

**BEFORE THE
CASE REVIEW PANEL**

In The Matter of Christian Wilkens,)	
Petitioner)	
and)	CAUSE NO. 000829-3
The Indiana High School Athletic Assoc., Inc.,)	
Respondent)	
)	
Review Conducted Pursuant to)	
I.C. 20-5-63 <i>et seq.</i>)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Procedural History

Petitioner is a foreign exchange student from Germany, who enrolled in August of 2000 in the Morristown Junior-Senior High School (hereafter, “Morristown”), which is part of the Shelby Eastern School Corporation in Shelby County. On August 8, 2000, Petitioner, with Morristown’s assistance, submitted to the Indiana High School Athletic Association (IHSAA) an Application for Foreign Exchange Student Eligibility Request. The Application verifies that Petitioner’s exchange program was approved, that placement at Morristown was secured before his departure from his home country, and that he met the requirements of **Rule C-19-7**.¹ Petitioner was attending Morristown under the auspices

¹The IHSAA has promulgated a series of by-laws as 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 eligibility and transfer but is more commonly known as the “Transfer Rule,” is common to all athletes. **Rule C-19-7** addresses specifically the eligibility of a foreign exchange student. In order to qualify for eligibility at the varsity level, a foreign exchange student must, in part, not have completed the secondary education program in the student’s home country, meet all IHSAA eligibility rules (including scholarship and age rules, neither involved in this matter), and the foreign exchange program must be approved both by the IHSAA and the Council on Standards for International Education Travel (CSIET). The IHSAA requires that foreign exchange programs, to be approved, must, *inter alia*, be under the auspices of an established national entity, assign students in such a fashion as to insure that the placement was not the result of undue influence to attend a particular school for

of the “EF Foundation for Foreign Study” (hereafter, “EF”).² Petitioner was not aware that EF had been “non listed” by the Council on Standards for International Educational Travel (CSIET) (see *footnote 1*), an organization that, since 1984, has set standards for international youth exchange programs and upon whose standards the IHSAA relies. The CSIET standards are endorsed by a number of school-related groups.

EF has had a history of problems with its CSIET listing. It was “conditionally listed” in 1996, listed with an advisory in 1997, listed with a “strong advisory” in 1998, and again conditionally listed in 1999. In April of 2000, CSIET notified EF it was “non listed.” The IHSAA concedes that Petitioner may not have been aware of the action by the CSIET, or at least did not understand the ramifications under the IHSAA’s rules. Petitioner told an EF representative that he was active and interested in athletics, and that he wished to participate in athletics during his year in the United States. The fourth standard of the CSIET states that an organization shall not promote its program as providing opportunities for athletic participation, although there is no showing that EF did this. On August 8, 2000, Petitioner was notified by the IHSAA that he had “limited eligibility.”³ The reason for the ruling was based upon the failure of EF to be listed as approved by CSIET.

Petitioner had hoped to play varsity soccer at Morristown. “Limited eligibility” would limit him to junior varsity participation except that Morristown, a relatively small school, has only fifteen students involved

athletic reasons, and consult with the principal of the IHSAA-member school prior to placement.

²The official name is “EF Educational Foundation for Foreign Study.” As will be noted later, the Case Review Panel took official notice under I.C. 4-21.5-3-26(f) of the existence of I.C. 20-8.1-6.1-6(b), which provides in relevant part as follows:

(b) A foreign student visiting in Indiana under any student exchange program approved by the Indiana state board of education is considered a resident student with legal settlement in the school corporation where the foreign exchange student resides. The student may attend a school in the school corporation in which the family with whom the student is living resides....

The “EF Educational Foundation for Foreign Study” is on the list of the United States Department of State’s “Organizations with High School Exchange Visitor Program Designation,” which is the list used by the State of Indiana and disseminated to public schools.

³“Limited eligibility” is defined under **Rule 19** as meaning a student may participate in all interschool athletics, except on varsity athletic teams, for a period of 365 days from the date of last participation at the previous school. All references herein are to the IHSAA’s By-Laws for the 2000-2001 school year.

in soccer and does not have a junior varsity team.⁴ In Germany, sports are not associated with the schools. Organized sports are on a club basis. Although he participated with one athletic club, it was not soccer. His Application for Foreign Student Exchange Request filed with the IHSAA, however, indicates that he did participate on a soccer club.

The IHSAA concluded that there existed no evidence of any sort and to any degree that Petitioner's transfer to Morristown was "for primarily athletic reasons" or was the result of "undue influence" (see **Rule 20**). However, because his transfer was without a corresponding change of residence by his parents (see **Rule C-19-6.1**)⁵, the IHSAA restricted his participation under the "limited eligibility" to junior varsity competition for one year, which would be the extent of his foreign exchange program.

The IHSAA does have a "Hardship Rule."⁶ However, the IHSAA did not believe the Petitioner or his

⁴Morristown has only one official junior varsity team—basketball. The IHSAA indicated in its written decision that its granting of "limited eligibility" did not prevent Petitioner from participating on a junior varsity level in individual sports, such as cross country or tennis.

⁵**Rule C-19-6.1** contains instances where student's transfer without a corresponding change of residence by his parents will not prevent a student-athlete from enjoying full eligibility. These instances include, but are not limited to, intervention of a court (wardship), moving to reside with one of the student's parents where the parents are divorced (with limitations on multiple moves), the former school closed, the student enrolled in the wrong school district by mistake but transferred immediately upon discovering the error, or the student is emancipated and has established a "bona fide residence" in the school district.

⁶**Rule C-17-8** is the IHSAA's "Hardship Rule." Generally, the "Hardship Rule" allows the IHSAA "to set aside the effect of any Rule [with some exceptions] when the affected party establishes, to the reasonable satisfaction of [the IHSAA], all of the following conditions are 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." **Rule C-17-8.1.**

The IHSAA, on its own initiative, can invoke the "Hardship Rule," but a member school cannot. **Rule C-17-8.2.** The IHSAA provides some guidance and examples as to what would be considered a "hardship." See **Rule C-17-8.4** (e.g., injury, illness or accidents that result in a student being unable to meet a basic requirement; substantial changes in the financial condition of the student or his family, although these would have to be permanent and "significantly beyond the control of the student or the student's family") and **Rule C-17-8.5**, which applies directly to **Rule 19** (the "Transfer Rule"), specifically **Rule C-19-6**, which allows the IHSAA to grant full eligibility where (a) the student establishes "the transfer is in the best interest of the student and there are no athletic related motives

circumstances provided “reliable, credible and probative evidence...that each element of the hardship rule has been met,” adding that the burden of proof remains with Petitioner in this regard. Accordingly, the IHSAA ruled that there was no evidence that strict enforcement of the “Transfer Rule” would fail to serve to accomplish the purposes of the rule.⁷ However, the main reason for denying full eligibility had to do with the relationship between EF and CSIET. The IHSAA, in its Review Committee decision of August 25, 2000, wrote in part at Conclusion No. 5:

EF was not list[ed] as approved by CSIET as required by the eligibility rules. The IHSAA relies on CSIET, and its listings, to assure that the sponsoring organization with which the IHSAA deals, such as EF, maintains strict control over the placement and supervision of students and in a manner which assures that there is and can be, no athletic consideration in the placement of an exchange student at a host family or at the school enrolled. Should a sponsoring organization, such as EF, fail to meet all the CSIET standards, such as the standard requiring the organization to exercise adequate managerial control to prevent substandard activity from happening or developing, which includes, for example, failing to have the student placed by the national organization and not the local organizer, and failing to have school enrollment established before the students leave their home country, athletic consideration could become a part of the process. This problem (allowing the process to be exposed to manipulating) is the exact type of problem the IHSAA seeks to eliminate through enforcement of the transfer rule (i.e., prohibit circumstances which could result in athletic transfers). By strictly enforcing the rule (requiring full compliance with the approval process), the purposes of the transfer rule are served and accomplished, generally, and the foreign exchange rule purposes in particular.⁸

surrounding the transfer,” and (b) the principals of the sending and receiving schools affirm in writing that the transfer is in the best interests of the student and there are no athletic-related motives.

⁷The IHSAA’s By-Laws have stated philosophical underpinnings for many of its Rules. The “Transfer Rule” (**Rule 19**) has such statements, notably that athletic participation is a privilege and that uniform standards for eligibility are necessary to protect the opportunities of bona fide students to participate in interscholastic competition in an educational setting that is fundamentally fair and equitable to all. In addition, attendance at member schools is primarily to obtain an education and not participate in athletics. Uniform rules serve as a deterrent to students who would transfer schools for athletic reasons as well as those who would seek to recruit student athletes to attend a particular school.

⁸This statement contains only one actual fact: EF was not listed by CSIET. The remainder of the statement lacks any factual determinations by the IHSAA. There is no showing that EF committed any of the untoward acts, nor is there any evidence that Morristown—or anyone on its behalf—exercised undue influence on Petitioner to induce him to enroll in Morristown in order to participate on its soccer

The IHSAA also determined in Conclusion No. 6 that strict enforcement of its rule would also further other purposes of the rule, specifically:

- [Petitioner] will displace an existing bona fide student from participating;
- Granting an exception in these circumstances will disrupt the framework in which interscholastic athletic competition is taking place;
- [Petitioner's] participation on the varsity squad under these circumstances will deviate from the uniform standards established by the eligibility rules; and
- [Petitioner's] varsity participation could set a precedent for other students to obtain full eligibility, even though they failed to meet all of the requirements of the foreign exchange rule.

The IHSAA concluded that Petitioner “failed to show that strict enforcement of the transfer rule will not accomplish one or more goals of the rule.”

The IHSAA also rejected any other application of the Hardship Rule, notably the “spirit of the Rule” and the “undue hardship” provisions that would excuse a strict application of IHSAA rules. It indicated that it has established a “bright line” requirement for foreign exchange students. In essence, a “bright line” requirement for foreign exchange students precludes any consideration or application of the Hardship Rule for such students. The IHSAA acknowledged this: “To permit a waiver of the rule because the foreign students did not know of the programs [sic] non-listing would render the foreign exchange framework meaningless. The spirit of the rule would be violated if relief from the rule were granted in these circumstances....” IHSAA Conclusion No. 7.

There was no showing of “undue hardship,” the IHSAA concluded, because his “limited eligibility” status would still enable him to participate, albeit on the junior varsity level, in sports that Petitioner has not expressed an interest or competency in (basketball, cross country, tennis, golf, and track and field were listed in the IHSAA as possible athletic avenues for Petitioner).⁹

APPEAL TO THE CASE REVIEW PANEL

team. The IHSAA found just the opposite.

⁹Although this document has considered various IHSAA decisions together, it should be noted that the original decision to deny full eligibility to Petitioner occurred on August 11, 2000, when an assistant commissioner determined that the foreign exchange program (EF) was not approved by CSIET. Morristown, on behalf of Petitioner, initiated the appeal to the IHSAA’s internal Review Committee (see **Rule C-17-4**). It is the decision of the Review Committee, upholding the assistant commissioner’s earlier decision, that is the subject of this review by the Case Review Panel.

The IHSAA's Review Committee issued its written decision on August 25, 2000. Petitioner sought review of the final decision of the IHSAA 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 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 August 29, 2000, by the Indiana Department of Education on behalf of the CRP. Both Petitioner and the IHSAA were advised that same date of their respective hearing rights. The parent was presented with a form to permit the disclosure of student-specific information that, in effect, would make the review hearing by the CRP open to the public. The parent signed and dated the form and returned it the same date to the Indiana Department of Education.

The parties were advised thereafter of the date, time, and place for the conduct of the review hearing. The review hearing was set for August 31, 2000, beginning at 2:00 p.m. (Indianapolis time) at 251 E. Ohio St., Indianapolis, in the Fourth Floor Conference Room. 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 before the IHSAA.

Petitioner challenges the determination of the IHSAA. He asserts he is entitled to full eligibility for the 2000-2001 school year, and that his circumstances should qualify as an exception to the Transfer Rule and the Foreign Exchange Student Eligibility Rule by application of the Hardship Rule. In order for Petitioner to prevail, he must—through substantial and reliable evidence—establish that he is entitled to the Hardship Rule considerations provided under **Rule C-17-8**, notably **Rule C-17-8.1**, which allows the effect of an IHSAA rule to be set aside where a party has established “to the reasonable satisfaction” of the adjudicator that “all of the following conditions are 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.

On August 31, 2000, a review hearing was conducted pursuant to the aforementioned Notice of Hearing. Prior to the conduct of the review hearing, a pre-hearing was conducted. Petitioner submitted one document, without objection. The IHSAA submitted seven documents, without objection. The CRP took official notice of I.C. 20-8.1-6.1-6(b), although the matter was decided on other grounds. In addition, as required by I.C. 4-21.5-3-11(e), the parties were advised of three (3) separate

instances of attempted *ex parte* communications with three (3) CRP members. In all three cases, the persons contacting the CRP members were advised that the case—which had not yet been decided by the IHSAA—could not be discussed. None of the affected CRP members felt the communications would affect their ability to decide the matter impartially. Neither party objected to the CRP members remaining as adjudicators in this matter. Based upon the testimony and evidence presented at the review hearing, as well as those matters official noticed under I.C. 4-21.5-3-26(f), and the record as a whole, the following Findings of Fact, Conclusions of Law, and Orders are determined.

FINDINGS OF FACT

1. Petitioner is a resident of Stuhr, Germany. He is seventeen years old (d/o/b November 6, 1982). In December of 1999, Petitioner enrolled in the foreign exchange program offered by EF and paid \$1,500.00 as a first installment of the \$6,000 charge for placement in the United States through EF for Petitioner's senior year. Petitioner had researched foreign study programs and noted that EF enjoyed a good reputation based upon over two decades of experience in effecting such placements.
2. Secondary schools in Germany do not have interscholastic competition. Rather, athletic competition is organized through clubs. Petitioner belonged to a club for team handball. He did not belong to a soccer club. Although Morristown had earlier reported that Petitioner participated on a soccer club in Germany, this was clarified as a miscommunication by Morristown at the CRP review hearing.
3. Petitioner's interest in participating in soccer at Morristown is motivated by the fact that the son of his host family participates on the varsity soccer team. The Morristown Junior-Senior High School houses grades 7-12 and has a student population of 436. The varsity soccer team has approximately 15 players. There is no junior varsity soccer team.
4. Although Petitioner indicated to EF that he was active and interested in participating in interscholastic competition while in the United States, there is no indication nor is it alleged that Petitioner's purpose for participating in the foreign exchange program was primarily for athletic reasons. There is no indication nor is it alleged that his placement in Morristown is due to any undue influence.
5. The Council on Standards for International Education Travel (CSIET) has nine (9) general standards against which it evaluates foreign exchange programs. The resulting list of accredited programs is relied upon by various organizations, including the IHSAA. The nine (9) general standards, all of which contain subparts, are: (1) Educational Perspective (clearly established educational goals related to an international experience); (2) Organizational Profile (demonstrated competency in international education travel, including well defined organizational structures and sufficient personnel to administer programs effectively); (3)

Financial Responsibility (financial viability, annual audit); (4) Promotion (responsible media presentations, professional and ethical presentation of purposes, activities, and sponsorship); (5) Student Selection and Orientation (screenings and student selection must be designed and implemented in order to ensure students are adequately prepared for the experience); (6) Student Placement (ensure the host family is compatible with the criteria for the program, coordinate placement with U.S. high school involved, ensure placement is not based upon athletic abilities); (7) Operations (adequate care and supervision of students, including regular contact by local representatives); (8) Student Insurance (ensure adequate health and accident insurance coverage for the students); and (9) Adherence to Government Regulations.

6. The EF Foundation for Foreign Study (“EF”) was notified by CSIET by letter dated April 12, 2000, that it would not be listed by CSIET. EF and CSIET had been involved in a continuing dialogue regarding EH’s compliance with the aforementioned standards. This dialogue resulted in the issuance of advisories and conditional listings dating from 1996. However, the CSIET found that violations of its standards continued, notably of Standards 6 and 7 (Student Placement and Operations), as well as Standard 9.¹⁰ The violations of Standard 6 involved primarily the failure to ensure school enrollment through contact with the public schools in Wichita, Kansas, prior to the arrival of thirteen students, although there were other singular instances of this occurring as well. The screenings of host families in some cases were inadequate, while in other situations, host families were not secured until after students arrived in the United States.
7. EF sent a letter dated May 11, 2000, “To whom it may concern,” advising of CSIET’s action to remove EF from its list of accredited programs. However, the letter downplayed the infractions that led to the “non listing” and did not explain the potential ramifications to students studying in the U.S. under the EF program. There is no showing that the May 11, 2000, letter was provided to either the Petitioner, his host family, or Morristown.
8. At the time Petitioner enrolled in the EF program in December of 1999, the EF program was listed as accredited by the CSIET, albeit conditionally due to the aforementioned violations of Standards. EF never informed Petitioner of its accreditation status nor any ramifications that may result from being “non listed” by CSIET although it knew of this. Petitioner learned in June of 2000 who his host family would be and where he would be enrolled. He arrived in the United States on July 14, 2000, and was at Bryant College for two (2) weeks before joining his host family in Shelby County, Indiana.

¹⁰EF is apparently also under a probation designation with the U.S. State Department and the United States Information Agency (USIA) but failed to report this timely to CSIET. The USIA list is the list employed under I.C. 20-8.1-6.1-6(b). See *footnote 2*.

9. On August 8, 2000, Petitioner, through Morristown, completed the IHSAA's "Application for Foreign Exchange Student Eligibility Request," which was then submitted to the IHSAA. On August 11, 2000, an assistant commissioner for the IHSAA gave Petitioner "limited eligibility." Morristown assisted Petitioner in appealing to the IHSAA's internal review committee. The internal review committee, following a hearing on August 21, 2000, upheld the determination of the assistant commissioner. The written decision of the internal review committee was issued on August 25, 2000.

CONCLUSIONS OF LAW

1. The Case Review Panel, as established by P.L. 15-2000, has the authority to review final determinations by the IHSAA regarding student eligibility when so requested by a student's parent or guardian. The Case Review Panel has jurisdiction to decide this matter.
2. Under **Rule C-19-7**, a foreign exchange student, such as Petitioner, must meet several criteria in order to participate in interscholastic varsity competition as sanctioned by the IHSAA. One of the criteria is that the foreign exchange program under which the student attending school in the United States be approved by the CSIET. **Rule C-19-7.1(d)**. Although Petitioner was not aware of EF's status, and EF did not inform him of the ramifications of its being "non listed" by CSIET, it is undisputed that Petitioner does not meet the criteria for eligibility under **Rule C-19-7.1**. Petitioner is studying in the United States under a foreign exchange program not approved by CSIET.

ORDER

The Case Review Panel, by a 6-3 vote, upholds the decision of the Indiana High School Athletic Association to accord "limited eligibility" to Petitioner for the 2000-2001 school year.

Date: September 7, 2000

Suellen Reed, 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.