BEFORE THE INDIANA
CASE REVIEW PANEL

In The Matter of Justin J. Fox.,	)	
Petitioner	)	
and	)	**CAUSE NO. 020917-21**
The Indiana High School Athletic Assoc. (IHSAA),	)	
Respondent	)	
	)	
Review Conducted Pursuant to	)	
I.C. 20-5-63 *et seq.*	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Procedural History

Petitioner is an 18-year-old junior (d/o/b August 26, 1984) attending Shenandoah High School in the Shenandoah School Corporation (hereafter, "Shenandoah"). Shenandoah is located in Henry County, Indiana. He previously attended Alexandria-Monroe High School in the Alexandria Community School Corporation (hereafter, "Alexandria"). Alexandria is located in Madison County, Indiana. Petitioner, as a sophomore, earned varsity letters in football, basketball, and track. As is often the case in Indiana, it is participation in basketball that is the focal point of this dispute.

In March of 2002 during Petitioner's sophomore year, the family decided that a move from Alexandria was necessary, due to Petitioner's father's health and attempts to reestablish himself in a different radio market. The father had worked in Madison County for 22 years as a radio announcer for local interscholastic sports competition. He also sold radio time and conducted talk shows with athletics as a central theme. The radio station was bought out, requiring Petitioner's father to seek employment elsewhere in order to continue his radio career. He has entered into a contract with a radio station in Henry County where he will broadcast interscholastic athletic competitions between local school districts, conduct talk shows, and sell advertising time.

The Petitioner[1] 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**.[2] Unfortunately, Petitioner presented the Transfer Report to Alexandria initially rather than Shenandoah. The IHSAA's By-Law in this regard reads as follows:

> **C–19-8**
> **Procedure upon Transfer**
> When a student transfers to a member school, the receiving school principal shall promptly conduct an investigation and file an IHSAA Athletic Transfer Report with the Association.
> **C-19-8.1**
> **IHSAA Athletic Transfer Report and Investigation**
> a. The principal of the receiving school shall promptly conduct an investigation commensurate with the facts known and the information provided to the principal at the time that an IHSAA Athletic Transfer Report is requested or initiated by a student or such student's parent(s)/guardian(s).
> b. On all transfers, an IHSAA Athletic Transfer Report shall immediately be completed by the student and/or the student's parent(s)/guardian(s) as well as the receiving school principal and principal of the school from which the student transferred (sending school) and forwarded to the Association together with:

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[1]"Petitioner" shall refer to the student-athlete himself and may also include the student-athlete's parents in some contextual references.

[2]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)** – 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.

(1) a written report reflecting the results of the investigation of the receiving school principal;

(2) a statement explaining the circumstances, documented and supported in all appropriate ways;

(3) any verified or unverified statements from the student and/or the student's parent(s)/guardian(s), and others;

(4) all pertinent and relevant documents which appear to bear on the subject; and

(5) recommendations regarding immediate eligibility by both principals.

c. The receiving school principal shall notify the student and the student's parent(s)/guardian(s) that further investigation has been requested by either the sending school principal or the receiving school principal, or if it would appear that further investigation may be undertaken by the Association; under such circumstances, the student and the student's parent(s)/guardian(s) shall be advised that they have the opportunity to present any pertinent information not previously provided.

d. The failure of the student and/or the student's parent(s)/guardian(s) or the receiving school or sending school principals, to process and file with the Association the IHSAA Athletic Transfer Report, may render the student ineligible and may subject the offending school to disciplinary action.

At the time Petitioner presented the Transfer Report to Alexandria, he was not yet registered in Shenandoah. Alexandria opposed the transfer, asserting that it was primarily for athletic reasons. Shenandoah, after the Petitioner enrolled, asserted the move was a *bona fide* move and recommended full eligibility.[3]

The IHSAA conducted further inquiry into the matter. The IHSAA, on August 22, 2002, ruled the Petitioner was ineligible for interscholastic competition for 365 days from the date of enrollment in Shenandoah, finding that the transfer was primarily for athletic reasons under **Rule C-19-4**.[4] Petitioner

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[3]This matter is complicated by an unusual occurrence. Although the family did move into Shenandoah, Alexandria did not oppose the awarding of full eligibility to Petitioner's step-brother, a sophomore who participated in football and track. At first blush, this seems contradictory that one student-athlete in the same household allegedly transferred primarily for athletic reasons while the other did not. Although this is a curiosity, the Case Review Panel makes no findings as to whether such seemingly contradictory conclusions are permitted under the Respondent's By-Laws. The Respondent, although acknowledging that this is unusual, nevertheless believes that there are factual bases that could distinguish one case from another.

[4]**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

appealed to the IHSAA Review Committee under **Rule C-17-4**, which conducted a review on September 5, 2002, and issued its written decision on September 11, 2002, upholding the IHSAA's decision that the Petitioner is ineligible for interscholastic competition for 365 days from his enrollment in Shenandoah.

APPEAL TO THE CASE REVIEW PANEL

Petitioner appealed the adverse decision of the Review Committee to the Indiana Case Review Panel (CRP) on September 17, 2002.[5] The CRP notified the parties by memorandum of September 18, 2002, of their respective hearing rights. The parent was provided with a "Consent to Disclose Student Information." The parent, on September 23, 2002, elected to have the hearing proceedings open to the public. A hearing date was set for October 17, 2002. The record of the proceedings before the Review Committee was photocopied and transmitted to CRP members.[6] Petitioner and Respondent both requested the issuance of subpoenas for the attendance of certain witnesses, which were provided.

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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."

[5]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.

[6]The hearing was conducted before CRP members John L. Earnest, chair designee; Teresa Emery; Pamela A. Hilligoss; James Perkins, Jr.; Michael L. Ross; Brenda K. Sebastian; and Brad Tucker.

The parties appeared on that date for the hearing. Petitioner was represented by counsel. Respondent was represented by counsel. A brief pre-hearing conference was conducted prior to the hearing, during which time Petitioner and Respondent submitted additional documents. Neither party objected to the introduction of these 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 an 18-year-old junior (d/o/b August 26, 1984) enrolled in Shenandoah. He attended Alexandria for his freshman and sophomore years. During his sophomore year, he participated in varsity football, basketball, and track. On December 7, 2001, during a basketball game, Petitioner's family began to exit the stands some time after the third quarter ended. Although characterizations of what occurred thereafter vary, the following can be ascertained: Petitioner's father was vocal regarding what he perceived to be a lack of playing time for Petitioner. Petitioner did enter the game shortly thereafter, stole the basketball, and made a lay-up. The father commented upon this as well. The comments were directed to the athletic director, but the principal was also present. It is agreed that the comments did not contain any profanity. The father acknowledged that his comments were borne from his personal frustration. At no time did the father ever discuss his displeasure with Petitioner's playing time with the basketball coach. The principal did not see a need to discuss and further the father's statements at the basketball game. This type of display did not recur during the basketball season, although the father's displeasure became a source of interest for some local residents of Alexandria.

2. The father is a self-taught radio broadcaster who broadcasted high school interscholastic athletic competition in the Madison County area for twenty-two (22) years before the radio station was bought out. He also sold advertising for the radio station and conducted athletic-oriented talk shows. The father, as is the Alexandria community, very involved in high school athletics. The father has served as an assistant track coach at Alexandria and presently is an assistant football coach for a middle school team in Anderson Community Schools, where he is also a supervisor of an in-school detention class. The father has also coached an amateur basketball team that includes Petitioner as a player.

3. During the 2001-2002 school year, Petitioner's father began to broadcast high school athletic contests with a radio station located in Henry County. He also began to sell advertising for the station and continued the athletic-oriented talk shows. He would often have to pick up

equipment from the station, travel to the game site, set up for the game, and then return the equipment to the Henry County station. This would sometimes result in very little sleep before he had to attend to his responsibilities at the Anderson Community Schools. The family experienced a loss of income as a result of the Madison County station being bought out. At various times, the father and Petitioner's step-mother were without jobs. The position with the Anderson Community Schools provides the family with the opportunity to obtain health insurance coverage at an affordable rate.

4. Petitioner's father began to experience health problems, which he initially attributed to the distances he had to travel in order to broadcast games and return equipment, with the concomitant loss of sleep. He had been seeing a family physician, but his health concerns did not resolve. His wife directed him to an endocrinologist who diagnosed the father as having Type II Diabetes exacerbated by his lifestyle and poor eating habits. The physician recommended, as one lifestyle change, that the father move closer to his work to reduce the traveling.

5. At some time near the end of March, 2002, the family had a family meeting where the father and the stepmother informed the family that a move would be necessary due to the father's health condition and the need for a larger home. Because the father's first love was radio broadcasting, the family looked for houses that would be large enough to accommodate the family (see Finding of Fact No. 6 *infra*) as well as be advantageously situated between the Henry County radio station and the Anderson Community Schools. Although witnesses testified that athletics was not discussed, this seems unlikely, given the family's intense interest in athletics. Petitioner did express some reservation regarding moving from his friends and the only school district that he knew.

6. Petitioner lived in a three-bedroom house in Alexandria with his sister, his father, his stepmother, and his stepbrother. The father was to soon obtain custody of Petitioner's younger sister. With six people in the household, the family would need a larger house.

7. After looking at over 15 houses, the family eventually bought a five-bedroom house in Daleville, which is located in Henry County and within the boundaries of Shenandoah. Shenandoah's basketball coach is employed as a teacher in another public school district, although he has been attempting to be employed in Shenandoah, a relatively small school district with about 1,300 students. The high school has between 380-400 students. Neither Petitioner nor his father sought out the Shenandoah basketball coach to discuss an impending move. There is no evidence that the father "shopped around" Petitioner to other school districts.

8. Testimony from an Indiana State Trooper, who also is the head football coach at the Anderson middle school where Petitioner's father works, indicates that the Daleville residence is reasonably located so as to provide easier access to both the Anderson job and the Henry

County radio station. This testimony was corroborated, in part, by the testimony of another witness who has been a long-time teacher in the Anderson Community Schools. Both the state trooper and the teacher traveled the same routes Petitioner's father would have traveled and about the same time of the day.

9. Petitioner's family listed its Alexandria house for sale on June 17, 2002. An offer was made on July 4, 2002, for the Daleville residence, which was eventually accepted. The family closed on the house on July 30, 2002. On that same date, Petitioner's father entered into a contract with the Henry County radio station, although the contract had been negotiated on July 15, 2002. Vacation schedules had prevented the parties from executing the contract earlier. The Alexandria house has not yet been sold. The family is maintaining two mortgages, with the one in Daleville approximately $100 more than the mortgage on the Alexandria home. The Alexandria home is empty. The family has moved to and resides in the Daleville home.

10. Petitioner could not enroll in Shenandoah before August 1, 2002. The school was closed until that date. Petitioner's father downloaded the IHSAA Athletic Transfer Report from the Respondent's web site. He contacted Alexandria on or about June 24, 2002, to meet with the principal. He learned the principal would not return until July 10, 2002. On that date, Petitioner and his stepbrother talked to the Alexandria football coach to inform him they were moving to Shenandoah. On July 10, 2002, Petitioner's father and the Alexandria principal met in the parking lot and proceeded to the principal's office. The father discussed the pending move to Shenandoah, indicating the move was necessitated by his employment. Later in July, Petitioner's father and the Alexandria principal met again near a concession stand operated by Petitioner's father in an Alexandria park. During this conversation, Petitioner's father informed the principal of his health problems. There were other conversations which both sides characterized differently, a recurring theme. However, the concession stand conversation was partially overheard by Petitioner's sister. Nevertheless, the purported statements of the principal–and, indeed, statements attributed to Petitioner's father–are subject to interpretation depending upon tone and inflection.[7]

11. The Alexandria principal wrote to the Respondent on July 18, 2002, indicating that Petitioner should be ineligible for athletic competition for the 2002-2003 school year. The primary basis for this determination is his characterization of what occurred at the December 7, 2001,

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[7]This poses a problem for the Case Review Panel. As noted on the record, no witness in this matter is believed to have misrepresented conversations the witness heard. However, the statements made by a number of different players in this matter are subject to interpretation. Hearsay, especially from the local feed store, are, of course, not accorded credibility. It becomes readily apparent that statements made by various parties have been interpreted in some cases based upon subsequent actions. There is a sufficient factual basis for the resulting decision of the Case Review Panel such that it is not necessary to rely overmuch on the credibility, or lack thereof, of any witness testifying in this matter.

basketball game.

12. The Shenandoah principal, by a letter to Respondent dated July 25, 2002, indicated that he had received the Transfer Report from Alexandria, but that the report could not be processed because Petitioner had not yet enrolled. As noted *supra*, Petitioner could not enroll until August 1, 2002, as the school was not open. Petitioner acknowledges that he did attend some "open gym" sessions at Shenandoah prior to officially enrolling.

13. The completion of the Athletic Transfer Report did not follow Respondent's procedures at **Rule C-19-8.1**. Alexandria's principal completed the form on July 18, 2002, indicating the Petitioner should be ineligible because the move was primarily for athletic reasons. The family, when it completed the form, indicated the move was primarily to cut down on travel time and to be somewhat equidistant between the father's two jobs. Health considerations are not indicated. Shenandoah, on August 5, 2002, completed the form, indicating the move was a *bona fide* move, the transfer was not due to any undue influence, and the transfer was not for athletic reasons. Shenandoah recommended full eligibility under **Rule C-19-5**.

14. Because of the conflicting statements from the respective principals, the IHSAA conducted further inquiry. After doing so, it declared Petitioner ineligible on August 22, 2002, determining that the move was primarily for athletic reasons. Shenandoah requested review of this decision on August 23, 2002.[8] As noted previously, the IHSAA Review Committee conducted its review on September 5, 2002, and issued its decision on September 11, 2002, affirming the determination that Petitioner was ineligible under **Rule C-19-4** because the move was primarily for athletic reasons. **Rule C-19-4** provides as follows:

C–19-4
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

[8]The request for review was actually initiated by an e-mail. A subsequent written request was received by Respondent on August 26, 2002.

the student ineligible which was the result of a transfer for primarily athletic reasons.

15. There was sufficient testimony in the record to indicate that Petitioner's father had a number of discussions with other people and coaches regarding his health, his employment circumstances and attempts to reestablish his radio broadcasting career, as well as his concerns about Petitioner's playing time. Petitioner's father acknowledges his frustration and inappropriate remarks at the December 7, 2002, basketball game but denies that he continued to voice such concerns thereafter, particularly as Petitioner began to experience more playing time. Petitioner's father represents that he has been satisfied with the head basketball coach, but acknowledged that he had differences with one of the assistant coaches stemming from an occurrence during Petitioner's freshman year. The only witness that actually had any direct conversations with Petitioner's father that would contradict his recitations also asserted that he advised Petitioner's father to just move his family and not tell anyone. The witness claimed that he gave this advice on several occasions. This advice is questionable and does raise credibility concerns. Fortunately, this advice was not heeded.

16. The Alexandria head basketball coach indicated that Petitioner was never a problem and that he was likely to be a starting guard on this year's team. Petitioner was not under any disciplinary action and was liked by the coaching staff.

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. Although athletics is likely involved in some part for the decision to move to Henry County, athletics was not the primary motivator. Petitioner's father has substantiated the existence of a health problem with the medical indications that he must change his lifestyle. More compelling, however, is the father's motivation to reestablish his radio broadcasting avocation. He had spent 22 years employed in this endeavor in Madison County until the station was bought out. He will need to reestablish this career in Henry County, where he has not lived previously.

Because his contract requires him to sell advertisements for air time, he will need to become established in Henry County. However, he also requires health benefits, which he can obtain at affordable rates through his employment at the Anderson Community Schools. Testimony supports a conclusion that the Daleville residence is more advantageously located to accomplish the father's primary motivation to maintain his Anderson position as well as reestablish his radio career, albeit in Henry County. The move was not primarily for athletic reasons.

3. Petitioner did not transfer primarily for athletic reasons, as Respondent defines the concept. His transfer to Shenandoah will not result in an athletic advantage of a superior, or inferior, athletic team, a superior athletic facility or a superior coach or coaching staff. Testimony indicated that the head coach at Alexandria is an established, veteran coach, while the coach at Shenandoah is not employed by that school district other than as a coach. Petitioner did not transfer to obtain relief from a conflict with the philosophy or action of an administrator, teacher or coach relative to athletics. There is no indication that Petitioner had such a conflict. Petitioner did not transfer seeking a team consistent with the student's athletic abilities. Testimony indicates he would have likely been a starter at Alexandria had he remained enrolled there. Likewise, he did not transfer as a means of nullifying a punitive action taken by Alexandria. There were no pending punitive actions or similar sanctions.

4. The move from the Alexandria residence was a *bona fide* move, as this concept is defined by Respondent. The original residence has been abandoned as a residence. It is in the process of being disposed of as a residence although it has not yet been sold. In addition, the Alexandria residence is not being used as a residence by any member of the Petitioner's immediate family. The Petitioner's entire immediate family moved to the Daleville residence and took with them their household goods and furniture appropriate to the circumstances. The change of residence is genuine, was without fraud or deceit, and has been accomplished with permanent intent.

ORDER

1. Petitioner's change of residence was not primarily for athletic reasons and was a *bona fide* change of residence. Accordingly, the decision of the Respondent denying Petitioner eligibility is reversed by a vote of 5-2. Petitioner is eligible for interscholastic competition pursuant to **Rule C-19-5**.

DATE: October 22, 2002

/s/ John L. Earnest, Chair
Indiana Case Review Panel