BEFORE THE
CASE REVIEW PANEL

In the Matter of Miguel Delossantos,	)	
Petitioner	)	
And	)	**CAUSE NO. 050307-37**
The Indiana High School Athletic Assoc., Inc.,	)	
Respondent	)	
	)	
Review Conducted Pursuant to	)	**Open Hearing**
I.C. § 20-5-63 *et seq*.	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Procedural History

Miguel Delossantos (hereafter, "Petitioner") is presently a 19-year-old senior enrolled in Southport High School in the MSD of Perry Township (hereafter, "Southport"). His date of birth is May 16, 1985. He is originally from the Dominican Republic. He is also a baseball player who has previously played two years of varsity baseball at Southport. Interscholastic baseball competition at the secondary level is a sport sanctioned by Respondent and played in the spring. Petitioner will turn 20 years of age on May 16, 2005. The baseball state championships will be played on June 18, 2005. Under the Respondent's **Rule C-4-1**, also known as the "Age Rule,"

> A student who is or shall be twenty (20) years of age prior to or on the scheduled date of the IHSAA state finals in a sport shall be ineligible for interschool athletic competition in that sport; a student who is nineteen (19) years of age on the scheduled date of the IHSAA state finals in a sport shall be eligible as to age for interschool athletic competition in that sport.[1]

Petitioner acknowledges his age and the fact that he will be twenty years of age prior to the scheduled date for the state finals in baseball. Strict application of Rule **C-4-1** would render him ineligible. Petitioner believes that his circumstances should be considered and Respondent's

[1]Respondent 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, but many of the by-laws are "common" to all potential athletes and, hence, begin with "C." **Rule C-4-1** is "common" to both genders. (All references are to the 2004-2005 by-laws of Respondent.)

"Hardship Rule" should be applied.[2] However, Respondent's By-Laws prohibit the application of the "Hardship Rule" to the "Age Rule." See Rule **C-17-8.1.**

Petitioner came to the U.S. from the Dominican Republic when he was 17 years of age. He was admitted to Southport High School as a junior despite his inability to speak English. There is some dispute as to the school record of Petitioner in the Dominican Republic. Petitioner claims that he did not complete a full year of high school in the Dominican Republic. Petitioner repeated his junior year and is now expecting to graduate this spring. Petitioner hopes to earn U.S. citizen status and play baseball in college.

On September 25, 2004, Petitioner requested a determination of his athletic eligibility status for the 2004-2005 baseball season. On December 21, 2004, the Respondent, by its Commissioner, determined him ineligible to participate and notified Southport of this decision by letter dated December 21, 2004. Petitioner, through Southport, requested a review of the Commissioner's decision by Respondent's Review Committee. This request was made on January 24, 2005. The Respondent's Review Committee conducted its review on February 18, 2005, and issued its decision on February 28, 2005, upholding the Commissioner's decision declaring Petitioner ineligible.

APPEAL TO THE CASE REVIEW PANEL

Petitioner, by counsel, appealed to the Indiana Case Review Panel[3] on March 7, 2005. The parties were notified that date of their respective hearing rights. The record from the investigation and review by Respondent was requested and received. The record was copied and provided to each participating member of the CRP. The parent notified the CRP on March 14, 2005, that she wished

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[2]Rule **C-17-8** is the IHSAA's "Hardship Rule." Generally, the "Hardship Rule" allows the IHSAA "to set aside the effect of any Rule [with some exceptions] when the affected party establishes, to the reasonable satisfaction of [the IHSAA], all of the following conditions are met:

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

Respondent, on its own initiative, can invoke the "Hardship Rule," but a member school cannot. **Rule C-17-8.2**. However, Respondent will not apply the "Hardship Rule" to several eligibility by-laws, including Rule **C-4-1**, the "Age Rule." See **Rule C-17-8.1**.

[3]The Case Review Panel (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 decision does not affect any By-Law of the IHSAA but is student-specific. In like manner, no by-law of the IHSAA is binding on the CRP. The CRP, by statute, is authorized to uphold, modify, or nullify any student eligibility decision by the Respondent. I.C. 20-5-63-7(c)(3).

for the proceedings in this matter to be open to the public. Hearing was set for March 23, 2005, within the offices of the Indiana Department of Education. The parties received timely notice of the proceedings.

Respondent, by counsel, filed a Motion for Summary Judgment on March 16, 2005. The Motion was copied and provided to the participating members of the CRP. On March 18, 2005, the Chair denied the Motion because it was contrary to statute and lacked any legal foundation. Respondent attempted to raise its Motion at the hearing, but the CRP affirmed its denial of the Motion.

On March 23, 2005, the CRP convened.[4] The Petitioner appeared and was represented by counsel. The Respondent appeared by counsel and its Commissioner. Prior to the hearing, a pre-hearing conference was conducted for the purpose of receiving additional documents and entertaining objections. During the pre-hearing, Petitioner submitted four (4) additional documents. Two of these were published decisions of the Indiana Court of Appeals: IHSAA v. Durham, 748 N.E.2d 404 (Ind. App. 2001) (marked as P-1) and IHSAA v. Martin, 731 N.E.2d 1 (Ind. App. 2000) (marked as P-2). Respondent questioned the relevancy of these two decisions as neither involved a dispute over the "Age Rule." Respondent stated that there is only one (1) published decision involving the "Age Rule." That decision–Thomas v. IHSAA, 603 N.E.2d 190 (Ind. App. 1992)–was marked as "CRP-1" and admitted along with the other two published decisions, pursuant to I.C. § 4-21.5-3-26(f). Petitioner also submitted a revised Official Transcript from Southport (marked as P-3). This transcript differed in several material respects from the Official Transcript submitted to Respondent as a part of its investigation. Respondent objected to P-3, but it was admitted over Respondent's objection. Petitioner also submitted the tentative baseball roster for Southport (P-4), to which no objection was made. During the course of the hearing, it became necessary to introduce two additional documents: P-5 (transcript from Petitioner's freshman year at a private school in the Dominican Republic) and P-6 (a partial copy of P-5 with handwriting and notes). Both parties relied upon these latter two documents to elicit testimony from witnesses. Respondent tendered no additional documents.

Testimony was provided under oath or by affirmation. An interpreter was present and was administered the oath required by I.C. § 4-21.5-3-16. In consideration of the testimony and record, the following Findings of Fact and Conclusions of Law are determined.

FINDINGS OF FACT

1. Petitioner is 19 years old (d/o/b May 16, 1985). He was born in the Dominican Republic. He has two older siblings. His parents came to the United States a number of years ago. Petitioner was raised by relatives. He entered kindergarten late and repeated the fifth grade. He attended a private high school for the first semester of his freshman year. This was the 2001-2002 school year. The instructional school day and time frame for class periods was

[4]Six members were present: Mark Mason, Chair; Scott F. Eales; Thomas J. Huberty, Ph.D.; Brenda K. Sebastian; Earl H. Smith, Jr.; and Brad Tucker.

much shorter than those for an Indiana school district. During the second semester, the Petitioner was preparing to come to the United States and did not attend school. He eventually left the Dominican Republic on or about May 20, 2002, to join his mother in Indiana.

2. Petitioner enrolled in Southport for the 2002-2003 school year. Southport, in an attempt to translate the transcript from the private school, determined Petitioner attempted 14.5 credits during his freshman year, earning 12.50 credits with a grade-point average (GPA) of 1.3104. Southport initially misinterpreted the Spanish transcript and believed the Petitioner should be a junior and placed him accordingly. Petitioner struggled academically and has continued to struggle academically, in large part because of the language barrier. His GPA has improved to 1.6033. Petitioner has yet to satisfy the Graduation Qualifying Examination. See I.C. § 20-10.1-16-13. Notwithstanding, Petitioner intends to graduate this school year, attend college, and play baseball.

3. Petitioner began playing baseball on club teams in the Dominican Republic when he was about eight or nine years old. He was not aware that sports teams were part of the school system in Indiana until he arrived. He played shortstop for Southport during the 2002-2003 and the 2003-2004 school years. He was the starting shortstop during the 2003-2004 school year, batting over .400. Although some scouts for professional teams have seen him play, the scouts were not there to observe Petitioner alone. There are several other members of the Southport team who are considered exceptional players. There was some interest shown by a post-secondary school during the 2003-2004 school year but not this year as he isn't playing.

4. Petitioner was advised by Southport prior to 2004-2005 school year that he would not be eligible to participate in baseball due to his age. Although Petitioner was aware of this, he nevertheless continued to remain in school and work towards graduation and a high school diploma. He has not been practicing with the baseball team.[5] Petitioner is of average height and weight. The Southport baseball coach stated that Petitioner would be one of the team's top four players if he were eligible. He also described Petitioner as a capable player, both offensively and defensively.

5. The projected baseball roster for the Southport team during the 2005 spring season includes eight (8) seniors, nine (9) juniors, and two (2) sophomores but no freshmen. One of the sophomores would be the starting shortstop if Petitioner remains ineligible.

6. Both the athletic director and baseball coach for Southport described Petitioner as a possible baseball prospect at the post-secondary level. Both considered Petitioner fundamentally sound as a baseball player, but neither considered him an exceptional player. Petitioner

[5]Respondent's Commissioner did indicate that, so long as Petitioner is enrolled as a student at Southport, he could practice with the baseball team even though he could not play. It would be Southport's decision to allow him to practice with the team.

would likely do well at a junior college where he could be a "walk on" for the baseball team and possibly earn an athletic scholarship.

7. Petitioner has not been offered an athletic scholarship. His future plans involve attending a post-secondary school. Although he is slated to graduate on or about May 27, 2005, he has not applied to any post-secondary schools, taken either the SAT or ACT, or applied for any financial aid.

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 Petitioner. The Petitioner invoked his statutory right to review. The Case Review Panel has jurisdiction to review and determine this matter.

2. Under the Administrative Orders and Procedures Act (AOPA), I.C. § 4-21.5-3-27(d), findings by the CRP must be based upon evidence considered substantial and reliable. This requires the CRP to evaluate documentary and testimonial evidence presented to it.

3. Respondent's "Age Rule" is, *per se*, a legitimate rule that promotes important facets of athletic competition, such as the health and safety of student-athletes based upon physiological considerations resulting from maturation during the high school years. The "Age Rule" is also designed to encourage competitive equality among member schools and promote availability of opportunities for competing as a member of a team. As with any age-specific regulation, some line-drawing must occur. Respondent has established a rule regarding age that can be readily ascertained. Petitioner was advised by Southport of the "Age Rule" and was aware that he would likely be ineligible to participate on Southport's baseball team during the spring of 2005.

4. There is no dispute that Petitioner does not satisfy the "Age Rule" requirement of **Rule C-4-1**. Rather, Petitioner argues that the rule should be waived utilizing Respondent's "Hardship Rule." Under this rule, the Respondent can waive the effect of any eligibility rule where strict enforcement of the rule in a particular case would not serve to accomplish the purpose of the rule; the spirt of the rule would not be violated; and there exists in a particular case circumstances showing an undue hardship would result from enforcement of the rule. However, Respondent will not apply its "Hardship Rule" to certain eligibility rules, including the "Age Rule." See **C-17-8.1**. Respondent has developed what it characterizes

as a "uniform, bright line rule" in this regard, which limits Respondent and its member schools. Respondent may limit itself by its own rules, but Respondent cannot limit the CRP in this fashion. A *per se* legitimate rule such as the "Age Rule" may, when applied to a specific student, work a hardship. Each case will require its own analysis. Petitioner was entitled by statute to seek a hearing before the CRP, a right secured by the General Assembly without the exception Respondent argues. Any exceptions to the right of a parent to seek recourse to the CRP would have to be dictated by the General Assembly.

5. Petitioner did not come to the United States to play baseball. Rather, he came here because of increased opportunities. He was not aware of the relationship between athletics and high schools in Indiana. His long-range goals do not necessarily involve baseball. He has no professional prospects or post-secondary scholarship offers that are jeopardized by his ineligibility. Petitioner's more immediate goals include satisfying graduation requirements, earning a high school diploma, and furthering his education–and employment prospects–through post-secondary education. Although Petitioner was one of the better players on the team, if he were eligible, he would displace a younger student who is presently playing at Petitioner's position. The restriction imposed on Petitioner by virtue of his age is not the result of any exceptional circumstance that would warrant a waiver of the "Age Rule" under an "as applied" analysis.

ORDER

In consideration of the foregoing, the Case Review Panel, by a vote of 5-1, sustains the determination of the Respondent that Petitioner is ineligible for interscholastic athletic competition sanctioned by Respondent by reason of his age.

DATE: April 5, 2005

/s/ Mark Mason, 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.