

**BEFORE THE INDIANA  
CASE REVIEW PANEL**

Inre the Matter of J.B.,	)	
Petitioner	)	
and	)	<b>CAUSE NO. 060925-47</b>
The Indiana High School Athletic Assoc. (IHSAA),	)	
Respondent	)	
	)	
Review Conducted Pursuant to	)	<b>Closed Hearing</b>
I.C. 20-14 <i>et seq.</i>	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

**Procedural History**

Petitioner is a 17-year-old junior (d/o/b August 12, 1989) at Heritage Christian High School, a private school located in Indianapolis (hereafter, “Heritage Christian”). He attended Lawrence Central High School in the Lawrence School Corporation (hereafter, “Lawrence Central”) for his freshman and sophomore years. He was a member of the junior varsity baseball team during the ninth grade. During his sophomore year he was a member of the junior varsity baseball and football teams. His legal settlement at all times relevant herein, has been in the Lawrence school district. Petitioner’s parents enrolled Petitioner and his younger brother in Heritage Christian in June 2006. Petitioner’s parents completed the IHSAA Athletic Transfer Report on June 30, 2006, seeking full eligibility for Petitioner under the Hardship Rule 17-8.<sup>1</sup> Lawrence Central completed the IHSAA Athletic Transfer

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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 many of the by-laws are “common” to all potential athletes and, hence, begin with “C.” **Rule C-17-8** is the **Hardship Rule**. It provides in relevant 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.

Report on August 8, 2006, recommending limited eligibility under Rule 19-6.2<sup>2</sup> and did not sign the Hardship Verification. Heritage Christian, the receiving school completed the form on August 10, 2006, and did not make a recommendation on eligibility or sign the Hardship Verification. On August 11, 2006, Respondent determined that Petitioner should have “limited eligibility.”

Petitioner appealed this determination to Respondent’s Review Committee. The parties made presentations to Respondent’s Review Committee on September 6, 2006. Respondent’s Review Committee issued its written decision on September 15, 2006, upholding the Commissioner’s determination that Petitioner have limited eligibility for 365 days from his last athletic competition at Lawrence Central.

### APPEAL TO THE CASE REVIEW PANEL

Petitioner appealed to the Indiana Case Review Panel<sup>3</sup> on September 25, 2006. Petitioner’s parents notified the Case Review Panel that they wished for the proceedings in this matter to be closed to the public. A Hearing was set for October 18, 2006. The parties were advised of their respective hearing rights. The CRP convened<sup>4</sup> and the parties appeared on October 18, 2006.

Petitioner<sup>5</sup> was not present, but was represented by his parents. Respondent appeared by counsel. Petitioner submitted nine (9) additional exhibits marked P-1 through P-8A inclusive:

- P-1 Three (3) IHSAA Review Committee Summary Statements of Testimony
- P-2 Two (2) pages from an IPD 2005 Homicide Report.
- P-3 Lawrence Central Bears Football Newsletter dated April 2006.

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<sup>2</sup>**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.” “Limited eligibility” is defined under **Rule 19** 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.”

<sup>3</sup>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 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 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).

<sup>4</sup>Former CRP-Member Mark Mason served as the Chair-Designee. He was joined by CRP Members Stephen J. Psikula; Edwin Baker; Melissa B. Starry; Christi Bastnagel; and Earl H. Smith, Jr.

<sup>5</sup>References to “Petitioner” throughout this decision will include both the student and his parents.

- P-4 Letter addressed to: “Members of the IHSAA Board Committee for Eligibility” and signed by Alan B. Leinbach, High School Principal, Heritage Christian School.
- P-5 Two (2) pages printed from Mapquest dated 10/17/2006.
- P-6 Letter addressed to: “All-State Honoree” on Southern Indiana Babe Ruth Leagues letterhead dated September 8, 2006.
- P-7 Copy of an article from the Indianapolis Star dated October 10, 2006.
- P-8 Document entitled “15 Year Old Shot After Getting Off School Bus” dated October 17, 2006.
- P-8A Copy of an article from the Indianapolis Star dated October 18, 2006.

Respondent objected to all the documents. The CRP noted the objections, but admitted the documents into the record. Petitioner and Respondent gave opening statements. 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 junior (d/o/b August 12, 1989 ) enrolled in Heritage Christian High School. He attended Lawrence Central High School for his freshman and sophomore years of high school, where he participated on the freshman baseball team during his ninth grade year and the junior varsity baseball and football teams during his sophomore year.
2. Petitioner and his younger brother enrolled at Heritage Christian, a private faith-based school, in June 2006. At all times relevant, Petitioner and Petitioner’s parents have resided within the attendance area of Lawrence Township.
3. Petitioner’s parents enrolled Petitioner and his brother in Heritage Christian because they had concerns about their children’s personal safety, and felt that Heritage Christian would greatly reduce the risks. Petitioner believes that family members and their associates are connected to gang and drug activity in and around Lawrence Central.
4. Petitioner’s teachers advised Petitioner’s parents that he was capable of “A” work although he did not achieve at this level. Heritage Christian has provided Petitioner with smaller classes and individual tutoring. Although no documentation was presented, unchallenged testimony by Petitioner indicated he is receiving A’s and B’s on the schoolwork that he brings home.
5. Petitioner does not fault the academic or athletic programs at Lawrence Central. Petitioner feels teachers must spend a great deal of their time managing classroom behavior, making learning more difficult for Petitioner.
6. Petitioner’s brother, who is not currently involved in athletics, also attends Heritage Christian as a freshman. The parents would like to eventually have their other two younger children attend Heritage Christian. Petitioner’s parents have made sacrifices in order to pay the tuition at Heritage Christian.

7. Petitioner is close to his extended family and frequently attends family functions with all family members, including the relatives who have been involved in gang and drug activity. Petitioner had a relative who was shot and killed in April 2006.
8. When Lawrence Central completed the IHSAA Transfer Report they did not indicate a need for any additional investigation.<sup>6</sup> Lawrence Central indicated Petitioner should have “limited eligibility.” Lawrence Central did not sign the “Hardship Verification” box on the Transfer Report form that indicates the transfer would be in the “best interest of the student and there is no athletic-related motives surrounding the transfer.”
9. Heritage Christian did not complete the recommended eligibility portion of the form or sign the Hardship Verification. Heritage Christian did not attend the IHSAA Review Committee Hearing or the Case Review Panel Hearing. Heritage Christian’s principal sent a letter in support of full eligibility for Petitioner based upon the hardship rule.
10. Petitioner established that gang and drug activity existed in the Indianapolis area. Commissioner Ress and Principal Freije testified that Lawrence Central has experienced limited gang-related activity.

### CONCLUSIONS OF LAW

11. 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. 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.
12. **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 he does. Accordingly, Rule C-19-6.1 does not apply.
13. To invoke the equitable principles underlying **Rule C-17-8.5**, Petitioner would have to show:

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<sup>6</sup>The form submitted to the IHSAA Commissioner as the IHSAA Athletic Transfer Report by Heritage Christian and Lawrence Central was actually completed by the principals’ assistant athletic directors.

(a) he continues to reside with his parents; (b) his transfer is in his “best interest” and there are no athletic-related motives surrounding the transfer; and (c) the principals at Lawrence Central and Heritage Christian must affirm the transfer is in the “best interest” of the student and there are no athletic-related motives surrounding the transfer. Neither principal, through their respective designees, signed the affirmation.

14. In this case, Petitioner alleged full eligibility should be awarded under Respondent’s Hardship Rule based on the potential risks of gang and drug activity. Petitioner cited many examples of violence and gang activity, but did not produce evidence that any such events had directly affected the Petitioner or occurred within the public high school. Petitioner did not successfully prove that a hardship determination was warranted.
15. Petitioner is eligible to play junior varsity baseball this spring (2007). It is possible that his 365-day limited eligibility period will be completed in time for him to be considered for the varsity baseball sectional which typically follows the conclusion of the junior varsity season.

### **ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, the Case Review Panel decided by a vote of 5-1 to uphold Respondent’s determination that Petitioner have limited eligibility.

DATE: Ocotber 31, 2006

/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.