

**BEFORE THE  
CASE REVIEW PANEL**

In the Matter of C.C.,	)	
Petitioner	)	
and	)	<b>CAUSE NO. 111301-13</b>
The Indiana High School Athletic Assoc.,	)	
Respondent	)	
	)	
Review Conducted Pursuant to	)	
I.C. 20-5.63 <i>et seq.</i>	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

**Procedural History**

C.C. (d/o/b June 26, 1984) is a 17-year-old junior presently enrolled in the Bloomington High School South in the Monroe County Community School Corporation (hereinafter, "Bloomington"). During his freshman and sophomore years, he had been a student at the Boonville High School in the Warrick County School Corporation (hereinafter, "Boonville"). C.C. participated in varsity basketball during his freshman and sophomore years, and varsity track and field during his sophomore year. C.C. and his parents complained of problems with the basketball coach during the two years C.C. played varsity basketball. During this time, C.C.'s parents had a number of communications and meetings with the administration concerning the problems with the coach. No complaints were made, or meetings held, concerning C.C.'s academic program or any other aspects of the school environment other than the basketball program. During the summer of 2001, C.C.'s parents made inquiries with other schools about C.C. transferring and playing basketball. The parents made contact with the basketball coaches at Reitz Memorial High School and Heritage Hills High School, but did not make contact with the administration at either school concerning admission or enrollment.

C.C.'s parents decided to enroll C.C. at Bloomington and to have C.C. live with his AAU coach. Although C.C.'s parents stated the transfer was for better academics, as Boonville students had below average SAT scores, they never inquired about the SAT scores of Bloomington students nor made any other inquiry as to the academic program offered by Bloomington. On September 5, 2001, C.C.'s parents filed a Petition for Appointment of Guardian of the Person over Minor in the Warrick Superior Court No. 1. The petition alleged that it was necessary that a guardian be appointed for C.C. in order to provide for his education due to his minority in that he had been subjected to discriminatory and defamatory treatment in his home school environment. On that same day, the court issued an Order Appointing Guardian of the Person Over Minor, appointing C.C.'s AAU coach as guardian of the

person of C.C.

C.C. was enrolled at Bloomington, as the guardian resides in Bloomington, Indiana, within the current attendance area of Bloomington High School South.<sup>1</sup> Bloomington completed an “IHSAA Athletic Transfer Report,” as required by **Rule C-19**.<sup>2</sup> On this transfer report, the guardian represented that the reasons for change were personal reasons, a desire to live with the guardian, emotional stress, and educational opportunities. The sending school corporation (Boonville) indicated the student transferred for athletic reasons. The receiving school (Bloomington) placed a question mark (?) by the question “[d]id student transfer for athletic reasons?” The parents, Boonville and Bloomington all submitted supporting documents to the IHSAA. An IHSAA Associate Commissioner reviewed the documents and made further inquires with school officials, and on October 19, 2001, ruled that C.C. violated **Rule C-19-4** and would be ineligible for 365 days from enrollment, or until August, 2002. C.C. timely appealed this determination under **Rule C-17-4** to the IHSAA’s Review Committee, which received additional documentation, discussion, and argument at a meeting on November 2, 2001. On November 8, 2001, the Review Committee issued its written decision, upholding the original determination by the Associate Commissioner.

#### **APPEAL TO THE CASE REVIEW PANEL**

Petitioner sought review of the Respondent’s final decision by initiating the instant action before the Case Review Panel (CRP), created by P.L. 15-2000, adding I.C. 20-5-63 *et seq.* to the Indiana Code. The 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

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<sup>1</sup>The guardian has indicated the attendance boundaries between Bloomington High School South and Bloomington High School North fluctuate on a yearly basis. The guardian has just moved into a new residence within the attendance area of Bloomington High School South. His previous residence was within the attendance area of Bloomington High School North.

<sup>2</sup>The Indiana High School Athletic Association (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 19**, which governs transfers and eligibility, is common to all athletes. **Rule C-19-4**, which governs transfers for primarily athletic reasons, prohibits a student from participating in interscholastic athletic competition for 365 days from the date of enrollment in the new school. This rule is intended “[t]o preserve the integrity of interschool athletics and to prevent or minimize recruiting, proselytizing and school ‘jumping’ for athletic reasons...[,]” especially where there has been “undue influence.” Respondent also defines under **Rule 19** “transfer for primarily athletic reasons,” in relevant part as “a transfer to obtain relief from a conflict with the philosophy or action of an administrator, teacher or coach relative to athletics[.]” All references herein are to the IHSAA’s By-Laws for the 2001-2002 school year.

public entity and not a private one. Its function is to review final student-eligibility decisions of the IHSAA, when a student, 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.

Petitioner initiated this review through a facsimile transmission received on November 13, 2001, by the Indiana Department of Education on behalf of the CRP. Both Petitioner and the Respondent were advised on November 13, 2001, of their respective hearing rights. Petitioner was presented with forms to permit or deny the disclosure of student-specific information that, in effect, would make the review hearing by the CRP open or closed to the public. Petitioner has not signed consent to permit disclosure of student-specific information, making the hearing closed to the public.

On November 19, 2001, Petitioner requested an extension of time in which to conduct the review. The CRP granted this request, continuing the review date until December 7, 2001. On November 19, 2001, Petitioner also requested permission to take the deposition of unnamed witnesses who were unavailable to attend the hearing in person. The CRP took this motion under advisement and requested Petitioner provide a list of names and titles of the proposed witnesses. Petitioner supplied the names and titles of thirteen (13) proposed witnesses on November 26, 2001. On November 27, 2001, the CRP denied Petitioner's request for depositions, as that would prevent the CRP from asking questions of the witnesses. Petitioner was advised that witnesses may testify by telephone if they are unable to attend in person. Petitioner was further advised to make arrangements for testimony by telephone with the CRP prior to the date of the hearing. On December 5, 2001, Petitioner faxed to the CRP his list of witnesses with the approximate time for their telephone testimony listed.

The parties were advised of the date, time, and place for the conduct of the review hearing. The review hearing was set for December 7, 2001, beginning at 10:00 a.m. (Indianapolis time) in the Department of Education Riley Conference Room, 151 W. Ohio Street, Indianapolis, Indiana. Notice of the review hearing was posted, as required of public agencies by Indiana's Open Door Law, I.C. 5-14-1.5 *et seq.* CRP members were provided with copies of the record as established before the IHSAA. Petitioner appeared in person and by counsel. Respondent appeared by counsel and its Commissioner and Associate Commissioner.

A brief pre-hearing conference was conducted. One additional document was submitted by Respondent. Respondent objected to Petitioner having witnesses testify by telephone, and also objected to both the parents and guardian being present on behalf of the student. The parents acknowledged the guardian was the proper representative for the student and left the hearing room. After a brief caucus, the CRP permitted testimony by telephone.<sup>3</sup>

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<sup>3</sup>Petitioner had alleged the witnesses were unavailable to testify in person. During the testimony of each witness testifying by telephone, the CRP inquired why the witness was not present to testify in

The record from the proceedings before Respondent's Review Committee was received. Additional testimony was taken. Based upon the foregoing, the following Findings of Fact, Conclusions of Law, and Orders are determined.

### FINDINGS OF FACT

1. Petitioner is a two-sport athlete (basketball, track and field). He is presently seventeen years old (d/o/b June 26, 1984) and a junior at Bloomington. Until the 2001-2001 school year, Petitioner had been enrolled at Boonville.
2. During his freshman and sophomore years, Petitioner participated in varsity basketball. Petitioner never did play on the Freshman team, but participated on both the varsity and junior-varsity (JV) teams during the first four games of his freshman year. By the fifth game, he played strictly varsity basketball. He was a starter on the basketball team, averaging 13 points per game as a freshman and 16 points and 6 rebounds per game as a sophomore. Petitioner participated in varsity track and field during his sophomore year. Petitioner tied for second place in the high jump at the 2001 state track and field meet.
3. Petitioner is a good student. He maintained a 3.0 grade point average while at Boonville and has earned a 3.2 grade point average during the first grading period at Bloomington.
4. While on the basketball team, Petitioner and his parents had numerous disagreements with the expectations and coaching philosophy of the basketball coach.
5. After the first week of the basketball season of Petitioner's freshman year, his father called the coach to complain that Petitioner wasn't playing varsity.
6. Petitioner was subjected to discipline for failing to follow team rules or not meeting the expectations of the coach. The following are representative of such rule violations:
  - a. Petitioner was required to sit on the bench for nine minutes during a game for not playing as a team player. Petitioner hadn't followed the coach's directions that the center (Petitioner) doesn't bring the ball down court but instead gets the ball to a guard.
  - b. Petitioner was not allowed to start a game for failing to warm up properly.
  - c. Petitioner was suspended for a game for throwing an elbow that hit a player on an opposing team.
  - d. After an unexcused absence from practice during his sophomore year, Petitioner was required to run laps and was suspended for one quarter of a game.

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person. Each witness indicated he or she had not been asked to appear in person but was advised testimony by telephone was acceptable.

- e. Before the Castle game, Petitioner refused to wear his shooting shirt, and criticized the coach for remarks reported in the newspaper.
6. Petitioner's parents had several meetings and conversations with the principal during Petitioner's freshman and sophomore years concerning their problems with the basketball coach. Petitioner's parents did not express any concerns regarding the academic program to the principal.
7. During the summer of 2001, Petitioner's parents heard that the coach did not consider Petitioner to be a part of the basketball team and would probably cut him from the team if he tried out.
8. Petitioner's parents spoke to the basketball coaches at Reitz Memorial High School and Heritage Hills High School. They did not contact the principals or guidance counselors at these schools to inquire about enrolling Petitioner. Petitioner's parents also contacted the basketball coach at Daviess County High School in Owensboro, Kentucky. They met with the coach and the principal, but did not enroll Petitioner at that school.
9. Petitioner's parents subsequently arranged for Petitioner to live with his AAU coach in Bloomington, Indiana, and to enroll in school at Bloomington.
10. On September 5, 2001, Petitioner's parents filed a Petition for Appointment of Guardian of the Person over Minor in the Warrick Superior Court No. 1. The petition alleged that it was necessary that a guardian be appointed for C.C. in order to provide for his education due to his minority in that he had been subjected to discriminatory and defamatory treatment in his home school environment. On that same day, the court issued an Order Appointing Guardian of the Person Over Minor, appointing C.C.'s AAU coach as guardian of the person of C.C.
11. Upon Petitioner's enrollment at Bloomington, Bloomington completed an IHSAA Athletic Transfer Report. The guardian represented that the reasons for a transfer were personal reasons, a desire to live with the guardian, emotional stress, and educational opportunities. Bloomington (the receiving school) placed a question mark (?) by the question "[d]id the student transfer for athletic reasons?" The sending school (Boonville) indicated the student transferred for athletic reasons.
12. The parents, Boonville, and Bloomington all submitted supporting documents to the IHSAA.
13. An IHSAA Associate Commissioner reviewed the documents and made inquiries of school officials. On October 19, 2001, the Associate Commissioner determined that Petitioner violated **Rule C-19-4** and would be ineligible to participate in interscholastic athletics for 365 days from enrollment, or until August, 2002.

14. Petitioner timely appealed this determination under **Rule C-17-4** to the IHSAA's Review Committee, which received additional documentation, discussion, and argument at a meeting on November 2, 2001. On November 8, 2001, the Review Committee issued its written decision, upholding the original determination by the Associate Commissioner.

### 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. P.L. 15-2000, adding I.C. 20-5-63 *et seq.* to the Indiana Code. 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. The student has timely sought review. The Case Review Panel has jurisdiction to review and determine this matter.
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. Although Petitioner's parents claim the transfer to Bloomington is not for athletic reasons, the only reasons proffered through the testimony for the transfer were related to basketball. Petitioner and his parents disagreed with the coach's philosophy and discipline. They were upset when Petitioner was disciplined for not following team rules or the directions of the coach. Although they claimed this affected Petitioner academically, as well, there was no showing Petitioner's grades suffered in any manner, he was unable to attend school, or suffered in any other manner in school attendance or performance. He maintained a 3.0 grade point average during his two years at Boonville High School. Prior to enrolling at Bloomington, Petitioner's parents contacted the basketball coaches at three other schools to inquire about the possibility of Petitioner playing basketball.
4. The IHSAA's By-Laws for **Rule 19** define "Transfer for Primarily Athletic Reasons" as follows:

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.
5. The Petition for Appointment of Guardian of the Person over indicates the appointment of a guardian for Petitioner was necessary in order to provide for his education. No allegations have been made and no evidence or testimony indicate that Petitioner's parents are unable to support or care for him, or provide for his education. The Petition was filed to enable Petitioner to attend school in a school corporation other than where the parents resided.
6. **Rule C-19-6.1** of the IHSAA's By-Laws provides for immediate eligibility for students in certain circumstances where there is not a change of residence by the parents or guardians:
- 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 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...
- c. The student transfers with a corresponding change of residence by the student into a new district or territory to reside with a guardian or in a foster home which is a result of:
    - (1) the student becoming an orphan;
    - (2) reasons outside the control of the student and the student's parent(s) and the student's guardians and/or the student's foster parent(s) which are significant, substantial, and/or compelling. *A guardian appointed for the purpose of making a student eligible will not be accepted.* (Emphasis supplied.)
7. The evidence and testimony support the conclusions that the transfer was primarily for athletic reasons and the guardian was appointed for the purpose of making the student eligible.

ORDER

The Case Review Panel, by a vote of 7-1, upholds the decision of the Respondent to deny eligibility for interscholastic participation to Petitioner for 365 days from the date he enrolled in Bloomington High School South. The Petitioner transferred primarily for athletic reasons, and the guardian was appointed for the purpose of making the student eligible.

DATE: December 13, 2001

/s/ John L. Earnest, Chair  
Case Review Panel