

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter of K.T., A.T., M.T.,)	
Petitioners)	
and)	CAUSE NO. 080818-58
The Indiana High School Athletic Assoc. (IHSAA),)	
Respondent)	
)	
Review Conducted Pursuant to)	Closed Hearing
I.C. 20-5-63 <i>et seq.</i>)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Procedural History

K.T., A.T., and M.T., (hereafter, “Petitioners”) presently **attend Elkhart Memorial High School (hereafter, “Elkhart”), a public school located in Elkhart, Indiana.** Prior to their enrollment at Elkhart Memorial High School at the end of the 2007-2008 school year, Petitioners attended Mishawaka High School (hereafter “Mishawaka”). Petitioners’ parents filed for divorce in February of 2008. The father moved to Elkhart, Indiana and Petitioners moved in with him.

On June 4, 2008 each Petitioner submitted a completed IHSAA Athletic Report to Mishawaka High School. Each report was reviewed and completed by Mr. Robert J. Shriner, the Athletic Director for Mishawaka High School. Mr. Shriner indicated that he believed the Petitioners’ move to their father’s residence was not a bona fide transfer, the move was athletically motivated, and there was undue influence. Mishawaka recommended ineligibility under rules **C- 19-4¹** and **19-5²**. Elkhart recommended full eligibility. On this same date, the IHSAA completed its investigation and determined that Petitioners

¹The 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 most of the by-laws are “common” to all potential athletes and hence, begin with “C”. **Rule C-19-4** reads as follows:

Transfers for Primarily Athletic Reasons

To preserve the integrity of interschool athletics and to prevent or minimize recruiting, proselytizing and school ‘jumping’ for athletic reasons, regardless of the circumstances, student athletes who transfer from one school to a new school for primarily athletic reasons or as a result of undue influence will become ineligible to participate in interschool athletics in the new school for a period not to exceed 365 days from the date the student enrolls at the new school, provided, however, if a student transfers and it is not discovered at that time that the transfer was primarily for athletic reasons, then under those circumstances, the student may be declared ineligible for a period not to exceed 365 days following the date of enrollment or, may be declared ineligible for a period not to exceed 365 days commencing on the date that the Commissioner or his designee declares the student ineligible which was the result of a transfer for primarily athletic reasons.

²**Rule C-19-5** reads as follows:

Transfer Eligibility With Change Of Residence By Parent(s)/Guardian(s)

A student who transfers with a corresponding change of residence to a new district or territory by the student’s custodial parent(s)/guardian(s) may be declared immediately eligible, provided there is a bona fide change of residence.

were entitled to limited eligibility pursuant to **Rule C-19-6.2**.³ At the time of the IHSAA's investigation, the parents had two residences⁴; therefore, the move was not a bona fide transfer.⁵

Petitioners, by counsel, sought review of the Commissioner's decision by Respondent's Review Committee, as provided by Respondent's **Rule C-17-4**. The Commissioner notified Petitioners' counsel by letter dated June 26, 2008, that the Review Committee would meet to discuss this matter on August 6, 2008. Respondent's Review Committee met on August 6, 2008. It issued its decision on August 18, 2008, affirming the decision of the Commissioner.

APPEAL TO THE CASE REVIEW PANEL

Petitioners, by counsel, appealed the adverse decision of the Review Committee to the Indiana Case Review Panel (CRP) on August 18, 2008.⁶ The CRP notified the parties by memorandum dated August 18, 2008, of their respective hearing rights. The Respondent was asked to forward its record. Petitioners' counsel was provided with a "Consent to Disclose Student Information" form. Petitioners elected to have the hearing proceedings **closed** to the public. A hearing was set for August 27, 2008, in the offices of the Indiana Department of Education. Late in the afternoon on August 22, 2008, Respondent made a request for an order to depose the parents of Petitioners on August 26, 2008. The request was denied by the Chairman, James Perkins, Jr., on August 25, 2008. On August 27, 2008, the CRP convened.⁷

Both parties were represented by counsel. No additional exhibits were submitted. The Petitioners called ten witnesses: A.T., K.T., M.T., the father of Petitioners, the mother of Petitioners, Blake Ress

³**Rule 19-6.2** reads as follows:

Limited Eligibility

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.

⁴At the time of the IHSAA's investigation, the parents had filed for divorce but the divorce had not been granted.

⁵Respondent defines "Bona fide change of Residence" for Rule C-19 purposes as follows: Determination of what constitutes a 'bona fide change of residence' depends upon the facts of each case, however, to be considered, the following facts must exist:

a. the original residence must be abandoned as a residence; that is, sold, rented or disposed of, or in the process of being disposed of as a residence and must not be used as a residence by any member of the student's immediate family; and

b. the student's entire immediate family must make the change and take with them the household goods and furniture appropriate to the circumstances. For eligibility purposes, a single family unit may not maintain two or more residences.

c. the change of residence must be genuine, without fraud or deceit, and with permanent intent.

⁶The 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.

⁷Eight members were present: James Perkins, Jr. (Chair), Melissa B. Starry, Stephen Sipes, Scott F. Eales, Christi L. Bastnagel, Edwin Baker, Denise Gilliland, Earl H. Smith, Jr.

(Commissioner of IHSAA), Robert Shriner (Athletic Director at Mishawaka High School), Mark Fedder (Resource Officer-Elkhart Police Department), John Himshoot (Special Education Teacher at Mishawaka High School/Assistant Volleyball Coach at Elkhart Memorial High School), and Bruce Anglemyer (Elkhart Police Officer). Respondent called one witness: Robert Shriner.

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. Petitioners, K.T. and A.T. are 17 year old twins (d.o.b. 08/02/91) entering their Junior year of high school at Elkhart Memorial High School. Petitioner, M.T. is 15 years old (d.o.b. 10/26/92) and entering her Sophomore year of high school at Elkhart Memorial High School.
2. Prior to their move to Elkhart, Petitioners lived with their parents and younger sibling in a 5 bedroom house located in Mishawaka. The family has lived in this house for 12 years. The father is employed as a fireman and has been employed by the Mishawaka Fire Department for 18 years. The mother is employed as a secretary at Mishawaka High School.
3. All three Petitioners play volleyball. All three played on the varsity squad last year at Mishawaka High School.
4. In December of 2007, Petitioners' parents separated. On December 12, 2008, the father moved out of the family home, located in Mishawaka, Indiana, to a small(900 square feet), two bedroom, two bathroom apartment located in Elkhart, Indiana. Petitioners' father signed a 12 month lease. Petitioners remained with their mother in the family home in Mishawaka.
5. Petitioners' father filed for divorce the second week of February 2008. In March of 2008, Petitioners indicated that they were having conflicts with their mother and wanted to move in with their father. He denied their request and told them to complete the school year and they would re-evaluate the situation at that time. In early June of 2008, the Petitioners indicated they were still having problems at home and wanted to live with their father.
6. Collectively, the family agreed that Petitioners would move to Elkhart with their father and the youngest child would remain with the mother in Mishawaka. Petitioners' father made no attempts to secure a larger apartment once they moved in with him. Petitioners moved all of their clothing and small personal items to their father's apartment. The divorce was finalized July 21, 2008. The father was granted physical custody of the Petitioners and the mother was granted physical custody of the youngest child. Both parents share joint legal custody of all four children.
7. The initial ruling by Respondent occurred during the pendency of the parents' divorce. Petitioners were granted limited eligibility because there was no evidence of a bona fide change of residence. The parents were sharing custody and the siblings were spending time living with each parent.

8. Since that time the divorce has been finalized and the Petitioners have transferred to another school and moved to another residence. Respondent indicates that normally under these circumstances, it might permit full eligibility under **Rule C-19-6.1(b)**⁸
9. Mr. Blake Ress testified that the initial investigation was done by Ray Craft, who retired soon after completing this investigation. Mr. Craft found evidence that suggested the move was athletically motivated and that undue influence had been exerted on Petitioners by a former coach. Mr. Ress acknowledged that this evidence was predicated on hearsay⁹ and that there was no direct evidence that established Petitioners' move was athletically motivated and that there was undue influence. However, the sequence of events suggested that the move was athletically motivated.
10. Petitioners' father had expressed dissatisfaction with the Mishawaka Volleyball program. He made obnoxious comments after losses which suggested that he might transfer his daughters to another school. He developed a close friendship with Bruce Anglemyer. Mr. Anglemyer's daughter played volleyball for Elkhart. Mr. Anglemyer was supposed to share the apartment with Petitioners' father; however, his personal circumstances changed and he didn't move into the apartment. Additionally, the former Assistant Volleyball Coach at Mishawaka, John Himshoot, is now the Assistant Volleyball Coach at Elkhart. Mr. Himshoot was dissatisfied with Mishawaka because he didn't get the Head Volleyball Coach position after working as the Assistant Coach for five years.
11. Mr. Himshoot testified that although he coaches at Elkhart, he still works as a Special Education Teacher at Mishawaka. He admits that he disagreed with the coaching philosophy of the Head Coach at Mishawaka but denies trying to poach players for Elkhart.
12. Mr. Robert Shriner testified that he believed Petitioners' move was athletically motivated because Petitioners' mother indicated that the girls would be with her when their father was working. The father works an alternating 24 hour/48 hour shift. Additionally, the parents signed a letter indicating their displeasure with the Head Volleyball Coach at Mishawaka, and the Petitioners were writing signs in support of their rival, Elkhart, after their regional tournament. Mr. Shriner didn't have direct evidence of undue influence but the gossip he heard in conjunction with the Petitioners' actions, their mother's statement and their father's move into a very small apartment soon thereafter suggested that this wasn't a bona fide change of address. Mr. Shriner noted that in a previous situation that was factually similar, the student athlete moved into the Elkhart school district after it

⁸Note: In its findings Respondent cites Rule C-19-6.2, the correct Rule is C-19-6.1(b)

**Transfer Eligibility Without Change of Residence By Parent(s)/Guardian(s)
Immediate Eligibility Rule 19-6.1(b)** states:

A student who transfers without a corresponding change of residence to a new district or territory by the student's parents(s)/guardian(s) may be declared immediately eligible provided there has been provided to the Association reliable, credible and probative evidence that one or more of the following criteria has been met.

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- b. The student transfers with a corresponding change of residence by the student into a new district or territory to reside with a parent. Moves between divorced or separated parents may meet this criteria; however, multiple moves between such parents will not be approved unless the reasons for the move are outside the control of the parents and student and are significant, substantial and/or compelling.

⁹Heresay is traditionally, testimony that is given by a witness who relates not what he or she knows personally, but what others have said, and that is therefore dependent on the credibility of someone other than the witness." Blacks Law Dictionary 8th Edition 2004

was alleged that the Parents were divorcing and the parents never divorced and the move was so the student could play volleyball at Elkhart.

13. Petitioners have indicated that they did not have problems with the coach or volleyball program at Mishawaka. They had no problems socially or academically at Mishawaka. They still had friends at Mishawaka. They moved in with their father because of the problems with Mom and his apartment is closer to Elkhart, so their commute to school is shorter.
14. Respondent does not think the divorce was athletically motivated. Respondent looked at the actions of the Petitioners and their parents in order to determine whether the subsequent move was bona fide. Nothing compelled the transfer to Elkhart. The parents had joint custody. Petitioners could have remained at Mishawaka and still moved in with their father.

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 to challenge an application or interpretation by Respondent of one of its by-laws. In the instant matter, the IHSAA has rendered a final determination of student-eligibility adverse to the Student. The Petitioner 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. In this instance, there is no evidence of undue influence or fraud. This dispute is aggravated by excessive reliance on hearsay, rumor, and innuendo, especially by Mishawaka administration, the decision of the Respondent that is under review comes down to an analysis of whether the move from the Mishawaka residence to the Elkhart residence was a “bona fide change of residence.” The Respondent has a three prong analysis for this purpose.
3. Under the first prong, “the original residence must be abandoned as a residence; that is, sold, rented or disposed of, or in the process of being disposed of as a residence and must not be used as a residence by any member of the student’s immediate family.” In this instance, the original residence is not being abandoned as a residence or sold. Petitioners’ mother and youngest sibling still reside in the original residence.
4. The second prong requires that “the student’s entire immediate family must make the change and take with them the household goods and furniture appropriate to the circumstances. For eligibility purposes, a single family unit may not maintain two or more residences.” As stated previously, the mother and youngest sibling remained in the house. The household goods and furniture remain in the house. Petitioners moved their personal items and clothing to their father’s apartment.
5. The third prong requires “the change of residence” to be “genuine, without fraud or deceit, and with permanent intent.” There is no evidence that the Petitioners’ move was the result of fraud or deceit.

Respondent questions whether the move is genuine in that Petitioners could have moved in with their father, without moving to a new school.

6. The Petitioners have not satisfactorily met all three prongs of the Respondent's criteria for a "bona fide change of residence," as defined.

Based on the foregoing Findings of Fact and Conclusions of Law, and following discussion of the merits of the case on the record, the Case Review Panel decided as follows:

ORDER

1. The Respondent's decision to grant limited eligibility to Petitioners based on the criteria for determining a "bona fide change of residence" is upheld. This decision was reached on a 5-3 vote.

DATE: September 8, 2008

/s/ James Perkins, 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.