

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter of Broderick Lewis,)	
Petitioner)	
And)	CAUSE NO. 061109-51
The Indiana High School Athletic Assoc. (IHSAA),)	
Respondent)	
)	
Review Conducted Pursuant to)	Open Hearing
I.C. 20-26-14 <i>et seq.</i>)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Procedural History

Petitioner is a 17-year-old junior (d/o/b June 19, 1989) currently attending Jefferson High School, a public high school located in the Lafayette School Corporation (LSC). He lives with his family within the attendance area of Tippecanoe School Corporation (TSC). He previously attended Klondike Middle School, within the TSC, where he completed eighth grade in 2003. He then attended Lafayette Central Catholic (LCC), a private school, repeating eighth grade and then continuing through ninth and tenth grades. Petitioner participated in varsity basketball, football, and track and field during his freshman year and varsity basketball and track and field during his sophomore year. During the 2005-2006 school year Petitioner experienced several incidents of racial discrimination or harassment. Petitioner's parents decided to remove Petitioner from LCC and enroll Petitioner in a school with more diversity. Petitioner's parents considered Harrison and McCutcheon High Schools, both of which are in the TSC, and Jefferson High School, located in the LSC, as well as two out-of-state private schools. TSC and LSC signed an interlocal agreement which permits attendance at any of the schools in either school corporation beginning with the 2006-2007 school year. Petitioner's parents enrolled him at Jefferson High School on August 7, 2006.

Petitioner's mother completed the IHSAA Transfer Report claiming a hardship and indicating that she was seeking full eligibility under **Rule C-17-8**,¹ the hardship rule. On August 9, 2006, the principal of the sending school, LCC, signed the IHSAA Transfer Report recommending full

¹ Respondent 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, but many of the by-laws are "common" to all potential athletes and, hence, begin with "C." (All references are to the 2006-2007 by-laws of Respondent.)

eligibility under **Rule C-17-8.4**.² The principal of the receiving school signed the Transfer Report recommending full eligibility under the hardship exception to a limited eligibility case under **Rule 17-8.5**.³ On August 22, 2006, the principal of Harrison High School signed a copy of the page from the IHSAA Transfer Report that is utilized by the sending school⁴ indicating that an additional investigation should be made, and recommending that Petitioner be found ineligible pursuant to **Rule C-19-4**.⁵ On September 25, 2006, after an investigation, Respondent's Commissioner determined that Petitioner was athletically ineligible at Lafayette Jefferson for 365 days from the time of his transfer, pursuant to **Rule C-19-4**.

On September 28, 2006, Petitioner sought review of the Commissioner's decision by Respondent's Review Committee. The Review Committee conducted its review on October 19, 2006 and issued its decision on October 30, 2006, upholding the Commissioner's decision

² **Rule C-17-8.4: General Consideration**

- 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.
- b. Injury, illness or accidents which cause a student to fail to meet a basic requirement are possible causes for a hardship consideration.
- 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.

³ **Rule 17-8.5**

In addition to the foregoing, in transfer cases under Rule 19-6, the Commissioner, his designee or the Committee shall have the authority to set aside the effect of the transfer rule and grant a student full eligibility following a transfer if (a) the student continues to reside with his/her parent(s) or guardian(s), (b) the student establishes, to the reasonable satisfaction of the Commissioner, his designee or the Committee, that the transfer is in the best interest of the student and there are no athletic related motives surrounding the transfer, and (c) the principals of the sending and receiving schools each affirm in writing that the transfer is in the best interest of the student and there are no athletic related motives surrounding the transfer.

⁴ The "Sending School" is identified on the IHSAA Transfer Report as the school where student last attended. Harrison was not the Sending School as Petitioner never attended Harrison High School.

⁵ **Rule C-19-4** provides in part: To preserve the integrity of interschool athletics and to prevent or minimize recruiting, proselytizing and school 'jumping' for athletic reasons, regardless of the circumstances, student athletes who transfer from one school to a new school for primarily athletic reasons or as a result of undue influence will become ineligible to participate in interschool athletics in the new school for a period not to exceed 365 days from the date the student enrolls at the new school . . .

Respondent's by-laws provide the following definition: **Transfer for primarily athletic reasons** - A transfer for primarily athletic reasons includes, but is not limited to:

- a. a transfer to obtain the athletic advantage of a superior, or inferior, athletic team, a superior athletic facility or a superior coach or coaching staff;
- b. a transfer to obtain relief from a conflict with the philosophy or action of an administrator, teacher or coach relative to athletics;
- c. a transfer seeking a team consistent with the student's athletic abilities;
- d. a transfer to obtain a means to nullify punitive action taken by the previous school.

declaring Petitioner ineligible to participate in interscholastic athletics for 365 days from his enrollment.

APPEAL TO THE CASE REVIEW PANEL

Petitioner, by counsel, appealed to the Indiana Case Review Panel⁶ on November 9, 2006. Petitioner requested an expedited hearing and that the hearing be open to the public. On November 13, 2006, the parties were notified of their respective hearing rights. 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 20, 2006, in the offices of the Indiana Department of Education, Indianapolis, Indiana. The parties received timely notice of the proceedings. On December 14, 2006, legal counsel for Petitioners' withdrew their appearances.

On December 20, 2006, the CRP convened.⁷ Petitioner's parents appeared and were represented by their advocate. Respondent appeared by counsel. Prior to the hearing, Respondent each submitted five exhibits. No objections were made to the exhibits. During the course of the hearing Respondent submitted another document⁸. Copies of this document were made available to all parties and members of the CRP.

Testimony was provided under oath or by affirmation. In consideration of the testimony and record, the following Findings of Fact and Conclusions of Law are determined.

FINDINGS OF FACT

1. Petitioner is a seventeen-year-old junior (d/o/b June 19, 1989) currently attending Jefferson High School, a public high school located in the Lafayette School Corporation.
2. Petitioner enrolled at Lafayette Central Catholic, a private school, in August, 2003, when he repeated eighth grade. Prior to enrolling at LCC, Petitioner attended Klondike Middle School within the TSC.

⁶ The Case Review Panel (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 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).

⁷ Seven members were present: Joan L. Keller, Chair; Edwin Baker; Christi L. Bastnagel; Scott F. Eales; James Perkins, Jr.; Stephen Psikula; and Melissa Starry.

⁸ This document appears to be a copy of policies of the TSC concerning Assignment Within the Corporation; Interlocal Agreement Between Lafayette School Corporation and Tippecanoe School Corporation; and Eligibility of Resident/Non-Resident Students. These policies address legal settlement and transfer tuition.

3. During his freshman year at LCC, Petitioner played varsity football, basketball, and track and field. He played varsity basketball, and track and field during his sophomore year.
4. The LCC athletic director (AD) sought out Petitioner's parents after games and solicited their comments and opinions. The AD indicated he would be their advocate and take their concerns to the coach. Petitioner's parents did share with the AD their concern that in some games the ball was not passed to Petitioner, and a concern that a scoring cap may have been placed on Petitioner.
5. Petitioner was subjected to various racial incidents during the time he was enrolled at LCC. These incidents include: being called a racial slur by a religion teacher; being taunted with racial slurs by his track and field teammates; a Ku Klux Klan poster being placed on his school locker; and vandalism of Petitioner's vehicle. Petitioner was the only African-American student in his class at LCC.
6. As a result of the racial discrimination, Petitioner no longer felt comfortable or safe attending LCC and his grades began to slip. At the end of the 2005-2006 school year his parents decided to withdraw Petitioner from LCC.
7. Petitioner's parents explored academic and extracurricular options at other schools. They considered Harrison and McCutcheon High Schools, both of which are in the TSC, and Jefferson High School, located in the LSC, as well as two out-of-state private schools.
8. On June 20, 2006, Petitioner's mother spoke with one of the assistant principals at Harrison. The assistant principal sent an enrollment packet, including course offerings, to Petitioner.
9. Petitioner and his father spoke with the basketball coach at Harrison High School on June 27, 2006. Petitioner was not enrolled at Harrison at the time of this conversation.⁹ Petitioner also attempted to speak with the basketball coaches at McCutcheon High School and Jefferson High School. Both of these coaches referred Petitioner to the school's principal.
10. As they explored other schools, Petitioner's parents were interested in academics, diversity, and the climate of the school.
11. Petitioner's older sister attended Harrison High School for her junior and senior years, graduating in 2001. She was one of only 3 African American students in her class of 400. She advised her father that, from her experience, Harrison was not a good environment for Petitioner. The student population at Harrison is 91% white.

⁹ The Harrison coach should have referred Petitioner and his father to the principal. Harrison High School received a warning for violation of **Rule C-20**.

12. Students at Harrison High School had taken Confederate battle flags and Nazi flags to school assemblies. Students had Confederate battle flags in their cars.
13. Petitioner resides within the attendance area of TSC. Harrison High School is the school that he would attend based solely upon his residence. Petitioner was interested in the Business Academy offered at Jefferson High School. TSC and LSC signed an interlocal agreement which permits attendance at any of the schools in either school corporation beginning with the 2006-2007 school year. On August 1, 2006, Petitioner's parents submitted a Transfer Request Application to TSC requesting transfer to Lafayette Jefferson High School. The reasons for the transfer request included better accommodations (educational, extra-curricular, physical appearance, etc.) and increased diversity that will have a positive impact on Petitioner. The Transfer Request was approved by TSC on August 1, 2006. On August 3, 2006, LSC also approved the Transfer Request. Petitioner's parents enrolled him at Jefferson High School on August 7, 2006. The student population at Jefferson is 75% white.
14. Petitioner's mother completed the IHSAA Transfer Report claiming a hardship and indicated that she was seeking full eligibility under **Rule C-17-8**. On August 9, 2006, the principal of the sending school, LCC, signed the IHSAA Transfer Report recommending full eligibility under **Rule C-17-8.4**.
15. After investigation, the Commissioner of the IHSAA determined Petitioner to be ineligible pursuant to **Rule C-19-4**. This determination was upheld by the IHSAA Review Committee.

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 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. 20-26-14 *et seq.* The Case Review Panel has jurisdiction when a parent, 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 student. Petitioner has 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 either 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 C-19-6.1** provides immediate eligibility for a student who transfers schools without a change of residence by the student's parent or guardian. Petitioner does not meet any of the criteria under this Rule, nor does Petitioner argue that he does. Accordingly, Rule C-19-6.1 does not apply.
4. A student who transfers without a corresponding change of residence to a new district by the student's parents may be declared to have limited eligibility¹⁰ pursuant to **Rule C-19-6.2** unless the transfer was primarily for athletic reasons,¹¹ or unless there exist circumstances showing an undue hardship would result from enforcement of the Rule. Although Petitioner's parents did express their concerns when invited to do so by the AD, dissatisfaction with the athletic program was not the primary reason the parents withdrew Petitioner from LCC. Petitioner had been subject to racial harassment, discrimination and possibly hate crimes. For Petitioner's well-being and safety, his parents transferred him to another school. Petitioner was enrolled in Jefferson High School for its academics, diversity, and climate which was perceived by Petitioner and his family as more accepting of minority students. Petitioner did not transfer primarily for athletic reasons.

¹⁰Respondent's by-laws provide the following definition: **Limited Eligibility** - A student who is declared to have limited eligibility shall be eligible to participate immediately in all interschool athletics, provided, however, during the first 365 days from the date of last participation at a previous school, such student may not participate in interschool athletics as a member of a varsity athletic team.

¹¹Respondent's by-laws provide the following definition: **Transfer for primarily athletic reasons** - A transfer for primarily athletic reasons includes, but is not limited to:

- a. a transfer to obtain the athletic advantage of a superior, or inferior, athletic team, a superior athletic facility or a superior coach or coaching staff;
- b. a transfer to obtain relief from a conflict with the philosophy or action of an administrator, teacher or coach relative to athletics;
- c. a transfer seeking a team consistent with the student's athletic abilities;
- d. a transfer to obtain a means to nullify punitive action taken by the previous school.

ORDER

Respondent's determination that Petitioner was modified. Petitioner shall have limited eligibility pursuant to **Rule C-19-6.2** . This was determined by a vote of 5 - 2.

DATE: January 16, 2007

/s/Joan L. Keller
Joan L. Keller, 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.