

**BEFORE THE INDIANA  
CASE REVIEW PANEL**

<b>In The Matter P.S.</b>	)	
<b>Petitioner,</b>	)	
	)	
<b>and</b>	)	
	)	<b>CAUSE NO. 191121-196</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 September 11, 2019, P.S.’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 September 16, 2019, Shenandoah High School (“Shenandoah”), the sending school, completed its portion of the Transfer Report. The receiving school, New Castle High School (“New Castle”) completed its portion of the Transfer Report on September 20, 2019.

On September 20, 2019, the IHSAA Commissioner determined that Petitioner’s transfer was a Rule 19-4 transfer and ruled Petitioner temporary ineligible under Rule 3-8 and ineligible at the receiving school until September 11, 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 November 8, 2019. Following the evidence presented at the November 8, 2019 hearing, the Review Committee issued its ruling on November 18, 2019 upholding the decision of the Commissioner declaring that according to Rule 3-8 and Rule 19-4, Petitioner had no eligibility.

On November 21, 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 26, 2019. On December 10, 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 senior, lives with his father in Daleville, Indiana. Petitioner attended Shenandoah for his freshman (2016-17), sophomore (2017-18), and junior (2018-19) years. While at Shenandoah he played varsity basketball, football, and golf as well as freshman baseball. He last participated athletically at Daleville on May 14, 2019.
2. The Petitioner lives in Daleville, Indiana and attended a public school which serves his parents' residence. Petitioner transferred without a corresponding change of residence when transfer report was submitted.
3. The Petitioner transferred to New Castle, a public school in New Castle, Indiana, that does not serve his parents' current residence.
4. In September 2019, Petitioner's parents completed the Transfer Report and the Petitioner indicated, "[P.S.] was struggling with other students from his home school. He said that being at the school was making him uncomfortable and really making it tough for him to focus during the school day. Parents have been working through things and dad has moved to New Castle with [P.S.] His class schedule was easy to transition because he was already enrolled in the New Castle Career Program."
5. Shenandoah recommended Petitioner have temporary ineligibility under Rule 3-8 and ineligibility under Rule 19-4. Shenandoah's recommendation was based on the Petitioner's two violations of school's athletic code resulting in a 365 day athletic suspension.
6. New Castle recommended Petitioner have full eligibility under Rule 19-5. New Castle's recommendation was based on their belief that Petitioner and his father made a bona fide change of residence into the school district, which turned out to be inaccurate. As of the date of the Review Committee Hearing, the Petitioner had not moved into the New Castle district.

---

<sup>1</sup>The following members participated in the meeting: Kelly Wittman (Chairperson), Mr. Ben Ballou, Ms. Mary Quinn, Ms. Laura Valle, and Ms. Meisha Wide. Ms. Kelly Bauder, staff attorney, was also present as legal counsel to the Panel.

7. Neither Shenandoah nor New Castle signed the 17-8.5 *Verification* limited eligibility waiver and signed 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 November 18, 2019 and Petitioner sought timely review on November 21, 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 or receiving school did not sign the *Verification*, so Petitioner did not qualify for an ineligible 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)). The Panel does not find there is a hardship condition present in this case.
  
8. According to Rule 19-5, 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 Petitioner's father indicated on the transfer report that there was a bona fide move to the New Castle school district. However, Petitioner's father stated at Review Committee Hearing that the New Castle address listed on the transfer report was not the Petitioner's current residence. The Petitioner and his father continued to live in Daleville after the transfer report was submitted. Thus, Petitioner and his father have not moved into the New Castle district. The Panel finds that according to Rule 19-5, that there was not a bona fide change of address to a new district by the Petitioner's parent.
  
9. The Panel acknowledges the Petitioner received a 365 day athletic suspension at Shenandoah prior to his transfer to New Castle. The two occurrences of athletic code violations made the Petitioner ineligible to participate in athletics his senior year at Shenandoah. Subsequent inquiries to Shenandoah's administration by the Petitioner's family focused primarily on his athletic eligibility status, thus Shenandoah recommended temporary ineligibility under Rule 3-8 and no eligibility under Rule 19-4. The Petitioner was attempting to obtain athletic eligibility at a new school to circumvent the disciplinary action as a result of his second code of conduct violation at Shenandoah. There was not sufficient evidence presented by the Petitioner that the move was for an academic or social purpose. The Petitioner is attempting to transfer to New Castle in order to circumvent the code of conduct violation at Shenandoah so that he can participate in sports. Thus, the Panel finds the transfer to New Castle was for primarily athletic motivation in violation of 19-4. Additionally, the Panel finds that pursuant to Rule 3-8, the Petitioner had a 365 day penalty that would be enforced, effective his entire senior year of high school.

**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 UPHELD. The Petitioner has no eligibility at New Castle until September 4, 2020. The Petitioner would have full eligibility as of September 4, 2020 at the receiving school, provided he meets all other eligibility requirements.

DATE: 12/11/2019



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.