

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter of K.E.,)	
Petitioner)	
And)	CAUSE NO. 061108-50
The Indiana High School Athletic Assoc. (IHSAA),)	
Respondent)	
)	
Review Conducted Pursuant to)	Open Hearing
I.C. 20-26-14 <i>et seq.</i>)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Procedural History

K.E., (hereafter, “Petitioner”) presently attends New Albany High School (hereafter, “New Albany”), a public high school located in the New Albany-Floyd County Consolidated School district. Petitioner previously attended Ben Davis High School (hereafter, “Ben Davis”) in the MSD Wayne Township school district. On April 10, 2006, Petitioner enrolled in New Albany.

On April 10, 2006, Petitioner, through New Albany, requested athletic eligibility. The Respondent, by its Assistant Commissioner, on May 10, 2006, found Petitioner was athletically ineligible at New Albany pursuant to Respondent’s **Rule C-19-4**.¹ **Rule C-19-4** addresses transfers for primarily athletic reasons, and provides, in part, as follows:

To preserve the integrity of interschool athletics and to prevent or minimize recruiting, proselytizing and school ‘jumping’ for athletic reasons, regardless of the circumstances, student athletes who transfer from one school to a new school for primarily athletic reasons or as a result of undue influence will become ineligible to participate in interschool athletics in the new school for a period not to exceed 365 days from the date the student enrolls at the new school . . .

Petitioner, by his Custodial or Guardian, Michael R. McDaniel, requested a review of the Assistant Commissioner’s decision of ineligibility to play sports at any level for the 2006-2007

¹Respondent 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, but many of the by-laws are “common” to all potential athletes and, hence, begin with “C.” **Rule C-19-4** is “common” to both genders. (All references are to the 2006-2007 by-laws of Respondent.)

season by Respondent's Review Committee.² The Respondent's Review Committee conducted its review on August 10, 2006. The Review Committee determined that the transfer from Ben Davis to New Albany was primarily for athletic reasons in violation of **Rule C-19-4**.³ The Review Committee issued its decision on August 23, 2006, upholding the Commissioner's decision declaring Petitioner ineligible at New Albany for 365 days from the date of his enrollment at New Albany.

APPEAL TO THE CASE REVIEW PANEL

Petitioner appealed to the Indiana Case Review Panel⁴ on November 8, 2006. On November 9, 2006, the parties were notified of their hearing rights. The record from the investigation and review by Respondent was requested and received. The record was copied and provided to each participating member of the CRP. On November 27, 2006, Legal Counsel for Petitioner notified the CRP that the parent wished for the proceedings in this matter to be open to the public. Hearing was set for December 15, 2006, at Room 233, State House, Indianapolis, Indiana. The parties received timely notice of the proceedings. On December 8, 2006, Legal Counsel for Respondent requested subpoenas be issued to Petitioner K.E., and Michael McDaniel. On December 12, 2006, subpoenas were issued for these two witnesses to Legal Counsel for Respondent who was advised that the party requesting such subpoenas is responsible for service of subpoenas and financially responsible for any associated witness fees.

On December 15, 2006, the CRP convened.⁵ The Petitioner appeared and was represented by counsel. The Respondent appeared by counsel. Prior to the hearing a brief pre-hearing conference was conducted. Petitioner submitted nine (9) additional exhibits marked P-1 through P-9.

²Date stamped as received on July 11, 2006.

³Respondent's by-laws provide the following definition: **Transfer for primarily athletic reasons** - A transfer for primarily athletic reasons includes, but is not limited to:

- a. a transfer to obtain the athletic advantage of a superior, or inferior, athletic team, a superior athletic facility or a superior coach or coaching staff;
- b. a transfer to obtain relief from a conflict with the philosophy or action of an administrator, teacher or coach relative to athletics;
- c. a transfer seeking a team consistent with the student's athletic abilities;
- d. a transfer to obtain a means to nullify punitive action taken by the previous school.

⁴The 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 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. 20-26-14-6(c)(3).

⁵Six members were present: Thomas Huberty, Ph.D., Chair; Christi L. Bastnagel; Scott F. Eales; Stephen Psikula; Earl H. Smith, Jr.; and Denise Gilliland.

- P-1 (P-1-1) Letter from Jette Hadley, School Counselor, New Albany High School To Whom It May Concern, dated December 12, 2006; (P-1-2) New Albany High School Transcript Report for K.E., dated 12/12/06; (P-1-3) New Albany High School Grade Report for 2006-2007 Academic Year for K.E., dated 12/12/06.
- P-2 M.S.D. of Wayne Township (Ben Davis High School) Student Transcript for K.E., dated 08/04/2006.
- P-3 Letter from John Barthold, History Instructor, New Albany High School To Whom It May Concern re: Progress Report for K.E., dated December 8, 2006.
- P-4 Letter from Kristen McKinley, Mathematics Teacher, New Albany High School To Whom It May Concern, dated December 8, 2006.
- P-5 Letter from Kevin R. Schultz, Visual Arts Educator, New Albany High School To Whom It May Concern, dated December 8, 2006.
- P-6 Letter from Amy Pendleton, Business Teacher, New Albany High School to Indiana State Board of Education, dated December 7, 2006.
- P-7 Letter from Donna Marie Burden, Art Educator, New Albany High School To Whom It May Concern, dated December 7, 2006.
- P-8 Letter from Suzanne E. Ponder, English Teacher, New Albany High School, dated December 6, 2006.
- P-9 Affidavit of Testimony By John Riley, dated December 14, 2006.

Respondent objected to exhibits P-3, P-4, P-5, P-6, P-7, P-8, and P-9. The CRP noted the objections, but admitted all of the exhibits into the record except for exhibit P-9 which was not admitted into evidence. The CRP agreed to the separation of witnesses. Testimony was provided under oath or by affirmation.

In consideration of the testimony and record, the following Findings of Fact and Conclusions of Law are determined.

FINDINGS OF FACT

1. Petitioner (K.E.) is a 17-year-old junior (d/o/b June 29, 1989) who was enrolled at Ben Davis until April of 2006. In the fall of 2005 he was a member of the junior-varsity basketball team at Ben Davis until he was released from the team in December 2005.
2. A decision was made by his grandmother (legal guardian) and Michael McDaniel (3rd party custodian) that K.E. should move from his grandmother's home in MSD Wayne Township school district to the home of Mr. McDaniel in Sellersburg, Indiana. On April 11, 2006, K.E. was enrolled at New Albany.
3. On April 10, 2006, Petitioner, through New Albany, requested athletic eligibility. The *IHSAA Athletic Transfer Report* (hereafter, "Report") part II Reasons For Transfer indicated that the reasons for transfer was that the student moved to New Albany School district to live with AAU Basketball coach/director. The "Yes" box was checked to question 1 "Is the change of residence bona fide?" The "Yes" box was checked to question 2 "Is there evidence that the transfer is for athletic reasons?" The "Yes" box was checked to question 3 "Is there any evidence that the transfer is a result of undue

influence?” In part IV question 2, the reason given for the transfer for the receiving school was “Academics.” The action recommended by the receiving school was that the student be declared ineligible according to **Rule C-19-4**.

4. Ben Davis, the sending school, completed its portion of the Report for Petitioner, and indicated that the student should be declared ineligible according to **Rule C-19.4**. The sending school in part III also checked the “Yes” box to question 5 “Is there any additional investigation that should be made?” The sending school in part III also answered “to play basketball” to question 6 “In your opinion, why did the student withdraw?” John Clark, Ben Davis’ Assistant Athletic Director, signed the Report with a date of 4-19-2006, for the sending school.
5. On May 10, 2006, the IHSAA’s Assistant Commissioner, ruled that K.E. was ineligible at New Albany under IHSAA **Rule C-19-4**.
6. On August 23, 2006, the IHSAA’s Review Committee upheld the decision of the Assistant Commissioner, which declared K.E. ineligible at New Albany for 365 days from his enrollment at New Albany.
7. At the hearing, K.E.’s grandmother testified that K.E.’s transfer to live with Mr. McDaniel was not a transfer for basketball reasons. She testified that K.E. needed help to improve his grades and that he could not improve his grades while continuing to live with her. K.E. contacted Mr. McDaniel and told him he needed help.
8. A *Custodial Statement and Agreement Third-Party Custody* form was completed by Mr. McDaniel which indicated that the parents are unable to support the student and the student is living with the guardian or custodian, who is supporting and caring for the student. The student was not placed with the guardian or custodian for the primary purpose of attending school in the school corporation of the guardian’s or custodian’s residence. At the hearing, Mr. McDaniel testified that K.E.’s grades had improved since he came to live with him.

CONCLUSIONS OF LAW

1. Although the IHSAA, the Respondent herein, 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 “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. 20-26-14 *et seq.* The Case Review Panel has jurisdiction when a parent, guardian, or eligible student 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 student. Petitioner has timely sought review. The Case Review Panel has jurisdiction to review and determine this matter. The Case Review Panel is not limited by any by-law of Respondent. The Case Review Panel is authorized by statute to either uphold, modify, or nullify the Respondent’s adverse eligibility determination.

2. 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.
3. Limited eligibility is defined in Respondent's by-laws, under the definition section, as: 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.

ORDER

1. Respondent's determination that K.E. is ineligible is modified. Petitioner shall have limited eligibility until January 31, 2007, and will have full eligibility on February 1, 2007 if he achieves a 2.5 average Grade Point Average (GPA) in core classes. If Petitioner does not achieve a 2.5 GPA in core classes by January 31, 2007, then K.E. will have limited eligibility until April 12, 2007. This was determined by a unanimous vote.

DATE: January 12, 2007

/s/ Thomas Huberty, Ph.D., 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.