

**BEFORE THE INDIANA
BOARD OF SPECIAL EDUCATION APPEALS**

In the Matter of D.C. and the)
West Central Indiana Special Education)
Services and the Attica Consolidated) **Article 7 Hearing No. 1128.99**
School Corporation)

The hearing and appeal issue was determined to be:

Does the Student need a signing aide, and if so, what level of proficiency?

PROCEDURAL HISTORY OF THE DUE PROCESS HEARING

It should be noted from the outset that any references to the “Student” or the “Student’s representative” include the parent or parents of the student. It should also be noted that West Central Indiana Special Education Services and Attica Consolidated School Corporation will be referred to collectively as the “School.”

October 21, 1999 The Student filed a request for a due process hearing with the Indiana Department of Education (IDOE).

October 22, 1999 Cynthia Stanley, Esq., was appointed Independent Hearing Officer (IHO) under 511 IAC 7-15-5.

November 1, 1999 A prehearing teleconference was held to clarify the issue. The School agreed to submit a motion for extension of the time within which a decision must be issued to January 1, 2000, to allow time for the hearing and decision. That motion was granted. Hearing was set for December 17, 1999. Parties were to exchange lists of witnesses and proposed exhibits no later than

	December 9, 1999.
<i>December, 1999</i>	Requests for extension of time within which a decision must be issued were filed and granted by the IHO.
<i>January, 2000</i>	The Student requested that the hearing be rescheduled for March 16 and 17, 2000, and moved for an extension of time within which the decision shall be issued. The motion was granted by the IHO and the deadline for the decision was extended to April 3, 2000 .
<i>March 13, 2000</i>	The Student's motion to extend time, dated March 9, 2000 was denied, and the hearing set for March 16 and 17, 2000 was to proceed as scheduled.
<i>March 16-17, 2000</i>	The due process hearing was conducted. By agreement of the parties at the hearing, the decision was due to be issued by April 8, 2000.
<i>April 5, 2000</i>	The IHO issued her written decision.

The due process hearing was conducted over two days -- March 16 and 17, 2000. The IHO's decision found that at the time of the hearing, the Student was a seven-year-old. The Student had been determined to be hard of hearing, with a bilateral, sharply sloping hearing loss, with normal sensitivity in the lowest frequencies and a profound hearing loss in the higher frequency range. The Student attended Indiana School for the Deaf (ISD) for the three years prior to entering kindergarten in 1998-99 in the school corporation. At ISD, no spoken language was used. Teachers at ISD used American Sign Language (ASL). The Student attended full day kindergarten for the 1999-2000 school year.

The Student's IEP, dated August 24, 1998, had the following annual goals: "Increase ability to attend to attention getting techniques" and "Increase receptive and expressive language skills." The School was to provide for an FM¹ trainer, seek employment of a signing aide, and provide Hearing Impaired (HI) consultation once a week for up to 30 minutes, speech-language therapy with the amount to be determined by the Speech-Language Pathologist (SLP), and Occupational Therapy (OT) with the

¹An FM device, a phonic ear or auditory trainer, is used to screen out background noise and enhance a teacher's voice.

need to be determined by the OT. The Student's primary disability was listed as Hearing Impairment.

The IEP from the September 25, 1998 Case Conference Committee (CCC) reported that the Student was doing very well in class, getting along well with other children, teacher and assistants. The IEP continued to call for a signing aide. An annual goal was added to increase speech/language (expressive/receptive) skills by one grade level, and specific objectives were added for SLP. The amount of services were as follows: HI consultation once a week for up to 30 minutes and speech-language therapy five days a week for a minimum of 15 minutes per session. The IEP added a secondary disability which was Communication Disorder. In October 1998, a signing aide began working with the Student. The signing aide had previous training in ASL but was not fluent in any sign language. She worked with the Student through December of 1998.

The December 9, 1998 IEP reported that the Student was continuing to make progress. Goals and objectives were added for OT, with consultation services provided monthly. The CCC discussed the Student's need for increased communication. The length of his school day was increased by half an hour in the morning for one-to-one instruction with a Title I instructor and half an hour at the end for lunch with second graders to hear language and to talk and be talked to more. The IEP did not call for "one-on-one signing in classroom," but required a "one-on-one communication facilitator." Since that time IEPs have not called for a signing aide. In January 1999, the School placed a full-time non-signing aide with the Student in the classroom.

In the Annual Case Review, the CCC of May 26, 1999, found that good progress had been made on almost all IEP objectives with adequate progress on the rest. However, the CCC determined that the Student was not ready to move on to first grade. A non-signing aide continued to be part of this IEP. Because the parents continued to request a signing aide, the School wanted testing done to shed light on the Student's need for a signing aide. Testing was done at the Indiana School for the Deaf, the Audiology Clinic at Purdue University and Riley Hospital for Children. The ISD report had no specific recommendation on whether a signing aide was needed. The Student was not

processing complex spoken language, and he was not attending well visually. The evaluators suggested strategies such as gaining visual contact or pre-teaching vocabulary, and further study to learn more on how best to teach the Student.

On August 27, 1999, the CCC convened. The Student's aunt reported that she had observed the Student in the classroom and felt that he was not understanding what was going on, nor was he actively participating. The Student's mother explained that at home she used both sign and voice when she wanted him to follow directions, and that one of his hearing aids was not working properly. The Student's uncle, who is an assistant superintendent at the Illinois School for the Deaf, recommended a full-time aide fluent in sign. The SLP provider reported on communication testing which indicated a gain of one year, three months within a seven month period. The CCC decided the need for a signing aide was not proved.

On September 13, 1999, the Student was tested at the Purdue University Department of Audiology to assess his ability to discriminate speech while using his binaural hearing aid. The Student scored 92% without background noise and 76% with background noise, in recognizing one-word prompts. On September 28, 1999, the Student was tested at Riley Hospital for Children. The Riley SLP recommended that the Student utilize the services of a sign language facilitator to promote his understanding of classroom instruction, discussions, and interactions. On November 22, 1999, the evaluator further advised that the signing aide be fluent and use Pidgin Sign English, and that pre-and post testing be administered.

The CCC convened on October 15, 1999. The CCC offered to the parents speech and language therapy three times a week for 25 minutes in the resource room and weekly consults in the classroom for 30-45 minutes, and a full-time signing aide. The aide believes the Student hears what she is saying. Other than the signs for numbers that the whole class was learning, the aide knew very little sign in the spring of 1999, and that was the signs the Student had taught her. Academically, the Student's grades placed him in the middle of the class. The teacher expected the Student to be ready to move on to first grade.

The IHO made the following Conclusions of Law. These read as follows:

Conclusions of Law

1. Despite all of their efforts, respondents have denied the student a [Free Appropriate Public Education] FAPE under Article 7 through failure to provide a fluent signing aide.
2. Respondents must provide such an aide for a trial sufficient in length for the student to have an opportunity to learn to make effective use of the interpreter. A two-week period is not long enough.
3. The student should be tested on receptive and expressive language before and after the period with a signing aide.
4. The parents, aunt and uncle must be allowed to visit the classroom to encourage the student to make best use of the signing available to him.
5. Any conclusion of law which would more appropriately be deemed a finding of fact may be so designated.

The IHO's Orders read as follows:

1. Respondents shall provide an aide who is fluent in Pidgin Sign English or Signed Exact English as soon as possible and through fall semester 2000-2001. The parents, aunt and uncle shall be allowed to come into the classroom to observe and to encourage the student to make use of the interpreter.
2. The student shall be tested for expressive and receptive language before and after the period.
3. Thereafter, the CCC shall convene and consider the test results.

PROCEDURAL HISTORY OF THE APPEAL

The IHO's written decision was issued on April 5, 2000. On May 9, 2000, the School requested an extension of time in order to prepare a Petition for Review. The Indiana Board of Special Education

Appeals (BSEA), by order dated May 10, 2000, granted the School until close of business on May 19, 2000, to prepare and file its Petition for Review. The School's Petition for Review was received on May 19, 2000. On May 30, 2000, the Student requested an extension of time in order to prepare and file a Response to the Petition for Review. The BSEA, by order dated May 30, 2000, granted the Student until close of business on June 5, 2000, to prepare a Response to the Petition for Review. On June 5, 2000, the Student filed his Response to the Petition for Review.

The BSEA notified the parties by order dated May 22, 2000, that it would conduct its review on June 15, 2000, beginning at 10:00 a.m., but without oral argument and without the presence of the parties. 511 IAC 7-15-6(k). The BSEA also notified the parties that the review would be tape recorded and a transcript prepared. A copy of the transcript is to be sent to the representatives of the parties when available.

School's Petition for Review

The School's Petition for Review was timely filed on May 19, 2000. The School appealed based upon the following objections:

IHO's Conclusions of Law

The School objects to Conclusions of Law #1 through #4 on the ground that they are erroneous as they are unsupported by substantial evidence and contrary to law. The School argues that the IHO's Conclusions of Law #1 through #4 ignore the educational progress the Student has made over the past two years, when such progress is specifically noted in the IHO's Finding of Facts. The School also claims that these conclusions of law are arbitrary and capricious.

The relief sought includes:

1. A request that the BSEA reverse the IHO's orders requiring the School to:
 - a) Provide an aide who is fluent in Pidgin Sign English or Signed Exact English through the fall semester of 2000-2001;
 - b) Allow the parents, aunt and uncle to come into the class to encourage the Student to make

- use of the interpreter;
- c) Test the Student for expressive and receptive language before and after a trial period with the signing aide; and
 - d) Convene a Case Conference Committee meeting to discuss the test results.
2. A request that the BSEA rule that the October 1999 IEP provides the Student a FAPE in the least restrictive environment.

Student's Response to the Petition for Review

The Student filed his Response to the Petition for Review on June 5, 2000. In summary, the Student argues that the IHO conducted an impartial hearing, and the School's Petition for Review misinterprets the findings of fact issued by the IHO. The Student claims that the School has taken passages "out of context" to support its positions.

1. The Student claims that a partial quotation of Finding of Fact #50 is a summary of the School's position, not a conclusory statement based on the evidence. The School states, "In her decision, the Hearing Officer focuses on whether 'the student's scores on receptive and expressive language [would] increase even more significantly over the course of a substantial period where he is instructed consistently both verbally and in sign.'" The Student claims the IHO actually stated in Findings of Fact #56:

Without an extended trial period, where he could adjust to the changes of aides and the presence of the signing aide, there is insufficient data to determine conclusively whether the student needs a signing aide. Amount of time on-task is not the standard that should be applied. Rather the question should be, do the student's scores on receptive and expressive language increase even more significantly over the course of a substantial period where he is instructed consistently both verbally and in sign. Testing must be done before and after the period with the signing aide, to establish a baseline.

2. The Student claims that the IHO indicated that the School is using the wrong "measure" of progress to determine the Student's educational needs. The IHO stated in Finding of Fact #54, "It is impossible to know why the student did not make best use of the interpreter's services in the fall 1999-2000 for the two week period, whether because he wanted to fit in,

because he does not need the signing to comprehend fully what is occurring around him and what is expected of him or for some other reason.”

3. The Student claims that because the School does not disagree with the IHO’s Findings of Fact it means that the School concurs that the Student is years behind his age peers and that it is not possible to know exactly what he understands in the classroom.
4. The Student claims that the School refers to many court cases, however, those cases are out-of-date, and do not take the American with Disabilities Act (ADA) and the current federal regulations into account. The Student claims that the School’s Petition for Review is an attempt to apply outdated case law to their distorted version of what the IHO concluded, and both are incorrect.

REVIEW BY THE BOARD OF SPECIAL EDUCATION APPEALS

The BSEA convened on Thursday, June 15, 2000, to review the Petition for Review and the Response thereto in consideration of the record as a whole. All members were present and had reviewed the record. The review was tape recorded. A transcript will be made from the tape and provided to the parties by the IDOE.

In consideration of the record, the Petition for Review, and the Response thereto, the BSEA now finds as follows:

Combined Findings of Fact and Conclusions of Law

1. The BSEA has jurisdiction in the matter pursuant to 511 IAC 7-15-6.
2. The BSEA accepts Conclusion of Law #1 as written by the hearing officer.
3. The BSEA accepts Conclusion of Law #2 as written by the hearing officer.
4. The BSEA accepts Conclusion of Law #3 as written by the hearing officer.
5. The BSEA accepts Conclusion of Law #4 as written by the hearing officer.

Orders of the Indiana Board of Special Education Appeals

In consideration of the above Combined Findings of Fact and Conclusions of Law, the Indiana Board

of Special Education Appeals now holds:

1. The BSEA accepts Order #1 as written by the hearing officer.
2. The BSEA accepts Order #2 as written by the hearing officer.
3. The BSEA accepts Order #3 as written by the hearing officer
4. Any other matters not specifically addressed by the BSEA in this written decision are hereby deemed denied or dismissed.

Date: June 15, 2000

/s/Richard Therrien

Richard Therrien, Chair
Board of Special Education Appeals

Appeal Right

Any party aggrieved by the written decision of the Indiana Board of Special Education Appeals has thirty (30) calendar days from receipt of this decision to request judicial appeal from a civil court with jurisdiction, as provided by I.C. 4-21.5-5-5 and 511 IAC 7-15-6(p).