

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter of M.D.M.,)	
Petitioner)	
And)	CAUSE NO. 070221-52
The Indiana High School Athletic Assoc. (IHSAA),)	
Respondent)	
)	
Review Conducted Pursuant to)	Closed Hearing
I.C. 20-26-14 <i>et seq.</i>)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Procedural History

M.D.M., (hereafter, “Petitioner”) attends Canterbury School (hereafter, “Canterbury”), a private school located in Fort Wayne, Indiana. Since January, 2005, Petitioner has attended Canterbury, and plans to attend this school during the 2007-2008 school year.

In a letter dated, October 31, 2006, Petitioner, through Canterbury’s Athletic Director, requested continued athletic eligibility. The Respondent, by its Commissioner, on November 7, 2006, found Petitioner was athletically ineligible beginning the fall 2007 semester, and thereafter pursuant to Respondent’s **Rule C-12-2**.¹ **Rule 12** addresses Enrollment and Attendance. **Rule C-12-2** states as follows:

After enrollment in the 9th grade for 15 or more school days, students shall be eligible for no more than four (4) consecutive years, or the equivalent. (e.g. 12 semesters in a trimester plan, etc.)

Petitioner, by his father, J.F.M., requested a review of the Commissioner’s decision denying a waiver to allow him to have a fifth year athletic eligibility for the 2007-2008 school year.² The Respondent’s Review Committee conducted its review on January 18, 2007. The Review Committee upheld the decision of the Commissioner declaring that M.D.M. will have four (4)

¹Respondent 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-12-2** is “common” to both genders. (All references are to the 2006-2007 by-laws of Respondent.)

²Letter dated November 14, 2006.

years (eight (8) semesters) of athletic eligibility available to him since his fall 2003 enrollment in high school and will have used all his athletic eligibility as of the end of the spring 2007 semester; therefore, M.D.M. is ineligible to participate in interscholastic athletic competition at Canterbury beginning the fall semester 2007. The Review Committee also determined that: it will not grant eligibility under **Rule C-12-3** or **Rule 17-9**, since no evidence was presented which would allow M.D.M. to qualify under such rules; it has not considered eligibility under the general hardship rule, **Rule 17-8.1**, because that hardship rule does not apply to the eight semester rule; and had the Review Committee considered the case under any such rules, it would have denied relief because there was no proof entitling M.D.M. to more than eight (8) semesters. The Review Committee issued its written decision on January 26, 2007.

APPEAL TO THE CASE REVIEW PANEL

Petitioner appealed to the Indiana Case Review Panel³ on February 21, 2007. On February 22, 2007, the parties were notified of their 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. Hearing was set for April 17, 2007, at the Indiana Department of Education, 151 West Ohio Street, James Whitcomb Riley Conference Room, Indianapolis, Indiana. The parties received timely notice of the proceedings. On April 13, 2007, the Petitioner, by counsel, filed a Motion for Continuance of the hearing date scheduled for April 17, 2007. On April 13, 2007, the CRP issued an Order Granting Continuance. On June 15, 2007, the CRP issued a Notice of Hearing that a hearing on this matter would be conducted on August 7, 2007, at the Indiana Department of Education, 151 West Ohio Street, James Whitcomb Riley Conference Room, Indianapolis, Indiana at 9:30 a.m. (Indianapolis Time). On June 18, 2007, the Petitioner filed the Consent to Disclose Student Information Form, and elected to not disclose student information, so the proceedings in the matter are closed to the public

On August 7, 2007, the CRP convened.⁴ The Petitioner appeared and was represented by counsel. The Respondent appeared by counsel. Prior to the hearing a brief pre-hearing conference was conducted. Petitioner submitted ten (10) additional exhibits marked P-1 through P-10. P-9 was the evidentiary deposition of Tamara N. Lombard, Ph.D., and P-10 was the signature sheet and errata sheet for the deposition of Tamara N. Lombard, Ph.D.

- P-1 Development Medical Follow-up Exam for M.D.M.
- P-2 Prescription for M.D.M.

³The 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).

⁴Seven members were present: Joan L. Keller, Chair; Edwin Baker; Christi L. Bastnagel; Scott F. Eales; James Perkins, Jr.; Stephen Sipes; and Earl H. Smith, Jr.

- P-3 Grades for M.D.M. at Easthampton High School.
- P-4 Letter To Whom It May Concern from Janet W. Paflas, dated February 28, 2007.
- P-5 Physical Examination for M.D.M., dated 07/18/06.
- P-6 Canterbury School Record for M.D.M.
- P-7 Curriculum Vita for Tamara Neubauber Lombard, Ph.D., dated July, 2007.
- P-8 Letter To Whom It May Concern from Tamara N. Lombard, Ph.D., dated July 7, 2007.
- P-9 Deposition of Tamara N. Lombard, Ph.D., dated July 20, 2007.
- P-10 Signature Sheet and Errata Sheet for Deposition of Tamara N. Lombard, Ph.D., dated 08/01/07.

Respondent objected to exhibits P-1 and P-4. The CRP noted the hearsay objections for P-1 and P-4, but admitted all of the exhibits into the record. 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 (M.D.M.) is a 17-year-old (d/o/b August 24, 1989). Petitioner lived with his mother and attended Easthampton High School in Massachusetts until December, 2004. During a December 2004 Christmas visit, Petitioner's father persuaded Petitioner's mother to give him custody of Petitioner, and Petitioner has continued to live with his father in Indiana since that time. In January 2005, Petitioner was enrolled at Canterbury School, a private school in Fort Wayne, Indiana.
2. The *IHSAA Athletic Transfer Report*, dated January 2005, indicated that Petitioner was in the 10th grade. The Sending School indicated that Petitioner had participated in baseball and soccer in 9th grade at the Varsity level, and basketball and soccer in 10th grade at the Varsity level. The "No" box was checked to question 7 "Did student transfer for athletic reasons?" The "No" box was checked to question 8 "Did student transfer as a result of undue influence?" The Sending School indicated the student withdrew to live with his father. There was a Hardship Verification of Principal, Easthampton High School in Massachusetts. Canterbury, the Receiving School, indicated that Petitioner did not transfer for athletic reasons and did not transfer as a result of undue influence. There was a Hardship Verification of Principal, Receiving School, dated January 14, 2005. The action taken by the Commissioner was that M.D.M. was eligible under Rule 19-6.1b, dated January 14, 2005.
3. Petitioner repeated the 10th grade in the 2005-2006 school year because of a decision made by Petitioner's father.
4. In a letter dated, October 31, 2006, Petitioner, through Canterbury's Athletic Director, requested continued athletic eligibility under the IHSAA Hardship Rule. Canterbury's Athletic Director claimed that Petitioner originally was misplaced in school relative to his age which allows for his continued eligibility to be well within the age guidelines outlined in the IHSAA by-laws.

5. A letter to Canterbury's Athletic Director from Petitioner's father indicated that he decided it was in M.D.M.'s best interest to hold him back a year at Canterbury for two reasons: 1) he was young for his grade (birth date August 24, 1989, and he did not turn 17 until after this school year began; and 2) his academic performance at Easthampton High School was poor, and Petitioner's father was concerned that his son did not have the background necessary to succeed in Canterbury School's rigorous academic environment. Petitioner's father also indicated that M.D.M. had failed his freshman year math course at Easthampton High School, and had taken a summer make-up course. Petitioner's father requested that Petitioner be considered eligible for varsity level sports participation into and throughout his senior year at Canterbury by being granted a hardship exception under IHSAA **Rule 17-8.1c**⁵.
6. On November 7, 2006, the IHSAA's Commissioner, found Petitioner was athletically ineligible beginning the fall 2007 semester, and thereafter pursuant to IHSAA **Rule C-12-2**.
7. On January 26, 2007, the IHSAA's Review Committee upheld the decision of the IHSAA Commissioner, which declared M.D.M. athletically ineligible for his fifth year of high school, the 2007-2008 school year, under the IHSAA eight semester rule, **Rule 12-2**.
8. By the end of the 2006-2007 school year M.D.M. had four years of high school athletics. He had played high school soccer, basketball and baseball, and had been a starter for Canterbury School's soccer team.
9. M.D.M. had been diagnosed with ADHD, but no longer took medications for this condition because of the side effects from the medication.
10. M.D.M. did not have a Section 504⁶ Plan at Canterbury School in Fort Wayne, Indiana or at Easthampton High School in Massachusetts.

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

⁵**Rule 17-8.1** states that:

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.

⁶Section 504 of the Rehabilitation Act of 1973.

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.

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. Petitioner did not qualify for a disability exception.
4. Respondent's denial of athletic eligibility for a fifth high school year for the 2007-2008 school year is upheld.

ORDER

1. The Case Review Panel upheld the IHSAA's decision that M.D.M. had four (4) years (eight (8) semesters) of athletic eligibility available to him since his fall 2003 enrollment in high school and had used all his athletic eligibility by the end of the spring 2007. This was determined by a vote of 6-1.

DATE: August 23, 2007

/s/ Joan L. 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.