

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter of Kristopher Kyle,)
Jake Turner, Tyler Rosen, Brandon Hutson,)
and Landon Morris,)
)
Petitioners)
)
and)
)
The Indiana High School Athletic Assoc. (IHSAA),)
Respondent)
)
Review Conducted Pursuant to)
I.C. 20-5-63 *et seq.*)

CAUSE NO. 020917-22

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Procedural History

This is a dispute involving a Respondent’s by-law **Rule C-15-2.2**.¹ This rule, known informally as the “60% Rule,” reads as follows:

RULE 15 – PARTICIPATION

Philosophy

Students should have the opportunity to voluntarily engage in non-school sponsored sports activities provided such activities do not interfere with the student’s educational development and the activities do not conflict with the principles of wholesome amateur athletics. The IHSAA wishes to enhance that opportunity while at the same time discouraging the exploitation of student athletes by overzealous individuals and organizations who attempt to impose an obligation on the student, to participate in their programs at any cost. There has been growing evidence of commercialism of high

¹The 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.” All references are to the IHSAA’s By-Laws for the 2002-2003 school year.

school athletes. In far too many instances non-school sponsored sports events have been the “market place” where the students have been lured to display their “athletic wares.” Experience has revealed that such events tend to divide the allegiance of the students, undermine their respect for their high school coaches, and encourages the type of adulation which 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. By the promulgation and enforcement of these rules the IHSAA strives to eliminate these abuses.

• • •

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 season as a member of one of their school teams in that sport are rostered on 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. 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. Member schools may not provide school-owned uniforms (shorts, pants, singlets, or swimsuits, etc.) worn by the student in non-school contests.

There are potential penalties for violating this by-law (as well as other by-laws in Rule 15).

C-15-3.5 provides that the penalties are those found at **Rule C-17-7.1**. That rule reads as follows:

Rule C-17-7.1

Penalties

For violation of a Rule or disregard of a decision or directive made under these Rules, some or all of the following action may be taken.

- a. The student may be declared ineligible to participate in interschool athletics for a period not to exceed 365 days.
- b. A coach may be prohibited from directing an athletic team which participates in interschool athletics.
- c. A member school may be:
 - (1) prohibited from certain interschool athletic participation; or
 - (2) warned; or
 - (3) fined, including the forfeiting of revenues generated from the Association; or
 - (4) suspended or placed on probation for a period not to exceed 365 days by the Association.
- d. The Association may take any appropriate disciplinary or remedial measures or impose, or direct the imposition of, appropriate sanctions or penalties.

There is little dispute as to the facts in this situation. In fact, the Respondent moved for summary judgment pursuant to I.C. 4-21.5-3-23. Following oral argument on the motion, the Case Review Panel denied the Motion by an 8-0 count, principally because Petitioners asserted that their circumstances would merit application of the “Hardship Rule.”²

Petitioners are all members of the basketball team for the North Montgomery High School in the North Montgomery Community School Corporation (hereafter, “North Montgomery”). After completion of the basketball season during the 2001-2002 school year but before the school year ended, Petitioners were part of a team that played in an organized league established by a local boys’ and girls’ club. Petitioners were under the impression that the Respondent had changed its by-laws so that such participation could occur. Regrettably, such was not the case. The rule that had been changed was the so-called “Summer Participation” Rule, **C-15-3**, specifically **Rule C-15-3.1**. Members of the Crawfordsville High School team also participated. Their athletic director discovered the participation, noted it exceeded the “60 % Rule” requirements, and reported the infraction to the Respondent. The Crawfordsville athletic director also called the North Montgomery athletic director to advise him of Petitioners’ participation.

²**Rule C-17-8** is the IHSAA’s “Hardship Rule.” Generally, the “Hardship Rule” is an administrative equity provision that allows the IHSAA “to set aside the effect of any Rule [with some exceptions] when the affected party establishes, to the reasonable satisfaction of [the IHSAA], all of the following conditions are met:

- a. Strict enforcement of the Rule in the particular case will not serve to accomplish the purpose of the Rule;
- b. The spirit of the Rule has not been violated; and
- c. There exists in the particular case circumstances showing an undue hardship that would result from enforcement of the Rule.” **Rule C-17-8.1**.

The North Montgomery athletic director investigated. Petitioners readily acknowledged their participation but indicated their understanding that the participation rule had been changed. The athletic director reported the infraction to the Respondent on or about June 10, 2002. Respondent and the athletic director—as well as the boys’ basketball coach—had several discussions thereafter. The athletic director supplied additional information. On August 19, 2002, the Respondent issued a letter that, *inter alia*, provided a three-game suspension for Petitioners. However, the three-game suspension could be spread over six games.

North Montgomery and the Petitioners appealed Respondent’s decision to the Respondent’s Review Committee under **Rule C-17-4** on August 23, 2002. The Review Committee conducted its review on September 5, 2002, and issued its decision on September 11, 2002, affirming the three-game suspension.

APPEAL TO THE CASE REVIEW PANEL

Petitioners requested on September 17, 2002, a hearing before the Case Review Panel (CRP).³ On September 19, 2002, the Petitioners and Respondent were advised of their respective hearing rights. Petitioners were provided with consent forms in order to indicate whether this hearing would be open or closed to the public. All Petitioners responded, indicating that they wished for the hearing to be open to the public. Hearing was set for October 23, 2002.

Respondent filed its Motion for Summary Judgment on October 15, 2002. The Case Review Panel advised Petitioners of their right to respond and the time frame within which to do so as well as the procedure. Petitioners responded on October 21, 2002. On October 22, 2002, Petitioners also indicated that, pursuant to I.C. 4-21.5-3-15(b), they would be represented by a lay representative.

The record of the proceedings before the Review Committee was photocopied and transmitted to CRP members. The Respondent’s Motion for Summary Judgment and the Petitioners’ Response thereto were also provided to the CRP.⁴

The parties appeared on October 23, 2002, for the hearing. Petitioners were represented by lay

³The 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.

⁴The hearing was conducted before CRP members Joan Keller, chair designee; Teresa Emery; Pamela A. Hilligoss; Mark Mason; James Perkins, Jr.; Michael L. Ross; Brenda K. Sebastian; and Earl H. Smith, Jr.

representative. Respondent was represented by counsel. Oral argument regarding Respondent's Motion for Summary Judgment was conducted. As noted *supra*, the CRP declined to grant the Motion. A brief pre-hearing conference was then conducted prior to the hearing, during which time Petitioners and Respondent submitted additional documents. Petitioners submitted a document that purported to be a statement from a witness that was present in the hearing room and available to testify. Respondent objected to the document. The objection was sustained. Petitioners also submitted a dissertation that was actually the opening remarks of the lay representative. The CRP accepted copies of the opening remarks but did not mark it as an exhibit and did not enter it into the record. The lay representative then proceeded to read the entire document as his opening remarks. Respondent submitted two additional documents: R-1, a press release issued on or about April 30, 2001, regarding activities of the Respondent's Board of Directors; and R-2, a copy of the Respondent's By-Laws for the 2001-2002 school year. Both documents were received into the record without objection.

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).⁵

FINDINGS OF FACT

1. Petitioners were all members of the North Montgomery boys' basketball team during the 2001-2002 school year and anticipate being a part of the basketball team during the 2002-2003 school year. Some time shortly after the conclusion of the basketball season for the 2001-2002 school year, Petitioners completed an application to participate in a spring basketball league sponsored by the local boys' and girls' club. The Petitioners paid a fee to participate. A roster was created. There was a scheduled number of games with a tournament. The league games were officiated. Official scores were kept. Petitioners were all members of a team they named "Border Patrol."⁶
2. Petitioners had participated in the spring league in the past. However, Petitioners were aware

⁵Petitioners' lay representative believed that intent was the standard to be applied to these proceedings. However, intent is not a standard *per se*; it is a factor for consideration under the "Hardship Rule." It is also noted that Respondent never indicated Petitioners intentionally transgressed **Rule C-15-2.2**.

⁶The CRP notes that not all of Petitioners paid the fee, although they were suppose to do so. Also, not all of the Petitioners were on the original roster. A substitution was made when one of the Petitioners was injured. There was also some testimony indicating that the officiating was less than thorough, that sometimes players made up their own rules, and it was not uncommon for unauthorized players to participate. Notwithstanding, there were sufficient indices to support a finding that the league play was an organized team-sport endeavor for the purpose of applying **Rule C-15-2.2**.

in the past that the “60 % Rule” would prevent them from having more than three (3) members on the same team. Following the 2000-2001 basketball season, Petitioners participated on different teams so as not to transgress the “60 % Rule.”

3. Respondent did amend its **Rule C-15-3** regarding summer participation. This was a somewhat contentious proposition, favored by most of Respondent’s member schools but opposed by a significant number as well. Respondent disseminated information regarding changes in the “Summer Participation” rule in an attempt to address seeming confusion over its effective date (June 3, 2002) and the permissible scope of participation by student-athletes and their coaches. Respondent’s commissioner disseminated a paper entitled “Summer Participation.” Additionally, Respondent disseminated a one-page document entitled “2002 Summer Participation Rules.” These two documents were supplied to interested parents and student-athletes at a meeting on February 20, 2002, conducted by North Montgomery. The athletic director had earlier met with respective coaches to discuss the “Summer Participation” rule changes. The athletic director and the coaches were aware that the “60 % Rule” had not been affected.
4. Although it is apparent from the hearing on this matter that there was considerable confusions in Montgomery County regarding the “Summer Participation” rule and its relationship, if any, to the “60 % Rule,” Petitioners supplied no evidence or testimony that the confusion was caused by Respondent, either through its publications or any statements attributed to Respondent.⁷ Notwithstanding the confusion that occurred in Montgomery County, the information disseminated at the February 20, 2002, meeting indicated that no changes would be effective until June 3, 2002, a date well past the spring basketball league participation that resulted in the instant dispute.
5. The Petitioners exceeded the number of team members permitted on a league team out of season under **Rule C-15-2.2**. According to North Montgomery (letter of June 19, 2002), four of the Petitioners played in six games while one played in two games. Petitioners did not ask the athletic director or their basketball coach whether they could participate on a spring basketball league in excess of the “60 % Rule.”
6. Although under **Rule C-15-3.5** as it cross-references with **Rule C-17-7.1** would permit the Respondent to declare ineligible each of Petitioners “ for a period not to exceed 365 days,” the rule infraction did not merit such a draconian result. Accordingly, the Respondent’s

⁷The CRP did note that Respondent’s exhibit R-1, which included a passing reference to the “Summer Participation” rule changes, was not clearly stated and could have been misunderstood by a reasonable reader. However, the press release that constitutes exhibit R-1 did indicate that the changes were not effective until June of 2002 and Petitioners did not indicate they were aware of the press release much less relied upon it.

commissioner employed a “rule of thumb” for such infractions, declaring Petitioners ineligible for three basketball games but permitting the suspensions to be staggered over six games. The “rule of thumb” is based upon 15 percent of the regular season contests. For basketball, that amounts to three games in a 20-game season.

7. This “rule of thumb” has been fairly consistently applied. The following relevant instances were reported in Respondent’s By-Laws for the 2002-2003 school year, of which the CRP takes official notice under I.C. 4-21.5-3-26(f).

| Date | School | Sport | Rule | Penalty |
|-------------|---------------------|--------------|-------------|--|
| 8/9/01 | Waldron H.S. | Volleyball | 15-2.2 | Student suspended 4 matches; assistant coach suspended for four matches. |
| 9/6/01 | Pike H.S. | Basketball | 15-2.2 | Six students suspended three games each |
| 10/11/01 | Connorsville H.S. | Softball | 15-2.2 | Coach suspended for 1 st regular season game |
| | Mississinewa H.S. | Basketball | 15-2.2 | Four students suspended three games each. |
| 2/15/02 | Bloomington N. H.S. | Basketball | 15-1.2 | Three students suspended three games each. |
| | Elkhart Mem. H.S. | Basketball | 15-1.2 | One student suspended for three games. |
| | Kokomo H.S. | Basketball | 15-1.2 | One student suspended for three games. |
| 3/22/02 | Bloomington S.H.S. | Basketball | 15-1.2 | Three students suspended for three games each. |
| 6/7/02 | Crawfordsville H.S. | Basketball | 15-2.2 | Five students suspended for three games each. |
| | Frankton H.S. | Basketball | 15-2.2 | Two students suspended for three games each; coach reprimanded. |
| | Lakeland H.S. | Volleyball | 15-2.2 | Six students suspended two matches. |
| | McCutcheon H.S. | Softball | 15-1.2 | One student suspended for four games. |

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. Petitioners exceeded the permissible number of student-athletes on a basketball team while participating on a non-school team following the completion of their basketball season but before school ended for the 2001-2002 school year. The Petitioners fashioned a roster, paid league fees, kept scores, and participated in games that were officiated. Petitioners were aware the previous year that **Rule C-15-2.2**, or the so-called “60 % Rule,” prohibited more than three of them to be on any team. Although Petitioners were under the impression that **Rule C-15-2.2** had been changed, they did not confer with either their coach, who was present in the high school every day, or their athletic director regarding the rule. Instead, Petitioners relied upon outside sources of information that were unofficial. Petitioners did not demonstrate that Respondent engaged in any miscommunication, either orally or through dissemination of publications, that materially misled them to their detriment. Petitioners acknowledge the documents that were supplied to a community meeting in Montgomery County on February 20, 2002. These documents, although clearly addressing “summer participation,” also indicated an effective date of June 3, 2002, which would have been well past the date Petitioners engaged in the league play.⁸
3. Although Respondent did have the authority to declare Petitioners ineligible “for a period not to exceed 365 days,” Respondent elected to suspend Petitioners for three games but allowed these suspensions to be staggered over six games. The sanction imposed is consistent with the “rule of thumb” employed by Respondent in similar circumstances. The three-game suspension was reached by determining 15 percent of the regular season contests. For basketball, this would constitute three games. The sanction is consistent with similar sanctions and does not pose a hardship for Petitioners.
4. Petitioners fail to demonstrate that the three-game suspension staggered over six games is suitable for consideration under the “Hardship Rule.” While the “spirit of the rule” was likely

⁸Petitioners also seemed to argue that the Respondent should have anticipated that people would be confused and disseminated information indicating that **Rule C-15-2.2** had not been amended. There is no law that compels Respondent to anticipate what people might or might not understand. It was under no legal duty to do so.

not violated, the Petitioners did not demonstrate that strict enforcement of the rule in question would not serve to accomplish the purpose of the rule. The contrary is concluded: This will likely ensure that other student-athletes, parents, coaches, and interested constituencies do not confuse the "60 % Rule" with the "Summer Participation" Rule. Petitioners also failed to demonstrate that their particular sanctions would work an undue hardship upon them from enforcement of this rule. The sanction could have been for 365 days, which would have been unreasonable in these circumstances. The sanction is for three games, staggered over six games. This is not an undue hardship.

ORDER

The Case Review Panel, by a vote of 7-1, upholds the decision of the Respondent to suspend Petitioners for three (3) basketball games this season, to be staggered over six (6) games.

DATE: November 4, 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.