

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter of B.E.B.,)	
Petitioner)	
and)	CAUSE NO. 120501-15
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 ORDERS

Procedural History

B.E.B. is a 17-year-old sophomore (d/o/b November 26, 1984) at Castle High School in the Warrick County School Corporation (hereafter, referred to as Castle). At the beginning of the 2001-2002 school year, B.E.B. (hereafter, the Student) attended Harrison High School in the Evansville-Vanderburgh School Corporation (hereafter, referred to as Harrison), where he participated in that school's football program, reportedly as the starting quarterback.. The Student played football and basketball at Harrison during his freshman year.

The Student was pulled from a football game on September 28, 2001. The football coach and the Student had a discussion about the Student's play, but then the coach's attention returned to the progress of the game. The Student apparently sustained an injury and was bent over. The father observed this from the stands, but at first thought the Student was "winded." When the Student continued to exhibit pain, the father went onto the field to attend to him. The situation did not lead to any angry exchanges, even after the game when the father and the Student spoke with the coach as he exited the field.

The father had a series of conversations with school officials the next few days, all of which could be described as cordial and complimentary of the school's educational programs and the coach's philosophy and attention to his athletic program. The Student practiced with the football team on the following Monday (October 1, 2001) and Tuesday, but then began the process to transfer to Castle, which is nearby, albeit in a different county. The father had moved to Newburgh, Indiana, and secured

an apartment. The mother came to the school on October 5, 2001, to begin the transfer process. There was some misunderstanding between the parents and the school over (1) the authority of a coach to “release” a student to play at another school, and (2) the possible effect upon athletic eligibility should the parents move the Student to Castle under the circumstances then known to them. The Harrison principal explained the by-laws of the Indiana High School Athletic Association (IHSAA). However, the impetus for the move was more for family discord at the time, which the parents believed required more immediate attention. The extent of the family discord was not fully known to Harrison nor the IHSAA when the move was evaluated by both with respect to the IHSAA by-laws, as explained more fully below.

The IHSAA’s Athletic Transfer Report was completed by Castle on October 5, 2001. Harrison completed the form on October 9, 2001, but indicated that the Student withdrew from Harrison for athletic reasons, possibly to obtain relief from conflict with a coach’s action. Further investigation by the IHSAA was requested. Harrison did not believe the Student was eligible for athletic participation under **Rule C-19-4**.¹

On October 19, 2001, the IHSAA determined the Student ineligible for athletic participation for 365 days from September 28, 2001. The Student, through Castle, appealed to the IHSAA’s Review Committee under **Rule C-17-4**. The IHSAA Review Committee conducted a hearing on November 13, 2001, and issued its written decision on November 16, 2001, upholding the determination of ineligibility. The IHSAA found that the Student’s move did not meet the requirements of **C-19-5** because the move was not a “bona fide” change of residence.²

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 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 a period not to exceed 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...” 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 are to the IHSAA’s By-Laws for the 2001-2002 school year.

²**Rule C-19-5** permits a student to have full eligibility immediately when the student’s custodial parent or guardian moves to a new district “provided the change of residence was bona fide.” The IHSAA defines “bona fide change of residence” for **Rule 19** purposes as a fact-sensitive matter. However, the original residence must be abandoned as a residence and not used by any member of the student’s immediate family as a residence. In addition, the student’s entire immediate family must make the change of residence and take with them the household goods and furniture appropriate to the

APPEAL TO THE CASE REVIEW PANEL

The Student, on December 5, 2001, appealed to the Case Review Panel (CRP) the adverse decision of the IHSAA Review Committee. All parties were notified of their hearing rights on that date. The Student's parents, on December 12, 2001, requested that the hearing be closed to the public. A review hearing date was tentatively set for December 17, 2001. However, the IHSAA's counsel requested a continuance on December 11, 2001, which was granted. The hearing was rescheduled for January 9, 2002, and the parties were so notified. A notice of the CRP's 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. The Student did not appear in person but was represented by his parents. Respondent appeared by counsel and its Commissioner.

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 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.³

The parties appeared on January 9, 2002, and presented evidence, testimony, and argument in support of their respective decisions. The Student introduced three additional documents: P-1 (correspondence from the Prep Recruiting Network, indicating the Harrison coach had recommended the Student as a likely football prospect); P-2 (correspondence of December 12, 2001, from an Arkansas school district the Student once attended, indicating that no release of information had been requested from the Arkansas school other than from the Student's parents); and P-3 (part of an educational evaluation conducted by the Arkansas school district, and part of the mother's written clarification regarding an element of her October 5, 2001, discussion with the Harrison principal). The IHSAA introduced one additional document: R-1 (the Student's report card from Harrison). Neither party objected to the introduction of such documents into the record.

Based upon the record as a whole, including testimony and documentation, the following Findings of Fact are determined.

FINDINGS OF FACT

1. The Student is a 17-year-old sophomore at Castle (d/o/b November 26, 1984). He participated in football and basketball during his freshman year, and played varsity football for Harrison until September 28, 2001. Although apparently a talented athlete, the Student has

circumstances.

³CRP Member Khadijah A. Muhammad did not participate in this hearing.

struggled academically through his school years. At one time he attended school at the MSD of Wayne Township (Indianapolis), where he received speech-language services. Thereafter, he attended school in the Conway Public Schools (Arkansas), where he was also determined to be in need of speech-language services for a communication disorder. He repeated the fifth grade. He continued to struggle academically at Harrison, although Harrison did review his situation and attempt to develop classroom interventions and supports. He was referred for an educational evaluation to determine whether he required more specialized services. Harrison conducted an educational evaluation in March and April of 2001. A resulting meeting between Harrison staff and the parents resulted in a determination that, despite the Student's learning difficulties, he was not eligible for special education and related services due to any learning disabilities. Notwithstanding his academic struggles, the Student remained eligible for athletic participation.

2. Following the move from Harrison to Castle, however, the Student's grades began to drop. At present, he is not eligible academically for athletic participation.
3. The Student was the starting quarterback for the Harrison varsity football team. During a game on September 28, 2001, he was withdrawn from a contest by his coach following an error on the field. The coach and the Student discussed the Student's performance. Indications were made that the Student might not be the starting quarterback thereafter, and the coach questioned the Student's continuing interest in football, further indicating that he would "release" him to play basketball if that was what he wanted.⁴ Following this conversation, the Student was down on "all fours," which was observed by his parents, who were attending the game. The father thought the Student was "winded," but when the Student did not recover, he went onto the field to attend to him. When the condition was brought to the attention of Harrison staff, the Student received attention.
4. After the game, the Student and his father approached the coach as he began to exit the field. Although there is some disagreement between the parties as to what was discussed, there is no disagreement that the conversation was not hostile but tended toward the direct if not the cordial. The father represents that he has always supported the coach and his coaching style, and that he continues to respect the coach and continues to be appreciative to him for the interest he has shown in the Student.

⁴This statement regarding "release," and its apparent use before as a motivation to players by the coach, has been a source of misunderstanding. During the hearing, it was noted—and the CRP takes official notice of this—that a coach cannot "release" a student to play for another school. Whether a student is eligible for participation in IHSAA-sanctioned athletic endeavors is not decided by individual coaches. However, Harrison does permit a coach to "release" a player from one sport to participate in another one at the same school. It is not uncommon for sports to overlap one another.

5. The following Monday, October 1, 2001, the father approached the coach outside the locker room shortly before a junior varsity football game. The father apologized to the coach for any intemperate remarks that he may have made on September 28, 2001, but indicating that he was upset at the time because he thought the Student was injured. He asked the coach if he would release the Student so that he could play quarterback at another school. The coach explained that he could not do that, and informed the father the school personnel that he would have to discuss this with. There was also a conversation about the Student playing other football positions (receiver, defensive back) as well as the possibility of the Student playing quarterback again for Harrison's team. The Student elected to practice Monday and Tuesday as a receiver.
6. On Wednesday, October 3, 2001, the father turned in the Student's equipment and advised the coach that the Student was leaving Harrison and moving in with the father, who now resided in Newburgh, which would be in the attendance area for Castle. The coach was not aware that the parents had separated, nor was he aware of any family discord. The coach and the father appear to remain on good terms.
7. The mother met with the principal on Thursday, October 5, 2001, during which time she provided additional information regarding the move and the separation between her and her husband. The principal explained the IHSAA's by-laws and cautioned her regarding the possible effects the move could have on the Student's athletic eligibility. The principal did inquire as to possible motivations for the move. Although some information regarding family discord was provided, it was sketchy information.
8. The father obtained an apartment in Newburgh and took possession on or about October 4, 2001. The Student moved in with him. The mother continues to live in the former family residence, which the father is repairing with the intent of placing the house on the market. Although the house has not been listed, the father represents that there is some interest expressed by a potential buyer. The Student sometimes spends the evening at the former residence.
9. The Student reportedly did not wish to move and expressed concern about maintaining his friendships he had developed at Harrison. However, the move became necessary because of family discord occasioned by an older sister. The older sister associated with unsavory characters and maintains a lifestyle that both parents find objectionable. She has a child which, for all practical purposes, she has abandoned to the care of her mother. The older sister does not live in the family residence, but would visit, sometimes in the company of people the parents do not approve of. Shouting matches have apparently occurred. The separation between the husband and the wife are related to significant disagreements on how to address the problems

caused by the older daughter. The parents are seeking to adopt their grandchild.

10. The separation of the parents has not been formalized through any legal proceeding. Divorce is not imminent. Reconciliation is possible. However, the parents have not yet reconciled. The family discord was affecting the Student, who called his father at work one evening when a particularly contentious confrontation occurred between the older sister and the mother. The father could hear the shouting over the telephone. Both parents felt that continued exposure to these confrontations would not be in the Student's best interests.
11. The parents are described as private people who do not wish to discuss their difficulties. This reluctance to discuss the underlying reasons for the move to Newburgh and the separation hampered the investigation by Harrison and the subsequent review by the IHSAA. Nevertheless, it is understandable that parents would not wish to discuss such matters as part of such an investigation.
12. Neither parent sought out—nor have sought out—a coach or the athletic director at Castle regarding the Student. They have not discussed his athletic future with Castle personnel, other than to complete the IHSAA Athletic Transfer Report.
13. Although relative academic offerings was proffered as a reason for the transfer, there is no indication that the academic offerings between the two schools are so dissimilar as to be an issue. The father, on Sunday, September 30, 2001, saw the principal at a local store and complimented the principal and Harrison for their academic endeavors.

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 is “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 Student. The parents timely sought review. The Case Review Panel has jurisdiction to review and determine this matter.
2. Any Finding of Fact that could be considered a Conclusion of Law shall be considered as same. Any Conclusion of Law that could be considered a Finding of Fact shall be considered as such.

3. Although the timing of the move to Newburgh could not have been worse, given the occurrences of September 28, 2001, during and after the football game, the evidence and testimony indicate that the move to Newburgh was not a means to obtain relief from a conflict with the philosophy or action of a coach, administrator, or teacher with respect to athletics. The parents supported the Student's coach, even though the father expressed concern about the student's sideline injury and the possible loss of the starting quarterback position. Particularly evident is that the parents continue to support the Harrison football coach.
4. The parents are separated, although there is no legal documentation to support this separation. However, their testimony in this respect is credible, notwithstanding the lack of legal documentation.⁵ The reasons for the move are influenced heavily by the discord occasioned by an older daughter, whose lifestyle has burdened the family, not only with occasional confrontations but with childcare for her abandoned child. Disagreements between the parents regarding how to address the older daughter has added to the discord. The Student did not want to move. The decision to move was the parents' decision. The reasons for the move were outside the control of the Student. The reasons were significant and compelling.⁶
5. The father's understanding of the use of "release" by the Harrison coach was a unilateral one. The coach's explanation is reasonable—that it applied to releasing football players to participate in another Harrison sport—and the coach provided an explanation to the father. The principal also provided the mother with explanations of the IHSAA's by-laws and the possible effect the move to Newburgh could have on the Student's eligibility. The father's misunderstanding of the "release," coupled with his statements regarding similar occurrences that were alleged to have occurred at another Indiana school district, seem to indicate that athletic concerns were involved, albeit in small part, in the move to Newburgh.

⁵**Rule C-19-6.1(b)** would permit, in part, a student to have immediate eligibility where a student transfers with a corresponding change of residence to reside with a parent who is divorced or separated from the other parent, so long as the "reasons for the move are outside the control of the parents and student and are significant, substantial and/or compelling."

⁶The CRP recognizes the dilemma such cases cause, not only for the family that does not wish to share intimate and embarrassing details of their family life with others outside their family, but with the IHSAA and its member schools that are attempting to divine the motivations behind moves in mid-season that appear suspiciously motivated for athletic reasons. The CRP, however, is not an investigative body but an adjudicative one. As such, the CRP can apply credibility tests that would otherwise be inappropriate for an investigatory body beholden to support of its rules. The CRP also has the advantage of a fuller disclosure by the family of the reasons for the what appeared to be a sudden move preceded immediately by an occurrence related to athletics.

ORDERS

1. The Case Review Panel, based upon the foregoing Findings of Fact and Conclusions of Law, hereby modifies, pursuant to I.C. 20-5-63-7(c)(3)(B), the determination of the Indiana High School Athletic Association regarding B.E.B. The vote to do so was 7-1.

2. B.E.B. shall have “limited eligibility” to participate in interscholastic competition sanctioned by the Indiana High School Athletic Association, as this term is defined in **Rule 19**, and that he shall have such “limited eligibility” for 365 days or until September 28, 2002, provided B.E.B. remains academically eligible to participate in sports sanctioned by the IHSAA.

DATE: January 14, 2002

/s/ John L. Earnest, 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.