

**BEFORE THE INDIANA  
CASE REVIEW PANEL**

In The Matter of M. W.,	)	
Petitioner	)	
and	)	<b>CAUSE NO. 020909-20</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**

Petitioner is a senior attending the Lafayette Jefferson High School in the Lafayette School Corporation (hereafter, "Lafayette"). He previously attended McCutcheon High School in the Tippecanoe School Corporation although he lives within the boundaries of Harrison High School, which is also within the Tippecanoe School Corporation. The Tippecanoe School Corporation has established a form of intra-district school choice that permits students to attend Tippecanoe schools other than the ones they would typically attend based upon residence. Petitioner attended McCutcheon for his freshman, sophomore, and junior years, where he participated in cross country and track. He enjoyed success particularly in cross country where he advanced to the semi-state competition as an individual runner during his sophomore year.

Near the end of his junior year, he quit the McCutcheon track team shortly after spring break. He later transferred to Lafayette. Petitioner's parents asserted the move was purely for academic reasons, but McCutcheon officials believed that athletics was also involved. The Petitioner<sup>1</sup> completed the IHSAA Transfer Report, seeking to maintain full eligibility and representing that this was a *bona fide* change of residence under the IHSAA's **Rule C-19-5**.<sup>2</sup>

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<sup>1</sup>"Petitioner" shall refer to the student-athlete himself and may also include the student-athlete's parents in some contextual references.

<sup>2</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 C-19** is often referred to as the "Transfer Rule." **Rule C-19-5** provides as follows: "**Transfer Eligibility with Change of Residence by Parent(s)/guardian(s)**

The Commissioner of the IHSAA, on July 18, 2002, ruled the Petitioner was ineligible for interscholastic competition for 365 days from the date of enrollment in Lafayette, finding that the transfer was primarily for athletic reasons under **Rule C-19-4**.<sup>3</sup> Petitioner appealed to the IHSAA Review Committee under **Rule C-17-4**, which conducted a review on August 8, 2002, and issued its written decision on August 15, 2002, upholding the Commissioner's decision that the Petitioner is ineligible for interscholastic competition for 365 days from his enrollment in Lafayette.

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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 further defines "bona fide" under **Rule C-19** as meaning: "**Bona fide change of residence** – Determination of what constitutes a 'bona fide' change of residence depends upon the facts in each case, however, to be considered, the following facts must exist:

- a. the original residence must be abandoned as a residence; that is, sold, rented or disposed of, or in the process of being disposed of as a residence and must not be used as a residence by any member of the student's immediate family; and
- b. the student's entire immediate family must make the change and take with them the household goods and furniture appropriate to the circumstances. For eligibility purposes, a single family unit may not maintain two or more residences.
- c. the change of residence must be genuine, without fraud or deceit, and with permanent intent."

All references are to the IHSAA's By-Laws for the 2002-2003 school year.

<sup>3</sup>**Rule C-19-4** reads as follows: "**Transfers for Primarily Athletic Reasons**—To preserve the integrity of interschool athletics and to prevent or minimize recruiting, proselytizing and school 'jumping' for athletic reasons, regardless of the circumstances, student athletes who transfer from one school to a new school for primarily athletic reasons or as a result of undue influence will become ineligible to participate in interschool athletics in the new school for a period not to exceed 365 days from the date the student enrolls at the new school, provided, however, if a student transfers and it is not discovered at that time that the transfer was primarily for athletic reasons, then under those circumstances, the student may be declared ineligible for a period not to exceed 365 days following the date of enrollment or, may be declared ineligible for a period not to exceed 365 days commencing on the date that the Commissioner or his designee declares the student ineligible which was the result of a transfer for primarily athletic reasons." The IHSAA further defines under **Rule 19** "**Transfer for primarily athletic reasons** – A transfer for primarily athletic reasons includes, but is not limited to:

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

## **APPEAL TO THE CASE REVIEW PANEL**

Petitioner appealed the adverse decision of the Review Committee to the Indiana Case Review Panel (CRP) on September 9, 2002.<sup>4</sup> The CRP notified the parties by memorandum of September 9, 2002, of their respective hearing rights. The parent was provided with a “Consent to Disclose Student Information.” The parent, on September 13, 2002, elected to have the hearing proceedings closed to the public. A hearing date was set for September 30, 2002. The record of the proceedings before the Review Committee was photocopied and transmitted to CRP members.<sup>5</sup> Petitioner did request the issuance of subpoenas for the attendance of certain witnesses, which were provided.

The parties appeared on that date for the hearing. Petitioner was represented by his parent. Respondent was represented by counsel. A brief pre-hearing conference was conducted prior to the hearing, during which time Petitioner submitted four additional documents. Respondent did not object to the introduction of the documents. These were received into the record.

The following Findings of Fact and Conclusions of Law are based upon the evidence and testimony presented at the hearing in this matter, as well as the record as a whole. All Findings of Fact are based upon evidence presented that is substantial and reliable. I.C. 4-21.5-3-27(d).

### FINDINGS OF FACT

1. Petitioner is presently a senior in high school at Lafayette Jefferson High School in the Lafayette School Corporation (d/o/b July 16, 1984). He attended McCutcheon High School in the Tippecanoe School Corporation for the first three years of high school where he participated in cross country and track, enjoying success in cross country where, as a sophomore, he advanced to the semi-state competition as an individual runner. Although his individual times were not as good his junior year as his sophomore year, his team advanced to the semi-states. Petitioner was a co-Captain of his cross country team as a junior.
  
2. Although standardized test scores indicate the Petitioner is capable, he was a somewhat indifferent student. He passed the Graduation Qualifying Examination part of the 10<sup>th</sup> grade ISTEP+ examination, but he has shown little enthusiasm for mathematics and science, and

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<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.

<sup>5</sup>Former CRP Member Joan Keller presided as the chair-designee for this hearing, pursuant to I.C. 20-5-63-7(a)(2).

satisfies English requirements by taking courses well below his expected ability level. He is interested in current events and history, especially military history. He has an interest in photography.

3. Petitioner lives within the Tippecanoe School Corporation and would typically attend Harrison High School. However, the Tippecanoe School Corporation has an intra-district school choice program. Petitioner applied for and was permitted to attend McCutcheon High School. Petitioner continues to reside in the Tippecanoe School Corporation.<sup>6</sup>
4. During his junior year cross-country season, Petitioner became embroiled in an altercation with another member of the team. This occurred in August of 2001. The cross country coach interceded and imposed sanctions upon both runners. However, he also required of Petitioner that he write a paper on leadership, believing that Petitioner's actions were more egregious than those of the other runner. This additional sanction eventually resulted in a deterioration of the relationship between the cross country coaching staff and Petitioner, especially Petitioner's parent. In a meeting in October of 2001, Petitioner's parent indicated her displeasure with the additional sanction, and opined that she might send Petitioner to Lafayette. She had, in the past, reportedly stated she could send him to Harrison. Petitioner's parent acknowledges she has had "run-ins" with the head coach and that such remarks were made; however, she represents the remarks were made facetiously. There may have been as many as four such remarks. It is evident that McCutcheon personnel did not interpret the remarks as facetious in nature. Such remarks were reportedly made when the current head coach assumed his responsibilities after Petitioner's freshman year, in October of 2001 when the coach and assistant coach met with Petitioner and his parents, and in April of 2002 shortly after Petitioner quit the track team.
5. Petitioner also had disagreements with the head coach as to the advisability of attending a running camp in North Carolina. He had previously attended the running camp. However, the head coach was not supportive of Petitioner's participation in that camp because of the potential for conflicting training philosophies that may emerge that would pit coach against student-athlete. The coach was not averse to Petitioner participating in other running camps, but was particularly concerned about the North Carolina one.
6. Petitioner represented that the head coach had some success in coaching Petitioner but did not help Petitioner reach his potential. He had, at one time, hoped to obtain a college scholarship for long-distance running, possibly in Colorado. He has since become "burned out" on running and is

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<sup>6</sup>Although it was stated twice by Petitioner's parent that she believed owning property in a school district entitled one to attend school in that school district, this is not the case. The right to attend school in a particular public school is based not on mere property ownership but upon "legal settlement," as defined and applied under I.C. 20-8.1-6.1-1, especially I.C. 20-8.1-6.1-1(b). Based on the record in these proceedings, Petitioner appears to have legal settlement in Tippecanoe School Corporation and not the Lafayette School Corporation. Indiana is not a "school choice" state, although individual public school corporations can create limited intra-district school choice programs.

not presently training. He has joined the U.S. Marine Corps with a delayed enlistment until after high school graduation in 2003. Petitioner's parent also expressed dissatisfaction with the coaching Petitioner was receiving as he was not progressing as hoped.

7. Petitioner, during his junior year when he was co-Captain of his team, began to run on Sundays with cross country runners from Lafayette. He also trained some in the off-season with Lafayette runners. Petitioner represented that Lafayette runners lived closer to his residence than McCutcheon runners. Although this relationship was termed "odd" by several witnesses, Respondent acknowledged that it did not violate any by-laws. Testimony indicates that the Lafayette Jefferson High School Cross Country team is considered one of the top ten teams in the State.<sup>7</sup>
8. Petitioner's parent graduated from Lafayette. She has returned to college and is completing her requirements for teaching. She recently completed course work that required her to return to Lafayette. She is reportedly impressed with the school district and noted that it offers courses that may be better suited to Petitioner's interest. All adults involved with Petitioner noted that Petitioner is not particularly self-motivated and requires encouragement. Although Petitioner's parent would rather Petitioner attend college, she is supportive of his decision to join the military. She would also rather have him compete in interscholastic competition, but Petitioner expressed little desire to do so.
9. When Petitioner completed the IHSAA Athletic Transfer Report form on May 9, 2002, it was indicated that the family was moving from its present address to a residence in the Lafayette School Corporation. The Lafayette residence is owned by Petitioner's parents and his older brother lives there. Neither Petitioner nor his parents moved to the residence. Although Petitioner represented the move from the county to Lafayette was for academic reasons, McCutcheon, when it completed the form on May 21, 2002, questioned whether the change of residence was a "bona fide" change and asserting the move was primarily for athletic reasons. Lafayette completed the form on June 7, 2002, representing its belief the move was a "bona fide" one and was not primarily for athletic reasons. All parties agree that the move was not due to "undue influence" on the part of Lafayette.<sup>8</sup>
10. Respondent requested clarification from Petitioner. In a response dated June 6, 2002, Petitioner's parent represented that the family intended to make an offer on a condominium within a week. However, no offer was made. On July 18, 2002, the Commissioner determined Petitioner was ineligible for 365 days from his enrollment in Lafayette pursuant to **Rule C-19-4**. Petitioner appealed to the IHSAA Review Committee, which conducted a review on August 8, 2002, during which time Petitioner's parent acknowledged at least four "run-ins" with coaching staff. The Review Committee, in a written decision issued on August 15, 2002, affirmed the Commissioner's determination of ineligibility for Petitioner. Petitioner appealed this determination to the Case Review Panel.

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<sup>7</sup>At the time of the hearing on this matter, Lafayette Jeff was ranked seventh in the State.

<sup>8</sup>See, generally, **Rule C-20**.

11. Petitioner continues to reside in the Tippecanoe School Corporation. The residence has been listed for sale, but it has not been sold. No other residence has been purchased, nor has the family moved. Petitioner is attending Lafayette where he reportedly is performing better academically.

### 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 are considered “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 Petitioner timely sought review. The Case Review Panel has jurisdiction to review and determine this matter.
2. Petitioner has been indifferent to academic pursuits. This has been a concern to Petitioner’s parent. However, his involvement in long-distance running both on the cross country and the track teams has also been a concern to Petitioner’s parent, who has been intimately involved in the schools Petitioner has attended. Although Petitioner completed the IHSAA Transfer Request Form, indicating that the family was to make a “bona fide” change of residence, the Petitioner has never actually made such a change of residence. He continues to reside within the Tippecanoe School Corporation. The proposed change of residence cannot be considered “bona fide” because it has not actually occurred. As a result, **Rule C-19-5** does not apply such that Petitioner could obtain immediate eligibility.
3. Respondent determined the Petitioner’s transfer to Lafayette from McCutcheon was “primarily for athletic reasons.” Respondent defines “transfer for primarily athletic reasons” to include a transfer to obtain the athletic advantage of a superior athletic team or superior coach or coaching staff. Although the Lafayette team is ranked seventh in the State, it does not appear that Petitioner’s transfer to Lafayette was based upon this subpart.<sup>9</sup>
4. Another element of “transfer for primarily athletic reasons” includes “a transfer to obtain relief from a conflict with the philosophy or action of [a]...coach relative to athletics.” Petitioner and

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<sup>9</sup>Respondent has four subparts to this definition. However, these four subparts are intended to be read separately and not collectively. That is, should substantial and reliable evidence support a legal conclusion that Petitioner violated any one (1) of the four (4) subparts, the move would be considered as “primarily [for] athletic reasons” under **Rule C-19**.

his parent took exception to what they perceived as the inequitable treatment of Petitioner as a result of the altercation he had with a member of his team in August of 2001. Petitioner and his parent also believed the coaching staff were not sufficiently adequate in ensuring Petitioner's progress as a runner. Petitioner disagreed with the coach regarding participation in running camps. When considered with the reported "run-ins" and the acknowledged remarks that Petitioner may be transferred to Harrison or Lafayette, a legal conclusion can be drawn, and is so determined, that the move to Lafayette was influenced by athletic reasons. By definition, this would be "for primarily athletic reasons," such that **Rule C-19-4** would apply.

#### ORDER

1. The determination of Respondent that Petitioner's transfer was "for primarily athletic reasons" such that he is ineligible for interscholastic athletic competition for 365 days from enrollment in Lafayette is upheld.

DATE: October 2, 2002

/s/ Joan Keller, 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.