

**BEFORE THE
CASE REVIEW PANEL**

In The Matter of Vytautas Danelius)	
and Marius Kliokys,)	
Petitioners)	
and)	CAUSE NO. 001219-8
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

Vytautas (“Vytautas”) Danelius (d/o/b June 16, 1982) and Marius Kliokys (d/o/b September 9, 1982), Petitioners herein, are natives of Lithuania. Through the Rotary Youth Exchange Program, Petitioners became enrolled at Park Tudor High School, a private school in Indianapolis that is a member of the Respondent’s association. Petitioners, through Park Tudor, submitted to Respondent the Application for Foreign Exchange Student Eligibility Request, which was initially approved on September 14, 2000, by Respondent, granting Petitioners full eligibility. Petitioners both play basketball and are members of their country’s junior national team. Basketball in Lithuania is not sponsored by secondary schools but is a club sport.

Thereafter, the Respondent received via telephone information from a person who did not identify herself, alleging irregularities in the Petitioners’ enrollment at Park Tudor. The anonymous caller represented herself as the mother of an athlete at the school. Respondent investigated and, on November 15, 2000, reversed its previous position, stating the exchange program failed to meet the standards under **Rule C-19-7.**¹ Respondent reaffirmed its decision in this respect on November 30,

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

2000. Petitioners' eligibility was reduced from full eligibility to "limited eligibility."² Petitioners appealed on December 1, 2000. A hearing was conducted on December 11, 2000, before Respondent's Review Committee, which issued its written decision on December 14, 2000, affirming the decision that Petitioners have "limited eligibility." Petitioners appealed to the Case Review Panel on December 18, 2000.

Respondent's decision is based upon the perceived irregular nature of the placement of Petitioners at Park Tudor. The father of one of the Petitioners originally sought to enroll his son in a public school in Miami, Florida, but apparently not through a student foreign exchange program. However, the use of metal detectors and visible security personnel discouraged further inquiry. The father was also a member of the Rotary. The father, through Rotary, sought information on American schools with academic reputations. An internet search was also conducted. The father contacted Park Tudor and requested information on the school, which was forwarded. Park Tudor informed the father and Petitioners of its admission criteria and its foreign exchange program. An application process began, which involved the Rotary of Indianapolis as a sponsoring entity. Host families were identified from what is described as a "pool" of host families within the Park Tudor community, but their preparation was conducted after the fact rather than beforehand, as is the usual process. It appears that the direct contact between the Petitioners and Park Tudor prior to enrollment in a foreign exchange program is at the core of Respondent's decision to accord Petitioners only "limited eligibility" status. Respondent characterizes this contact as involving unduly the foreign exchange students in the selection process, as noted more fully below.

The Respondent concluded from the above that there was no proof of violations of **Rule C-19-4** (Transfers For Primarily Athletic Reasons) or **Rule 20** (Undue Influence). However, Respondent found that Petitioners are not "qualified foreign exchange students" under **Rule C-19-6.1(m)** "because

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

²"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. The "limited eligibility" rule can be applied to situations where, as here, there has been no corresponding change of residence. See **Rule C-19-6.2**. All references herein are to the IHSAA's By-Laws for the 2000-2001 school year.

Rotary, the organization which sponsored both students, did not have in place a program which assigned students to American schools by a method which insured that no student, school or other interested party could influence the assignment for athletic purposes.” Respondent goes on to state once again that the transfers were not “for primarily athletic reasons” but never concludes that Petitioners’ transfers were influenced by athletic reasons. “Rotary’s failure to have in place a program which assigned students to American schools by a method which insured that no student, school or other interested party could influence the assignment for athletic purposes permits athletic manipulation in the selection process. The IHSAA’s reliance on blind placement of foreign students by sponsoring organizations 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. Allowing the process to be exposed to manipulation is the exact type of problem the IHSAA seeks to eliminate through enforcement of the transfer rule (i.e., prohibiting circumstances which could result in athletic transfers).”

Respondent did not find that Petitioners satisfied the elements necessary to invoke the “Hardship Rule.”³ Strict enforcement of the rules, Respondent wrote, will prevent “displacement” of “existing bona fide students from participating”; will prevent disruption of “the framework in which interscholastic athletic competition is to take place”; will prevent deviation “from the uniform standards established by the eligibility rules”; and avoid setting “a precedent for other students to obtain full eligibility, even though they failed to meet all of the requirements for the foreign exchange rule.”⁴

³**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 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.

⁴Respondent also indicates that, with respect to foreign exchange students, it employs a “bright line requirement” because of the numbers of students and its inability to thoroughly investigate the

APPEAL TO THE CASE REVIEW PANEL

The IHSAA's Review Committee issued its written decision on December 14, 2000. Petitioners 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 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 December 18, 2000, by the Indiana Department of Education on behalf of the CRP. Both Petitioners and the Respondent were advised on that date of their respective hearing rights. Petitioners were presented with forms to permit the disclosure of student-specific information that, in effect, would make the review hearing by the CRP open to the public. The Petitioners, both of whom are over the age of 18 years, signed and dated the forms and returned them to the Indiana Department of Education.⁵

circumstances surrounding placements to ensure that such placements are not for "athletic reasons." This, in essence, means that a foreign exchange student does not have any realistic recourse to invoke the "Hardship Rule." If this is the case, the Respondent should indicate in its by-laws that **Rule C-19-7** is not covered by the "Hardship Rule."

⁵Respondent raised as an inquiry and not as a challenge the issue of host families invoking the jurisdiction of the Case Review Panel. Respondent acknowledged that it had not raised the issue in the past and does not challenge these petitioners—who are over the age of 18 years—from initiating the process, but may raise the issue in the future. While the language creating the statute does refer to "parents," the Case Review Panel in the past has not employed a strict reading of that term. Prior to this hearing, the Case Review Panel considered the cases of two other foreign exchange students. In both situations, the review by the Case Review Panel was initiated by the host families and not the students' respective parents. Although Respondent was not challenging the standing of Petitioners and, as a consequence, it is not necessary for the Case Review Panel to rule on the inquiry, it should be noted that the Case Review Panel is a creation of statute and, as such, is required to interpret statutes in such a fashion as not to arrive at an interpretation that would be "plainly repugnant" to legislative intent. The Case Review Panel was created to review student-eligibility decisions made by the Respondent. This is its chief purpose. A strict reading of statute's use of the term "parents" would likely defeat a foreign exchange student's ability to invoke further review through this panel. This does not appear to be the intent of the Indiana General Assembly. See I.C. 1-1-4-1.

The parties were advised thereafter of the date, time, and place for the conduct of the review hearing. The review hearing was set for December 22, 2000, beginning at 9:00 a.m. (Indianapolis time) at Room 233, State House. 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. Petitioners appeared in person and by the Headmaster at Park Tudor. Respondent appeared by counsel and its Commissioner.

A brief pre-hearing conference was conducted. Petitioners submitted one additional document: a print-out of organizations approved for the 2000-2001 school year by CSIET, indicating Central States Rotary is on the list. Respondent did not object to the admission of the document.

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. Petitioners are both over the age of 18 years. They have not completed their secondary education. They are both natives of Lithuania and have exceptional academic ability. Both are multi-lingual. They were both placed at Park Tudor through a foreign exchange program on the list of approved organizations for the 2000-2001 school year, as compiled and maintained by CSIET.
2. Park Tudor is a private school located on the northside of Indianapolis. It maintains five scholarships a year for foreign students who meet its academic requirements. These scholarships waive the tuition at the school and are only for one year. One of the stated purposes for these scholarships is to provide greater diversity for the school's student population. For the current year, only four (4) students qualified for the scholarships. Petitioners are two of the four students. Park Tudor is a member school in Respondent's organization.
3. One of the host families has children attending a different private school on the Indianapolis northside. Although not a member of Rotary or involved with Park Tudor, the host family noted that no other private school on the Indianapolis northside has a foreign exchange program. As a consequence, the host family, in June or July, offered to become a host family should Park Tudor need one. The host family completed an application. It learned on August 18, 2000, that it would be hosting one of the Petitioners.
4. Sometime during May of 2000, Park Tudor's admissions office received a request for information about the school from the father of one of Petitioners. The request was via a

telephone call that was estimated to be no more than five minutes. Park Tudor mailed the standard information on the school, including its academic profile, curriculum, and clubs. The clubs include basketball as well. Admission to Park Tudor is dependent upon one's academics. Park Tudor was not aware that either of Petitioners was a member of the junior national basketball team in Lithuania. Athletics were not discussed during the telephone conversation. Park Tudor receives a number of such requests for information on a weekly basis (between 100 and 150) and did not perceive this telephone inquiry as unusual. The school did not learn that Petitioners were members of the Lithuania junior national team until the Rotary applications were received near the end of June of 2000. Park Tudor also noted that one of Petitioners is also a member of Lithuania's national mathematics team. Park Tudor does not actively recruit students but allows prospective students to make the initial contact. Park Tudor is not noted for its athletic domination in interscholastic competition.

5. Park Tudor completed the Application for Foreign Exchange Student Eligibility Request for both Petitioners, utilizing the forms prepared and supplied by Respondent to its member schools. Respondent approved both applications on September 14, 2000, granting Petitioners full eligibility for the 2000-2001 school year. Park Tudor has a "no cut" policy. It is projected that had Petitioners been permitted to play varsity, they would have been in the starting five.
6. The Respondent's Commissioner received an anonymous telephone call from a woman who represented herself as the parent of an athlete at Park Tudor. She alleged irregularities in the placement of the Petitioners at Park Tudor. The Commissioner does not routinely act upon anonymous telephone calls, but this caller was seemingly privy to information that would not otherwise be known to anyone outside the Park Tudor school community. The Commissioner discussed the matter with pertinent staff and decided that further investigation was warranted. The Commissioner has never been able to determine the identity of the caller, and acknowledges that some of the information she has supplied has been grossly erroneous. Her identity remains unknown.
7. Based on his investigation, the Commissioner, on November 15, 2000, found that the placement of the Petitioners was not through a process that was sufficiently "random." As a consequence, the Rotary program did not meet the Respondent's standards and, accordingly, the Petitioners were deemed to have "limited eligibility" rather than full eligibility. The "limited eligibility" meant that Petitioners would not be able to play on the varsity basketball team at Park Tudor.
8. Testimony from a Youth Exchange Officer for Rotary clarified a number of issues involving the

placement of Petitioners and the selection of host families.⁶ Indiana is part of the Central States Rotary district. For foreign exchange purposes, Rotary ensures that there are as many students from the Central States area assigned to foreign exchange programs as are arriving from foreign countries. Obtaining qualified host families is always a concern. The witness is a volunteer in her position. She has worked with other public schools in the Indianapolis area for over a decade. She assumed her current position in July of 2000. At that time, Park Tudor was already designated as the host school for Petitioners. Host families had to be located. Although Park Tudor provided the names of two prospective host families, neither was aware of Petitioners when the Youth Exchange Officer contacted them. Although this created a somewhat awkward situation, she discussed the functions and benefits of being a host family. Both indicated interest, although later one family had to withdraw for reasons unrelated to the instant matter. This family was replaced by the one referenced in Finding of Fact Three *supra*. The witness acknowledged that because the process is staffed by volunteers and there will be inconsistencies from time to time, there were no Rotary rules broken with respect to the placement of Petitioners.

9. Although having two members of a national junior basketball team at the same school would, at “first blush,” raised questions, the circumstances were explained by the student whose father is a member of Rotary. When his father had inquired of his son whether he would like to be part of the Rotary foreign exchange program, the son asked several schoolmates if they would be interested. None of them expressed any interest. He was aware, however, that a member of the junior national basketball team had indicated an interest to be a foreign exchange student. He approached his teammate and he was agreeable. Both students then completed the Rotary application near the end of May and beginning of June, 2000, and submitted them for consideration. His teammate is the one who is also a member of the national mathematics team. At Park Tudor, he has been advanced several levels in mathematics and science because of his academic adeptness in these areas. He is currently taking Advanced Placement Calculus.
10. Petitioner Marius Kliokys is enrolled in the following courses and received the following grades: English II (A); Algebra II (A-); Chemistry (A); Conditioning (A); German II (A); Technology Skills (A-); and U.S. History (B+). Petitioner Vytas Danelius is enrolled in the following courses and received the following grades: English II (B-); Calculus I–A.P. (B-); Chemistry (A-); Conditioning (A); German II (A-); and Technology Skills (A).

⁶This witness is somewhat given to the use of hyperbole. Some of her statements to Respondent during its investigation indicate a lack of appreciation for the seriousness of the situation, especially with respect to Respondent concern about school transfers for athletic reasons. Although she did not mean to impugn the Rotary organization, some of her statements could have been interpreted as having done so.

11. Petitioners learned of their school assignment in August, principally through communication with their respective host families. It was from this communication that one of Petitioners utilized the internet to visit Park Tudor's web site and learn more about the school. Petitioners were unaware of the previous contact made by one of their fathers.
12. While it is difficult to prove, the parties appear to agree that the father of one of Petitioners contacted a number of schools with academic reputations and may have selected as many as three for consideration for placement through Rotary. CSIET acknowledged that it is unusual for parents of prospective exchange students to study information on possible school placements because this tends to appear to be influencing specific school placements for athletic reasons, which would violate CSIET's standards. However, a "direct placement for academic reasons is not prohibited by CSIET standards." CSIET also stated that the sending of academic information to a requesting parent does not violate CSIET's standards.⁷
13. Respondent maintains that the method for placing students must be random and that this is a part of its standards. A member school of Respondent's organization must satisfy both Respondent's standards and CSIET's standards, and compliance with CSIET's standards does not necessarily satisfy Respondent's standards.

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. 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 or 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 students. The students have timely sought review. The Case Review Panel has jurisdiction to review and determine this matter.
2. At the core of this dispute is the interpretation of **C-19-7.1(d)(2)**, which requires of foreign exchange students, in order to be fully eligible for participation in interscholastic sports

⁷Although Respondent states that it is particularly difficult to determine what is motivated by athletics and what is motivated by academics—and that no one ever admits that the motivation was athletics—nevertheless, in this case, there is no evidence that Park Tudor was "selected." At most, it was one of three schools for which the father may have expressed a preference.

sanctioned by Respondent, to be placed by a program that is approved by both Respondent and CSIET. In order for such a program to be approved, it:

(d)(2) must assign students to schools by a method which insures that no student, school or other interested party may influence the assignment for athletic purposes.

While it appears the father of one of the Petitioners had made inquiries in search of schools with academic reputations, there is no evidence to indicate that he selected Park Tudor. Park Tudor was selected by Rotary, the approved placing program. Even accepting that Rotary operated from a short list of three schools, this is still a "method" for placement. Although Respondent asserts that its approval process requires that all placements be "random," there is no indication in its by-laws that this is, in fact, a required "method." There is also the concomitant problem regarding unpublished gradations of "randomness," which Respondent appears to apply.

3. There is no evidence to indicate that Petitioners' placement at Park Tudor was influenced for athletic purposes. Petitioners acknowledge their affinity for the sport, but also indicated that academics was the primary motivator. The emersion into a difficult curriculum and the grades they have earned lend credibility to their representations regarding academics primacy over athletics, a key philosophical tenet of Respondent's organization. The fact that Park Tudor is not noted for its athletic dominance does not lessen the specter of improper placements for athletic purposes. Students have been placed at such institutions in the past as a means of "showcasing" talent. In this case, however, the process is not tainted by any evidence of impropriety.
4. The Commissioner was justified in conducting further inquiry even though the impetus for such came as the result of an anonymous telephone call from a source that proved less than reliable and was apparently vindictive. Continued acceptance of telephone calls from this source without requiring the identity of the caller, however, tends to effect the credibility of the investigation.⁸

ORDERS

1. Respondent's determination that Petitioners should have "limited eligibility" is reversed.

⁸Respondent is cautioned against the use of unverifiable hearsay. Besides the statements of the anonymous telephone caller, Respondent also alluded to innuendo regarding possible transfers of Petitioners to a North Carolina school. While it may be a fact that Respondent received such information, stacking hearsay on hearsay does not create substantial, reliable evidence upon which the Case Review Panel can make decisions. The relating of such information also negatively affects credibility.

2. Petitioners shall have full eligibility to participate in interscholastic sports sanctioned by Respondent so long as Petitioners remain otherwise eligible to participate. The vote was 5-3, following five previous deadlocked votes at 4-4.

DATE: December 28, 2000

/s/ John L. Earnest, 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.