

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter of M.P.,)	
Petitioner)	
And)	CAUSE NO. 090831-62
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

Petitioner is a sixteen-year-old sophomore (d/o/b July 19, 1993) currently attending St. Theodore Guerin High School (Guerin Catholic), a nonpublic high school. He lives with his family in Carmel, Indiana. He attended elementary, middle and grade nine in Carmel Public Schools. Petitioner participated in freshman football and freshman and junior varsity basketball during the 2008-2009 school year. During (March/April) of 2009, Petitioner began Catholic confirmation class, visited Guerin Catholic, and decided he wanted to seek a faith-based education. Petitioner’s parents applied for admissions at Guerin Catholic. In April 2009, Petitioner was accepted to Guerin Catholic and his parents placed a down payment to secure his enrollment position.

On April 30, 2009, Carmel High School (Carmel High) received the student’s portion of the IHSAA Transfer Report (“Transfer Report”). The Transfer Report indicated that there was no corresponding move by the Petitioner’s family to a new district. The Transfer Report included a request for consideration of a Principal’s hardship waiver for full eligibility. Both Carmel High and Guerin Catholic administrators recommended that Petitioner receive limited eligibility.

On June 12, 2009, Petitioner through Guerin Catholic submitted a request for full athletic eligibility. On June 15, 2009, IHSAA Assistant Commissioner Sandy Searcy, informed Guerin Catholic that Petitioner would receive limited eligibility beginning in the fall of 2009 for a period of 365 days from the date he last participated in interscholastic athletics at Carmel High. Under limited eligibility status, Petitioner is eligible to play at the junior varsity level, but he is not eligible to play at the varsity level during the period specified.

On June 15, 2009, Petitioner sought review of the Assistant Commissioner's decision by Respondent's Review Committee. The Review Committee conducted its review on August, 5, 2009, and issued its decision on August 13, 2009, upholding the Commissioner's decision, which declared Petitioner has limited eligibility at Guerin Catholic, for 365 days from the day of his last participation at Carmel. Petitioner last participated at Carmel sometime during the 2008-2009 basketball season. He has limited eligibility for 365 days from that last participation at Carmel High, and then full eligibility from that date at Guerin Catholic, provided Petitioner meets all other eligibility rules. Petitioner can return to Carmel High and participate on the varsity teams, provided he has not played in an interscholastic contest while a student at Guerin Catholic.

Petitioner transferred from Carmel High to Guerin Catholic in August of 2009. Petitioner did not play football at Guerin Catholic, but expressed an interest in trying out for basketball and golf during spring of 2010.

APPEAL TO THE CASE REVIEW PANEL

Petitioner, without counsel, appealed to the Indiana Case Review Panel¹ on August 31, 2009. That same day 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. Petitioner requested that the hearing be closed to the public. The hearing was scheduled for September 22, 2009, in the office of the Indiana Department of Education, Indianapolis, Indiana. The parties received timely notice of the proceedings.

On September 22, 2009, the CRP convened.² Petitioner and his parents appeared in person. Respondent appeared by counsel. Prior to the hearing, Petitioner submitted five exhibits. Copies were made and provided to Respondent and members of the CRP. Respondent objected to exhibit one on the basis of hearsay and questioned the relevance of exhibit four. The CRP admitted the documents over Respondent's objection, noting that the resulting order may not be based solely upon the hearsay evidence and the burden to prove relevance of exhibit four is on Petitioner.³ Respondent submitted two exhibits. Copies were made and provided to Petitioner and members of the CRP. Petitioner did not object.

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.

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 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).

² Eight members were present: Joan L. Keller, Chair; Edwin Baker; Christi Bastnagel; James Perkins, Jr.; Matthew Rager; Brenda Sebastian; Earl Smith; and Don Unruh.

³ I.C. 4-21.5-3-26(a).

FINDINGS OF FACT

1. Petitioner is a sixteen year-old sophomore (d/o/b July 19, 1993) currently attending Guerin Catholic, a nonpublic high school. He resides with his parents in Carmel, Indiana.
2. Petitioner enrolled at Guerin Catholic at the start of the 2009-2010 school year. Prior to enrolling at Guerin Catholic, Petitioner attended Carmel Public Schools from grades K-9.
3. Petitioner and his family were members of the Catholic faith prior to Petitioner's high school enrollment.
4. During March of 2009, Petitioner began Catholic confirmation class, visited Guerin Catholic, and decided to seek a faith-based education.
5. As a member of the Catholic faith, confirmation for the Petitioner became an option at grade 9.
6. Petitioner applied for admission and sought enrollment at Guerin Catholic beginning the 2009-2010 school year.
7. In April 2009, Petitioner was accepted to Guerin Catholic and his parents placed a down payment to secure his enrollment position.
8. On April 30, 2009, Petitioner's parents completed the student's portion of the IHSAA Transfer Report ("Transfer Report") for the upcoming transfer. The Transfer Report indicated the Petitioner would enroll at Guerin Catholic at the start of the 2009-2010 year. The reason provided for the transfer was to allow for a faith-based education.
9. On June 11, 2009, Carmel High, the sending school, completed its portion of the Transfer Report and indicated that Petitioner participated in freshman and junior varsity basketball and freshman football. Although Carmel High did not indicate the last date Petitioner participated in athletics, it was established Petitioner participated in the final game of the junior varsity basketball season, which also represents the Petitioner's last date of participation.
10. Carmel High School recommended that Petitioner should have limited eligibility under **Rule 19.6.2⁴** and did not sign the Hardship Verification. Carmel High answered "No" to the question as to whether the transfer was for athletic reasons or the result of undue influence.
11. Guerin Catholic, as the receiving school, completed the Transfer Report on June 12, 2009; Guerin Catholic answered "No" to the question as to whether the transfer was for athletic reasons or the result of undue influence. Guerin Catholic recommended limited eligibility and did not sign the Hardship Verification.

⁴ Respondent has promulgated a series of by-laws as a part of its sanctioning procedures for interscholastic athletic competition. (All references are to the 2009-2010 by-laws of Respondent.)

12. On June 15, 2009, IHSAA Assistant Commissioner Sandy Searcy granted Petitioner limited eligibility, pursuant to **Rule 19-6.2**.
13. During the summer 2009 which was between the Petitioner's 9th and 10th grade year, Petitioner was confirmed as an "adult" Catholic.
14. Petitioner transferred to Guerin Catholic in August 2009 without a corresponding change of residence by his parents.
15. Petitioner chose not to participate in football during the fall 2009 football season at Guerin Catholic, but expressed an interest in playing basketball and golf.
16. Petitioner sought reversal of the limited eligibility ruling under hardship rule 17-8-1.
17. After investigation, the Commissioner of the IHSAA determined Petitioner to have limited eligibility pursuant to **Rule 19-6.2** of the IHSAA General Eligibility Rules. 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 completion 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 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**⁵ provides that "[a] student who transfers without a corresponding change of residence to a new district or territory by the student's parent(s)/guardian(s) may be declared to have limited eligibility."

⁵ 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.

4. Petitioner argues that to deny his request for full eligibility is not in his best interest under **Rule 17-8.5**. Respondent argues that this rule does not apply because Petitioner failed to meet a condition of **Rule 17.8.5** that required Petitioner to secure the signature of both the sending and receiving principals on the Verification Section of the IHSAA Transfer Report. **Rule 17-8.5** permitted the principals to exercise their sole discretion in signing or not signing, the Verification. Petitioner's inability to obtain the required principals' signatures makes **Rule 17-8.5** inapplicable.
5. Petitioner also argues that to deny his request for full eligibility would constitute an undue hardship pursuant to **Rule 17-8.1**, because it prevents him from competing at his full potential and penalizes him solely because Carmel High cannot provide him the Catholic education he desires. Respondent argues that the hardship rule (**Rule 17-8.4**) requires that Petitioner's school transfer be outside the control of the Petitioner's family and truly compelling. Petitioner chose to attend Carmel High and chose to seek a faith-based school. These choices are not out of the Petitioner's control, and Petitioner will have the option to play interscholastic junior varsity sports during 2009/2010 school year. This is not an undue hardship.
6. The CRP is not bound by either the By-Laws addressing the CRP nor the language of the "Hardship Rule" that proscribes its application to the transfer rule. However, because the CRP must conduct its proceedings pursuant to the Administrative Orders and Procedures Act (AOPA), I.C. 4-21.5-3, it is not free to ignore the By-Laws, especially ones that serve an obvious rational purpose such as the transfer rule, and make student-specific decisions based upon whimsy. The burden remains with Petitioner to provide substantial evidence that would justify piercing the transfer rule and permitting Petitioner to participate at the athletic level that is sanctioned by Respondent.
7. Petitioner and his parents were members of the Catholic faith before Petitioner chose to attend Carmel High. While Petitioner's decision to confirm his Catholic faith and seek out a school that would provide a faith based education is admirable, such voluntary choices do not constitute an undue hardship under **Rule 17-8.4**,⁶ nor provide justification to pierce the transfer rule.

⁶ 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.
- d. In a transfer case where a student seeks full or limited eligibility, and there is evidence that the transfer or move was motivated, in part, by athletic reasons, albeit not for primary athletic reasons, it is unlikely that the student will qualify for a hardship.

ORDER

Respondent's determination that Petitioner has limited eligibility at Guerin Catholic, for 365 days from the day of his last participation at Carmel High is affirmed. Since Petitioner last participated at Carmel High sometime during the 2008-2009 basketball season, he has limited eligibility for 365 days from that last participation at Carmel High, and then full eligibility from that date at Guerin Catholic, provided Petitioner meets all other eligibility rules. Petitioner can return to Carmel High and participate on the varsity teams, provided he has not played in an interscholastic contest while a student at Guerin Catholic. This was determined by a 5-3 vote.

DATE: October 2, 2009

/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.