

**BEFORE THE
CASE REVIEW PANEL**

In The Matter of Jorge Escobar,)	
Petitioner)	
and)	CAUSE NO. 001026-4
The Indiana High School Athletic Assoc., Inc.,)	
Respondent)	
)	
Review Conducted Pursuant to)	
I.C. 20-5-63 <i>et seq.</i>)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Procedural History

Petitioner is a foreign exchange student from Columbia, who enrolled on August 15, 2000, in the White River Valley High School (hereafter, “White River”), which is part of the White River Valley School Corporation in Greene County. White River has fewer than 350 students in grades 9-12 and does not offer a full array of varsity sports sanctioned by the Indiana High School Athletic Association (IHSAA). On August 3, 2000, and August 21, 2000, Petitioner, with White River’s assistance, submitted to the Indiana High School Athletic Association (IHSAA) an Application for Foreign Exchange Student Eligibility Request. The Application verifies that Petitioner’s exchange program was approved, that placement at White River was secured before his departure from his home country, and that he met the requirements of **Rule C-19-7**.¹ Petitioner was attending White River under the auspices

¹The IHSAA has promulgated a series of by-laws as 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 eligibility and transfer but is more commonly known as the “Transfer Rule,” is common to all athletes. **Rule C-19-7** addresses specifically the eligibility of a foreign exchange student. In order to qualify for eligibility at the varsity level, a foreign exchange student must, in part, not have completed the secondary education program in the student’s home country, meet all IHSAA eligibility rules (including scholarship and age rules, neither involved in this matter), and the foreign exchange program must be approved both by the IHSAA and the Council on Standards for International Education Travel (CSIET). The IHSAA requires that foreign exchange programs, to be approved,

of the “EF Foundation for Foreign Study” (hereafter, “EF”).² Petitioner was not aware that EF had been “non listed” by the Council on Standards for International Educational Travel (CSIET) (see *footnote 1*), an organization that, since 1984, has set standards for international youth exchange programs and upon whose standards the IHSAA relies. The CSIET standards are endorsed by a number of school-related groups.

EF has had a history of problems with its CSIET listing. It was “conditionally listed” in 1996, listed with an advisory in 1997, listed with a “strong advisory” in 1998, and again conditionally listed in 1999. On April 12, 2000, CSIET notified EF it was “non listed.” The IHSAA concedes that Petitioner may not have been aware of the action by the CSIET, or at least did not understand the ramifications under the IHSAA’s rules. Although Petitioner did not seek to attend school specifically in Indiana, when advised that he would be coming here, he was particularly interested because of his involvement and interest in basketball. Correspondence between the Indiana host family and Petitioner often referred to basketball possibilities at White River. Petitioner expressed interest in participating in varsity basketball at White River in order to hone his skills in preparation for future collegiate and professional opportunities. EF documentation indicates that participation in the foreign exchange program does not assure athletic participation. The fourth standard of the CSIET states that an organization shall not promote its program as providing opportunities for athletic participation, although there is no showing that EF did this. Documentation indicates otherwise. On August 22, 2000, Petitioner was notified by the IHSAA that, due to the status of EF with respect to CSIET’s non-listing, he would not be able to participate in varsity sports but, rather, would be granted “limited eligibility.”³

Petitioner played junior varsity tennis this past fall, a sport that is not his particular interest, but had

must, *inter alia*, be under the auspices of an established national entity, assign students in such a fashion as to insure that the placement was not the result of undue influence to attend a particular school for athletic reasons, and consult with the principal of the IHSAA-member school prior to placement.

²The official name is “EF Educational Foundation for Foreign Study.” Under I.C. 20-8.1-6.1-6(b), a foreign student visiting in Indiana under any student exchange program approved by the Indiana State Board of Education is considered a resident student with legal settlement in the school corporation where the foreign exchange student resides. The student may attend a school in the school corporation in which the family with whom the student is living resides without payment of tuition. The “EF Educational Foundation for Foreign Study” is on the list of the United States Department of State’s “Organizations with High School Exchange Visitor Program Designation,” which is the list used by the State of Indiana and disseminated to public schools.

³“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. All references herein are to the IHSAA’s By-Laws for the 2000-2001 school year.

hoped to play varsity basketball at White River. “Limited eligibility” would limit him to junior varsity participation. Petitioner is 6’3” tall and is now 18 years of age (d/o/b August 15, 1982). He played basketball on his local, state, and national team in Columbia. Competition at the junior varsity level, Petitioner believes, would not be beneficial to him. Petitioner and White River appealed to the IHSAA Executive Committee the eligibility determination on September 15, 2000. A hearing was conducted on October 11, 2000, with a written decision issued on October 18, 2000.

The IHSAA concluded upon review that there existed no evidence that Petitioner’s transfer to White River was “for primarily athletic reasons” or was the result of “undue influence” (see **Rule 20**). However, because his transfer was without a corresponding change of residence by his parents (see **Rule C-19-6.1**)⁴, the IHSAA restricted his participation under the “limited eligibility” to junior varsity competition for one year, which would be the extent of his foreign exchange program.

The IHSAA does have a “Hardship Rule.”⁵ However, the IHSAA did not believe the Petitioner or his

⁴**Rule C-19-6.1** contains instances where student’s transfer without a corresponding change of residence by his parents will not prevent a student-athlete from enjoying full eligibility. These instances include, but are not limited to, intervention of a court (wardship), moving to reside with one of the student’s parents where the parents are divorced (with limitations on multiple moves), the former school closed, the student enrolled in the wrong school district by mistake but transferred immediately upon discovering the error, or the student is emancipated and has established a “bona fide residence” in the school district.

⁵**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.

circumstances provided “reliable, credible and probative evidence...that each element of the hardship rule has been met,” adding that the burden of proof remains with Petitioner in this regard. Accordingly, the IHSAA ruled that there was no evidence that strict enforcement of the “Transfer Rule” would fail to serve to accomplish the purposes of the rule.⁶ However, the main reason for denying full eligibility had to do with the relationship between EF and CSIET. The IHSAA, in its Review Committee decision of August 25, 2000, wrote in part at Conclusion No. 5:

...EF was not listed as approved by CSIET as required by the eligibility rules. The IHSAA relies on CSIET, and its listings, to assure that the sponsoring organizations with which the IHSAA deals, such as EF, maintain strict control over the placement and supervision of students and in a manner which assures that there is and can be, no athletic consideration in the placement of an exchange student at a host family or at the school enrolled. Should a sponsoring organization, such as EF, fail to meet all the CSIET standards, such as the standard requiring the organization to exercise adequate managerial control to prevent substandard activity from happening or developing, which includes, for example, failing to have the student placed by the national organization and not the local organizer, and failing to have placement and school enrollment established before the students leave their home country, athletic consideration could become a part of the process. This problem (allowing the process to be exposed to manipulating) is the exact type of problem the IHSAA seeks to eliminate through enforcement of the transfer rule (i.e., prohibiting circumstances which could result in athletic transfers). Here, it appears that [Petitioner’s] host family was part of the selection process with the local organizer. By strictly enforcing the rule (requiring full compliance with the approval process), the purposes of the transfer rule are served and accomplished, generally, and the foreign exchange rule purposes in particular.⁷

⁶The 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.

⁷This statement contains only one actual fact (EF was not listed by CSIET) and one apparent fact (host family and local organizer participated in selection), although this latter finding is couched in rather vague language. The remainder of the statement lacks any factual determinations by the IHSAA. There is no showing that EF committed any of the untoward acts in Petitioner’s situation, nor is there any evidence that White River—or anyone on its behalf—exercised undue influence on Petitioner to induce him to enroll in White River in order to participate on its basketball team. The IHSAA found

The IHSAA also determined in Conclusion No. 6 that strict enforcement of its rule would also further other purposes of the rule, specifically:

- [Petitioner] will displace an existing bona fide student from participating;
- Granting an exception in these circumstances will disrupt the framework in which interscholastic athletic competition is taking place;
- [Petitioner's] participation on the varsity squad under these circumstances will deviate from the uniform standards established by the eligibility rules; and
- [Petitioner's] varsity participation could set a precedent for other students to obtain full eligibility, even though they failed to meet all of the requirements of the foreign exchange rule.⁸

The IHSAA concluded that Petitioner “failed to show that strict enforcement of the transfer rule will not accomplish one or more goals of the rule.”

The IHSAA also rejected any other application of the Hardship Rule, notably the “spirit of the Rule” and the “undue hardship” provisions that would excuse a strict application of IHSAA rules. The IHSAA indicated that it has established a “bright line” requirement for foreign exchange students. In essence, a “bright line” requirement for foreign exchange students precludes any consideration or application of the Hardship Rule for such students. The IHSAA acknowledged this: “To permit a waiver of the rule because the foreign students did not know of the program’s non-lisitng would render the foreign exchange framework meaningless. The spirit of the rule would be violated if relief from the rule were granted in these circumstances....” IHSAA Conclusion No. 7.

There was no showing of “undue hardship,” the IHSAA concluded, because his “limited eligibility” status would still enable him to participate, albeit on the junior varsity level, in sports.

APPEAL TO THE CASE REVIEW PANEL

The IHSAA’s Review Committee issued its written decision on October 18, 2000. 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. The CRP is a public entity and not a private one. Its function is to review final student-eligibility decisions of the IHSAA,

just the opposite.

⁸It is noteworthy that decisions by the Case Review Panel do not establish precedent. Its decisions apply only to the student-eligibility case before it. I.C. 20-5-63-7(d)(1).

when a student, 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.

Petitioner initiated this review through a facsimile transmission received on October 26, 2000, by the Indiana Department of Education on behalf of the CRP. Both Petitioner and the IHSAA were advised on October 27, 2000, of their respective hearing rights. Petitioner's counsel 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 on November 3, 2000, 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 November 9, 2000, beginning at 1:00 p.m. (Indianapolis time) at 251 E. Ohio St., Indianapolis, in the Fourth Floor Conference Room. Notice of the review hearing was posted, as required of public agencies by Indiana's Open Door Law, I.C. 5-14-1.5 *et seq.* CRP members were provided with copies of the record as established 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 and the Foreign Exchange Student Eligibility 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 considerations provided under **Rule C-17-8**, notably **Rule C-17-8.1**, which allows the effect of an IHSAA rule to be set aside where a party has established “to the reasonable satisfaction” of the adjudicator that 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.

On November 9, 2000, a review hearing was conducted pursuant to the aforementioned Notice of Hearing. Prior to the conduct of the review hearing, a pre-hearing was conducted. Both parties tendered additional documents: Petitioner tendered three additional documents, which were marked P-1 through P-3 inclusive. Respondent tendered four documents, which were marked as Exhibit 1 through Exhibit 4 inclusive. Both parties objected to each others exhibits based upon the hearsay nature of the documents. The Case Review Panel, by unanimous vote, accepted both parties' documents into the record, the hearsay nature of same notwithstanding. Based on the testimony and documentary evidence presented at the review hearing, the following Findings of Fact and Conclusions of Law are determined.

FINDINGS OF FACT

1. Petitioner, a native of Columbia, is an eighteen-year-old (d/o/b August 15, 1982) foreign exchange student attending White River Valley High School through a foreign exchange program (EF) approved for placing students under Indiana statute, I.C. 20-8.1-6.1-6(b).
2. Petitioner initiated enrollment in the foreign exchange program in February of 2000 when he and his family paid approximately \$8,000.00 to EF. When he enrolled in the foreign exchange program, he was not aware of what state he would be assigned to. He learned in May of 2000 that he would be assigned to a host family in Indiana who lived in the White River school district.
3. Petitioner, who is an avid basketball player in his native country, was aware of Indiana's basketball reputation and hoped that participation in interscholastic competition in Indiana would help him improve his skills, especially as he hopes to play basketball at the collegiate level.
4. Correspondence between Petitioner and the host family often included references to basketball. However, this had more to do with stressing commonalities. The host family had a son on the varsity basketball team, the Petitioner and the host family are of the same faith tradition, the host family wished to expose their children to a native speaker of the Spanish language, and the host family has a dog, the latter a wish expressed by Petitioner during the application process.
5. Petitioner enrolled in White River on or about August 15, 2000. On August 3, 2000, Petitioner, through White River, submitted the Application for Foreign Exchange Student Eligibility Request, a document required by Respondent of its member schools in order to assess eligibility of a foreign exchange student. The Petitioner supplemented this application on August 21, 2000. It was at this time that Petitioner, his host family, and White River learned that EF had been "non-listed" by the Council on Standards for International Education Travel (CSIET), an organization that provides an accrediting process upon which the Respondent relies. The Respondent does not conduct any independent investigations of such programs. Due to EF's "non-listing," the IHSAA determined Petitioner would have only "limited eligibility."
6. The Council on Standards for International Education Travel (CSIET) has nine (9) general standards against which it evaluates foreign exchange programs. The resulting list of accredited programs is relied upon by various organizations, including the IHSAA. The nine (9) general standards, all of which contain subparts, are: (1) Educational Perspective (clearly established educational goals related to an international experience); (2) Organizational Profile (demonstrated competency in international education travel, including well defined organizational structures and sufficient personnel to administer programs effectively); (3) Financial Responsibility (financial viability, annual audit); (4) Promotion (responsible media presentations, professional and ethical presentation of purposes, activities, and sponsorship);

(5) Student Selection and Orientation (screenings and student selection must be designed and implemented in order to ensure students are adequately prepared for the experience); (6) Student Placement (ensure the host family is compatible with the criteria for the program, coordinate placement with U.S. high school involved, ensure placement is not based upon athletic abilities); (7) Operations (adequate care and supervision of students, including regular contact by local representatives); (8) Student Insurance (ensure adequate health and accident insurance coverage for the students); and (9) Adherence to Government Regulations.

7. The EF Foundation for Foreign Study (“EF”) was notified by CSIET by letter dated April 12, 2000, that it would not be listed by CSIET. EF and CSIET had been involved in a continuing dialogue regarding EH’s compliance with the aforementioned standards. This dialogue resulted in the issuance of advisories and conditional listings dating from 1996.⁹ However, the CSIET found that violations of its standards continued, notably of Standards 6 and 7 (Student Placement and Operations), as well as Standard 9.¹⁰ The violations of Standard 6 involved primarily the failure to ensure school enrollment through contact with the public schools in Wichita, Kansas, prior to the arrival of thirteen students, although there were other singular instances of this occurring as well. The screenings of host families in some cases were inadequate, while in other situations, host families were not secured until after students arrived in the United States.
8. EF sent a letter dated May 11, 2000, “To whom it may concern,” advising of CSIET’s action to remove EF from its list of accredited programs. However, the letter downplayed the infractions that led to the “non-listing” and did not explain the potential ramifications to students studying in the U.S. under the EF program. Petitioner was aware that participation in the foreign exchange program did not guarantee participation in interscholastic athletic competition.
9. At the time Petitioner enrolled in the EF program in February of 2000, the EF program was listed as accredited by the CSIET, albeit conditionally due to the aforementioned violations of Standards.
10. Petitioner did participate in junior varsity tennis this past autumn, although the opportunities to play competitively were few due to the small size of White River Valley (the athletic director’s testimony placed the student population in grades 9-12 at about 310 students), as well as the

⁹There is some dispute as to the exact nature of EF’s listing by CSIET in years past, but there is no apparent dispute as to its listing for the 1999-2000 and 2000-2001 school years.

¹⁰EF is apparently also under a probation designation with the U.S. State Department and the United States Information Agency (USIA) but failed to report this timely to CSIET. The USIA list is the list employed under I.C. 20-8.1-6.1-6(b). See *footnote 2*.

relatively small sizes of the member schools in White River's conference. Few small schools are able to field junior varsity sports. White River, according to the testimony of its athletic director, fields teams in twelve of the 20 sports sanctioned by the IHSAA, but oftentimes students will participate in more than one sport during a particular season in order to field a complete team. White River does have a junior varsity basketball team, although it has relatively few players to choose from in fielding freshman, junior varsity, and varsity teams (testimony indicated that eighteen players total would be available for all three teams). Petitioner's basketball skills would not place him within the top eight (8) varsity players. He would likely play some at the varsity level, but there are concerns about his playing at the junior varsity level due to his size (6'3"). Petitioner could participate in track and field in the spring, but White River does not have sufficient numbers to have a junior varsity track and field team.

11. The mother of the host family had several contacts with the local representative of EF. During these contacts, she indicated her preferences for a foreign exchange student. The local EF representative indicated there were two students available, the Petitioner and a prospective student from Brazil. The mother stated the student from Brazil played soccer (White River does not have a soccer team) and spoke Portuguese. The family was interested in a Spanish-speaking student. His involvement and interest in basketball were perceived as positive factors because the host family's oldest son played on the varsity basketball team and athletic involvement would aid in Petitioner's acclimation. Also, the family had a dog, a wish expressed by Petitioner, and the host family and Petitioner are of the same faith tradition.

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 is "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. P.L. 15-2000, adding I.C. 20-5-63 to the Indiana Code. The Case Review Panel has jurisdiction when a parent or guardian may invoke 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. The parent has timely sought review. The Case Review Panel has jurisdiction to review and determine this matter.
2. Petitioner is attending school under an approved foreign exchange program, as contemplated by I.C. 20-8.1-6.1-6(b). However, the right to attend school does not have a guarantee of participation in interscholastic athletic competition.

3. There is no showing of undue influence or recruiting of Petitioner to attend White River Valley schools. Petitioner's attendance at the school is consistent with the goals and aims of the approved foreign exchange program.
4. Under **Rule C-19-7**, a foreign exchange student, such as Petitioner, must meet several criteria in order to participate in interscholastic varsity competition as sanctioned by the IHSAA. One of the criteria is that the foreign exchange program under which the student attending school in the United States be approved by the CSIET. **Rule C-19-7.1(d)**. Although Petitioner was not aware of EF's status, and EF did not timely inform him of the ramifications of its being "non listed" by CSIET, it is undisputed that Petitioner does not meet the criteria for eligibility under **Rule C-19-7.1**. Petitioner is studying in the United States under a foreign exchange program not approved by CSIET.

ORDER

The Case Review Panel, by an 8-1 vote, upholds the decision of the Indiana High School Athletic Association to accord "limited eligibility" to Petitioner for the 2000-2001 school year.

Date: November 13, 2000

/s/ John L. Earnest

John L. Earnest, Chair

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.

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