

**BEFORE THE INDIANA  
CASE REVIEW PANEL**

<b>In The Matter T.M.</b>	)	
<b>Petitioner,</b>	)	
	)	
<b>and</b>	)	
	)	<b>CAUSE NO. 191023-194</b>
<b>The Indiana High School Athletic Association,</b>	)	
<b>Respondent.</b>	)	
	)	
<b>Review Conducted Pursuant to Ind. Code</b>	)	
<b>§ 20-26-14 <i>et seq.</i></b>	)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

**PROCEDURAL HISTORY**

On or about July 10, 2019, T.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 2019–2020 school year relating to the Petitioner’s transfer. On July 31, 2019, Lafayette Jefferson High School (“Lafayette Jefferson”), the sending school, completed its portion of the Transfer Report. The receiving school, McCutcheon High School (“McCutcheon”), completed its portion of the Transfer Report on July 29, 2019.

On August 1, 2019, 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 January 29, 2020. 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 10, 2019. Following the evidence presented at the October 10, 2019 hearing, the Review Committee issued its ruling on October 23, 2019 upholding the decision of the Commissioner declaring that according to Rule 19-6.2, Petitioner had limited eligibility.

On October 23, 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 November 7, 2019<sup>1</sup>. On November 13, 2019, 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, lives with her mother and father in Lafayette, Indiana. Petitioner attended Lafayette Jefferson for her freshman year (2018-19). While at Lafayette Jefferson she played varsity basketball. She last participated athletically at Lafayette Jefferson on January 29, 2019.
2. The Petitioner lives in Lafayette, Indiana and attended Lafayette Jefferson, a public school which did not serve her parents' residence. Petitioner transferred without a corresponding change of residence when the Transfer Report was submitted.
3. The Petitioner transferred to McCutcheon, a public school in Lafayette, Indiana that does serve her parents' residence.
4. In July 2019, Petitioner's parents completed the Transfer Report and the Petitioner indicated "[T.M.] needed a change of environment." In addition, Petitioner's parents indicated in supplementary documentation that Petitioner struggled with Lafayette Jefferson's block scheduling, experienced transportation difficulties, and was subjected to bullying. The Petitioner did notify a teacher about an incident with other students on SnapChat, but Lafayette Jefferson administration indicated they were not aware of other bullying incidents and the Petitioner and her family did not follow school policies on reporting allegations of bullying.
5. The Petitioner's documentation primarily focused on the family's frustration with Lafayette Jefferson's basketball program and coaching staff. Moreover, Lafayette

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<sup>1</sup>The Panel notes that during the Review Committee Hearing the IHSAA's attorney engaged in an unprofessional exchange with McCutcheon's principal saying "That's a good question, and you – if you want to go to law school ... and find out about those things, I'd suggest you do that." (R.42, T. 83-84) All participants in the Review Committee process should model professional behavior, particularly in front of children. Attorneys often have disputes on what testimony is hearsay and whether there are exceptions, it is understandable participants in this process do not understand these concepts and might need some clarification. Additionally, Mr. Baker's reference to "left with one -- one bullet, if you will, in the gun, and that's 17-8.1" is in poor taste given the nature of gun violence prevalent in schools. (R. 47, T. 104)

<sup>2</sup>The following members participated in the meeting: Kelly Wittman (Chairperson), Mr. Ben Ballou, Mr. Brett Crousore, Mr. Chris Lancaster, Ms. Mary Quinn, Mr. Mickey Golembeski and Mr. Chuck Weisenbach. Ms. Kelly Bauder, staff attorney, was also present as legal counsel to the Panel.

Jefferson staff stated the majority of the conversations they had with the Petitioner's parents focused on the basketball coach. Coach Baker, after a game, sent a text to the Petitioner that said "I honestly believe T and her family has been the main reason we are playing like absolute dog shit and we are not a TEAM like we used to be." Coach Baker later tried to tell the Petitioner and the family he sent the text as a motivator for the Petitioner but later admitted the text was not meant to be sent to the Petitioner. The text was inappropriate and exacerbated the tensions with the Petitioner, her family and Lafayette Jefferson.

6. Lafayette Jeff recommended Petitioner have limited eligibility under Rule 19-6.2. McCutcheon recommended Petitioner have full eligibility signing 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).
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 23, 2019 and Petitioner sought timely review on October 23, 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 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 19-6.2, 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 for athletic reasons or the result of undue influence. The Panel finds that the Petitioner’s decision to transfer schools was a choice and there is not a hardship condition that exists that would allow for full eligibility. The Petitioner experienced an unfortunate incident with the inappropriate text message from Coach Baker. However, Petitioner’s family did not properly report the bullying experienced by the Petitioner to Lafayette Jefferson’s administration. Petitioner complained about academic difficulty but was able to maintain a 4.1 grade point average. Additionally, Petitioner’s family submitted documentation that reflects the transfer had athletic motivations. Consequently, there appears to be no “extremely negative non-athletic condition” peculiar to the student nor was it unforeseeable, unavoidable, or uncorrectable to grant full eligibility. The Panel finds this was a choice by her family and it did not rise to the level of a hardship. Therefore, all of the requirements of Rule 17-8.1 were not met.
9. The Panel finds that according to Rule 19-6.2, there was not a corresponding change of residence by student. Thus, the Petitioner is eligible for limited eligibility at McCutcheon under rule 19-6.2.

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 UPHELD. The Petitioner has full eligibility as of January 29, 2020 at the receiving school, provided she meets all other eligibility requirements.

DATE: 11/15/2019



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.