

**BEFORE THE INDIANA  
CASE REVIEW PANEL**

In The Matter of E. N.,	)	
Petitioner	)	
and	)	<b>CAUSE NO. 020927-23</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 17-year-old senior (d/o/b January 9, 1985) at Bethany Christian School (hereafter, “Bethany”) in Elkhart County. She attended Bethany from sixth grade through her sophomore year. During her junior year, she accompanied her parents to Illinois, where she enrolled in an Illinois public school and participated on that school’s soccer and basketball teams. It had been the intention of her parents to move back to Elkhart, where they maintain a residence, for Petitioner’s senior year. However, during the summer of 2002, the father accepted an appointment to serve as a pastor for an Illinois congregation. Arrangements were made for Petitioner to stay with a friend of the family in Elkhart County while she completed her senior year. The Illinois public school, the family, and Bethany completed the IHSAA Athletic Transfer Report and submitted it to the Respondent for consideration. Hardship was sought under **Rule C 17-8.5**.<sup>1</sup> Although Petitioner was living at that time with her

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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 C-17-8.5** reads as follows:

In addition to the foregoing, in transfer cases under Rule 19-6, the Commissioner, his designee or the Committee shall have the authority to set aside the effect of the transfer rule and grant a student full eligibility following a transfer if (a) *the student continues to reside with his/her parent(s) or guardian(s)*, (b) the student establishes, to the reasonable satisfaction of the Commissioner, his designee or the Committee, that the transfer is in the best interest of the student and there are no athletic related motives surrounding the transfer, and (c) the principals of the sending and receiving schools each affirm in writing that the transfer is in the best interest of the

parents in Elkhart County, the parents were preparing to move to Illinois at the end of August, 2002. As a consequence, the parents listed an Illinois mailing address on the Athletic Transfer Report.

Respondent received the Athletic Transfer Report on August 14, 2002. Following review, Respondent denied Petitioner full eligibility that same date because she had transferred from the Illinois school district to Bethany, a member of the IHSAA, without a corresponding change of residence by her parents. **Rule C-19-6.** She did not meet any of the criteria under **Rule C-19-6.1** that would have permitted her to have immediate eligibility despite the fact there was not a corresponding change of residence by her parents.<sup>2</sup> Respondent, pursuant to **Rule C-19-6.2**, Petitioner was determined to have “limited eligibility,” which would prohibit her from playing varsity basketball at Bethany during her senior year.<sup>3</sup> Bethany appealed the determination to the Respondent’s Review Committee, which reviewed the matter on September 5, 2002. The Review Committee issued its decision on September 11, 2002, affirming the determination that Petitioner has limited eligibility and that no undue hardship exists.

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

Petitioner appealed the adverse decision of the Review Committee to the Indiana Case Review Panel

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student and there is no athletic related motives surrounding the transfer. (Emphasis added.)

<sup>2</sup>Petitioner did make an alternative argument that Bethany qualified as a “boarding school.” Under **Rule C-19-6.1(I)**, a student who transfers to a member boarding school may have full eligibility. Although Bethany does have a number of students who live with host families while attending the school, it is not a “boarding school” as defined by Respondent’s by-laws. The Respondent defines “Boarding School” to mean “A school providing housing and meals.” Additionally, it defines “Boarding School Student” to mean “A student who both attends and receives housing and meals from a boarding school.” Page ix, **Definitions, By-Laws and Articles of Incorporation of the Indiana High School Athletic Association**. Petitioner is living with a family friend. A host family does not make Bethany a “boarding school” nor is she considered to be a “boarding school student.” As this matter is decided on other grounds, no further reference will be made to this argument. All references herein are to the By-Laws as in effect for the 2002-2003 school year, except where noted.

<sup>3</sup>**Rule C-19-6.2** reads as follows:

“**Limited Eligibility** (See Definition) A student who transfers without a corresponding change of residence to a new district or territory by the student’s parent(s)/guardian(s) may be declared to have limited eligibility.” “Limited eligibility” is defined as follows: “A student who is declared to have limited eligibility shall be eligible to participate immediately in all interschool athletics, provided, however, during the first 365 days from the date of last participation at a previous school, such student may not participate in interschool athletics as a member of a varsity athletic team.” **Rule 19–Eligibility and Transfer, Definitions .**

(CRP) on September 27, 2002.<sup>4</sup> The CRP notified the parties by memorandum of October 1, 2002, of their respective hearing rights. The parents were provided with a “Consent to Disclose Student Information.” The parents, on October 8, 2002, elected to have the hearing proceedings closed to the public. A hearing date was set for November 1, 2002. The record of the proceedings before the Review Committee was photocopied and transmitted on October 11, 2002, to CRP members.<sup>5</sup>

The parties appeared on that date for the hearing. Petitioner was represented by her athletic director. 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. Respondent objected to the introduction of Petitioner’s Exhibit P-1, a one-page letter from Bethany’s guidance counselor. The exhibit is a hearsay document. There was no showing that the author of the document could not have been made available to testify. The objection was sustained; however, the document was permitted into the record but limited by its hearsay status. Petitioner submitted three additional documents, P-2 through P-4 inclusive. Respondent did not object to 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 a 17-year-old senior (d/o/b January 9, 1985) enrolled in Bethany Christian Schools in Elkhart County. She attended Bethany from the sixth grade through her sophomore year. Her father was the pastor of a local church, where he served for seventeen years. Petitioner’s parents determined that a leave of absence from the father’s pastorate may be necessary. It was the original intent to go to Mexico for that year. However, the mother’s mother, who lived in Illinois, began to experience failing health, including a broken hand. The family decided that the year should be spent in Illinois, assisting Petitioner’s grandmother. This would have been for the 2001-2002 school year.

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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>The hearing was conducted before CRP members John L. Earnest, chair designee; Teresa Emery; Pamela A. Hilligoss; James Perkins, Jr.; Michael L. Ross; Earl H. Smith, Jr.; and Brad Tucker.

2. Some time in April of 2001, Petitioner and her mother consulted with the athletic director for Bethany to determine whether Petitioner's absence from Bethany for the ensuing school year would affect her athletic eligibility. They had done so because the family was aware that another family faced with similar decisions were denied full eligibility. At the time of this conversation, the family was still contemplating a move to Mexico. The athletic director was aware that Respondent had a "hardship" rule that would permit the Respondent to have full eligibility upon her return to Bethany for her senior year so long as there were no athletic-related motives surrounding her transfer, and the principals of the two affected schools affirmed in writing that the transfer was in the best interest of the student and there were no athletic-related motives surrounding the transfer. **Rule C-17-8.5**, as effective July 1, 2000, did contain these two provisions. (Exhibit P-3).
3. The Respondent amended **Rule C-17-8.5**, effective for the 2001-2002 school year to include an additional requirement: that a student must continue to reside with his/her parents or guardians. (Exhibit P-4). Petitioner and her parents were unaware that the additional requirement had been included in the rule. The athletic director likewise was unaware.<sup>6</sup>
4. Petitioner enrolled in an Illinois public school district, where she participated on the soccer team and the varsity girls' basketball team. The soccer team was the first interscholastic endeavor into this sport for the Illinois school. As a result, it played a sparse schedule (five games), and competed only at the junior varsity level. Although Petitioner was on the varsity team, she played sparingly.
5. It had been the intention of the family to move back to Elkhart County after the year of absence. Petitioner had accompanied her parents to Illinois with the understanding that they would return to Elkhart County so she could complete her education at Bethany. Bethany is supported by the faith tradition of the family. While in Illinois, the father accepted an interim pastorate for a church of his faith tradition while the church interviewed for a permanent pastor. Unfortunately, the church was unable to select a suitable candidate. The father was asked to apply. The church selects its pastor through an "affirmation vote." The "affirmation vote" did not occur until August 4, 2002.
6. Although the "affirmation vote" did not occur until August 4, 2002, Petitioner and her family had

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<sup>6</sup>The athletic director acknowledges that he should have known of the amendment of the rule. The Petitioner and the athletic director do not challenge the fact the rule was changed nor do they challenge the necessity for the rule change itself. Petitioner does not contest the basic facts underlying this dispute, nor does she contest the fact that she has not met the requirements of the rules, as amended. Rather, she seeks a hardship exception to the application of the rule because she has not violated any of the principles or philosophical underpinnings for any of the rules.

already returned to Elkhart County. On February 27, 2002, Petitioner completed an “Intent-to-Return Form” for Bethany, indicating her reasons for returning to Bethany for the 2002-2003 school year (Exhibit P-2). It is noteworthy that of all the reasons listed for why Petitioner wished to return to Bethany, none of the reasons included athletic participation. Athletics are referenced only on the second page and only in response to a list of interests and activities that she might participate in at Bethany. Her primary interests involve immersion in her faith tradition, choir, service activities, music, and student governance. Tuition had been paid by mid-July of 2002. Bethany is a small school. It has about 225 students. All students are involved in activities at the school. Bethany does have a varsity and junior varsity girls’ basketball teams. However, there are only 17 girls who are trying out for the basketball teams. The varsity usually consists of eight (8) players. Petitioner would likely be one of the eight varsity players.

7. After the “affirmation vote” in August of 2002, it became apparent the father and mother would return to pastor the church in Illinois. Arrangements were made for Petitioner to live with a family friend, an Elder in the Elkhart County church where the father previously served as pastor. Classes began at Bethany around August 15, 2002. At that time, Petitioner was still residing with her parents. The parents moved to Illinois on or about August 29, 2002.
8. Respondent does not dispute Petitioner’s statement of facts regarding the move to Illinois and the re-enrollment in Bethany a year later. Rather, Respondent notes that its By-Laws provide as follows:

#### **Hardship C-17-8.1**

##### **General**

Except with respect to Rules 4, 12 and 18, the Commissioner, his designee or the Committee shall have the authority to set aside the effect of any Rule when the affected party establishes, to the reasonable satisfaction of the Commissioner, his designee or the Committee, 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. (Emphasis added.)

This By-Law, when read in concert with **Rule C-17-8.5** and **Rule C-17-8.4(a)**<sup>7</sup>, eliminated

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<sup>7</sup>This subsection provides that “Ordinary cases shall not be considered hardship; rather, the conditions which cause...the failure to meet the eligibility requirements must be beyond the control of the school, the coach, the student, the parents and/or the affected party.”

Petitioner from consideration for hardship because the hardship is not an “undue hardship.” Respondent provided testimony as to its interpretation of “undue hardship,” noting that it does not include “ordinary hardship,” which may be understood as a form of inconvenience. “Undue hardship,” according to Respondent, includes more serious situations, such as harassment within a school setting, the parent losing a job, and similar dramatic changes in circumstances.

### 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. The CRP recognizes and acknowledges that the Respondent’s By-Laws and their philosophical underpinnings serve a very valuable function, particularly those enumerated under **Rule C-19**, which bear reproduction, in relevant part, herein:  
**Rule 19 – Eligibility and Transfer**  
...  
**Philosophy**  
The following is a brief resume of the points of philosophy included in the transfer rule of this Association.
  - a. Participation in interschool athletics is a privilege provided for students who meet the democratically-established standards of qualification as set forth by this Association.
  - b. The privilege of participation in interschool athletics should fundamentally be available to bona fide students in school districts where their parents or legally-established guardians reside.
  - c. Standards governing residence and transfer are a necessary prerequisite to participation in interschool athletics because:
    - (1) they protect the opportunities of bona fide students to participate;
    - (2) they provide a fundamentally fair and equitable framework in which interschool athletic competition, in an educational setting, can take place;
    - (3) they provide uniform standards for all schools to follow in maintaining athletic competition;

(4) they support the educational philosophy that athletics is a privilege which must not be permitted to assume a dominant position in a student's or school's program;

(5) they keep the focus of educators and students on the fact that students attend school to receive an education first and participate in athletics second;

(6) they maintain the fundamental principle that a high school student should live at home with his/her parents or legally-appointed guardian (if the parents are deceased) and attend school in the school district in which the parents or guardians live;

(7) they reinforce the view that the family is a strong and viable unit in our society, and as such, is the best place for students to live while attending high school;

(8) they serve as a deterrent to students who would transfer schools for athletic reasons and to individuals who would seek to recruit student athletes to attend a particular school for the purpose of building athletic strength;

(9) they serve as a deterrent to students running away from or avoiding an athletic conflict or discipline that has been imposed;

(10) they protect school programs from losing students who have established an identity as an athlete and, as such, are contributors to the overall school program and image.

3. Respondent recognizes that some cases require individual consideration. For this reason, it has created **Rule C-17-8** to address cases of "hardship" where strict enforcement of an applicable rule would not serve to accomplish the purpose of the rule, the spirit of the rule has not been violated, and there exists in a particular case of showing of undue hardship that would result from enforcement of the rule. **Rule C-17-8.1**. In this case, it is not disputed by Petitioner that she does not meet the "hardship" criteria under **Rule C-17-8.5** because she has not continued to reside with her parents. There is no dispute that there are no athletic-motivated reasons for her re-enrollment in Bethany. Likewise, the principals of both the sending and receiving schools have affirmed there are no athletic-motivated reasons for the move. The philosophical underpinnings of **Rule 19** state a "fundamental principle that a high school student should live at home with his/her parents...and attend school in the school district in which the parents...live" and that the rules should "reinforce the view that the family is a strong and viable unit in our society, and as such, is the best place for students to live while attending high school." The CRP believes that these statements are valid statements and should be supported. However, such support should not be without consideration of individual circumstances. The "Hardship Rule" is intended to permit equitable considerations where, as here, a transfer presents unusual circumstances that do not technically satisfy the requirements of a rule.
4. Petitioner herein and her family are very close. The circumstances surrounding the year of leave from a 17-year pastorate with a resulting interim pastorate in Illinois and then an unforeseen change in pastoral responsibilities that would require the parents removal to Illinois do constitute an "undue hardship" for Petitioner. She had agreed to accompany her parents on the year-long

leave of absence with the understanding that she would be able to return and complete her senior year at the school where she had attended since sixth grade, where she could participate in the school life with her peers and as a senior. There was no attempt by Petitioner or her family to circumvent Respondent's by-laws. They attempted to comply with the by-laws, but unforeseen circumstances intervened.

Although Respondent may be limited by its by-laws, the CRP is not necessarily limited by Respondent's interpretation of its by-laws where, as here, there are specific considerations. Under I.C. § 20-5-63-7(d), a decision of the CRP applies only to the case before it and does not affect any by-law of the Respondent other than with respect to the application to the Petitioner's situation. The CRP's decision below does not do violence to Respondent's by-law.

5. The purpose of the "Transfer Rule," **Rule C-19**, will not be served in this instance through a strict enforcement of that rule. Further, Petitioner has not violated the spirit of the rule. The CRP finds that, in this case, the circumstances demonstrate an undue hardship would result from enforcement of **Rule C-19** against the Petitioner.

#### ORDER

1. Respondent's determination that Petitioner is entitled to "limited eligibility" under **Rule C-19-6.2** is nullified. Petitioner has satisfied the requirements for consideration under the "Hardship Rule," specifically **Rule C-17-8.1** as this relates to **Rule C-19**. Accordingly, Petitioner shall have full eligibility during the 2002-2003 school year. The vote of the CRP was 5-2 in this regard.

DATE: November 4, 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.

