BEFORE THE
CASE REVIEW PANEL

In The Matter of John Zdonek,	)	
Petitioner	)	
and	)	**CAUSE NO. 000828-2**
The Indiana High School Athletic Assoc.,	)	
Respondent	)	
	)	
Review Conducted Pursuant to	)	
I.C. 20-5-63 *et seq.*	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Procedural History

Petitioner has, during all times relevant herein, resided with his parents within the Portage Township Schools in Porter County, Indiana. As such, he has legal settlement within that school district.[1] He was enrolled in the Portage Township Schools through middle school, but transferred to Valparaiso Community Schools during the 1997-1998 school year in order to attend the high school.[2] Valparaiso Community Schools is also located in Porter County. At the time, the family contemplated moving to and establishing legal settlement within the Valparaiso Community Schools. The move did not occur. As a consequence, the Petitioner paid tuition to Valparaiso Community Schools and played on its freshman football team.

On September 15, 1998, Petitioner withdrew from Valparaiso Community Schools and enrolled in the Lake Station Community School Corporation in neighboring Lake County, Indiana. He attended the Lake Station's Edison Junior-Senior High School for his sophomore year. The proffered reason for the

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[1]"Legal settlement," as defined and applied by I.C. 20-8.1-1-7.1 and I.C. 20-8.1-6.1-1, refers to the status of a student with respect to the Indiana public school corporation that has the responsibility to permit the student to attend its local public schools without the payment of tuition.

[2]The final written decision of the IHSAA Review Committee indicates Petitioner enrolled as a freshman during the 1996-1997 school year. However, this seems to be a clerical error. Accordingly, the appropriate school year has been included in this decision.

transfer was for the Petitioner to be closer to his home in Portage. However, there was testimony before the Indiana High School Athletic Association (IHSAA) that Petitioner's father had some unspecified conflict with Valparaiso Community Schools. Petitioner sought full athletic eligibility at Lake Station; however, because the transfer from Valparaiso to Lake Station was without a corresponding change of residence by Petitioner's parents, he was granted "limited eligibility."[3] Petitioner did not seek a "hardship" exception or otherwise appeal this decision.[4] Petitioner played on the junior varsity football team during the 1998-1999 school year and on the varsity team the next school year, 1999-2000. Petitioner paid tuition to Lake Station in order for him to attend school there. However, Petitioner did not complete the school year at Lake Station.

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[3]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 most of the by-laws are "common" to all potential athletes and, hence, begin with "C." Rule 19, which governs transfers and eligibility, is common to all athletes. **Rule C-19-5** addresses transfer eligibility where the student's parent or guardian does change residence, while **Rule C-19-6** addresses transfer eligibility where there has been no corresponding change of residence. "Limited eligibility" is defined under **Rule 19** as meaning a student may participate in all interschool athletics, except on varsity athletic teams, for a period of 365 days from the date of last participation at the previous school. The "limited eligibility" rule can be applied to situations where, as here, there has been no corresponding change of residence. See **Rule C-19-6.2**. All references herein are to the IHSAA's By-Laws for the 2000-2001 school year.

[4]**Rule C-17-8** is the IHSAA's "Hardship Rule." Generally, the "Hardship Rule" allows the IHSAA "to set aside the effect of any Rule [with some exceptions] when the affected party establishes, to the reasonable satisfaction of [the IHSAA], 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
c. There exists in the particular case circumstances showing an undue hardship that would result from enforcement of the Rule." **Rule C-17-8.1**.

The IHSAA, on its own initiative, can invoke the "Hardship Rule," but a member school cannot. **Rule C-17-8.2**. The IHSAA provides some guidance and examples as to what would be considered a "hardship." See **Rule C-17-8.4** (e.g., injury, illness or accidents that result in a student being unable to meet a basic requirement; substantial changes in the financial condition of the student or his family, although these would have to be permanent and "significantly beyond the control of the student or the student's family") and **Rule C-17-8.5**, which applies directly to **Rule 19** (the "Transfer Rule"), specifically **Rule C-19-6**, which allows the IHSAA to grant full eligibility where (a) the student establishes "the transfer is in the best interest of the student and there are no athletic related motives surrounding the transfer," and (b) the principals of the sending and receiving schools affirm in writing that the transfer is in the best interests of the student and there are no athletic-related motives.

On April 6, 2000, Petitioner enrolled in the Portage Township Schools and began attending school there for the last grading period of the spring semester. The proffered reasons for the transfer included alleged threats and harassment at the Lake Station school. Petitioner's mother described the threats, in part, as "verbal death threats" and that the perpetrators of such threats have threatened Petitioner and the family at the family residence in Portage. She added the transfer from Lake Station to Portage was not for athletic reasons but the family was "making sure of his Senior eligibility for football in the fall." Neither Lake Station (sending school) nor Portage (receiving school) recommended full eligibility. The IHSAA, through one of its assistant commissioners, determined Petitioner did not meet the criteria for hardship consideration and, on April 27, 2000, granted Petitioner "limited eligibility" (see *footnote 3*).

The initial IHSAA decision was based on several factors:

1. The principal at the Lake Station's Edison Junior-Senior High School described the threats as "unsubstantiated allegations." He spoke with Petitioner and his mother on April 7, 2000. It was during this conversation that he learned Petitioner had already transferred to Portage four days earlier. He also learned of the alleged threats, which he offered to investigate. Petitioner's mother declined the offer and refused to provide the principal with any information regarding the alleged incidents.

2. The football coach at Portage High School was contacted several times by Petitioner's mother prior to the transfer. The coach reported the mother stated she wanted Petitioner to play football for a successful program in order to enhance his athletic scholarship prospects. She also wanted to be assured that a prior incident where Petitioner slashed a tire would not be held against him. In a later conversation, the mother and Petitioner indicated they were looking forward to Petitioner's playing football at Portage High School.

3. The vice-principal at Portage met with Petitioner and his mother at the time of his enrollment. Petitioner related to the vice principal that he transferred because of harassment and threats from students and coaches at Lake Station. Either Petitioner or his mother also mentioned that the Lake Station football coach had retired (March 11, 2000), and that Portage's football conference would grant Petitioner greater exposure and competition. Because of the apparent athletic reason for the transfer, the vice-principal directed Petitioner and his mother to the Portage athletic director to complete an IHSAA transfer report.

4. The athletic director discussed the reason for the transfer report with Petitioner and his mother. The mother indicated the reason for transfer was due to death threats, but they were hoping Petitioner could play football for Portage. The athletic director informed them that Petitioner would likely get only "limited eligibility," and, as he would be a senior, he would not be permitted to participate on the junior varsity team. The mother stated this was "not acceptable." Petitioner's mother disputes this account, asserting instead that she advised the athletic director of the intention to enroll Petitioner in Portage only for the conclusion of the

spring semester of 2000 and then enroll in Andrean High School. The athletic director does not recall this aspect of the conversation.

5. The Portage guidance counselor enrolled Petitioner in the spring of 2000. Neither Petitioner nor his mother indicated that their intention was to attend Portage only for that grading period, nor did they indicate an intent to enroll the next school year at Andrean High School, a nonpublic school located in Lake County. Petitioner was enrolled and, with his mother, selected classes for the 2000-2001 school year at Portage and presented the selection to the guidance counselor on April 7, 2000. Petitioner's mother disputes this account, asserting instead that she advised the guidance counselor of the intention to enroll Petitioner in Portage only for the conclusion of the spring semester of 2000 and then enroll in Andrean High School. The guidance counselor does not recall this aspect of the conversation.

Petitioner did not appeal the April 27, 2000, determination. The assistant commissioner spoke with Petitioner's mother regarding the determination and offered to consider additional information. Petitioner's mother indicated that she was in the process of divorce and could no longer afford the tuition at Lake Station. Because she was asserting financial hardship (see **Rule C-17-8.4**, *footnote 4*), the assistant commissioner recommended the mother collect all financial information and present this for consideration. Subsequent to this conversation, the assistant commissioner did learn that the Lake Station superintendent was advised in February of 2000 by Petitioner's mother of harassment of Petitioner at Lake Station. There is no indication why this information was not forwarded to the building principal.

The assistant commissioner contacted Petitioner's mother in June 7, 2000. It was at this time that the assistant commissioner was informed the Petitioner would be transferring to Andrean High School. The assistant commissioner expressed doubts that Petitioner and his mother would be able to substantiate a claim of "financial hardship" because Andrean charges tuition.

Petitioner completed an IHSAA Transfer Report on July 14, 2000, seeking full eligibility at Andrean. The application sought relief under the "Hardship Rule" due to threats at Lake Station; the dying wish of Petitioner's grandmother in 1995 that he attend Andrean; the pending divorce; enrollment in Andrean in April of 2000 could not be accomplished because of course conflicts; and their intention was to enroll Petitioner in Portage only for the spring semester and then enroll him in Andrean for the 2000-2001 school year.

Petitioner was a kicker for the Lake Station football team. He has been recruited by numerous colleges and universities. He is concerned that if he is ineligible for varsity competition, he will not be as heavily recruited.

On August 8, 2000, the Transfer Report was submitted to the IHSAA. The following day, the IHSAA's associate commissioner, under **Rule C-19-6.2**, granted Petitioner "limited eligibility." This

decision was appealed to the internal "Review Committee" of the IHSAA (see **Rule C-17-4**). The Review Committee conducted a hearing on August 21, 2000, and received testimony and exhibits. After consideration of same, the Review Committee, in a written decision dated August 25, 2000, upheld the decision granting Petitioner "limited eligibility" for the 2000-20001 school year.

APPEAL TO THE CASE REVIEW PANEL

Petitioner sought review of the final decision of the IHSAA by initiating the instant action before the Case Review Panel (CRP), created by P.L. 15-2000, adding I.C. 20-5-63 *et seq*. to the Indiana Code. The 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. Its function is to review final student-eligibility decisions of the IHSAA, when a parent or guardian so requests.

Petitioner initiated this review through a facsimile transmission received by the Indiana Department of Education on behalf of the CRP on August 28, 2000. Both Petitioner and the IHSAA were advised that same date of their respective hearing rights. The parent was presented with a form to permit the disclosure of student-specific information that, in effect, would make the review hearing by the CRP open to the public. The parent signed and dated the form, and returned it the same date to the Indiana Department of Education.

The parties were advised thereafter of the date, time, and place for the conduct of the review hearing. The review hearing was set for August 31, 2000, beginning at 10:00 a.m. (Indianapolis time) at 251 E. Ohio St., Indianapolis, in the Fourth Floor Conference Room. Notice of the review hearing was posted, as required by Indiana's Open Door Law, I.C. 5-14-1.5 *et seq*. CRP members were provided with copies of the record before the IHSAA.

Petitioner challenges the determination of the IHSAA. He asserts he is entitled to full eligibility for the 2000-2001 school year, and that his circumstances should qualify as an exception to the Transfer Rule by application of the Hardship Rule. In order for Petitioner to prevail, he must–through substantial and reliable evidence–establish that he is entitled to the Hardship Rule exceptions provided under **Rule C-17-8**, notably **Rule C-17-8.4** (General Considerations, where certain conditions beyond the control of the school, coach, student, parents, or other affected parties resulted in a failure to satisfy IHSAA eligibility criteria, including injury, illness, or accidents as well a substantial change in the family's financial condition) and **Rule C-17-8.5** (where to grant the transfer would be in the student's best interest and there were no athletically motivated circumstances and the principals from the sending and receiving schools affirm in writing their respective beliefs the transfer would be in the best interest of the student and was not athletically motivated).

The CRP notes that the IHSAA's By-Laws have stated philosophical underpinnings for many of its Rules. The "Transfer Rule" (**Rule 19**) has such statements, notably that athletic participation is a privilege and that uniform standards for eligibility are necessary to protect the opportunities of bona fide

students to participate in interscholastic competition in an educational setting that is fundamentally fair and equitable to all. In addition, attendance at member schools is primarily to obtain an education and not participate in athletics. Uniform rules serve as a deterrent to students who would transfer schools for athletic reasons as well as those who would seek to recruit student athletes to attend a particular school.

On August 31, 2000, a review hearing was conducted pursuant to the aforementioned Notice of Hearing. A brief pre-hearing was conducted prior to the taking of testimony. Petitioner submitted several documents related to purported conversations with teachers at Willowcreek Middle School in the Portage Township Schools; application for admission at Andrean; Petitioner's grades from Lake Station; a letter from Andrean regarding a meeting with Petitioner's mother on March 3, 2000; and a letter from a physician regarding Petitioner's insomnia and stress. The IHSAA objected to the documents based upon their hearsay nature. The CRP acknowledged the hearsay nature of the documents, but admitted them into the record. Based upon the testimony and evidence presented at the review hearing, and the record as a whole, the following Findings of Fact, Conclusions of Law, and Orders are determined.

FINDINGS OF FACT

1. Petitioner is 18 years old (d/o/b August 2, 1982) and is presently a senior enrolled in Andrean High School, a nonpublic school that is a member of the Indiana High School Athletic Association (IHSAA). Petitioner is an academically capable student who participates in football, principally as a kicker.

2. At all times relevant herein, Petitioner has had legal settlement within the boundaries of the Portage Township Schools.[5]

3. Although Petitioner attended Portage Township Schools through middle school, he enrolled in the Valparaiso Community Schools for his freshman year. He participated in football at Valparaiso High School his freshman year.

4. At the beginning of his sophomore year, on September 15, 1998, Petitioner withdrew from Valparaiso Community Schools and enrolled in the Lake Station Community School Corporation, purportedly to be closer to home. Although there were references to a dispute between Petitioner's father and Valparaiso that precipitated the transfer, the articulated reason

[5]Because Petitioner did not have legal settlement in Valparaiso or Lake Station, he was required to pay approximately $1,200 tuition a school year as a "cash transfer" under I.C. 20-8.1-6.1-3.

for transfer was to be closer to home.[6]

5. Petitioner was granted "limited eligibility" for his sophomore year because the transfer occurred without a corresponding change in residence. Petitioner did not challenge this determination. He played on the junior varsity team during the 1998-1999 school year.

6. Petitioner played varsity football for Lake Station during his junior year, the 1999-2000 school year. At the beginning of the football season, in August of 1999, the football coach had expressed frustration at the small number of potential football players and considered resigning or retiring as the football coach. These remarks were reported in the local media. Although Lake Station performed better than expected as a football team, the coach relinquished his position on March 11, 2000.

7. Petitioner enrolled in Portage Township Schools on April 6, 2000. However, prior to enrolling in Portage, Petitioner and his mother sought out the head football coach for Portage to advise him that Petitioner would be attending Portage and playing football that fall for Portage. Petitioner also wanted to ensure that an act of vandalism committed by Petitioner on the football coach's car in 1994 would not affect any relationship. Approximately two weeks later, Petitioner and his mother again approached the Portage football coach, this time at a restaurant where a local radio show was being transmitted. Petitioner reiterated his desire to play football for Portage that fall. The coach advised that his eligibility status had yet to be resolved. Petitioner's mother reported Petitioner would be attending summer football-related camps.

8. Although Petitioner sought to enroll in Andrean on March 3. 2000, his enrollment at that time was denied because of problems coordinating courses from Lake Station with Andrean's curriculum. Upon enrolling at Portage, however, Petitioner did not indicate to the guidance counselor, the vice principal, or the athletic director that the Petitioner intended to attend Portage only for the spring semester and then transfer to Andrean for the 2000-2001 school year. Petitioner and his mother did tell a middle school teacher of this intent, but the testimony was not specific as to when this conversation occurred. Petitioner also completed Portage course selections for the 2000-2001 school year.

9. Petitioner's proffered reason for transferring to Portage was due to alleged threats and harassment at Lake Station. Petitioner described his tenure at Lake Station as uneasy except

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[6]Petitioner's father and mother are now divorced. There was testimony that marital discord was a factor in the stress purported to be experienced by Petitioner, but the father was not present to testify nor were any physicians who examined the Petitioner. Whatever the reasons may have been for the transfer from Valparaiso, the articulated reason provided contemporaneously with the transfer itself cannot be set aside based on unverifiable subsequent information.

with faculty, but relationships with his peers notably deteriorated when he began to wear clothing bearing Andrean's name to the Lake Station school. The high school population at the Lake Station school is approximately 400 students. The principal testified that he is generally aware of problems in his school. However, he was not aware of any problems Petitioner was experiencing at Lake Station and was not informed of any until after Petitioner had transferred to Portage. Although the principal offered to investigate the allegations, the Petitioner and his mother declined the offer and did not provide the names of any of the students allegedly threatening Petitioner.[7]

10. The head football coach for Valparaiso High School testified that he spoke with Petitioner and his mother on April 22, 2000, during which time they related that Petitioner would be playing football for Portage that fall. Neither Petitioner nor his mother indicated his intent to enroll in Andrean for the fall season.

11. On April 27, 2000, the IHSAA determined that Petitioner would have "limited eligibility" for the 2000-2001 school year due to his transfer to Portage without a corresponding change in residence. This meant that Petitioner would not be able to participate on the varsity football team that fall. The mother indicated to the Portage athletic director that "limited eligibility" would not be acceptable. However, this determination by the IHSAA was not appealed.

12. Subsequent conversations between an assistant commissioner for the IHSAA and Petitioner's mother indicated the mother wished for the IHSAA to consider Petitioner's case under the Hardhship Rule, notably for financial reasons. The assistant commissioner asked for documentation of financial hardship, but these were not forthcoming.

13. The assistant commissioner again contacted Petitioner's mother, this time on June 7, 2000. It was at this time she was informed that Petitioner would be transferred to Andrean for the 2000-2001 school year. The assistant commissioner expressed doubt that "financial hardshp" could be established since Andrean charges tuition. Nevertheless, on June 14, 2000, Petitioner, through Andrean, submitted an IHSAA transfer report, seeking full eligibility. Relief under the Hardship Rule was requested, based upon the alleged threats at Lake Station, the intent to enroll at Portage only for the completion of the spring semester of the 1999-2000 school year, and family considerations (divorce and the concomitant financial strain). Petitioner's mother

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[7]There was also testimony that the threats were not confined to the school. There were reported incidents involving Petitioner's neighborhood and home. The extent of these incidents is difficult to determine. A witness for Petitioner stated that a rock had been thrown with the word "traitor" written on an attached message. However, upon cross examination, the witnesses acknowledged she did not actually read the message but was told of its contents by Petitioner's mother. Petitioner's mother did not testify as to the message at all, nor was the written document presented.

asserts that it was the intent that Petitioner be enrolled in Andrean because that is where she attended high school and it was a wish of Petitioner's deceased grandmother expressed in 1995 prior to her death. Petitioner's mother asserts that Petitioner had not been enrolled in Andrean as a freshman in deference to the father's wishes.

14. The IHSAA again found Petitioner was entitled to "limited eligibility." Although Petitioner did appeal this determination, the record before the IHSAA and the CRP does not contain any documentation that has a direct bearing on financial hardship.

CONCLUSIONS OF LAW

1. The Case Review Panel, as created by P.L. 15-2000, is established to review final decisions of the Indiana High School Athletic Association regarding student-eligibility for participation in interscholastic athletic competition. Petitioner timely requested review by the CRP. Accordingly, the CRP has jurisdiction to review this matter.

2. Petitioner has attended four (4) separate high schools in four years. Although he transferred from Lake Station due to alleged threats, his intent was to remain enrolled in Portage for the 2000-2001 school year. Although Petitioner's mother disagrees with the recollections of some school officials, neither Petitioner nor Petitioner's mother contradicted the testimony of the head football coaches for Portage and Valparaiso. Both coaches testified, without contradiction, that Petitioner intended to pay football for Portage in the fall of the 2000-2001 school year.

3. The decision of the IHSAA that Petitioner had "limited eligibility" for the 2000-2001 school year at Portage is not disturbed by Petitioner's subsequent transfer to Andrean. There is no credible evidence that Petitioner or his mother were mislead by any party regarding the effect of the April 27, 2000, determination of "limited eligibility" or that it could be avoided by transferring to another IHSAA-member school, albeit a nonpublic school.

4. Petitioner fails to provide reliable or substantial evidence that there exists a financial hardship. No documents have been supplied that indicate the financial terms of the divorce nor that enforcement of a divorce decree would be unavailing. Documentation supplied during the IHSAA proceedings indicate that the father is employed. Additionally, if a financial hardship did exist, remaining in Portage–where Petitioner has legal settlement and could attend school tuition free–rather than transferring to Andrean–where tuition would be approximately $4,000–would be more logical. Petitioner has not substantiated the existence of a financial hardship such that the Hardship Rule should be invoked to avoid the consequences of the multiple transfers over four years.

ORDER

Based on the foregoing, it is determination of the Case Review Panel, by a 9-0 vote, that the decision of the IHSAA, granting Petitioner "limited eligibility," be and is hereby upheld.

DATE: September 7, 2000

Suellen Reed, Chair
Case Review Panel

APPEAL RIGHT

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