville offered in-person learning and it was far more consistent in their scheduling...this played a major role in my decision." Tr. 14. In addition, the Panel acknowledges the Petitioner made statements regarding athletics and his transfer with Assistant Varsity Football Coach Hultman. However, the Panel takes note of the text communication being initiated by Coach Hultman and occurring after the Petitioner transferred. Moreover, in the conversation with Coach Hultman, the Petitioner expressed "[f]ootball isn't the only reason I left. It's a much smaller school and there's more one-on-one work and there are seven-period days every day. I couldn't sit in a class for an hour and a half much longer." Tr. 9. The Panel finds that the academic environment at Avon informed the decision to transfer the Petitioner to Danville.
10. In Smock v. the Case Review Panel/Indiana Department of Education/Indiana High School Athletic Association, and Delphi Community School Corporation 08C01-1912-PL-000019, the trial court found that "the Limited Eligibility Waiver Rule (17-8.5) exists to allow non-athletically motivated transfers, which serve the best interest of the student, full eligibility. A school cannot simply unilaterally and erroneously misuse that discretion, and in turn, preclude a student athlete from participating in athletics with full eligibility." See also In the Matter of J.T. 091002-64 and IHSAA v. Durham, 748 N.E.2d 404 (Ind. Ct. App. 2001). In the absence of athletic motivation and when presented with evidence from the Petitioner that the move was in his best interest, the Review Committee should have found the move was in his best interest and given full eligibility by Rule 17-8.5.
11. The Panel finds the Petitioner eligible for full eligibility Danville under Rule 17-8.5.

### **ORDER**

The Panel finds by a vote of 7-0 that the decision of the IHSAA Review Committee, upholding the decision of the Commissioner is NULLIFIED. The Petitioner has full eligibility as of September 7, 2021 at the receiving school, provided he meets all other eligibility requirements.

DATE: 09/15/2021



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Risa Regnier, 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.