

**BEFORE THE INDIANA  
CASE REVIEW PANEL**

**In The Matter C.H.** )  
**Petitioner,** )  
 )  
**and** )  
 ) **CAUSE NO. 150928-137**  
**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 May 28, 2015, C.H.'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 2015–2016 school year relating to the Petitioner's transfer. On June 3, 2015 Pendleton Heights High School ("Pendleton Heights"), the sending school, completed its portion of the Transfer Report. The receiving school, Liberty Christian High School ("Liberty Christian") completed its portion of the Transfer Report on July 9, 2015.

On August 4, 2015, the IHSAA Commissioner determined that Petitioner transfer was a Rule 19-6.2 and ruled Petitioner had limited eligibility at the receiving school. 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 September 10, 2015. Following the evidence presented at the August 19, 2015 hearing<sup>1</sup>, the Review Committee issued its ruling on September 22, 2015, upholding the decision of the Commissioner declaring that according to Rule 19-6.2, Petitioner have limited eligibility until March 4, 2016, and then on March 5, 2015, he would be fully eligible to participate in athletics at the receiving school,

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<sup>1</sup>At the hearing, the student was questioned by the IHSAA regarding his personal religious journey. The Panel finds this line of questioning both offensive and inappropriate in this type of setting. Certainly parents can be questioned about their choice of school, but a student or parent's religious beliefs should be off limits. Such matters are personal and do not have any bearing on the enforceability of IHSAA Rules.

provided he is academically eligible and meets all other eligibility rules.

On September 28, 2015, 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 October 26, 2015. On November 4, 2015, 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 lives with his mom and dad in Pendleton, Indiana. Petitioner attended Pendleton Heights for his freshman, sophomore and junior years. While at Pendleton Heights, during his freshman year (2012-13) he played freshman basketball, his sophomore year (2013-14) he played varsity basketball, and his junior year (2014-15) he played varsity basketball. He last participated athletically at Pendleton Heights on March 4, 2015.
2. The Petitioner was enrolled at Pendleton schools from kindergarten until 4<sup>th</sup> grade, he then enrolled at Frankton Elementary School for a couple of years, and he returned to Pendleton middle school and then enrolled at Pendleton Heights for high school.
3. On April 2, 2015, the Petitioner's father contacted Liberty Christian to inquire about applying to the school and a transfer for C.H.'s senior year. On April 23, 2015, the Petitioner applied for enrollment in Liberty Christian.
4. Petitioner transferred without a corresponding change of residence by his parents to a new district or territory.
5. On May 28, 2015, Petitioner's parents completed the Transfer Report; the Petitioner indicated that the transfer to Liberty Christian was to change his spiritual and academic surroundings. His parents felt Liberty Christian could help him and would be in his best interest to make a change.
6. In May, the Petitioner's father attended an entrance interview with Liberty Christian. In this interview his father said the transfer was based on their desire for the

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

Petitioner to get a Christian education and be with his Christian friends. During this interview, the Petitioner's parents did not mention the bullying at Pendleton Heights. Around the same time, the Petitioner's father emailed Pendleton Heights letting the school know about the move to Liberty Christian and expressed thanks for the school being good to the Petitioner and his family.

7. In July, 2015 the Petitioner's father notified local police about a bullying incident involving the Petitioner while he was a student at Pendleton Heights. This was the first time these incidents were reported to Pendleton Heights. Pendleton Heights did have a bullying policy and a mechanism for reporting incidents to school officials. The Petitioner admitted he did not report the bullying to anyone because the bullies threatened to make it worse if he told anyone.

8. Pendleton Heights recommended Petitioner have limited eligibility under rule 19-6.2 and neither recommended full eligibility under rule 17-8.5 nor signed the *Verification*. Liberty Christian recommended Petitioner have full eligibility under rule 17-8.5 and signed the *Verification*.<sup>3</sup>

#### 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 22, 2015, and Petitioner sought timely review on September 28, 2015.

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<sup>3</sup>There was discussion that the receiving school could not recommend 17-8.5 if the sending school did not agree. Certainly Rule 17-8.5 requires both schools to agree in order to be enforced, but schools should be able to list the IHSAA Rule that they feel is appropriate based on the Rules and the school's investigation. Schools should not be told what Rule the IHSAA feels would be appropriate, it should be based on the school's investigation and beliefs.

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. 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. Petitioner failed to establish that the primary and secondary purposes of the rule would still be accomplished if the Rule is not strictly enforced.
9. The Panel finds that the Petitioner's decision to transfer schools was a choice and he was not compelled to transfer. The Petitioner's parents believed he could succeed in a Christian school. The Panel finds this was a choice by his family and did not rise to the level of a hardship. Therefore, all of the requirements of Rule 17-8.1 were not met.
10. The Panel finds that a student may qualify for a 17-8.1 or 17.8.5 waiver when bullying occurs. The Panel would have been more receptive to a waiver had the Petitioner at a minimum notified the schools at the time of the transfer about the bullying. It was not until both schools had completed their investigations and gave recommendations for eligibility that the schools were notified of the bullying. The Panel has consistently found that students must bring to the attention of the sending school allegations of bullying and threats. If the sending school does not take action or the bullying continues,

at that point a hardship may exist. If threats are made, at a minimum, a student should notify a trusted adult to share information about the bullying so there can be some attempt to get the student assistance. This would ensure the student's well-being is being addressed as well as provide documentation of the existence of bullying.

**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 limited eligibility under Rule 19-6.2 at the receiving school until March 4, 2016, and then on March 5, 2016 he would be fully eligible to participate in athletics at the receiving school provided he is academically eligible and meets all other eligibility rules.

DATE: 11-10-2015

  
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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.