

**BEFORE THE INDIANA  
CASE REVIEW PANEL**

In The Matter of R.S.,	)	
Petitioner	)	
and	)	<b>CAUSE NO. 013002-17</b>
The Indiana High School Athletic Assoc. (IHSAA),)	)	
Respondent	)	
	)	
Review Conducted Pursuant to	)	
I.C. 20-5-63 <i>et seq.</i>	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

**Procedural History**

This case, as well as its companion case determined the same date (In the Matter of A.D., **CRP Cause No. 012402-16**), presents a dispute of first impression for the Case Review Panel (CRP). Both disputes involve the application of **Rule C-15-2.2**, which involves participation in certain team sports during the school year but out of season. **Rule C-15-2.2**<sup>1</sup> reads as follows:

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<sup>1</sup>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 15**, which is concerned with participation in organized non-school sports competition, including private lessons, contains a lengthy preamble that explains the philosophical bases for the subparts found in **Rule 15**. The intent of **Rule 15** is to ensure that students have the opportunity to engage voluntarily in non-school sponsored sports provided such activities “do not interfere with the student’s educational development” and “do not conflict with “the principles of wholesome amateur athletics.” Specifically, the IHSAA is attempting to discourage “the exploitation of student athletes by over-zealous individuals and organizations who attempt to impose an obligation on the student to participate in their programs at any cost.” The rule grows out of concern that there is an increase in the “commercialism of high school athletes,” where prospective students are show-cased in a “market place” where they can display their “athletic wares.” This, in turn, has a denigrating effect upon the high school experience, undermines confidence in the high school coaches, and “gives the students an exaggerated notion of the importance of their own athletic prowess rather than reinforcing the idea that athletic ability is an endowed talent which students should use for the pleasure and satisfaction that they may derive from athletic competition.” All references are to the IHSAA’s By-Laws for

**C-15-2.2 Team Sports** (Baseball, Basketball, Football, Soccer, Softball and Volleyball)

- a. Students may participate in team sport contests as members of a non-school team provided no more than the following number of students who have participated in a contest the previous year as a member of one of their school teams in that sport are members of the same non-school team, at the same time.

Baseball– 5	Football– 6	Softball– 5
Basketball– 3	Soccer– 6	Volleyball– 3

The following standards also must be met:

- (1) Participation is limited to non-school time.
- (2) Fees, if charged, must be provided solely by the student, parent or guardian. No school or athletic funds shall be used for such when students of grades 9-12 are involved.
- (3) Participation shall be open to all students.
- (4) Merchandise and awards, other than those of symbolic value, may NOT be accepted for athletic proficiency. [Emphasis original.] Student must remain an amateur.

- b. Students may not receive instruction from individuals who are members of their high school coaching staff.
- c. Coaches, from a member school coaching staff, may not instruct students who have participated in a contest as a member of their school’s team. (Exception: Coaches may instruct their sons or daughters.)
- d. Member schools may not organize, supervise or operate athletic practices.
- e. Members schools may not provide school-owned uniforms (shorts, pants, singlets, or swimsuits, etc.) worn by the student in non-school contests.

Petitioner was a member of the soccer team at North Central High School, MSD of Washington Township (hereafter, “North Central”), located on the northside of Indianapolis. Although it is not altogether clear who initiated the instant action as it appears to be a group action, Petitioner, as a member of the group, sought a waiver of the application of **Rule C-15-2.2**, alleging the existence of a hardship under **Rule C-17-8**.<sup>2</sup> The Commissioner reviewed the request on

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the 2001-2002 school year.

<sup>2</sup>**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

November 6, 2001, but denied the relief sought. The Commissioner's decision was appealed, under **Rule C-17-4**, to the IHSAA Case Review Committee (hereafter, Review Committee) on November 27, 2001. The Review Committee conducted its proceedings on January 10, 2002, and issued its written decision on January 22, 2002, upholding the Commissioner's original decision.

In its decision, the Review Committee made pertinent findings, notably that the affected non-school athletic team is a soccer club composed of male players who are 17 years of age or younger. The soccer club is affiliated with the Indiana Youth Soccer Association (IYSA) and competes in tournaments in and outside of Indiana. Petitioner has played for this soccer club since he was eight years of age and played for the soccer club last year (2000-2001 school year); however, at the time he had not previously been a member of the North Central soccer team but had resided in Pike Township. The "Participation Rule" did not affect Petitioner. The club season begins in late fall and concludes in late spring. Tryouts occur in the fall following the conclusion of the IHSAA-sanctioned soccer season. At the fall 2001 tryouts for the 2001-2002 season, seven (7) players who played for North Central's soccer team during the 2001 high school season tried out. Six of the players made the soccer club team. Petitioner, who moved to Washington Township in January of 2001 and was a member of the North Central team during the 2001 season, was the seventh player. As a result of the "Participation Rule," Petitioner was not included on the roster, although the IHSAA did permit him to participate with the soccer club in one tournament.

Soccer club competition, especially the tournaments, provides an opportunity to be seen by potential college recruiters. Participation on this soccer club team enhances the opportunity, particularly as college recruiters are more available to observe high school talent during the club season as opposed to the IHSAA-sanctioned season.

As noted *supra*, Petitioner and his family moved to Washington Township from Pike Township in January of 2001. Petitioner's father has Lou Gehrig's disease. The family moved to a smaller house that was "better suited to their needs," and which afforded an opportunity to be closer to friends and teammates. Petitioner, who is a junior, played for North Central's soccer team in the fall of 2001. Petitioner, who struggled academically previous years, has improved his academic standing while at North Central. Petitioner was generally aware of the "Participation Rule" and its potential ramifications.

The Review Committee concluded that the "Participation Rule" contains no exceptions, and that for an exception to be made, Petitioner would have to demonstrate a "hardship" under **Rule C-17-8**. The Review Committee determined Petitioner failed to demonstrate that he qualifies under any of the categories for application of the "Hardship Rule." To permit Petitioner to play

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result from enforcement of the Rule." **Rule C-17-8.1.**

The IHSAA, on its own initiative, can grant an exception under the "Hardship Rule," but a member school cannot do so. **Rule C-17-8.2.**

on the soccer club team would allow more than six members of the North Central soccer team to play and practice outside IHSAA established seasons for high school teams to practice. This would provide “an advantage that North Central would enjoy over every other high school soccer program in the state.” This would defeat the purpose of the IHSAA’s by-law. Further, Petitioner will suffer no hardship. He wishes to play for this soccer club. However, he is not being prevented from playing on other soccer club teams. The Review Committee also concluded that the move from Pike Township to Washington Township was within the control of the family.<sup>3</sup>

### APPEAL TO THE CASE REVIEW PANEL

Petitioner appealed the adverse decision of the Review Committee to the Indiana Case Review Panel (CRP) on January 24, 2002.<sup>4</sup> The CRP notified the parties by memorandum of January 31, 2002, of their respective hearing rights. The parent was provided with a “Consent to Disclose Student Information.” The parent elected to have the hearing proceedings closed to the public. A hearing date was set for February 27, 2002, but was later cancelled due to inclement weather. The hearing was rescheduled for March 26, 2002; however, Respondent, by counsel, requested a continuance due to the unavailability of a key witness and trial conflicts of Respondent’s counsel. The CRP granted the continuance and issued an order to that effect on March 14, 2002. The hearing was rescheduled for April 8, 2002. The record of the proceedings before the Review Committee were photocopied and transmitted to CRP members on February 12, 2002.

On April 1, 2002, Respondent, pursuant to the Administrative Orders and Procedures Act (AOPA), I.C. 4-21.5-3-23, moved for Summary Judgment, asserting that there are no genuine issues of material fact that would either avoid the Participation Rule (**Rule C-15**) or invoke the Hardship Rule (**Rule C-17-8**). The Respondent’s Motion recited facts from the record and included an affidavit from Blake Ress, the Commissioner for the IHSAA. The Motion arrived when many of the CRP members were on spring vacation. Petitioner was advised of the Motion

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<sup>3</sup>The actual conclusion from the Review Committee reads: “Although the move from the previous home was certainly an event outside the control of either [Petitioner] or his parents, the decision to move into North Central school district was within the family control.” This sentence is interpreted to mean that the Review Committee believes the family could have moved into other school districts so as to avoid the application of the “Participation Rule.” This issue will be addressed *infra*.

<sup>4</sup>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 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.

for Summary Judgment and provided an opportunity to respond in writing.

Petitioner filed his Response to the Motion for Summary Judgment on April 4, 2002. Petitioner asserts the Motion was not timely served on him, noting that I.C. 4-21.5-3-23(b) requires that such Motions be “served at least five (5) days before the time fixed for the hearing on the motion.” Petitioner acknowledges that he was aware of the Motion by April 2, 2002.

The AOPA, specifically I.C. 4-21.5-3-23, does not provide a time frame within which to respond to a Motion for Summary Judgment. The Indiana Trial Rules, which are often employed where the AOPA is silent,<sup>5</sup> provide for a thirty (30) day period to respond to such Motions in civil proceedings. However, given the delays already occasioned in this matter, another continuance was not advisable. Accordingly, the parties were notified on April 4, 2002, that the CRP would entertain argument on the Motion prior to the conduct of the hearing, as already scheduled for April 8, 2002.<sup>6</sup>

The parties appeared on April 8, 2002, and argued the Motion for Summary Judgment.<sup>7</sup> After the Motion was argued, the CRP took the matter under advisement and directed Petitioner to present direct testimony, as permitted by I.C. 4-21.5-3-23(e). The proceedings were somewhat awkward in that Petitioner in this matter and Petitioner in the companion matter wished to present their cases at the same sitting, with the CRP considering testimony provided as applicable to both decisions. The CRP obliged the parties in this respect.

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<sup>5</sup>See, e.g., I.C. 4-21.5-3-22(a).

<sup>6</sup>The timing of the Motion for Summary Judgment was awkward. However, as will be noted later, the Motion for Summary Judgment was denied. Petitioner was permitted to present his case. However, for purpose of clarifying concerns raised by the Petitioner, a Motion for Summary Judgment has to be served five (5) days before the time fixed for the hearing on the motion. These are not “business days” but “calendar days.” If the fifth day falls on a weekend, holiday, or date when the Indiana Department of Education (IDOE) is closed (IDOE serves as the agent for receipt for pleadings for the CRP), the fifth day will be the next business day of the IDOE. See I.C. 4-21.5-3-2(b). I.C. 4-21.5-3-23(b) is somewhat ambiguous in that the time is computed from when the Motion for Summary Judgment is served, but it doesn’t state upon whom service is to be made in order to “start the clock.” The Motion was timely served on the CRP under I.C. 4-21.5-3-1(f), but the CRP had not set a date for hearing on the Motion, as contemplated by statute. In the interest of judicial economy, the parties were notified that they would argue the matter prior to the conduct of the hearing, but this was to be on the original date for the hearing, April 8, 2002, and not five (5) days “before the time fixed for the hearing on the motion.” In order to accommodate future parties and similar motions, such motions would need to be filed as soon as practicable in order to provide the adverse party adequate time to respond and to set a date for argument on the motion.

<sup>7</sup>CRP Members Michael L. Ross and Brad Tucker did not participate in this matter.

The following Findings of Fact are based upon the evidence in the record of these proceedings, including those matters officially noticed in this proceeding. All Findings of Fact must be, and are, based upon evidence presented that is substantial and reliable. I.C. 4-21.5-3-27(d).

#### FINDINGS OF FACT

1. Petitioner is 17 years old and enrolled in North Central High School. He participated as a member of the North Central soccer team during the 2001 IHSAA-sanctioned soccer season. Petitioner previously participated in IHSAA-sanctioned soccer as a member of the Pike High School Team.
2. Petitioner has been a member of the soccer club since he was eight years old. He has an older brother who also participated. The older brother is now in college. The family has had a continuous relationship with the soccer club for over eleven (11) years.
3. In August of 1995, Petitioner's father was diagnosed with Amyotrophic Lateral Sclerosis (ALS), also known as "Lou Gehrig's Disease." ALS is a fatal neuromuscular disease manifested through progressive muscle weakness, resulting in paralysis. Petitioner's father testified at the hearing in this matter. He advised that his condition has deteriorated significantly since December of 2001. Petitioner's father had been a practicing attorney, but can no longer engage in this or any occupation. Petitioner's mother provides the care for Petitioner's father, including assistance in feeding and other basic needs. He has lost nearly all ability to move his arms. The ALS is also beginning to affect his breathing.
4. Petitioner, after learning of his father's fatal condition, became depressed. His academic work suffered. During his sophomore year, he was hospitalized in order to receive treatment. He received instruction on homebound due to this condition.<sup>8</sup> Petitioner continues to receive counseling. He also takes medication for Attention Deficit Hyperactivity Disorder (ADHD). The ADHD reportedly affects Petitioner's concentration, ability to focus, and impulsivity.

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<sup>8</sup>Petitioner referred to the homebound as being pursuant to "Section 504." Sec. 504 of the Rehabilitation Act of 1973, as implemented by 34 CFR Part 104, requires recipients of federal educational funds (which would include all Indiana public school districts) to provide access to services and programs for qualified students with disabilities. Sec. 504 does not contain specific categories. Rather, one would have to have a "substantial limitation" on a "major life activity" and be otherwise eligible to attend public school in order to receive necessary accommodations. One such accommodation would be through homebound or hospital instruction. See 511 IAC 7-27-11 for the Indiana State Board of Education's regulation regarding this accommodation.

5. The family moved into Washington Township in January of 2001. With the older son now in college and the father not able to attend to a larger house and its yard, the family sought a smaller house with a smaller yard so that the Petitioner and his mother could manage. The family selected Washington Township because of the long-standing relationships established with other families associated with the soccer club. These families provide a support group for Petitioner and his family during the father's illness.
6. Petitioner has thrived academically at North Central. He wishes to go to college.
7. Although Petitioner had been one of the better players on the soccer club, a new coach assumed responsibility in the fall of 2001. A four-day tryout was established, although the coach missed one of the days and did not seek the input or advice of the former coach as to the skill levels and potential of former players. There is also some indication the coach was dissuaded from doing so by others associated with the soccer club. On the morning of the initial tryout, the Petitioner's father experienced a significant choking episode, which greatly alarmed Petitioner and affected his concentration. As a result, he did not perform as well in the tryouts.
8. Following the tryouts, six other members of the North Central soccer team were considered for the team roster. Petitioner was the seventh member. The "Participation Rule," which had not affected him previously because of his status as a student in Pike Township, prevents him from being included on the roster. The coach stated that Petitioner would be a member of the soccer club but for the "Participation Rule." Although the team roster to be submitted by April 15, 2002, for the upcoming "state cup" competition is an 18-man roster, at present the roster has only 17 names. A spot is being reserved for the Petitioner should his situation be considered a "hardship" under the IHSAA's rules.
9. During the course of Petitioner's attempts to seek a hardship exception to the "Participation Rule," the IHSAA did permit him to be included on the roster for the soccer club as it participated in two out-of-state competitions. The rosters for these competitions are submitted solely for the respective competition. One of the six North Central players who had made the soccer club team could not participate. Allowing Petitioner to participate still maintained the six-player limitation. The roster for the "state cup" competition cannot be changed once submitted. In addition, there was testimony that of the six North Central players currently on the roster, one of these players has an injury that will prevent his participation for at least four (4) weeks.
10. The IHSAA's "Participation Rule," as applied to team sports,<sup>9</sup> is intended to discourage year-round specialization in a particular sport, with the concomitant creation of a

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<sup>9</sup>Individual sports, such as cross country, track and field, golf, swimming, tennis, wrestling, and gymnastics, are addressed separately in the IHSAA's by-laws.

“powerhouse” in a given team sport. The rule is also intended to lessen the pressure on coaches and students to compete year-round in order to remain competitive, and would allow students to pursue other high school sports and school activities. The “Participation Rule” was described by several witnesses as designed to provide “a level playing field” for all high school teams engaged in team competition, and that the limitations on the number of student-athletes from the same high school team who can play on the same non-school, out-of-season club is designed to achieve these ends.<sup>10</sup>

11. There was credible testimony that students are experiencing increased pressures from unscrupulous coaches, both in IHSAA-member schools and on non-school sponsored teams, to “specialize” in a given team sport, with possible recriminations if a student-athlete does not do so.
12. There was direct and credible testimony from representatives of other IHSAA-member schools that permitting additional members from the same high school to participate in a non-school, out-of-season team sport provides a decided advantage. This, in turn, encourages other coaches, student-athletes, and parents to seek the same advantage in order to remain “competitive.”<sup>11</sup>

#### 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. I.C. 20-5-63 *et seq.* The Case Review Panel has jurisdiction when a parent or guardian invokes the review function of the Case Review Panel. In the instant matter, the IHSAA has rendered a final determination of student-eligibility adverse to the Student. The parents timely sought review. The Case Review Panel has jurisdiction to review and determine this matter.

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<sup>10</sup>There were other reasons proffered in support of the “Participation Rule,” but the ones stated in this Finding of Fact are sufficient as the CRP concludes the rule is rationally related to the goals and functions of the IHSAA and is in concert with the intentions of its member schools. Although there was differing testimony as to how many other states have the same or similar rule, this is not relevant.

<sup>11</sup>CRP Member Mark Mason noted for the record that one of the witnesses, Mick Newport, who is presently the principal at Terre Haute North High School in Vigo County, was once the principal at Shelbyville High School, where Mr. Mason’s children were in attendance.

2. Any Finding of Fact that could be considered a Conclusion of Law shall be considered as same. Any Conclusion of Law that could be considered a Finding of Fact shall be considered as such.
3. The IHSAA does not except application of its “Hardship Rule” to **Rule C-15**. The “Hardship Rule” is, essentially, an equitable consideration that permits participation by a student-athlete because of extraordinary circumstances. Any rule of equity—which the Hardship Rule is—defies precise definition. Rather, what constitutes “equity” may likely be determined through consideration of mitigating principles or circumstances, which, in turn, will serve to ameliorate a strict application of an otherwise valid standard or law so as to avoid a substantial injustice.
4. Under the “General Consideration” for **Rule C-17-8.4**, “[o]rdinary cases shall not be considered hardship...” The situation giving rise to the alleged hardship “must be beyond the control of the school, the coach, the student, the parents....” Although “injury, illness or accidents” are “possible causes for a hardship consideration,” such occasions are related to meeting “a basic requirement” for participation. The Review Committee concluded: “Although the move from the previous home was certainly an event outside the control of either [Petitioner] or his parents, the decision to move into North Central school district was within the family control.” (Review Committee’s Conclusion No. 7.) This creates a conundrum of sorts. The IHSAA appears to recognize that the move from the Pike Township home was not an “ordinary case” and was likely a hardship, but that moving into North Central—when Petitioner was aware of the “Participation Rule”—makes this an “ordinary case” once again. Petitioner and his family, under this conundrum, could only move into a school district where the “Participation Rule” would not apply, thus negating this exercise in its entirety. Notwithstanding, although the CRP concludes that the “Participation Rule” is a valid rule that is related to the essential functions of the IHSAA, the IHSAA does acknowledge that there can be hardship exceptions to this rule. Petitioner has presented substantial and reliable evidence and testimony to explain why the family moved to North Central and why participation on this soccer club is germane to the conditions necessitating the move, even with the knowledge that the “Participation Rule” could prevent Petitioner from participating. The Petitioner has sufficiently demonstrated that a hardship exists.
5. The Indiana Supreme Court in IHSAA v. Carlberg, 694 N.E.2d 222, 228-29 (Ind. 1997), *reh. den.* (Ind. 1998), noted that “there is no right or interest to participate in interscholastic sports that is entitled to protection under the federal Equal Protection or Due Process Clauses or the state Due Course of Law Clause.... Thus, scrutiny of IHSAA decisions under the Equal Protection and Due Process Clauses will generally be limited to whether they impinge upon a suspect classification and whether they have a rational basis.... Scrutiny under the Privileges and Immunities Clause will generally be limited to whether they have a reasonable basis....” The IHSAA articulated a rational basis for **Rule C-15-2.2** and its application to Petitioner and others similarly situated. Its application of the rule has a reasonable basis, for the reasons stated in the Findings of

Fact *supra*. The fact that not all states—or even a majority of states—do not have the same or similar rule does not alter this analysis or conclusion.

ORDER

1. Petitioner will be permitted to be included on the 18-man roster for the soccer club, **provided that**, during any soccer club competition, no more than six (6) players from North Central shall be permitted to play in any single game. Although neither the CRP nor the IHSAA has any jurisdiction over the soccer club, any violation of this Order shall constitute a violation of the IHSAA's by-laws.

DATE: April 15, 2002

/s/ John L. Earnest, 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.