

**BEFORE THE
CASE REVIEW PANEL**

In the Matter of J.W.,)	
Petitioner)	
And)	CAUSE NO. 080416-57
The Indiana High School Athletic Assoc., Inc.,)	
Respondent)	
)	
Review Conducted Pursuant to)	Hearing Closed to the Public
I.C. § 20-26-14 <i>et seq.</i>)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Procedural History

J.W. (hereafter, “Petitioner”) is a 19-year-old who was enrolled in New Harmony High School in the Consolidated School Town of New Harmony and Harmony Township (hereafter, “New Harmony”) for his sophomore year. His date of birth is March 25, 1989. He will be a senior for the 2008-2009 school year. He played basketball at Mount Vernon High School during his freshman year. He has played basketball at New Harmony for two years during his sophomore and junior years. Petitioner will turn 20 years of age on March 25, 2009. The date of the 2009 state finals in boys’ basketball is March 28, 2009. 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

Strict application of **Rule C-4-1** would render him ineligible. Petitioner believes that his circumstances should be considered and Respondent’s “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**.

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-4-1** is “common” to both genders. (All references are to the 2007-2008 by-laws of Respondent.)

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**.

Petitioner, through his Athletic Director at New Harmony, requested that he be permitted to participate in the 2008-2009 basketball season even though he will reach the age of twenty on March 25, 2009. The Respondent, by its Commissioner, issued a letter, dated February 5, 2008, determining that, pursuant to the IHSAA Age Rule, **Rule C-4-1**, Petitioner's request for a waiver that would allow him to participate in basketball during the 2008-2009 school year as a twenty year old is denied. Petitioner, through his Athletic Director, requested a review of the Commissioner's decision by Respondent's Review Committee. This request was made in a letter dated February 11, 2008. The Respondent's Review Committee conducted its review on March 20, 2008, and issued its decision on March 28, 2008, upholding the Commissioner's decision declaring Petitioner ineligible to participate in sports beginning the winter of the 2008-2009 sports season in basketball under the IHSAA Age Rule.

APPEAL TO THE CASE REVIEW PANEL

Petitioner, by his stepfather, F.W., appealed to the Indiana Case Review Panel³ on April 16, 2008. 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 Petitioner did not make an election on whether the hearing would be closed or open to the public, so the hearing is closed to the public. A hearing was set for August 5, 2008, at the Indiana Department of Education, James Whitcomb Riley Conference Room, 151 West Ohio Street, Indianapolis, Indiana. The parties received timely notice of the proceedings.

On August 5, 2008, the CRP convened.⁴ The Petitioner appeared and was represented by the Athletic Director of New Harmony. 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 eleven (11) additional documents, which were marked P-1 through P-11. Respondent's objections to P-1 through P11 were noted by the Chair but all of these exhibits were admitted into the record. Respondent tendered no additional documents.

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 is 19 years old (d/o/b March 25, 1989). Petitioner's mother enrolled him in the Owensville schools. He was treated for Attention Deficit Hyperactive Disorder (ADHD) and was held back in 1st grade.

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).

⁴Five members were present: Joan L. Keller, Chair; Christi L. Bastnagel; Edwin Baker; James Perkins, Jr.; and Melissa B. Starry.

2. Petitioner now lives with his stepfather and his stepfather's wife in New Harmony, Indiana. Petitioner has attended New Harmony for his sophomore and junior years of high school and plans to graduate from high school at the end of the 2008-2009 school year.
3. Petitioner played basketball at Mount Vernon High School during his freshman year, and has continued to play basketball at New Harmony for his sophomore and junior years.
4. Petitioner will turn 20 years of age on March 25, 2009. The date of the 2009 state finals in boys' basketball is March 28, 2009.
5. Petitioner was advised that he is athletically ineligible to participate in basketball during the 2008-2009 school year because of Respondent's Age Rule (**Rule C-4-1**).⁵

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. § 20-26-14 *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.
4. There is no dispute that Petitioner does not satisfy the "Age Rule" requirement of **Rule C-4-1**. 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 spirit 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

⁵Letter to Larry Kahle, Athletic Director, New Harmony High School from Blake Ress, Commissioner, IHSAA, dated February 5, 2008.

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.

5. 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.
6. Respondent’s denial of athletic eligibility for Petitioner to participate in basketball for the 2008-2009 school year is upheld.

ORDER

In consideration of the foregoing, the Case Review Panel, by a vote of 5-0, upholds the determination of the Respondent that Petitioner is ineligible to participate in basketball during the 2008-2009 school year.

DATE: August 12, 2008

/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.