BEFORE THE INDIANA
CASE REVIEW PANEL

In The Matter of Michael G. Stout, Jr.,	)	
Petitioner	)	
and	)	**CAUSE NO. 040203-31**
The Indiana High School Athletic Assoc. (IHSAA),	)	
Respondent	)	
	)	
Review Conducted Pursuant to	)	**Open Hearing**
I.C. 20-5-63 *et seq.*	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Procedural History

Petitioner is a 17-year-old junior (d/o/b August 3, 1986) at Park Tudor High School, a private school located in Indianapolis (hereafter, referred to as "Park Tudor"). He attended Carmel High School in the Carmel Clay School Corporation (hereafter, "Carmel") for his freshman and sophomore years. He was a member of the freshman soccer and baseball teams during the ninth grade. During his sophomore year, he was a member of the Carmel junior varsity baseball team. Petitioner attended Park Tudor for his middle school years. His legal settlement, at all times relevant herein, has been in the Carmel school district. Petitioner wished to return to Park Tudor to complete high school. Petitioner and his parents completed the IHSAA Athletic Transfer Report on August 21, 2003, citing a desire to return to Park Tudor where he could be with his friends and be in a smaller school with smaller class sizes. Petitioner also claimed a hardship under the Hardship Rule.[1] Carmel completed its portion of

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[1]The IHSAA has promulgated a series of by-laws as a part of its sanctioning procedures for interscholastic athletic competition. Some by-laws apply to specific genders ("B" for Boys, "G" for Girls), but many of the by-laws are "common" to all potential athletes and, hence, begin with "C." **Rule C–17-8** is the **Hardship Rule**. It provides in relevant part:

C-17-8.1 General
Except with respect to Rules 4 [Age], 12 [Enrollment and Attendance] and 18 [Scholarship], the Commissioner, his designee or the Committee shall have the authority to set aside the effect of any Rule when the affected party establishes, to the reasonable satisfaction of the Commissioner, his designee or the Committee, all of the following conditions are met:
a. Strict enforcement of the Rule in the particular case will not serve to accomplish the purpose of the Rule;
b. The spirit of the Rule has not been violated; and

the Transfer Report on September 16, 2003, indicating its belief Petitioner should have only "limited eligibility" under **Rule C-19-6.2**.[2] Park Tudor completed the form on November 4, 2003, and recommended full eligibility. Park Tudor also supported the Hardship Application under **Rule C-17-8.5**.

On November 4, 2003, Respondent determined Petitioner should have "limited eligibility." Petitioner appealed this determination to Respondent's Review Committee. The parties made presentations to

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c. There exists in the particular case circumstances showing an undue hardship that would result from enforcement of the Rule.

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C-17-8.4 General Consideration

a. Ordinary cases shall not be considered hardship; rather, the conditions which cause a violation of a Rule, a disregard of a decision or directive made under these Rules, or the failure to meet the eligibility requirements must be beyond the control of the school, the coach, the student, the parents and/or the affected party.

b. Injury, illness or accidents which cause a student to fail to meet a basic requirement are possible causes for a hardship consideration.

c. Likewise, a change in financial condition of the student or a student's family may be considered a hardship, however, such conditions or changes in conditions must be permanent, substantial and significantly beyond the control of the student or the student's family.

C-17-8.5

In addition to the foregoing, in transfer cases under Rule 19-6 [Transfer Eligibility Without Change of Residence], the Commissioner, his designee or the Committee shall have the authority to set aside the effect of the transfer rule and grant a student full eligibility following a transfer if (a) the student continues to reside with his/her parent(s) or guardian(s); (b) the student establishes, to the reasonable satisfaction of the Commissioner, his designee or the Committee, that the transfer is in the best interest of the student and there are no athletic-related motives surrounding the transfer; and (c) the principals of the sending and receiving schools each affirm in writing that the transfer is in the best interest of the student and there is no athletic-related motives surrounding the transfer.

[2]**Rule C-19-6.2** provides that "[a] student who transfers without a corresponding change of residence to a new district or territory by the student's parent(s)/guardian(s) may be declared to have limited eligibility." "Limited eligibility" is defined under **Rule 19** as follows: "A student who is declared to have limited eligibility shall be eligible to participate immediately in all interschool athletics, provided, however, during the first 365 days from the date of last participation at a previous school, such student may not participate in interschool athletics as a member of a varsity athletic team."

Respondent's Review Committee on January 15, 2004. Respondent's Review Committee issued its written decision on January 23, 2004, upholding Respondent's 365 days from his last athletic competition at Carmel.

APPEAL TO THE CASE REVIEW PANEL

Petitioner appealed to the Indiana Case Review Panel[3] on February 3, 2004. The parents notified the Case Review Panel on February 11, 2004, that they wished for the proceedings in this matter to be open to the public. Hearing was set for February 23, 2004, in the offices of the Indiana Department of Education. The parties were advised of their respective hearing rights.

Prior to the hearing, counsel for Petitioner and Respondent agreed to submit this matter to the Case Review Panel based on the facts in the record supplemented with respective argument. The CRP agreed to accept the stipulated facts in the record. The CRP did not accept conclusory statement that appeared in Respondent's final written determination.

The parties appeared by counsel on February 23, 2004. Former CRP-Member Mark Mason served as the Chair-Designee. He was joined by CRP Members Pamela A. Hilligoss; James Perkins, Jr.; Michael L. Ross; Brenda K. Sebastian; Earl H. Smith, Jr.; Terry Thompson; and Brad Tucker. The parties, by counsel, provided argument to the CRP. The CRP deliberated in the presence of the parties.

The following Findings of Fact and Conclusions of Law are based upon the record as a whole, as stipulated by the parties. All Findings of Fact are based upon evidence presented that is substantial and reliable. I.C. 4-21.5-3-27(d).

FINDINGS OF FACT

1. Petitioner is a 17-year-old junior (d/o/b August 3, 1986)) enrolled in Park Tudor High School.

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[3]The Case Review Panel (CRP) is a nine-member adjudicatory body appointed by the Indiana State Superintendent of Public Instruction. The State Superintendent or her designee serves as the chair. The CRP is a public entity and not a private one. Its function is to review final student-eligibility decisions of the IHSAA when a parent or guardian so requests. Its decisions are to be student-specific, applying only to the case before the CRP. The CRP's decision does not affect any By-Law of the IHSAA but is student-specific. In like manner, no by-law of the IHSAA is binding on the CRP. The CRP, by statute, is authorized to uphold, modify, or nullify any student eligibility decision by the Respondent. I.C. 20-5-63-7(c)(3).

He attended Carmel High School for his freshman and sophomore years of high school, where he participated on the freshman soccer and baseball teams during his ninth grade year and the junior varsity baseball team during his sophomore year.

2. After Petitioner's parents moved to the Indianapolis metropolitan area in 1998, Petitioner enrolled at Park Tudor, a private school, for his middle school years (grades 6, 7, and 8). His legal settlement is in Carmel. His residence has not changed during any time relevant herein. He enrolled in Carmel for his freshman and sophomore years. He initially enrolled in Carmel because it was a larger school with more curricular and extracurricular opportunities. At the conclusion of his freshman year, Petitioner had a 3.7 grade point average. During his sophomore year, he occasionally experienced some difficulties in school work, but these difficulties were relative. He completed his sophomore year with a 3.3 grade point average.

3. After his sophomore year, Petitioner wanted to return to Park Tudor. Carmel is the largest high school in the state with an enrollment of approximately 3,500 students. Park Tudor's high school program has about 400 students. Petitioner represents that the smaller school and smaller class sizes are better suited to his academic progress and learning style. In addition, Petitioner had made close friends at Park Tudor during his middle school years and wished to rejoin his friends and acquaintances. Petitioner does not fault the academic or athletic programs at Carmel.

4. Petitioner also has two (2) younger siblings. The parents would like to have all three children at the same school. Park Tudor is their school of choice for this purpose.

5. Carmel, when it completed the Transfer Report form, did not indicate there was a need for any additional investigation.[4] Carmel did not represent the Petitioner's transfer was either for athletic reasons or the result of undue influence. Carmel, nevertheless, indicated Petitioner should have "limited eligibility" but never explained sufficiently its rationale for this determination. Carmel declined to sign the "Hardship Verification" box on the Transfer Report form that indicated the transfer would be in "the best interest of the student and there is no athletic-related motives surrounding the transfer." Carmel concedes there are no athletic-related motives but has never indicated how it determines what is in a student's "best interest" or what this actually means to Carmel. Carmel had opportunities to explain to the parents and the Petitioner what "best interest" met, including face-to-face meetings and other correspondence. The Carmel principal was no more forthcoming with the Park Tudor principal when Park Tudor broached the subject. Carmel has never explained how it interpreted this phrase nor how it applied it.

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[4]The form was actually completed by the principal's designee, an assistant athletic director.

CONCLUSIONS OF LAW

1. 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 "state action," and for this purpose, makes the IHSAA analogous to a quasi-governmental entity. IHSAA v. Carlberg, 694 N.E.2d 222 (Ind. 1997), *reh. den.* (Ind. 1998). The Case Review Panel has been created by the Indiana General Assembly to review final student eligibility decisions with respect to interscholastic athletic competition. I.C. 20-5-63 *et seq*. The Case Review Panel has jurisdiction when a parent or guardian invokes the review function of the Case Review Panel. In the instant matter, the IHSAA has rendered a final determination of student-eligibility adverse to the Petitioner. The Petitioner invoked his statutory right to review. The Case Review Panel has jurisdiction to review and determine this matter.

2. **Rule C-19-6.1** provides immediate eligibility for a student who transfers schools without a change of residence by the student's parent or guardian. Petitioner does not meet any of the criteria under this Rule, nor does Petitioner argue that he does. Accordingly, Rule C-19-6.1 does not apply.

3. It is conceded the Petitioner did not transfer for any athletically related motive or as the result of undue influence, two significant purposes of the Respondent's **Rule 19**. Respondent argued that in order for the Student to invoke the equitable principles underlying **Rule C-17-8.5**, he would have to show: (a) He continues to reside with his parents; (b) His transfer is in his "best interest" and there are no athletic-related motives surrounding the transfer; and (c) the principals at Carmel and Park Tudor must affirm the transfer is in the "best interest" of the student and there are no athletic-related motives surrounding the transfer. Respondent appeared to argue that simply because the Carmel principal or his designee would not "sign off" on this, the matter is closed and any further review by any adjudicative body–apparently including the CRP–is absolutely precluded. The CRP rejects this martinet approach. Respondent cited to IHSAA v. Carlberg, 694 N.E.2d 222 (Ind. 1997), *reh. den.* (Ind. 1998) but for reasons not altogether clear. Neither the Petitioner nor the CRP has questioned any of the student-eligibility by-laws implicated in this matter. The Carlberg case did involve a student transferring from a private school to, ironically, Carmel High School. However, Carlberg occurred before the General Assembly created the CRP, thus creating an alternative means for review. The Indiana Supreme Court recognized athletics as "an integral part of [the] constitutionally mandated process of education" in Indiana under the State's Constitution, Art. 8, Sec. 1. 694 N.E.2d at 229. The Supreme Court recognized that education is, by constitution, the principal responsibility of the General Assembly. The Supreme Court struggled with how to conduct administrative review of IHSAA decisions and not final administrative decisions of the CRP. The General Assembly altered this equation when it created the CRP and specifically authorized parents to initiate the CRP process where the parents disagree "with a decision of

the association concerning the *application* or *interpretation* of a rule of the association..." I.C. 20-5-63-7(b) (emphasis added). The legislature intended for there to be an avenue for parents to seek an independent review. The CRP's decisions, unlike the dilemma described by the Supreme Court in Carlberg, would be subject to the standard judicial review established under the Administrative Orders and Procedures Act, I.C. 4-21.5 *et seq*. There is no basis in judicial or statutory law for Respondent's position that its interpretation cannot be challenged by a parent before the CRP, or that the CRP must accept a preclusive effect because one of Respondent's member schools will not sign-off on the application or explain its disinclination to do so.

4. In this case, Petitioner provided sufficient rationale for his application under Respondent's Hardship Rule. This effectively shifted the burden. Respondent did not shift it back. Instead, it relied upon an absolute approach that it now describes as a mandatory condition precedent: Both principals must sign off before Respondent can act. As noted, this is inadequate. Respondent relies upon Carmel, but Carmel was equivocal in a key element: How did it interpret and apply the "best interest" portion of the Hardship Rule, especially when it conceded the important elements undergirding Rule 19 (no athletically related reason for transfer; no undue influence)? At one point, Carmel referred to "school loyalty," which has nothing to do with the "best interest" of the Petitioner. It also referred to the issue of whether Carmel had not been suited to Petitioner's needs, which may have been a legitimate area of inquiry, but no inquiry was ever conducted, especially regarding Petitioner's academic concerns. Petitioner expressed concerns over his deteriorating academic situation, but Carmel did not inquire of his teachers even though it had the Transfer Form for over three weeks. When the parents and Park Tudor persisted in their attempts to find out the reasons for Carmel's decision, no answer was forthcoming. The CRP does not know how Carmel interpreted or applied Respondent's by-law. Carmel's activities–or lack thereof–upon which Respondent relies, do not give fair warning of what is prohibited or proscribed. Carmel must have interpreted and applied this language and this rule in some fashion, but all affected parties and the CRP must guess at what Carmel meant. But this isn't the function of the CRP. Petitioner satisfactorily explained his rationale for application of the Hardship Rule. Respondent did not satisfactorily explain why Petitioner should not have full eligibility.

DISCUSSION

For the first time, Respondent attempted to invoke its Rule C-17-10. This is a by-law of Respondent, a private organization, that attempts to curtail the functions of the Case Review Panel. As has been explained often and should be readily apparent by now, the CRP is a creature of statute and not the creation of a private organization's by-laws. It was created by the General Assembly in furtherance of the legislature's constitutional powers under Art. 8, Sec. 1 with respect to student eligibility decisions in interscholastic athletics sanctioned by Respondent. The CRP is a part of the executive functions of State government. The Respondent does not have the authority to enact by-laws that serve to dictate

to an entity of State government. These by-laws are not recognized by the CRP and will have no effect. This is placed in a separate discussion section because it was not raised as an issue in this hearing.

Based on the foregoing Findings of Fact and Conclusions of Law, and following discussion of the merits of the case on the record, the Case Review Panel decided as follows:

ORDER

1. Respondent's determination that Petitioner shall have only limited eligibility is reversed. Petitioner shall have full eligibility. This vote was 7-1.

DATE: February 26, 2004

/s/ Mark Mason, Chair
Indiana Case Review Panel

APPEAL RIGHT

Any party aggrieved by the decision of the Case Review Panel has thirty (30) calendar days from receipt of this written decision to seek judicial review in a civil court with jurisdiction, as provided by I.C. 4-21.5-5-5.