

**BEFORE THE INDIANA  
CASE REVIEW PANEL**

**In The Matter M.A.,** )  
**Petitioner** )  
 )  
**and** )  
 ) **CAUSE NO. 141001-123**  
**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 August 1, 2014, M.A.'s ("Petitioner") aunt 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 2014–2015 school year relating to the Petitioner's transfer from Shenandoah High School ("Shenandoah") to Pendleton Heights High School ("Pendleton"). On July 16, 2014, Shenandoah, as the sending school, completed its portion of the Transfer Report. Pendleton, as receiving school, completed its portion of the Transfer Report on August 5, 2014.

On August 5, 2014, the IHSAA Assistant Commissioner determined that Petitioner transfer was a Rule 19-6.2 and ruled Petitioner had limited eligibility at Pendleton. 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 September 11, 2014. Following the evidence presented at the September 11, 2014 hearing, the Review Committee issued its ruling on September 24, 2014, upholding the decision of the Assistant Commissioner declaring that according to Rule 19-6.2, Petitioner have limited eligibility until February 8, 2015, and then on February 9, 2014, he would be fully eligible to participate in athletics at Pendleton, provided he is academically eligible and meets all other eligibility rules.

On October 1, 2014, 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 10, 2014. On November 19, 2014, 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 lives with his aunt in Middletown, Indiana. Petitioner attended Shenandoah his freshman - junior years. Over the summer, Petitioner transferred to Pendleton and was enrolled on August 1, 2014. While at Shenandoah, during his sophomore (2012-13) year he played varsity tennis and wrestling. His junior (2013-14) year, Petitioner played varsity wrestling. He last participated athletically at Shenandoah on February 28, 2014.
2. On August 1, 2014, Petitioner's aunt completed the Transfer Report. On the Transfer Report, Petitioner indicated that the transfer to Pendleton was because Petitioner "was bullied at his present school and is looking for a new start. He has applied to Pendleton Heights and has been accepted as an out of district student."
3. For the past six years Petitioner has lived in Middletown, Indiana with his aunt and attended Shenandoah. Petitioner's mother passed away and his father was, until recently, incarcerated. Petitioner's father was convicted of child molestation and as a result Petitioner has undergone jeering and name-calling since sixth grade<sup>2</sup>.
4. Petitioner had numerous referrals to the Shenandoah office. Some referrals were for tardies and absences, but the more serious ones involved disrespecting teachers, foul language to teachers and students, and de-panting a fellow student. Petitioner received in-school and out-of-school suspensions for his conduct.
5. Shenandoah and Pendleton signed the transfer verification forms. Shenandoah recommended Petitioner have limited eligibility under rule 19.62 and neither recommended full eligibility under rule 17-8.5 nor signed the *Verification*. Pendleton, the receiving school, recommended Petitioner have full eligibility under 17-8.1 and did not sign the rule 17-8.5 *Verification*.

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<sup>1</sup> The following members participated in the meeting: Dr. George Frampton (Chairperson), Mr. Bret Daghe, Mr. Michael Golembeski, Mr. Glenn Johnson, Mr. Chris Lancaster, Mr. Keith Pempek, Mr. Chuck Weisenbach, Mr. Rick Donovan and Ms. Dana Cristee. Ms. Kelly Bauder, staff attorney, was also present as legal counsel to the Panel.

<sup>2</sup> The Panel would note that in the IHSAA Review Committee opinion and at the hearing there was reference to the size of the Petitioner and it was opined he was more the size of a bully. The Panel would discourage this type of reference to a student. Bullies come in all shapes and sizes and the fear of physical harm is not the only factor a school, the IHSAA, or the Case Review Panel should consider when determining if bullying occurred.

## 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 September 24, 2014 and Petitioner sought timely review on October 1, 2014.
4. The Panel may uphold, modify, or nullify the IHSAA Review Committee’s decision. (Ind. Code § 20-26-14-6(c)(3)). The Panel is not required to review the IHSAA determination *de novo*. The Panel review is similar to an appellate-level administrative review. A full hearing to recreate the record is not required.
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. Shenandoah recommended Petitioner have limited eligibility under rule 19.62 and neither recommended full eligibility under rule 17-8.5 nor signed the *Verification*. Pendleton, the receiving school, recommended Petitioner have full eligibility under 17-8.1 and did not sign the rule 17-8.5 *Verification*. Therefore, the conditions for a Rule 17-8.5 were not met.

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. The Petitioner was subject of repeated name-calling and bullying beginning in sixth grade and continuing into high school. Petitioner also had numerous referrals to the office and was suspended on several occasions. The sending school was involved and did make efforts to assist the Petitioner, yet incidents continue to happen. Petitioner would benefit greatly from a fresh start at a new school. The Petitioner has proven by clear and convincing evidence the primary purpose of the Rule will be accomplished, the waiver will not harm or diminish the Rule's purpose, the Petitioner will suffer or be harmed if the waiver is not granted, and a hardship condition exists. Therefore, the conditions for a Rule 17-8.1 waiver have been met.

#### ORDER

The Panel finds by a vote of 9-0 that the decision of the IHSAA Review Committee, upholding the decision of the Commissioner is NULLIFIED. The Petitioner has full eligibility under Rule 17-8.1 at Pendleton, provided he is academically eligible and meets all other eligibility rules.

DATE: 11-21-2014

  
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George Frampton, Ed.D., Chairperson  
Case Review Panel

#### APPEAL RIGHT

Any party aggrieved by the decision of the Case Review Panel has forty-five days from receipt of this written decision to seek judicial review in a civil court with jurisdiction, as provided by Ind. Code § 20-26-14-7.