

**BEFORE THE
CASE REVIEW PANEL**

In The Matter of S.C.,)	
Petitioner)	
and)	CAUSE NO. 010627-12
The Indiana High School Athletic Assoc.,)	
Respondent)	
)	
Review Conducted Pursuant to)	
I.C. 20-5-63 <i>et seq.</i>)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Procedural History

S.C. (d/o/b May 12, 1984) is a 17-year-old junior presently enrolled in the Rochester High School in the Rochester Community School Corporation (hereafter, "Rochester"). During his freshman and part of his sophomore years, he had been a student at the Logansport Community High School in the Logansport Community School Corporation (hereafter, "Logansport"). His family had been involved in the Logansport community in several respects. S.C. participated in football and track and field while he attended Logansport. Unfortunately, he violated Logansport substance abuse policies on two occasions by consuming alcohol, once during his freshman year and once during his sophomore year. On the first occasion, S.C. and his father reported the transgression. The second alcohol offense occurred on a Thursday evening before a football playoff game. S.C. was arrested, but neither local law enforcement nor the student reported this incident to Logansport. He played in the game that Friday night. When Logansport learned of the violation, it suspended S.C. from athletic competition under its school policy for 365 days. This suspension is set to expire on October 28, 2001.

S.C. readily acknowledges that he possesses great confidence in his athletic prowess and has not been reticent in informing his coaches and fellow athletes of this. He believed he should have more playing time. His father apparently concurred, although he never confronted S.C.'s coaches regarding this. While serving with the Logansport booster club during the football season of S.C.'s sophomore year (school year 2000-2001), the father did indicate he was upset with the utilization of his son's football abilities. These remarks were to a fellow booster club member who also serves as a lay assistant track coach for Logansport. The lay assistant track coach apparently commiserated with the father, relating his own experiences the previous year when he did confront the Logansport basketball coach regarding his son's playing time. The father had volunteered to help the other booster club member with a half-time fundraiser but failed to appear. The booster club member did not solicit the assistance of anyone

else and actually conducted this fund-raiser by himself for the remainder of the football season. The father eventually resigned from the booster club.

The father is a general insurance agent, offering life insurance and financial planning. He has “subagents” located in several areas of north-central Indiana. “Subagents” may be offering other lines of insurance, but they enter into agreements with the father and he provides assistance in establishing such services. This broadens the client base for all and is described as mutually beneficial. The father has had as many as three subagents in the Rochester area. He was traveling to Rochester at least three times a week to work with the new subagents. One of the subagents had scheduled a meeting in December of 2000 with a client to discuss financial planning. The subagent invited the father to participate and assist. The client was the head football coach and athletic director for Rochester. After the business was conducted, the father informed the football coach that he was moving his business to Rochester and his family as well. He informed the football coach of his son’s current suspension from athletic competition by Logansport and inquired as to how Rochester might address the suspension. The football coach allowed that he did not know as he had not encountered this circumstance before.

The father’s father (the grandfather) was, during this period, in his last illness. The family did not move from Logansport because their Logansport residence was closer to the grandparents’ home. The grandfather passed away on December 28, 2000. Thereafter, the Logansport residence was advertised for sale and was sold. In addition, the father located a suitable business site in Rochester and began to relocate his office. The family eventually found a home that was nearly double the square footage of the Logansport residence and had lake access. S.C. and his sister, then an eighth grade student, moved in February of 2001 and enrolled in Rochester. When S.C. was enrolled, Rochester advised that it would honor the suspension levied by Logansport. S.C. and his father have never challenged this, although S.C. at one time expressed to a Logansport assistant football coach that S.C. might be able to play sooner when he transferred to Rochester.

Rochester completed the “IHSAA Athletic Transfer Report,” as required by **Rule C-19**.¹ Rochester

¹The Indiana High School Athletic Association (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-19-4**, which governs transfers for primarily athletic reasons, prohibits a student from participating in interscholastic athletic competition for 365 days from the date of enrollment in the new school. This rule is intended “[t]o preserve the integrity of interschool athletics and to prevent or minimize recruiting, proselytizing and school ‘jumping’ for athletic reasons...[.]” especially where there has been “undue influence.” Respondent also defines under **Rule 19** “transfer for primarily athletic reasons,” in relevant part as “a transfer to obtain relief from a conflict with the philosophy or action of an administrator, teacher or coach relative to athletics[.]” All references herein are to the IHSAA’s By-

represented that S.C. was not transferring for athletic reasons, nor was the transfer the result of “undue influence.” In addition, Rochester stated the change of residence was “bona fide.”² Logansport, however, believed S.C.’s move was for athletic reasons³ and violated **Rule C-19-4**. Rochester, when it realized Logansport was challenging the transfer, amended its statements on the transfer form to indicate that “Dad’s business and their home was relocated to Rochester” as a means of clarifying that Rochester did not believe the move was primarily for athletic reasons (IHSAA Transcript, pp. 131, 163).

Both schools submitted documents to the IHSAA in support of their contentions. An IHSAA Assistant Commissioner reviewed the documents and made further inquiries with school officials, and, on March 22, 2001, ruled that S.C. violated **Rule C-19-4** and would be ineligible for 365 days from enrollment, or until February 26, 2002.⁴ S.C. timely appealed this determination under **Rule C-17-4** to the IHSAA’s Review Committee, which received additional documentation, discussion, and argument at a meeting on June 7, 2001. On June 18, 2001, the Review Committee issued its written decision, upholding the original determination by the Assistant Commissioner.

APPEAL TO THE CASE REVIEW PANEL

Laws for the 2000-2001 school year, which were in effect at all relevant times.

²The IHSAA defines “bona fide change of residence” under **Rule 19** as a fact-sensitive matter that must require the original residence be abandoned as a residence (sold, rented, or otherwise disposed of, or in the process of being sold, rented, or otherwise disposed of), and that no member of the immediate family be residing there. In addition, the student’s entire immediate family must make the change and take with them their household goods and furniture. Under **Rule C-19-5**, “A student who transfers with a corresponding change of residence to a new district or territory by the student’s custodial parent(s)/guardian(s) may be declared immediately eligible, provided the change of residence was bona fide.” The IHSAA does not define “bona fide” other than the fact-sensitive inquiry referenced above. The IHSAA Case Review Committee, in its written decision of June 18, 2001, indicated it was employing the following definition of “bona fide”: “Genuine, without fraud or deceit, with permanent intent.” (IHSAA Transcript, p. 160).

³It is noteworthy that the IHSAA’s transfer form refers to “athletic reasons” but its by-law, **C-19-4**, is concerned with transfers that are *primarily* for athletic reasons.

⁴Petitioner raised during these proceedings several pertinent questions, including why Logansport did not conduct an investigation that satisfied IHSAA **Rule C-17-2.1**, which requires the principal, “[i]f time and the circumstances permit,” to notify a party that he is being investigated. There is no dispute that neither the parent nor S.C. were ever notified. Since the Case Review Panel has reversed the IHSAA’s decision, the application of this rule will not be discussed in this opinion.

Petitioner sought review of the Respondent's final decision 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, 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 June 27, 2001, by the Indiana Department of Education on behalf of the CRP. Both Petitioner and the Respondent were advised on July 3, 2001, of their respective hearing rights. Petitioner was presented with forms to permit or deny the disclosure of student-specific information that, in effect, would make the review hearing by the CRP open or closed to the public. Petitioner elected to have the hearing open to the public. He notified the CRP by facsimile transmission of July 11, 2001. On July 13, 2001, counsel for Petitioner notified the CRP of his representational capacity.

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 22, 2001, beginning at 10:00 a.m. (Indianapolis time) at Room 233 of the Indianapolis State Capitol Building (State House). 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 appeared in person and by counsel. Respondent appeared by counsel and its Commissioner and Assistant Commissioner.⁵

A brief pre-hearing conference was conducted. No additional documents were submitted by either party, although Petitioner later submitted during testimony by Petitioner's father several letters from booster club members. Respondent objected to these documents based upon their hearsay nature. The objection was noted, but the documents were admitted into the record with the hearsay qualification applicable. No Conclusion of Law has been based solely upon these documents.

The record from the proceedings before Respondent's Review Committee was received. Additional testimony was taken. Based upon the foregoing, the following Findings of Fact, Conclusions of Law,

⁵CRP Member Debra Stevens recused herself prior to the hearing on August 22, 2001, because she was familiar with several of the participants in this dispute. During the course of testimony, CRP Member Mark Mason realized that he had attended college with one of the witnesses. The parties were advised of this past relationship, but neither party objected to Mr. Mason's continued involvement in this matter.

and Orders are determined.

FINDINGS OF FACT

1. Petitioner is a two-sport athlete (football, track and field). He is presently seventeen years old (d/o/b May 12, 1984) and a junior at Marion High School. Until approximately February 26, 2001, Petitioner had been enrolled as a student at Logansport.
2. Petitioner, during his freshman year (school year 1999-2000) consumed alcohol in violation of Logansport's substance abuse policy, which is contained in the student handbook (see IHSAA Transcript, pp. 115-121). Petitioner and his father voluntarily reported the violation, which resulted in Petitioner's suspension from interscholastic athletic competition for 42 calendar days.
3. During Petitioner's sophomore year (school year 2000-2001), Petitioner again violated the Logansport substance abuse policy. He was arrested by local law enforcement on a Thursday evening; however, neither Petitioner nor law enforcement advised Logansport of this incident. Petitioner participated in a varsity football game Friday evening. Logansport learned of the arrest that weekend and, pursuant to its policy, suspended Petitioner from interscholastic athletic competition for 365 calendar days or until October 28, 2001.
4. Petitioner's father is a general agent for an insurance company, with specialty lines involving life insurance and financial planning. He has been self-employed for over 21 years. He has developed business relationships with other insurance agents that have been mutually beneficial. Through these professional relationships, six "subagents" are working presently with Petitioner's father to offer the father's specialty lines. These subagents are located in the north-central portion of Indiana. Petitioner's father has also been involved in a number of civic endeavors in Logansport, including the booster club for the school, which raises funds for athletic awards. It was in this role that he had a conversation with a fellow member of the booster club during which he expressed dissatisfaction with the playing time afforded his son. The booster club member related his own difficulties the previous year when he actually confronted his son's basketball coach regarding his son's playing time.⁶ The father had earlier agreed to assist the

⁶The fellow member of the booster club is also a lay assistant coach for the track team. Although the IHSAA Review Committee referenced Logansport's representation that the father had "had a conflict with the Logansport coaching staff" (IHSAA Transcript, p. 164), there was no evidence or testimony to support this allegation. The father's discussion with the fellow booster member was within the context of booster activities and regarding football, not track and field.

fellow booster member in a half-time fund raiser, but failed to do so. The booster member did not seek anyone else's assistance, and actually operated the half-time fund raiser alone for the rest of the football season.

5. Petitioner's father had indicated to his family as early as April 1999 that a move to Rochester was a possibility. Petitioner, sometimes vociferously, disagreed with such a move because he did not wish to have to leave an area he was familiar with and he did not wish to leave Logansport and the athletic conference to which it belonged. Logansport belongs to a well known athletic conference and participates in football at the 4A level. Rochester, a smaller school, participates at the 2A level, and has not had a student-athlete recruited by a Division I university for football in at least the past 22 years. Petitioner related his disenchantment with a potential move to his friends, including a fellow member of the football team, who testified to the pending move prior to the start of the 2000-2001 school year. The primary reason for a move was related to establishment of a more centralized location from which the father could consult and assist subagents. Testimony indicates that Rochester is, in fact, a more centralized location than Logansport, in this regard.
6. Such a move was dependent to some degree on the deteriorating health of the father's father (the grandfather), who was terminally ill and required periodic hospitalizations. Nevertheless, Petitioner's mother and father made inquiries and "Sunday drives" in the Rochester area to view potential business and residential sites. An appraisal of the Logansport residence was conducted on or about August 11, 2000 (IHSAA Transcript, pp. 88-93), which was in advance of the start of the 2000-2001 school year. The grandfather died on December 28, 2000.
7. In December of 2000, a subagent in Rochester scheduled a meeting with a client to discuss financial planning. The subagent invited Petitioner's father to assist in this discussion. The client was the athletic director and head football coach for Rochester. Following the business meeting, the father advised that his business and family would be relocated shortly to the Rochester area. He also advised the football coach that his son was presently under suspension for violation of Logansport's substance abuse policy and wanted to know what effect this would have upon his son's enrollment in Rochester. The coach advised that he had not encountered this issue before and advised further that he did not know at present what the requirements are for such an occasion.
8. Petitioner's father began to sever his civic ties with Logansport, including resigning from the booster club, which he did by a formal letter of resignation. Petitioner, during this time, had a discussion with Logansport's offensive coordinator regarding his impending move to Rochester. During this conversation, Petitioner indicated his hope that the Logansport suspension may not prevent him from participating in football during the 2001-2002 school year. Petitioner never stated the move was to avoid this penalty, and the family has never sought to avoid it.

Nevertheless, this conversation caused concern for Logansport that the move might be to avoid the school's penalty and might be primarily for athletic reasons. The offensive coordinator documented these remarks (see IHSAA Transcript, p. 102) and testified regarding the conversation.

9. The family listed its Logansport residence for sale in January and sold it rather quickly. It located a property with lake access in Rochester and closed sometime around February 26, 2001. The Rochester residence is nearly twice the size of the Logansport residence, and its access to a lake would be an additional asset. During this time, the Petitioner's father relocated his business to Rochester as well. A number of conversations with various business-related acquaintances indicating the business-related nature of this move have been documented, including testimony from a subagent indicating the father inquired of the Rochester subagents whether the presence of his business in their area would pose any problems.
10. Petitioner was enrolled in Rochester on or about February 26, 2001. Rochester and Logansport completed the IHSAA Athletic Transfer Report, as noted *supra*. It was at this time that Rochester—and eventually the family—became aware of Logansport's concerns. Logansport submitted documentation in support of its allegation the move was primarily for athletic reasons (IHSAA Transcript, pp. 102, 106-114). The Transfer Request Report was received by the IHSAA on March 6, 2001. Following its procedures, an Assistant Commissioner reviewed the Athletic Transfer Report and investigated by making further inquiries of officials from Logansport and Rochester. No inquiries were made of the family. On March 22, 2001, the IHSAA found the Petitioner transferred primarily for athletic reasons under **Rule C-19-4** and determined him further ineligible for interscholastic athletic competition until February 26, 2002. A consideration in the IHSAA's determination was that the Petitioner was transferring to avoid the Logansport suspension. There is no allegation that Rochester has exerted any undue influence in this matter.
11. Evidence and testimony indicate that Rochester is permitting Petitioner to practice with its football team but is otherwise honoring the suspension levied by Logansport for Petitioner's violation of its substance abuse policy.

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. P.L. 15-

2000, adding I.C. 20-5-63 *et seq.* to the Indiana Code. 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. The student has timely sought review. The Case Review Panel has jurisdiction to review and determine this matter.

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. Although the timing of the change of residence and business site are unfortunate, the evidence and testimony support a conclusion that the change of residence was, indeed, a “bona fide” change of residence in that, utilizing the definition employed by the IHSAA Case Review Committee (IHSAA Transcript, p. 160), the change of residence was “genuine, without fraud or deceit, [and] with permanent intent.” The discussion of a possible move occurred prior to the Petitioner’s first violation of Logansport’s policies. Petitioner voiced his objections and reservations about such a move to friends and family, sometimes vociferously. The family had an appraisal conducted of the Logansport residence in August of 2000. These situations occurred in advance of the start of the 2000-2001 school year, and prior to the second offense that resulted in the 365-day suspension. The Petitioner’s father articulated sufficient business-related reasons for such a move, and the newly acquired residence is, by all accounts, superior to the Logansport residence that was sold. The father indicated the move was stalled during the grandfather’s last illness. The move did not occur until the grandfather died on December 28, 2000. The change of residence was a “bona fide” change of residence.
4. The IHSAA’s By-Laws for **Rule 19** define “Transfer for Primarily Athletic Reasons” as follows:

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.
4. Although the father did speak to the athletic director/head football coach of Rochester, the father did not seek out this school official to discuss athletics. The conversation occurred during a business meeting arranged by a third party. The discussion also occurred after the conduct of the business for which the meeting had been established. The father did not attempt to avoid the penalty imposed by Logansport, and the Rochester official indicated he was not presently

aware of what the requirements would be in such a situation. Later, the athletic director/head football coach informed the family that Rochester would honor Logansport's suspension. There is no indication the family ever sought to avoid the suspension levied by Logansport. Rochester is, in fact, honoring the suspension, which runs its course on October 28, 2001.

5. Petitioner did not seek to transfer to Rochester. He wanted to stay at Logansport and participate on its football team because of the overall better competition, better known conference, and potential to be noticed by a Division I university that might be interested in his football abilities. Logansport is primarily a run-oriented offense, which is better suited to Petitioner's self-estimate of his prowess. Petitioner did not seek to transfer to Rochester for any of the proscribed reasons defined under the IHSAA's **Rule 19**.
6. Although the father indicated his displeasure at the playing time his son received, the father did not confront coaches in this regard. The CRP noted, without contradiction from witnesses, that it is a fairly common occurrence for a parent (and a student-athlete) to voice disagreement over playing time. A difference of opinion is not the same as difference in philosophy. In this situation, the evidence supports a difference of opinion and nothing more. The student did not transfer primarily for athletic reasons.

ORDERS

1. The Case Review Panel, by a vote of 5-1, reverses the decision of the Respondent to deny eligibility for interscholastic athletic participation to Petitioner for 365 days from the date he enrolled in Rochester High School. The family's change of residence was a "bona fide" change of residence. The Petitioner did not transfer primarily for athletic reasons.
2. The Petitioner's suspension by Logansport, as honored by Rochester, shall remain in effect until it expires of its own accord on October 28, 2001.

DATE: August 24, 2001

/s/ 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.