

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter of T.R.,)	
Petitioner)	
and)	CAUSE NO. 081215-60
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

T.R., (hereafter, "Petitioner") is presently enrolled as a senior at Mishawaka High School (hereafter "Mishawaka"), located in the School City of Mishawaka. Prior to his enrollment at Mishawaka, Petitioner attended Penn High School (hereafter, "Penn") for his freshman and sophomore year. At the time of his enrollment at Mishawaka, Petitioner's parents owned a home located within the boundaries of the Penn-Harris-Madison School Corporation.

Petitioner submitted an IHSAA (hereafter, "Respondent") Athletic Transfer Report to Penn indicating that the family was moving into a newly constructed home in the Mishawaka school district in November of 2007. Penn indicated that it was uncertain about whether the transfer was for athletic reasons or the result of undue influence. Petitioner was a promising high school wrestler, who wrestled on the varsity team his freshman and sophomore year. Penn indicated that further investigation was warranted to be sure that the family actually moved into the Mishawaka school district on a permanent basis.

Mishawaka, as the receiving school, stated that Petitioner's move was because the family was building a new home in the district, and that the family would live with the maternal grandparents, whose home is located in the Mishawaka school district, until their new home was completed. On August 6, 2007, the IHSAA granted Petitioner limited eligibility until the IHSAA verified a bona fide¹ change of residence.

As the wrestling season approached, Mishawaka reported to the IHSAA that the new home was not yet completed, Petitioner's former home had been leased, and the family was going to remain in the home of the maternal grandparents until the new home was completed. Based on this information, the IHSAA granted Petitioner full eligibility on November 12, 2007.

¹The IHSAA has promulgated a series of by-laws as a part of its sanctioning procedures for interscholastic athletic competition. **Rule C-19-5** provides as follows:

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. (All references are to the 2008-2009 by-laws)

After the wrestling season ended, Mishawaka informed the IHSAA that the lease for Petitioner's former home had been terminated in January of 2008, and that the family had moved back into their old home located in the Penn High School District.

On March 27, 2008, the Commissioner of the IHSAA vacated Petitioner's full eligibility status and declared Petitioner athletically ineligible at Mishawaka for 365 days from the ruling. The Commissioner held that the Petitioner's full eligibility ruling was based on false and misleading information. Petitioner sought review of the decision by Respondent's Review Committee, as provided by Respondent's **Rule C-17-4**.² Petitioner alleged that unique circumstances beyond his control created hardship as defined in **Rule C-17-8.1** ("Hardship Rule")³. Respondent requested the Committee to grant full eligibility. The Review Committee met on November 7, 2008 and upheld the decision of the Commissioner.

APPEAL TO THE CASE REVIEW PANEL

Petitioner appealed the adverse decision of the Review Committee to the Indiana Case Review Panel (CRP) on December 15, 2008.⁴ The CRP notified the parties of their respective hearing rights by memorandum on December 15, 2008. The advisement of Rights and Instructions were inadvertently left out of packet for the Petitioner and were sent to him on December 17, 2008. Respondent was asked to forward its record to the CRP and Petitioner was provided with a "Consent to Disclose Student Information." Petitioner elected to have the hearing proceedings closed to the public. The CRP set a hearing for January 13, 2009 in the offices of the Indiana Department of Education. Due to inclement weather, the CRP rescheduled the hearing for January 23, 2009.

²Rule C-17-4.1 states: Any affected party may appeal a decision of the Commissioner or his designee to the Review Committee for a review and hearing. The Review Committee is the initial review panel of all Association decisions and must consider all Association decisions prior to any review either by the case review panel described at Rule 17-10 or by any other body.

³**Rule C-17-8.1** The Hardship Rule allows the IHSAA to set aside the effect of any rule [with some exceptions] when the affected party establishes to the satisfaction of [the IHSAA], all of the following conditions have been 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.

However, The Hardship Rule does not apply to "Rules 4 [Age], 12 [Enrollment and Attendance] and 18 [Scholarship]."

⁴The CRP is a nine-member adjudicatory body appointed by the Indiana State Superintendent of Public Instruction. The State Superintendent or his 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.

On January 23, 2009, the CRP convened.⁵ Petitioner was represented by his father and Respondent was represented by counsel, Robert Baker. During the prehearing conference, Petitioner submitted ten additional exhibits, which were marked P-1 through P-10. Respondent objected to the admissibility of Exhibits P-1 through P-6 and P-8 through P-10 on the grounds that the exhibits were hearsay, irrelevant and cumulative.

The CRP sustained the Respondent's P-3 objection. The CRP overruled the Respondent's other objections and entered the following exhibits into evidence: Exhibits P-1, P-2, and P-4 through P-10. Respondent submitted no additional evidence.

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. Petitioner is a 17 year old senior (d/o/b January 24, 1991) at Mishawaka High School, located within the School City of Mishawaka. He enrolled at Mishawaka on or about July 18, 2008.
2. Prior to his enrollment at Mishawaka Petitioner lived with his family at 54435 Christle Court, which is located within the Penn-Harris-Madison School Corporation.
3. Petitioner attended Penn High School, located within the Penn-Harris-Madison School Corporation, for his freshman and sophomore year of high school. He was considered to be a very promising wrestler and wrestled on the varsity team both years. Petitioner testified that he had many problems at Penn, separate from athletics. He received a conduct code violation during his sophomore year for underage drinking. He later approached his parents about leaving Penn to attend school in a different environment.
4. Petitioner's father testified that he was moving his family to Mishawaka because it was a better environment for his children. Extended family lived in the area and Petitioner's father was building a home in that area. Petitioner claimed that the family was not moving to Mishawaka for athletic reasons.
5. At the time of the transfer, Petitioner completed the IHSAA Transfer Report. He indicated that the family was moving from the Christle Court address to 4128 Ryecrest Drive, which is located in Mishawaka, Indiana. The Ryecrest residence was under construction and scheduled for completion in November of 2007. The Transfer Report states that the family was making a bona fide move and that a hardship was not being sought.
6. Penn, the sending school, questioned whether the move was legitimate. Penn claimed that Mishawaka had a very good wrestling program and Petitioner was a promising wrestler. Penn indicated that further investigation was warranted to ensure that the family was actually moving to Mishawaka on a permanent basis.

⁵Eight members were present: Joan Keller (Chair), Ed Baker, Stephen Sipes, Matthew Rager, Christi Bastnagel, Earl Smith, Brenda Sebastian, and James Perkins.

7. Mishawaka, the receiving school, indicated that the family was building a home in the Mishawaka district and that the family would live with the maternal grandparents until their home was completed. The grandparents' home is located in the Mishawaka school district. Mishawaka recommended full eligibility.
8. On August 8, 2007, Respondent ruled that since there was no proof of a bona fide move, Petitioner would only be granted limited eligibility until the family actually made a bona fide move into the Mishawaka school district. Petitioner's family moved in with his maternal grandparents in November 2007.
9. In November 2007, Mishawaka reported to Respondent that Petitioner's Christle Court home had been leased and the family had moved into the grandparents' home. Based upon this information, Respondent granted Petitioner full eligibility on November 12, 2007. This grant of eligibility was at the beginning of the wrestling season. Petitioner had a pretty good wrestling season, even though he lost his matches in the finals. Despite Petitioner's losses, Mishawaka still won the State Championship.
10. At the end of the wrestling season, the Mishawaka Athletic Director reported to Respondent that the lease for Petitioner's home had been terminated and that the family had moved back into the Christle Court residence located in the Penn school district. Based upon this information, Respondent concluded that Petitioner's family had not made a bona fide move but had maintained the Christle Court residence and that their representations about a bona fide move were false and misleading. On March 27, 2008 Respondent vacated the full eligibility ruling and declared Petitioner ineligible for 365 days from the date of the ruling.
11. Petitioner's father admitted that he returned to the home after the wrestling season ended. He testified that the family had not moved back into the Christle Court residence. He returned to the home on a few occasions to perform routine maintenance and to deter vandals. The work was done on weekends and in the evenings.
12. The father also testified that the family's finances were strained and that their inability to sell their Christle Court home constituted a financial hardship. He claimed that the purchase of the Ryecrest home was always contingent on the sale of the Christle Court home. The father claimed that the family was unable to move to the Ryecrest home because they could not afford two mortgages.
13. A realtor lined up a tenant for the Christle Court home but the tenant only stayed in the home two months. Petitioner's parents decided not to pursue an action against the tenant for breaking the lease because he was a friend and he was also experiencing a financial hardship. The tenant's deposit was returned because the tenant had not damaged the property. The furnishings had been left in the home.
14. Petitioner's parents paid an initial \$500.00 to the builder for the home on Ryecrest. The builder has not imposed any additional charges. Petitioner's parents are currently unable to pay for the Ryecrest home; so, the builder is using the home as a model home. It is currently on the market and Petitioner's family has a right of first refusal.
15. After the school year ended, Petitioner's mother and father moved back to the Christle Court residence. Petitioner provided no evidence to explain why they moved back into the Christle residence. The children remained in the home of their maternal grandparents. However, they spent time with their parents in the Christle Court residence on a daily basis. Petitioner claims

that the maternal grandparents were given a guardianship over the children so that the children could continue to attend school in the Mishawaka school district.

16. Respondent testified that it had no strong evidence to prove that Petitioner's family had made a bona fide move to Mishawaka. However, there was a substantial amount of evidence that suggested that a bona fide move had not taken place. Respondent was constantly getting reports from various sources indicating that Petitioner's family was still living in the Christle Court home. By telephone, Mr. Brian Woodworth, the former Assistant wrestling coach, testified that he was present for a conversation between the wrestling coach for Mishawaka and Petitioner and his brother where they discussed the need to be careful when returning to the Christle Court home because people were watching them.
17. Respondent also received a DVD from an anonymous source that purportedly showed Petitioner's car and his father's vehicles parked at the Christle Court home during the time frame that the family was supposedly living in Mishawaka. Respondent contacted Mishawaka after receiving the DVD in order to verify that the family had moved back into their home on Christle Court. Mishawaka sent a letter to Respondent confirming that Petitioner's family had moved back into the Christle Court home.
18. Based on the evidence presented, Respondent held that the Petitioner's family had not made a bona fide move to the Mishawaka school district. Respondent declared Petitioner athletically ineligible at Mishawaka for 365 days from the ruling because Petitioner's original eligibility ruling was based on false and misleading information.

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).
2. The Indiana General Assembly created the Case Review Panel 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 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 uphold, modify, or nullify the Respondent's adverse eligibility determination.
3. Petitioner asserts that although he indicated that he was not seeking a hardship when he initially completed the IHSAA Transfer Report, his circumstances had changed. IHSAA **Rule C-17-8.1** ("hardship rule") allows the IHSAA to set aside the effect of any rule (with some exceptions) when the affected party establishes the following conditions:
 - (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.

Petitioner claims that the hardship rule applied to the changed circumstances because economic conditions prevented the sale of the Christle-street home, thereby preventing the family from completing the otherwise bona fide move. Petitioner claimed that the spirit of the original eligibility ruling had not been violated.

4. In determining whether a hardship exists, the IHSAA considers **Rule C-17-8.4**, which states:
 - (a) Ordinary cases shall not be considered hardship; rather the conditions which cause a violation of a Rule, a disregard of a decision or directive made under these rules, or the failure to meet the eligibility requirements must be beyond the control of the school, the coach, the student, the parents and/or the affected party.
...
 - (c) Likewise, a change in financial condition of the student or a student's family may be considered a hardship, however, such conditions or changes in conditions must be permanent, substantial and significantly beyond the control of the student or the student's family.
...
 - (e) In any application for a hardship under this Rule 17-8, the burden is upon the party seeking the hardship, whether it is a student, school or affected party, to show entitlement to a hardship by clear and convincing evidence.
5. Petitioner did not show by clear and convincing evidence that the conditions of the alleged hardship were beyond the control of the Petitioner's family. The decision to construct the new home was wholly and independently under the control of the Petitioner. The inability to sell their old home is a common place occurrence. While the housing market does create changing conditions beyond the control of market participants, these changing circumstances existed prior to Petitioner participating in the market. Petitioner chose to risk such control.
6. Respondent's **Rule C-19** requires certain facts for a move to be considered "bona fide," including:
 - (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.
7. The initial eligibility ruling established a presumption that student met the requirements of a bona fide move. For purposes of revoking the initial eligibility ruling, the IHSAA Commissioner determined that the change of residence was not genuine under Rule C-19(c) due to evidence including, but not limited to, an anonymously-created DVD.
8. Presented evidence was insufficient to revoke the initial ruling. The DVD contained no video proof to authenticate the inference set forth by the Respondent. While footage illustrates the presence of vehicles at the Christle-street residence, the record shows that the father returned to the residence on various occasions to do routine maintenance. The DVD does not refute that record and, indeed, could even support the Petitioner's claim. No other substantiated evidence existed to indicate that the change of residence was disingenuous under Rule C-19(c).

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. Respondent's determination that Petitioner is athletically ineligible at Mishawaka for 365 days from March 27, 2008 is modified pursuant to I.C. 20-26-14-6(c)(3)(B). The decision will be changed to a time served decision and Petitioner shall have full athletic eligibility as of January 23, 2009. This decision was determined by a vote of 6-2 vote.

DATE: February 13, 2009

/s/ Joan 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.