

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

In the Matter of J.B.,)
 Mooresville Consolidated School Corp.,)
 And West Central Joint Services) **Article 7 Hearing No. 1218.01**
)
Appeal from the Decision of)
Thomas J. Huberty, Ph.D.,)
Independent Hearing Officer)

Procedural History and Background

This matter was initiated on April 24, 2001, when the Indiana Department of Education, Division of Special Education, received a handwritten request for a hearing on behalf of J.B. (hereafter, the “Student”) and against the Mooresville Consolidated School Corporation and the special education cooperative, West Central Joint Services (hereafter, collectively referred to as the “School”). The handwritten request for the hearing contains a number of allegations of procedural noncompliance by the School, usually referred to as “complainable issues” that are usually addressed through the complaint process under 511 IAC 7-30-2.

Thomas J. Huberty, Ph.D., was appointed that same date as the Independent Hearing Officer (IHO). A pre-hearing telephone conference was set for May 9, 2001. The IHO notified the parties through correspondence of April 30, 2001. In this correspondence, the IHO provided preliminary instructions to the parties regarding the conduct of the hearing.

The pre-hearing was conducted as scheduled. Both parties were represented by counsel. The IHO issued a pre-hearing order as required by I.C. 4-21.5-3-19(c). In his pre-hearing order, the IHO identified four hearing issues and 27 complainable issues, over which he assumed jurisdiction with respect to the Student. The IHO permitted the parties to address further his framing of the issues in this fashion, but neither party did so. The 31 issues were stated as follows:

1. What is the nature and extent of the Student’s disability or disabilities?
2. Has the School appropriately implemented the Student’s IEP for the 2000-2001 school year?
3. If the School has not appropriately implemented the IEP for the 2000-2001 school year, are compensatory educational services required?
4. Is the proposed IEP for 2001-2002 appropriate for the Student?
5. Was the recent independent evaluation conducted appropriately?

6. If the recent independent evaluation was not conducted appropriately, should the information be considered for identification of the Student's disabilities and services?
7. Is the teacher of record appropriately licensed and trained for the Student's disabilities?
8. Has the paraprofessional received appropriate training for the Student's needs?
9. Did the School conduct a reevaluation without appropriate parental consent?
10. Did the School conduct additional evaluation procedures without appropriate parental consent?
11. Did the School change the Student's placement without appropriate parental consent?
12. Was the Student's parent denied the right to fully participate in a case conference?
13. Did the School impose inappropriate conditions for obtaining an independent educational evaluation at public expense?
14. Was the parent denied access to the Student's records prior to a case conference in September 2000?
15. Did the School fail to provide a copy of the educational evaluation five (5) days prior to the April 2001 case conference?
16. Did the School fail to include appropriate goals in the IEP for the 2000-2001 school year?
17. Did the School conduct an appropriate educational evaluation before determining that the Student no longer had a disability?
18. Did the School appropriately determine if the Student had a disability?
19. Did the School appropriately determine the Student's present levels of performance and educational needs?
20. Did the School appropriately determine if the Student requires special education and related services?
21. Does the IEP correctly identify the date of the completed educational evaluation?
22. Were the Student's IEP goals and objectives met at the time of the case conference in May 2000?
23. Were the goals and objectives as listed in the IEP at the initial case conference and at the IEP conference in April 2000 appropriate?
24. Was the parent appropriately notified of the time, date, and meeting place for the case conference?
25. Did the School appropriately inform the parent of the purpose of a case conference?
26. Was the parent provided with a complete copy of the educational evaluation?
27. Did the School appropriately consider the results of an independent educational evaluation?
28. Did the School maintain appropriate contact with the independent educational evaluator?
29. Did the School violate confidentiality by releasing the Student's records to other agencies without the parent's permission?
30. Was information from other agencies appropriately used for evaluation purposes?
31. Have eligibility and placement been determined within an appropriate period of time?

The parties jointly moved for an extension of time, which was granted through July 23, 2001. Hearing was set for June 27-29, 2001. The parties were advised of their hearing rights. An additional telephone pre-hearing conference was conducted on June 19, 2001.

The hearing was conducted over three days, June 27-29, 2001. At the conclusion of the hearing, the parties jointly moved for an extension of time, which was granted through August 20, 2001. The parties requested and were permitted to delay closing argument until after the parties had an opportunity to view seven (7) videotapes submitted into the record during the hearing. Oral argument was conducted by telephone on July 10, 2001. It was recorded and later transcribed.

On August 13, 2001, the IHO notified the parties that he had not yet received the transcript from the hearing, and he believed the transcript was necessary for him to complete his review of the testimony and evidence before rendering his decision. He advised the parties that the decision would be rendered by August 27, 2001. The transcript arrived on August 13, 2001, and the written decision was completed on August 25, 2001.

The IHO determined forty-four (44) Findings of Fact. The Student was born June 4, 1995. He had been enrolled in the School's preschool program as well as the Head Start program for the 2000-2001 school year. The Student has a high activity level and displays aggression as well as noncompliance at home. He has seizure activity, asthma, and behavioral problems.

According to medical reports from 1997, the Student was described as very active and difficult to control. He did receive medications for possible seizure activity and behavior. He was described as having a good vocabulary, using 5-6 word sentences. There were no references to possible developmental delays.

The Student has been hospitalized several times for medical and behavioral needs. He was referred to the School in March of 1998 for possible entry into the School's early intervention program. At the time, the Student was in the First Steps program and had an Individualized Family Service Plan (IFSP) that addressed Student and family needs in the area of communication, learning, toilet training, playing, feeding, and behavior. The social history reported the Student was aggressive, destructive, potentially violent, energetic, tireless, and having a short attention span. The parents reported concerns about the Student's behavior, medical history, developmental delays, and autism. The Student had been diagnosed in March or 1998 as having autism, but this was part of the screening process for determining eligibility for the Medicaid waiver. The family physician diagnosed autism when the Student was 32 months old based upon observation and parental report. He reiterated his diagnosis in September 9, 1999. No formal educational and developmental evaluation was conducted.

The School completed its educational evaluation of the Student in May of 1998. His cognitive ability was considered in the average range, while his adaptive skills were considered below average. Formal assessments of the Student's academic achievement and visual fine-motor skills were

attempted but the results could not be obtained. The Student's speech/language skills were in the 2:6-3:0 level, commensurate with his chronological age at the time (2 years, 11 months). No behavioral problems were noted during the testing although the Student did have difficulties maintaining attention. Fine/gross motor skills were perceived to be delayed (within the 2:0-2:6 level).

A case conference committee (CCC) was convened on June 3, 1998. At the time, the Student was taking nine (9) different medications for seizures, asthma, and behavior. The Student was determined eligible for services with a primary disability of "Other Health Impaired" (OHI) and a secondary disability of Communication Disordered. A checklist for autism characteristics was also completed. The CCC assessed whether the Student displayed qualitative impairment in reciprocal interaction and verbal/non-verbal communication and imaginative activity, and whether he had a restricted repertoire of activities and interests. He was determined not eligible for services under autism spectrum disorder.

An Individualized Education Program (IEP) was developed to address the Student's needs regarding fine motor skills, social interaction, transition between activities, attention to task, age-appropriate language skills, participation in motor activities, and motor control. The parent consented to the implementation of the IEP in the preschool program. Services included speech/language therapy, occupational therapy (OT), and physical therapy (PT).

The CCC convened on May 27, 1999, to conduct an annual case review (ACR). The Student remained eligible for services full-time in the preschool program. The Student was evaluated in April of 2000 by the Riley Child Psychiatric Clinic, Autism/Pervasive Developmental Disabilities Clinic and determined to have autism. The School was not contacted for information prior to this diagnosis. A speech/language evaluation was completed at this time, noting deficits in expressive language secondary to autism spectrum disorder. The Student did demonstrate strong receptive skills and a willingness to engage in conversation.

The parent, on April 9, 2000, provided the School with a signed consent in order for the School to conduct an additional evaluation, which occurred in May and September of 2000. An ACR was conducted in May of 2000. The Riley evaluation was not yet available, nor did the School have information regarding the Student from two other hospitalizations. The School presented the parent with a form that would permit the release of information from Riley and the other two hospitals to the School, although the parent disputes the extent of this release, asserting the release was only for the Riley report. At the May 2000 ACR, the School proposed that the Student no longer required services for a communication disorder, but remained eligible under OHI. Head Start services would also be provided. At this time, the School had completed speech/language, OT, and PT evaluations, but assessments of cognitive ability and achievement had not been completed. School personnel reported the Student was making progress and was functioning at age-appropriate levels. The parent disagreed with the School's proposal and wanted services to continue, along with the Head Start program and extended school year (ESY) services. Although the ACR was reportedly adversarial at times, an IEP was eventually completed and the parent provided signed consent. The goals and

objectives were similar to the ones originally developed in 1998 for the 1998-1999 school year although the School had indicated the objectives had been accomplished. An advocate who accompanied the parent to the ACR later wrote the School indicating the parent's signature was an indication of disagreement with the proposed program.

By September 7, 2000, the School completed evaluations of the Student regarding his cognitive ability, academic achievement, visual motor skills, adaptive behavior, social-emotional development and behavior, and possible autism. The results indicated he had average cognitive ability and academic achievement, but was in the low-average range for visual-motor integration. The autism rating scale indicated the student did not meet the criteria for autism. Adaptive behavior was in the below-average range, although socialization was in the average range. The student's teacher did not report any behavior concerns. The School and the parent were unable to resolve disagreement regarding the student's eligibility for services and his educational placement. The Student continued to receive services during the 2000-2001 school year based upon the IEP from 1999-2000 due to the parent's disagreement with the proposed IEP.

A CCC was convened on September 18, 2000, after all evaluation reports were available. The parent provided the School with signed permission to include the Student's medical records in his educational record. The School and the parent continued to disagree over the Student's eligibility, with the School maintaining the Student was only eligible under OHI. Subsequent CCCs were convened in November and December of 2000 without resolution.

The parent requested an independent educational evaluation (IEE), to which the School agreed. In a letter dated February 2, 2001, the School requested of an independent psychologist a "full psychometric evaluation, including observations in various settings (preschool class, Headstart)." School personnel did not have direct contact with the evaluator during this time. Arrangements were made through the psychologist's secretary. The local director of special education did not have direct contact until a CCC was convened in April of 2001.

The independent evaluator met with the parents and obtained permission to work with the Student and to obtain a release of information. She reviewed the Student's educational record in March of 2001. The School did not ask the parents to sign a release of information form for the IEE. The IEE was completed and mailed to the parents and the School on April 12, 2001. A CCC had already been scheduled for April 20, 2001, with the independent evaluator in attendance. Although the IEE report had not been received by the parties at the time the CCC was scheduled, no one requested the CCC be rescheduled. The School received the IEE report on April 16, 2001.

The IEE report indicated the Student's general cognitive ability was below average, which was inconsistent with previous evaluative data. The evaluator allowed that the results may underestimate the Student's actual ability because the Student had difficulties in the testing situation. His receptive language was in the high-average range, with overall school readiness level at the 48-60 month range. Visual-motor integration skills were below average. Classroom observations indicated few concerns, other than occasional impulsiveness, inattentiveness, and much movement when waiting.

The Student was observed to respond to teacher direction and interacted appropriately most of the time. The evaluator represented that she did not believe the Student had autism; rather, she believes the Student may have Attention Deficit Hyperactivity Disorder (ADHD) with possible childhood onset of Bipolar Disorder. She recommended the Student remain identified as having an OHI due to the ADHD. She also expressed concerns the Student would experience more difficulties in kindergarten due to the presence of more children and greater classroom demands. A behavior intervention plan (BIP) was established and included with the proposed IEP.

The Student's teacher during the 2000-2001 school year was licensed to teach early childhood education. She reported the Student demonstrated the ability to play cooperatively, was eager to participate, showed concern for others, and did not demonstrate any behavioral problems. His behavior was viewed as typical of children his age, and minor difficulties could be managed effectively. He engaged in both cooperative and parallel play, and was capable of expressing himself well. He did not resist interactions with others. She did not believe the Student had ADHD or autism, and she represented that the Student was prepared for entering kindergarten.

The paraprofessional in the classroom had worked in this situation for three years. She has an associate degree as an OT assistant and had received staff training. She had not experienced any behavioral problems with the Student. The speech/language therapist who worked with the Student during the second semester of the 2000-2001 school year stated the Student's language skills were appropriate for his age and that he did not require continued therapy. She did not see the deficits reported by Riley while completing her reevaluation of the Student in May of 2000. She added that the goals in his IEP were below his ability and that he was high-functioning in all age-appropriate skills.

The OT reported the Student made progress during the 2000-2001 school year, his skills were age appropriate, and he did not require further services. The Student did not demonstrate any sensory sensitivities, was not inattentive, did not misbehave, and communicated appropriately. Although some clumsiness was noted, the OT did not believe this was a concern. The Head Start teacher echoed the observations of the School personnel. Although there were a few incidences where the Student did not follow directions, there were no indications of the type of aggression or behavior reported by the parent. Although the independent evaluator expressed concern about the increased numbers of students that would be in a kindergarten class, the Head Start classroom had 16 students. The kindergarten class that would receive the Student would have between 14 and 18 students.

The IHO also found that the School, in preparation for CCC meetings, conducted assessments that did assist in determining the Student's present levels of educational performance. The IHO also found the parents were notified of CCC meetings and the purposes of these meetings through established procedures and legally sufficient forms. The parents received such information in a timely manner.

The seven (7) videotapes that were introduced into the record contain 13 ½ hours of classroom activity over a two-week period. No episodes of aggression were noted. The Student was

observed playing appropriately with other children. Although teachers did provide redirection, this was typical of the majority of the students in the class. He conversed with other children and adults, and easily communicated his needs. He demonstrated no unusual sensitivity to sounds, visual stimuli, food, or other objects or circumstances. Transitions between activities were appropriate. He took turns in group projects. He demonstrated enthusiasm and pride in his accomplishments, and demonstrated empathy for other children. He demonstrated some impulsiveness and inattention on occasion, but this was never disruptive of the class. The parent reports the student engages in self-stimulating behavior in the classroom, including spinning around in a swing. This was observed on one tape occurring for 4:46 minutes out of a six-hour videotape. On two occasions, he did mention tornado, but this was while he was in the swing, indicating imaginative play while pretending to be in a tornado. The behavior did not appear to be excessive, repetitive to the exclusion of other activities, or stereotypical. The activity did not interfere with his educational program, although he did use the swing more often than other students. When asked to leave the swing, he readily complied.

Based upon the Findings of Fact, the IHO reached thirty-three (33) Conclusions of Law. The evidence and testimony support a conclusion that the student is not eligible under autism spectrum disorder. The significant impairments in communication and social interaction, obsessiveness, and unusual responses to stimuli are not evident in the school setting. The Student is appropriately identified as OHI, given the history of seizures and asthma and the possibility of ADHD. The Student's speech and motor skills are age appropriate. As a consequence, he does not require further services in these areas.

At the May 23, 2000, CCC, the parties disagreed regarding the IEP for the 2000-2001 school year. The goals and objectives for communication, gross and fine motor skills had been met, resulting in a recommendation for discontinuation of these services. The parties agreed to continue the last-agreed upon program while attempting to resolve the dispute. The IEP was implemented appropriately. In addition, because the School did not alter the Student's program, no change of placement occurred. As a result, no compensatory educational services are warranted. The IEP for the 2001-2002 school year is likewise appropriate. The CCC, relying upon input from the independent evaluator, developed a behavior plan to address possible behavior problems. This was agreed to by the parties. The IEP also includes appropriate goals and objectives.

The IEE was conducted appropriately. The School did not impose any inappropriate conditions on the conduct of the IEE. The evaluator meets the requirements of Article 7, as does her report. She did not include speech and occupational therapy in her evaluation because she does not conduct such evaluations nor did she perceive a need to initiate a referral for such evaluations. The contacts between the evaluator and the School were appropriate. The IEE results should be considered when determining the Student's needs.

The Student's teacher is appropriately licensed. The paraprofessional has been properly trained and works under the direction and supervision of a licensed teacher.

The School obtained the parent's consent on April 19, 2000, prior to conducting its own reevaluation. Although part of the assessment occurred in May of 2000 and the rest in September of 2000, this is part of a reevaluation and not separate evaluations.

Although the parent alleges she was not permitted to participate fully in CCC meetings, there is no evidence to support this allegation. Two CCC meetings (May 23, 2000, and September 18, 2000) were, by all accounts, tense and occasionally adversarial, but there is no evidence the parent was denied full participation.

The School did conduct appropriate evaluations prior to determining the Student no longer required speech/language therapy or OT. The School also complied with Article 7 requirements for determining eligibility for services under an exceptionality area. It administered an individualized test of learning capability, an assessment of educational need, an adaptive behavior evaluation, a communication evaluation, obtained a social and developmental history, observed the Student in various settings, evaluated fine and gross motor skills and sensory skills, and completed a checklist of characteristics of autism. Current levels of educational performance were established based on this information and a review of records. The evaluation methods and CCC procedures were in compliance with the requirements for determining the presence of a disability. The procedures were appropriate and support the finding that the Student has an OHI and is not eligible under autism spectrum disorder. Although the parent alleges the School failed to identify the date of completion for an educational evaluation, it is noted that the April 20, 2001, CCC and the IEE do not have such a date entered into the IEP. However, there is no requirement that such a date be included in an IEP.

The parent alleged the School denied her access to the Student's educational record prior to the September 2000 CCC meeting. However, the School maintains the parent did not request such access. Notwithstanding the conflict in testimony, there is no evidence the School denied the parent such access.

The School did not provide the parent with a copy of the IEE at least five (5) days prior to the April 20, 2001, CCC meeting. However, as noted above, the School did not receive the IEE until April 16, 2001, through no fault of its own. The parent did not ask to reschedule the CCC meeting, suggesting agreement to continue with the CCC. The School will not be deemed to have failed to adhere to the requirement of 511 IAC 7-25-4(k). The parent did receive a complete copy of the IEE from the evaluator at approximately the same time the School did. The results of the IEE were considered appropriately by the CCC, with the independent evaluator in attendance. A behavior plan was developed based on the evaluator's recommendations. Although the evaluator did have access to the Student's educational records, she had a release of information that permitted such access. A report concerning the Student was provided to Child Protection Services following the September 18, 2000, CCC meeting.¹ Parental consent is not required for such reports.

¹ The IHO's decision refers to "September 18, 2001." The reference should be to "September 18, 2000," when the CCC meeting took place.

The School did consider evaluative information from other agencies, such as Riley Hospital. However, Riley's evaluations do not meet the requirements of Article 7 in that educational functioning was not considered and Riley did not contact the School.

The School has been compliant with Article 7 requirements for time frames within which to determine eligibility and placement.

The parent received adequate notice of the CCC meeting in April of 2001. The CCC was arranged at a time and place that was mutually agreeable to the parties. The School also advised that the CCC meeting was being convened to discuss evaluation results and transition to kindergarten. The purpose of a CCC is not subject to parental consent.

Based on the foregoing, the IHO issued five (5) Orders:

1. The School is to implement the proposed IEP for 2001-02 in its entirety. A case conference is to be convened within ten (10) school days of receipt of this decision to review the IEP. Any revisions or additions to the Student's program are to be included in the IEP.
2. The behavior plan included in the proposed IEP is to be implemented should the Student demonstrate behaviors that warrant intervention. The plan may be revised to meet the Student's needs. Any revisions of the plan are to be included in the Student's IEP.
3. The Student's eligibility for OHI is to be maintained for the current academic year, and an annual case review is to be completed no later than June 1, 2002, to determine if he remains eligible for services. Additional case conferences can be convened at the request of either party.
4. The School is to assure that the parents have reasonable access to all of the Student's educational records.
5. These Orders are to be implemented within five (5) school days of receipt of this decision.

APPEAL TO THE BOARD OF SPECIAL EDUCATION APPEALS

Student's Petition for Review

On September 24, 2001, the Student filed, pursuant to 511 IAC 7-30-4(d), a Petition for Review with the Indiana Board of Special Education Appeals (BSEA). The Student asserts the evidence supports a finding of autism, and that he had been diagnosed as same from two years of age. He displays obsessive thoughts regarding death, tornadoes, stinging scorpions, firemen and fire trucks and avoids eye contact. He does not engage in parallel play for any significant period of time, prefers to play by himself, is not empathetic, requires significant redirection, and generally exhibits characteristics associated with autism.

The Student also believes evidence in the record supports a continued need for speech/language therapy, occupational therapy, and physical therapy. Although the Student asserts the videocassette tapes were not made by qualified individuals, the Student refers to the tapes for support of various arguments.

The Student also argues that the IEP developed on May 23, 2000, was not appropriately implemented. The Student acknowledges agreement with the IEP developed for the 2001-2002 school year, except with respect to the use of restraints, the exceptionality area, and the continued need for OT and speech therapy.

There are exceptions to the IEE. The Student argues that the observations conducted by the independent evaluator were not sufficiently comprehensive. Further, the evaluator did not have the consent of the parents prior to access to the Student's educational record.

The teacher and paraprofessional were allegedly not appropriately licensed and trained. The Student objects to the teacher and paraprofessional having input on the evaluations conducted by and through the School. The credentials of Riley personnel should have been accorded more weight.

Although the parent consented to a reevaluation for speech in April of 2000, the School exceeded the scope of the parental permission by conducting a subsequent evaluation without parental consent. The triennial evaluation for the Student should have been completed by May of 1999 but wasn't completed until September 2000.

The School altered an educational record without notifying the parents when it allegedly removed the eligibility designation of "communication disordered" from the Student's record.² The Student also lodged general disagreements with the IHO's determinations regarding whether the parents were afforded an opportunity to participate fully in a CCC, whether the parents were denied access to the Student's educational records prior to a CCC, whether the School conducted appropriate evaluations prior to changing the Student's identified exceptionality area, whether the School conducted

² It noted that the Petition for Review often refers to "stay put" in the belief the Student would remain in his current educational placement during the period the School and parents are in disagreement. "Stay put," in this dispute, would apply only when a hearing has been initiated, an administrative appeal sought, or judicial review requested. It does apply to disagreements that do not otherwise involve a hearing, an administrative appeal, or judicial review.

appropriate evaluations prior to determining the Student's exceptionality area, and whether the School considered the results of IEEs. In the latter issue, the Student also asserts that the resulting IEP was based on the IEEs from Riley and the independent evaluator, and constitute further evidence that the Student has autism.

The Student also asserts the Parent provided written permission for records from Riley and did not provide written permission for the School to obtain records from two other hospitals.³

School's Response to Petition for Review

The School, pursuant to 511 IAC 7-30-4(f), filed its Response on October 3, 2001. The Response is more of a general support for the IHO's written decision, noting that the Riley evaluation was based on parent information and did not include information from the School much less an observations of the Student within the school context. Conversely, the IEE obtained through the School involved observations and more comprehensive information from a variety of sources. The fact the Student is not eligible for services under autism spectrum disorder does not deprive the Student of an appropriate education.

The School represents the record supports the IHO's determination the IEP for 2000-2001 was appropriately implemented. The School acknowledged it had recommended discontinuance of speech therapy and OT, but did not do so because the parent disagreed.

The Student, the School noted, does not object to the 2001-2002 IEP, except with respect to the use of restraints. This issue was not raised during the hearing. As to speech therapy and OT, evidence and testimony—as well as the seven videocassette recordings—support the determination the Student does not require these services.

³ The parent represents that sensitive material in one of the hospital reports should have been reported by the School to Child Protection Services as possible child neglect or abuse. To the extent this is a new issue, it was not raised during the hearing and will not be entertained on administrative appeal. Under 511 IAC 7-30-4(g), only issues raised in the due process hearing can be raised on appeal through a Petition for Review.

Thereafter, on October 9, 2001, the Indiana Department of Education, pursuant to 511 IAC 7-30-4(e), forwarded copies of the record from the hearing to the BSEA. BSEA members previously received the Petition for Review and the Response thereto.

The BSEA also determined on October 9, 2001, to conduct its review without oral argument and without the presence of the parties, as permitted by 511 IAC 7-30-4(j). The BSEA established October 23, 2001, as its date when it would meet and review the record from the hearing, the Petition for Review, the Response thereto, and then issue its written decision. The parties were notified in writing of this decision by a Notice of Review Without Oral Argument dated October 9, 2001.

REVIEW BY THE BOARD OF SPECIAL EDUCATION APPEALS

On October 23, 2001, the BSEA convened in Indianapolis for the purpose of conducting its review of this matter. All three members appeared. Based upon the record as a whole, the requirements of state and federal law, the Petition for Review, and the Response thereto, the BSEA now decides as follows.

COMBINED FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The hearing involves issues addressing the needs of a student eligible for special education services. The parties were provided notice of their hearing rights and participated actively in the hearing process. All parties were provided due process, as contemplated by state and federal law.
2. The Student timely appealed the decision of the IHO to the BSEA. The School timely responded. The BSEA has jurisdiction to determine this matter.
3. The Student takes exception to Issue No. 1 (What is the nature and extent of the Student's disability or disabilities?). The BSEA notes that there appears to be a continuing misunderstanding on the part of the Student and the parent regarding a determination of eligibility and a student's identified exceptionality area. Services are determined and provided based on identified student needs. Such services are not determined based upon an exceptionality area. The Independent Hearing Officer reviewed all relevant information and determined the Student does not qualify under autism spectrum disorder but is eligible under OHI. Accordingly, the IHO's Findings of Fact and Conclusion of Law in this respect are upheld.
4. The Student asserts error on the part of the IHO in ruling on Issue No. 2 (Has the School appropriately implemented the Student's IEP for the 2000-2001 school year?). The BSEA

finds no error on the part of the IHO in his determination that the IEP was implemented appropriately. The IHO's Findings of Fact and Conclusion of Law are upheld.

5. Error is asserted in the determination of Issue No. 4 (Is the proposed IEP for the 2001-2002 school year appropriate for the Student?). This is one of the core issues in this dispute. The parent expresses reservation regarding the use of restraints, but there is no evidence that the School has ever employed restraints with the Student. The reference to restraints flows from the parent's representations of the Student's aggression and dangerousness, behavior not observed by the School. The services identified for the Student are appropriate to his needs. The BSEA upholds the IHO's Findings of Fact and Conclusion of Law regarding this issue.
6. The Student takes exception to Issue No. 5 (Was the recent independent educational evaluation conducted appropriately?). The IEE was designed appropriately. There was no need for a speech/language or OT evaluation during this IEE. There is no evidence of any untoward activity on the part of the School in the arrangement for the parentally requested IEE. All contacts were ministerial and necessary to the conduct of the IEE. Accordingly, the IHO's Findings of Fact and Conclusion of Law are upheld.
7. Error is alleged in the IHO's determinations regarding Issues Nos. 7 and 8 (Is the teacher of record appropriately licensed and trained for the Student's needs? Has the paraprofessional received appropriate training for the Student's needs?). The State of Indiana does not provide teacher licensure for either autism spectrum disorder or OHI. The teacher is properly licensed for her teaching responsibilities and has received appropriate training, as has the paraprofessional. The IHO's Findings of Fact and Conclusion of Law are upheld.
8. Objection is made to Issue No. 9 (Did the School conduct a reevaluation without appropriate parental consent?). The record indicates that the School complied with Article 7, and the IHO's Findings of Fact and Conclusions of Law reflect this. The IHO's determination is upheld.
9. Objection is made to Issue No. 10 (Did the School conduct additional evaluation procedures without appropriate parental consent?). The record indicates that the School complied with Article 7, and the IHO's Findings of Fact and Conclusions of Law reflect this. The IHO's determination is upheld.
10. The Student objects to the IHO's determination with respect to Issue No. 11 (Did the School change the Student's placement without appropriate parental consent?). This, again, reflects a misunderstanding of the responsibility for providing services. Services are not categorically driven but are based on individual need. The School did not change the Student's placement. The IHO's Findings of Fact and Conclusions of Law in this respect are upheld.

11. The Student also objects to the determinations with respect to Issue No. 12 (Was the Student's parent denied the right to fully participate in a case conference?). Although there is evidence and testimony of disagreement and occasional acrimonious exchanges, this is not evidence the parent was denied the right to participate fully. The parent was not prohibited from participating fully in the case conference committee meetings. The IHO's Findings of Fact and Conclusions of Law in this regard are upheld.
12. Objection is made to Issue No. 14 (Was the parent denied access to the Student's records prior to a case conference in September 2000?). Although some misunderstanding may have occurred based on information supplied by the teacher to the parent, this was corrected by the local director of special education. There may have also been some misunderstanding on the School's part as to whether it was permissible to make available to the parent the hospital record from Community North Hospital. However, there is no indication the parent requested access to the Student's educational record until she prior to the case conference committee meeting, whereupon the School complied. To the extent any lingering misunderstandings may be present, the IHO addressed these in Order No. 4 (The School is to assure that the parents have reasonable access to all of the Student's educational records.). The IHO's Findings of Fact and Conclusion of Law are upheld.
13. The Student asserts the IHO erred in his determinations of Issues Nos. 17 and 18 (Did the School conduct an appropriate educational evaluation before determining that the Student no longer had a disability? Did the School appropriately determine the Student had a disability?). The Student remains eligible for special education and related services. The IHO determined that the School complied fully with Article 7 when it determined the Student no longer required speech and OT services. In addition, the School complied fully in determining the Student eligible for services. The BSEA sees no reason to disturb the Findings of Fact and Conclusions of Law reached by the IHO.
14. Objections are made to the decisions with regard to Issues Nos. 22 and 23 (Were the Student's IEP goals and objectives met at the time of the case conference in May of 2000? Were the goals and objectives as listed in the IEP at the initial case conference in April 2000 appropriate?). The IHO's Findings of Fact and Conclusions of Law in these regards are upheld. The case conference committee procedures were consistent with Article 7 requirements.
15. The Student objects to the IHO's determinations with respect to Issue No. 27 (Did the School appropriately consider the results of an independent educational evaluation?). There is no question the case conference committee considered the results of the IEE, as well as information from a variety of sources. The BSEA accepts as written the IHO's Findings of Fact and Conclusion of Law in this regard.
16. Error on the part of the IHO is alleged in his decision regarding Issue No. 29 (Did the School violate confidentiality by releasing the Student's records to other agencies without the

parent's permission?). As a part of the IEE requested by the parent and agreed to by the School, it would be necessary for the independent evaluator to have access to the Student's educational record. Notwithstanding, the independent evaluator obtained a release from the parent. There is no indication that the School abridged the confidentiality rights of the Student. The IHO's Findings of Fact and Conclusion of Law in this respect are upheld.

17. No objections are made to any Orders issued by the IHO. Accordingly, the Orders are upheld.

ORDERS

In consideration of the foregoing, the Board of Special Education Appeals rules as follows:

1. The decision of the Independent Hearing Officer is upheld in its entirety. The BSEA vote in all respects was unanimous.
2. Any allegation of error in the Petition for Review not specifically addressed above is deemed denied.

DATE: October 23, 2001

/s/ Richard Therrien, Chair

Board of Special Education Appeals

APPEAL RIGHT

Any party aggrieved by the decision of the Board of Special Education Appeals has the right to seek judicial review in a civil court with jurisdiction within thirty (30) calendar days from receipt of this written decision, as provided by I.C. 4-21.5-5-5 and 511 IAC 7-30-4(n)