BEFORE THE INDIANA
CASE REVIEW PANEL

In The Matter of K.J.,	)	
Petitioner	)	
And	)	**CAUSE NO. 060919-46**
The Indiana High School Athletic Assoc. (IHSAA),	)	
Respondent	)	
	)	
Review Conducted Pursuant to	)	**Closed Hearing**
I.C. 20-26-14 *et seq.*	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Procedural History

Petitioner is a high-school senior. Petitioner was enrolled at Penn High School during her freshman and sophomore years and participated on the varsity basketball team during the 2003-2004 and 2004-2005 school years. During the 2004-2005 school year, Petitioner's family moved to Alabama, but allowed her to stay in Indiana to complete her sophomore year and the basketball season at Penn High School before joining them in Alabama. She attended Oak Mountain High School in Birmingham, Alabama for the 2005-2006 school year.

Petitioner was very unhappy and depressed in Alabama and did not adjust well. Her grades dropped, she did not make friends, and she withdrew from family and friends. Petitioner played basketball in Alabama, but was still unhappy. Petitioner successfully tried out for an AAU basketball team in Alabama, but was unhappy and chose not to participate on the team. In the spring of 2006, she began to return to Indiana on the weekends to play with her old AAU team, Indiana Elite.

As a result of their daughter's failure to thrive in Alabama and her increasing depression and unhappiness there, Petitioner's parents decided to allow her to return to Indiana and live with family friends while completing her senior year of high school. Several friends and family members sent letters supporting Petitioner's request for hardship, detailing her depression as a result of her move to Alabama and her desire to move back to Indiana and finish her senior year at Penn High School. Petitioner, through Penn High School, on April 27, 2006, submitted a request for full eligibility at Penn High School. Respondent, on May 12, 2006, ruled that Petitioner did not meet the criteria for full eligibility and instead, granted her only limited

eligibility at Penn pursuant to **Rule C-19-6.2**,[1] which would restrict her to junior varsity participation in basketball.

Petitioner sought review of this decision from Respondent's Review Committee. The Review Committee conducted its review on August 10, 2006. The Review Committee upheld the determination that Petitioner should only be given limited eligibility because her transfer to Penn High School from Oak Mountain High School was not accompanied by a corresponding change of residence by her parents, and her situation did not warrant application of the Hardship Rule.[2]

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[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-19-6.2** is "common" to both genders. (All references are to the 2006-2007 by-laws of Respondent.) **Rule C-19-6.2** provides that 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.

[2]The Hardship Rule provides, in pertinent part:

C-17-8.1 General

Except with respect to Rules 4 [Age], 12 [Enrollment and Attendance] and 18 [Scholarship], 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.

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C-17-8.4 General Consideration

a. Ordinary cases shall not be considered hardship; rather, the conditions which cause a violation of a Rule, a disregard of a decision or directive made under these Rules, or 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.

b. Injury, illness or accidents which cause a student to fail to meet a basic requirement are possible causes for a hardship consideration.

c. Likewise, a change in financial condition of the student or a student's family may be considered a hardship, however, such conditions or changes in conditions must be permanent, substantial and significantly beyond the control of the student or the student's family.

C-17-8.5

In addition to the foregoing, in transfer cases under Rule 19-6 [Transfer Eligibility Without Change of Residence], 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 student and there are no athletic-related motives surrounding the transfer.

The Review committee noted that Petitioner did not get the signature of the Penn principal on the Hardship Verification section of the *Transfer Report*.

APPEAL TO THE CASE REVIEW PANEL

Petitioner appealed to the Indiana Case Review Panel[3] on September 19, 2006. The parties were notified on September 22, 2006, 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 parents notified the CRP on October 19, 2006, that they wished for the proceedings in this matter to be closed to the public. The hearing was set for October 23, 2006, at the State House, Indianapolis, Indiana. The parties received timely notice of the proceedings.

On October 23, 2006, the CRP convened.[4] The Petitioner was present in person and was represented by her parents. The Respondent appeared by its Commissioner and was represented by counsel.

Testimony was provided under oath or by affirmation. In consideration of the testimony and record, the following Findings of Fact and Conclusions of Law are determined.

FINDINGS OF FACT

1. Petitioner was enrolled at Penn High School during her freshman and sophomore years and participated on the varsity basketball team during the 2003-2004 and 2004-2005 school years.

2. During the 2004-2005 school year, Petitioner's family moved to Alabama. Petitioner remained in Indiana to finish her sophomore year at Penn High School.

3. Petitioner participated in varsity basketball during the school year and then participated in AAU basketball during the summer of 2005.

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[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. 20-26-14-6(c)(3).

[4]Six members were present: Thomas Huberty, Ph.D., Chair; Edwin Baker; Christi L. Bastnagel; Scott F. Eales; James Perkins, Jr.; and Stephen Psikula.

4. Petitioner joined her family in Alabama and attended Oak Mountain High School in Birmingham, Alabama for the 2005-2006 school year.

5. After moving to Alabama, Petitioner was very unhappy and depressed. She did not make friends in her new school, and her grades dropped. She was withdrawn and spent much of her time in her room. Petitioner did not interact with others, related minimally with her siblings, and she felt frustrated and disconnected. Petitioner lost her motivation for school and for social interactions.

6. Although Petitioner played basketball at Oak Mountain High School, she was still unhappy. Petitioner successfully tried out for an AAU basketball team in Alabama, but was unhappy and did not want to participate on the team.

7. Petitioner was so miserable that in the spring of 2006, Petitioner's parents decided to let her return to Penn High School for her senior year. Petitioner's father enrolled her at Penn High School in April, 2006.

8. The principal of Oak Mountain High School filled out and signed the IHSAA Athletic Transfer Report on April 22, 2006. On this form the principal indicated Petitioner would have been eligible for athletics if continuing in school (at Oak Mountain); there was no known reason why Petitioner should not have been eligible at Oak Mountain; Petitioner did not transfer for athletic reasons; and there was no undue influence. The principal indicated that Petitioner withdrew because she did not adjust very well to this move at this time in her life. Significantly, the principal recommended full eligibility under the hardship exception and signed the verification affirming that the transfer is in the best interest of Petitioner and there are no athletic related motives surrounding the transfer.

9. Petitioner's father signed the IHSAA Athletic Transfer Report on April 27, 2006, indicating Petitioner was seeking hardship.

10. Petitioner, her parents, her guidance counselor at Oak Mountain High School, and the pastor of St. Richard Church in Swanton, Ohio, all wrote letters describing the difficulties Petitioner experienced during the 2005-2006 school year and supporting her move back to Penn High School.

11. The signature stamp of the principal of Penn High School was affixed to the IHSAA Athletic Transfer Report with a date of May 12, 2006. The form indicated that Petitioner did not transfer for athletic reasons and Petitioner did not transfer as the result of undue influence. The principal of Penn High School did not sign the hardship verification.

12. Neither the principal of Penn High School nor the athletic director sought any information from Petitioner or her parents concerning their request for eligibility under the hardship exceptions.

13. There is no evidence in the record to indicate that either the principal or athletic director of Penn High School made any personal contact with the principal of Oak Mountain High School.

14. Petitioner is currently a senior, attending Penn High School in Mishawaka, Indiana and residing with friends in Granger. Petitioner's parents executed the Custodial Statement and Agreement: Third Party Custody, and Petitioner attends Penn High School without the payment of tuition.[5]

15. Petitioner transferred back to Penn High School primarily for social, emotional and educational reasons. Petitioner returned to Penn High School knowing that she might not be able to participate in basketball during her senior year. Petitioner indicated that her reasons for returning to Penn High School were 70% social, emotional and educational and only 30% athletic.

16. Petitioner has received a scholarship offer to play basketball at Coastal Carolina. Petitioner has this offer regardless of whether she plays basketball during her senior year of high school.

CONCLUSIONS OF LAW

1. Although the IHSAA, the Respondent herein, 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 "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. 20-26-14 *et seq.* The Case Review Panel has jurisdiction when a parent, guardian, or eligible student 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. Petitioner has timely sought review. The Case Review Panel has jurisdiction to review and determine this matter. The Case Review Panel is not limited by any by-law of Respondent. The Case Review Panel is authorized by statute to either uphold, modify, or nullify the Respondent's adverse eligibility determination.

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[5]Indiana Code 20-26-11-3 requires the State Superintendent of Public Instruction to prepare the form of agreement to be used when the legal settlement of the student is other than where the parent resides. The Custodial Statement and Agreement: Third Party Custody, is the form to be utilized when the student resides with someone other than the parent. The receiving school corporation, in this case, Penn-Harris-Madison School Corporation, makes the determination as to whether the student has legal settlement within the school corporation and can attend without the payment of tuition. Disputes between the school corporation and the parent as to whether the student has legal settlement within the school corporation are within the jurisdiction of the Indiana State Board of Education.

2. Any Finding of Fact that may be considered a Conclusion of Law shall be so considered. Any Conclusion of Law that may be considered a Finding of Fact may be considered as such.

3. **Rule C-19-6.1** provides immediate eligibility for a student who transfers schools without a change of residence by the student's parent or guardian. Petitioner does not meet any of the criteria under this Rule, nor does Petitioner argue that she does. Accordingly, Rule C-19-6.1 does not apply.

4. A student who transfers without a corresponding change of residence to a new district by the student's parents may be declared to have limited eligibility[6] pursuant to **Rule C-19-6.2** unless the transfer was primarily for athletic reasons[7] (in which case the student would be ineligible for 365 days), or unless there exist circumstances showing an undue hardship would result from enforcement of the Rule. Petitioner did not transfer primarily for athletic reasons.

5. In submitting the IHSAA Athletic Transfer Report, Petitioner sought a hardship transfer pursuant to **Rule 17-8.1**. A hardship may be determined if (a) strict enforcement of the Rule in the particular case will not serve to accomplish the purpose of the Rule;[8] (b) the

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[6]Respondent's by-laws provide the following definition: **Limited Eligibility** - 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.

[7]Respondent's by-laws provide the following definition: **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.

[8]Relevant considerations are reflected in the philosophy of the transfer rule:

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 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

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.

The evidence and testimony overwhelmingly show that Petitioner's transfer is not primarily for athletic reasons. Petitioner would still transfer even if she were not able to play basketball. Petitioner comes from a close family that did not lightly make the decision to enroll Petitioner at Penn High School. The decision to permit Petitioner to attend Penn High School for her senior year was made in an effort to enable Petitioner to thrive academically, socially, and emotionally and to stop the downward slide her parents perceived. This decision was not athletically motivated but was a difficult decision reached by Petitioner's parents as they sought to enable her to regain her interest in school and friends and participate in life.

Respondent's philosophy encourages students to live with their parents and to maintain the integrity of the family. Such is laudable, but it should not be an inflexible standard. Petitioner's family is very supportive of Petitioner and did not lightly make the decision to transfer her back to Penn High School. The family decision was made in the best interest of Petitioner, and not for athletic reasons. Respondent's philosophy should not be applied in a manner that interferes with the parents' right to provide for the educational, social and emotional welfare of their child.

The strict application of the transfer rules would be an undue hardship for Petitioner.

6. Although the sending school signed the hardship verification pursuant to **Rule 17-8.5**, the receiving school did not. The receiving school is required to conduct an investigation. Such investigation is to include personal contact with the principal of the sending school. There is no evidence in the record that such contact was made. The receiving school also made no inquiry of Petitioner or her parents concerning the request for a hardship determination. The Case Review Panel is unwilling to speculate that an appropriate investigation, including personal contact with the principal of Oak Mountain High

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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.

School, took place absent evidence of such in the record. The evidence does support a determination that the transfer is in the best interest of Petitioner, and that academic, emotional and social reasons motivated the transfer. Petitioner would transfer even without the opportunity to participate in athletics. The transfer was not the result of athletic motivation; the transfer is in the best interest of Petitioner; and Petitioner is living with guardians chosen by the parents to meet the educational, emotional and social needs of Petitioner. A hardship exists for Petitioner.

ORDER

Respondent's determination that Petitioner shall have limited eligibility for 365 days from her last participation at Oak Mountain High School is modified. Petitioner shall have full eligibility to participate in sports at Penn High School. This was determined by vote of 5-1.

DATE: November 8, 2006

/s/Thomas J. Huberty, Ph.D.
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.