

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In the matter of: D.O.,)	
Petitioner)	
)	
and)	CAUSE NO. 0911109-65
)	
The Indiana High School Athletic Association (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

Petitioner is a sophomore currently attending Huntington North High School (Huntington North) in the Huntington County Community School Corporation. He recently transferred from Homestead High School (Homestead) in the MSD Southwest Allen County School district to Huntington North. The change of schools was not associated with a change of address.

As a freshman at Homestead, the Petitioner participated in freshman football, basketball and baseball. Homestead High School indicated that the Petitioner last participated in athletics at Homestead on May 15, 2009. The Petitioner withdrew from Homestead on August 6, 2009 and Homestead completed the Indiana High School Athletic Association's (IHSAA) Transfer Report (Transfer Report) that same day. Huntington North completed its portion of the Transfer Report on August 6, 2009. Administrators from both schools recommended the Petitioner receive limited eligibility for a period of 365 days from the date the student last participated at Homestead High School. On August 6, 2009, the IHSAA agreed with the schools' recommendation and awarded limited eligibility to Petitioner.

Petitioner appealed the decision of the IHSAA to grant him limited eligibility status and a review was scheduled for October 8, 2009. On October 20, 2009, the Review Committee issued a decision upholding the Commissioner's decision.

APPEAL TO THE CASE REVIEW PANEL

Petitioner, without counsel, appealed to the Indiana Case Review Panel¹ (CRP) on December 3, 2009. On or about November 9, 2009, the parties were notified of their respective hearing rights.

¹ The Case Review Panel (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

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. Hearing was set for December 3, 2009, in the offices of the Indiana Department of Education, Indianapolis, Indiana. The parties received timely notice of the proceedings.

On December 3, 2009, the CRP convened.² Petitioner and his father appeared in person. Respondent appeared by counsel. Prior to the hearing, Petitioner submitted one exhibit marked as "P-1" for identification purposes. Copies were made and provided to Respondent and members of the CRP. Respondent did not object to the admission of Petitioner's "P-1". The CRP admitted the "P-1" document.

Testimony was provided under oath or by affirmation. In consideration of the testimony and record, the Case Review Panel makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Petitioner is a fifteen year old sophomore currently attending Huntington North, a public high school in the Huntington County Community School Corporation. He resides with his family in Ft. Wayne, Indiana.
2. Prior to enrolling at Huntington North, the Petitioner attended school at Homestead in Ft. Wayne, Indiana.
3. On August 6, 2009, the Petitioner enrolled at Homestead and his parents completed the parent's section of the IHSAA Transfer Report.
4. The Petitioner transferred to Huntington North because a coach on the Homestead coaching staff used profanity and vulgar language in front of the freshman basketball team.
5. In December 2008, the Petitioner's father complained to the head coach for boys basketball at Homestead, Coach Johnson, about the use of inappropriate, vulgar language by the freshman boys basketball coach, Coach Carter, to the freshman boys basketball team.
6. In January 2009, following the Petitioner's father's complaint, another parent complained about Coach Carter's use of inappropriate language in front of the freshman boys basketball team.

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).

² Six members were present: Ed Baker, Christi Bastnagel, Keith Pempek, James Perkins, Jr., Earl H. Smith, Jr., and Don Unruh. Mr. Unruh recused himself from the proceeding prior to the start of the hearing. Dr. Thomas Huberty served as chairman over the proceedings.

7. The Petitioner and his parents chose to transfer to Huntington North in August 2009, when the problem with Coach Carter's behavior was not improving.
8. On August 6, 2009, Petitioner requested full athletic eligibility and that same day the IHSAA, following their investigation, granted the Petitioner limited athletic eligibility.
9. Petitioner sought reversal of the limited eligibility ruling under rule 17-18.1 asserting that a hardship existed due to Coach Carter's continued use of vulgar and inappropriate language.
10. On October 8, 2009, the IHSAA Review Committee upheld the Commissioner's determination. On or about November 9, 2009, the Petitioner appealed to the Case Review Panel.

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 CRP 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 CRP has jurisdiction when a parent, guardian, or eligible student invokes the review function of the CRP. In the instant matter, the IHSAA has rendered a final determination of student-eligibility adverse to the student. Petitioner has timely sought review. The CRP has jurisdiction to review and determine this matter. The CRP is not limited by any by-law of Respondent and is authorized by statute to uphold, modify, or nullify the Respondent's adverse eligibility determination.
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. Rule 19-6.2 permits limited eligibility for a student who transfers to a new district without a corresponding change of residence to the new district by the student's parents. The Petitioner is eligible for limited eligibility pursuant to this Rule.
4. Rule 17-8.1 provides that a hardship exists if the Petitioner can show that strict enforcement of the Rule in the particular case will not serve to accomplish the purpose of the Rule; the spirit of the Rule has not been violated; and there exists in the particular case circumstances showing an undue hardship that would result from enforcement of the Rule. Even though the CRP was concerned by the continued use of vulgar language by Coach Carter and most every panel member offered an apology to the Petitioner's father, the Petitioner failed to show a hardship existed.

5. Based on the foregoing, the Petitioner's limited eligibility under Rule 19-6.2 is upheld.

ORDER

The decision of the IHSAA to limit the Petitioner's eligibility at Huntington North for the duration of the for 365 days from the day of his last participation at Homestead which was on May 15, 2009, or until May 15, 2010 is upheld. This was determined by a vote of 6 - 0.

DATE: December 18, 2009

/s/ Dr. Thomas Huberty
Dr. Thomas Huberty, Chair
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.

5. Based on the foregoing, the Petitioner's limited eligibility under Rule 19-6.2 is upheld.

ORDER

The decision of the IHSAA to limit the Petitioner's eligibility at Huntington North for the duration of the for 365 days from the day of his last participation at Homestead which was on May 15, 2009, or until May 15, 2010 is upheld. This was determined by a vote of 6 - 0.

DATE: December 28, 2009

/s/ Dr. Thomas Huberty
Dr. Thomas Huberty, Chair
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.