

**BEFORE THE INDIANA  
CASE REVIEW PANEL**

<b>In The Matter A.C.</b>	)	
<b>Petitioner,</b>	)	
	)	
<b>and</b>	)	
	)	<b>CAUSE NO. 200709-198</b>
<b>The Indiana High School Athletic Association,</b>	)	
<b>Respondent.</b>	)	
	)	
<b>Review Conducted Pursuant to Ind. Code</b>	)	
<b>§ 20-26-14 et seq.</b>	)	

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

**PROCEDURAL HISTORY**

On or about January 6, 2020, A.C.'s ("Petitioner") mother 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 January 9, 2020 Riverton Parke High School ("Riverton"), the sending school, completed its portion of the Transfer Report. The receiving school, Covington High School ("Covington") completed its portion of the Transfer Report on January 9, 2020.

On March 9, 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 October 19, 2020. 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 June 25, 2020. Following the evidence presented at the June 25, 2020 hearing, the Review Committee issued its ruling on July 7, 2020 upholding the decision of the Assistant Commissioner declaring that according to Rule 19-6.2, Petitioner had limited eligibility.

On July 9, 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 July

13, 2020. On July 15, 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 junior, lives with her mother in Rockville, Indiana. Petitioner attended Riverton for her freshman year (2018-19) and part of her sophomore year (2019-20). While at Riverton she played varsity volleyball. She last participated athletically at Riverton on October 19, 2020.
2. The Petitioner attended a public school which did not serve her mother's residence, but had open enrollment. Petitioner transferred without a corresponding change of residence when Transfer Report was submitted. The Petitioner transferred to Covington, a public school in Covington, Indiana that does not serve her mother's residence but also has open enrollment for out of district students. The Petitioner began attending Covington on January 6, 2020.
3. In January 2020, Petitioner's mother completed the Transfer Report and the Petitioner indicated she was transferring "for specific academic opportunities that will best prepare her for college." Additionally, the Petitioner's mother stated "we have done research on class offerings at the surrounding high schools and Covington is [A.C.'s] best option to expose her to what she needs to feel ready for her college experiences."
4. Riverton recommended Petitioner have limited eligibility under Rule 19-6.2.
5. Covington 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.

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

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 July 7, 2020 and Petitioner sought timely review on July 9, 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 school 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)).
7. 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.

8. The Review Committee, as part of their opinion, stated “while there is no direct evidence that the transfer was athletic, the circumstances suggest that [A.C.’s] motive for attending Covington<sup>2</sup> was principally to play volleyball with her older sister, and once her sister graduated, that that reason for attending Riverton no longer existed, and [A.C.] was free to go to another school and play volleyball.” There is no evidence of this in the record. The Panel finds there is no evidence of athletic motivation for the Petitioner’s move.<sup>3</sup> The same finding was made by Assistant Commissioner Walter (R.19).
9. The Panel finds that Petitioner’s decision to transfer to Covington was done in her best interest. The Petitioner conveyed to her mother that she was not being challenged at Riverton and wanted a more rigorous high school experience. The Petitioner explained to her mother that she “wanted to go to a more academically challenging school, and she was concerned about being prepared for college.” (R. 19). The Petitioner and her mother researched several schools by comparing course offerings, ISTEP scores and school letter grades. The Petitioner was especially interested in computer science courses and Spanish 4. She was concerned she would not be able to take all of the classes she wanted if she attended Riverton and participated in their vocational computer classes, which consumed half of the school day. Although Riverton testified about course offerings at their school, there was no evidence that contradicted the Petitioner’s and her mother’s assertion that the move was in her best interest based on her personal academic goals.
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 both she and her mother believed the move was in her best interest, the Review Committee should have found the move was in her best interest and given full eligibility by Rule 17-8.5.
11. The Panel finds that Petitioner is eligible for full eligibility at Covington under Rule 17-8.5.

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<sup>2</sup> The Review Committee order says Covington, but this appears to be a typographical error and should have read Riverton

<sup>3</sup> The Case Review Panel would note the Review Committee should refrain from engaging in conjecture or assumptions and base its decisions on the evidence presented by the parties, especially when it is contradicted by the Assistant Commissioner’s testimony.

**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 July 15, 2020 at the receiving school, provided she meets all other eligibility requirements.

DATE: 7/16/2020



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.