



hearing was set for July 27 and 28, 2006. Respondent requested that the hearing be reset due to the unavailability of witnesses. This hearing officer granted Respondent's motion and the parties agreed to reschedule the hearing for August 22, 2006, and to extend the hearing decision deadline to September 8, 2006.

The transcript was not completed on September 6, 2006, as anticipated. The parties were contacted and indicated that they wished to extend the hearing decision deadline to September 15, 2006, so that this hearing officer would have the opportunity to review the transcript prior to rendering her final decision. The issues for the due process hearing were as follows:

1. Whether Respondent failed in any duty to re-evaluate the student.
2. Whether Respondent failed to identify all of the student's handicapping conditions.
3. Whether the student's behavior leading to his expulsion was a manifestation of his handicapping condition(s), i.e., whether the student's behavior
  - (a) was caused by , or had a direct and substantial relationship to the student's disability; or
  - (b) was the direct result of Respondent's failure to implement the student's IEP.
4. Whether the placement and services set out in the student's IEP prior to his expulsion, were appropriate to meet his needs.
5. Whether Respondent wrongfully withheld credit for the student's school work completed after he was placed in an alternative education setting.

Following testimony and submission of evidence, the hearing officer made the following Findings of Fact and Conclusions of Law:

### **Findings of Fact**

#### ***ISSUE ONE: Whether Respondent failed in any duty to re-evaluate the student.***

F 1.1 The student was first enrolled with Respondent in the fall of 2005. A case conference committee met on September 1, 2005. They reviewed a psycho-educational evaluation dated May 12, 2005, from his Pennsylvania school. The Pennsylvania case

conference committee reviewed a number of standardized tests performed between September 1999<sup>2</sup> and 2005.<sup>3</sup> They also reviewed additional testing performed in May 2005.<sup>4</sup>

F 1.2 There is nothing in the record to indicate that the parent expressed any concerns other than academic improvement for the student during the case conference committee meeting in September 2005.

F 1.3 There is nothing in the record to indicate that the parent believed the 2005 Pennsylvania psycho-educational evaluation to be inadequate or that he requested Respondent to do any further evaluation of the student.

F 1.4 The student's disciplinary incidents prior to the "catalyst event" (possession of marijuana) involved a variety of misbehaviors such as tardiness, disruptiveness in class, defiance (i.e., failure to follow instructions, failure to do assigned work, failure to sit in assigned seat), failure to report to detention, being out of an assigned area, and fighting (one 5-day suspension). No clear pattern of misbehavior emerged to suggest that the student might have additional handicapping conditions.

***ISSUE TWO: Whether Respondent failed to identify all of the student's handicapping conditions.***

F 2.1 There was no evidence in the record that the parent believed the student to have any other handicapping conditions other than the Learning Disability and being "slow."

F 2.2 Records from the Social Security Administration (Childhood Disability Evaluation Form) indicated the following:

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<sup>2</sup> The IHO's decision identifies these dates as 1990-2005. Documents included with the exhibits indicate that these dates are actually 1999-2005.

<sup>3</sup> SAT-9 for 1999, 2001, 2002  
CAT/6 for 2003, 2004]  
Matrix Analysis Test (MAT) for 1999, 2005  
Test of Auditory Reasoning and Processing Skills (TARPS) for 1999, 2002  
Wide Range Assessment of Memory and Learning (WRAML) for 1999, 2002  
Bender for 1999, 2002  
VMI for 1999, 2002  
Woodcock Johnson (WJ) for 1990, 1999  
WIAT (Wechsler Individual Achievement Test) for 1999, 2001

<sup>4</sup> Naglieri Nonverbal Ability Test (NNAT)  
Beery-Buktenica Developmental Test of Visual-Motor Integration (VMI)  
Motor-Free Visual Perception Test (3<sup>rd</sup> Ed.) (MVPT-3)  
Test of Auditory-Perceptual Skills: Upper Level (TAPS-UL)

- a. The child's initial claim indicated that the child was impaired by reason of a learning disability (3152) and adjustment disorder with depressed mood (2960).
- b. The child's impairments were severe, but did not meet, medically equal or functionally equal the severity of a listing on 11/15/1999.
- c. Reconsideration of the child's claim indicated that the child was impaired by reason of a Learning Disorder and Major Depression.<sup>5</sup>
- d. In February 2000, the child's impairments were of listing-level severity, but were not, or were not expected to be, of listing-level severity for 12 months.

F 2.3 The parent testified that the student was found qualified for Social Security Benefits after a hearing before an administrative law judge (ALJ). The ruling of the ALJ is not in the record so it is not clear the reason that the student was granted benefits.

F 2.4 The student has had no medical or psychological services to address any depressive condition.<sup>6</sup> It is the parent's judgment that the student's depression is now "much better" due to the parent's efforts to involve the student in sports and community activities.

F 2.5 The parent was informed by school personnel of many of the student's disciplinary incidents. There was no evidence in the record that the parent communicated to Respondent a belief or concern that the student's misbehaviors might be related to any emotional problems, intellectual deficit, or handicapping condition.<sup>7</sup>

***ISSUE THREE: Whether the student's behavior leading to his expulsion was a manifestation of his handicapping condition(s), i.e., whether the student's behavior (a)***

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<sup>5</sup> At hearing, the parent indicated that he believed the record to read that the child had a Learning Disorder and "Major Deficiencies." The records of the Social Security Administration, read as a whole, make it clear that the SSA was looking into the child's learning disability and depression, not a cognitive or other deficiency.

<sup>6</sup> The psychiatrist evaluating the student for Social Security benefits in 2000 gave the following prognosis: "From a psychiatric standpoint, the claimant's current prognosis is poor. Given that the patient is not receiving any treatment for relatively severe childhood depression, his current prognosis is limited. If the patient were adequately treated, he may show much higher functioning both in his academic and social domains."

<sup>7</sup> The parent did, however, dispute the propriety of the student's 5-day suspension in September 2005 for fighting. He contended that he [the parent] had notified school personnel on several occasions that the student was being bullied by the other student involved in the altercation leading to the suspension.

***was caused by, or had a direct and substantial relationship to the student's disability; or (b) was the direct result of Respondent's failure to implement the student's IEP.***

F 3.1 The behavior considered by the case conference committee at the student's manifestation conference was as follows: "[Student] had five bags of marijuana at school. It was sufficient quantity to be considered to be selling." [sic]

F 3.2 Sworn testimony accepted by the expulsion Hearing Examiner and this Hearing Officer as fact include the following:

- a. The field test of the material suspected to be marijuana was positive for THC, the substance found in marijuana, and the material totaled 7.5 grams in weight.
- b. The student admitted that he had purchased the marijuana for \$35 the day before the incident.
- c. The student admitted that he had split it into 5 baggies and intended to sell it "if somebody come to me."<sup>8</sup>
- d. That the student admitted he had more marijuana at his home.

F 3.3 The parent found the marijuana at home and voluntarily turned it over to another law enforcement officer.

F 3.4 The student's identified handicapping condition is a learning disability. His most recent tests (July 2006) indicate that his general cognitive functioning is measured to be within the Borderline range of intellectual functioning. There is no evidence to support a conclusion that the student's cognitive functioning ("slowness") or learning disability prevented him from understanding the wrongfulness of his possession of marijuana or sale of marijuana.

F 3.5 Evidence supporting the student's awareness that drug possession was wrongful include:

- a. The student received a school handbook entitled *Student Rights and Responsibilities*, informing all students of the behaviors considered unacceptable.
- b. The Transitions Skills Checklist included in his IEP from his former school indicated that as of May 2005 "the student has had training / instruction in or

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<sup>8</sup> The marijuana was wrapped in corners cut from plastic "baggies." Plastic baggies with the corners missing were found in the student's backpack.

has demonstrated competency in...the effects of the use and abuse of drugs and alcohol.”

- c. The parent testified that the student was aware that the parent disapproved of drugs. The parent’s sworn testimony, as noted by the expulsion Hearing Examiner, was, “[Student] was wrong. He knows he was wrong. I’m not excusing the point that he had drugs on him. [Student] had drugs in school.”

F 3.6 The parent testified that the student is a “follower” and had been associating with peers the parent judged unacceptable. There is, however, no evidence in the record that any person tricked, manipulated or coerced the student into having illegal drugs in his possession.

F 3.7 Although certain of the student’s prior disciplinary incidents (for example, talking back to teachers), indicate a degree of impulsivity, the student’s actions of purchasing illegal drugs and repackaging those drugs for resale to an interested party show a significant amount of planning rather than impulsivity.

F 3.8 The student’s individualized education plan dated September 1, 2005, provided that the student receive the general education curriculum in general education classrooms. The accommodations, supports and / or modifications set out in the student’s IEP were: modified tests and assignments, extended time on tests, use of a calculator, tests read to him (if allowable) and use of the Resource Room. There was no evidence presented to indicate that Respondent failed to provide any of the above services prior to the student’s being found in possession of drugs.

F 3.9 Evidence in the record indicated that the student did not diligently avail himself of the program and supports available to him prior to being found in possession of drugs. The student’s special education teacher indicated in the July 2006 Psychological Report that he often failed to bring his general education assignments, materials or textbooks to the Resource Room, did not put forth good effort, and slept or was disruptive in class. He was also frequently tardy to his classes, especially the Resource Room.

F 3.10 All students in Respondent’s alternative education program are students with special needs under Article 7. The teachers at the AEP are “highly qualified” as required by the No Child Left Behind Act and are supervised by staff licensed in special education. These educators are available to assist the regular education teachers if and when learning or behavior difficulties arise with students in the AEP.

F 3.11 Prior to being placed in the AEP, the student attended general education classes and received assistance from teachers with special education licensure only during his Resource Room.

F 3.12 The student’s teachers at the AEP reported that he was focused, cooperative and diligent in doing his assigned work, which he completed. There was no evidence that the student’s education was in any way compromised by not receiving direct services from staff licensed in learning disabilities.

F 3.13 Prior to the hearing request, the student was in the alternative educational placement for at most six school days prior to the end of the semester, i.e., May 15, 16, 17, 18, 22 and 23, 2006. The Assistant Director of Special Services testified that he authorized transportation to begin Monday, May 15, 2006. The student's AEP teacher's records indicated that the student attended the AEP Monday through Thursday of the week of May 15<sup>th</sup>. The parent testified that the student did not receive services on May 15 and 16, 2006 because the school bus did not pick him up on those days. If there was, in fact, a two-day loss of services, there was no evidence to indicate that the student suffered any harm as a result.

***ISSUE FOUR: Whether the placement and services set out in the student's IEP prior to his expulsion, were appropriate to meet his needs.***

F 4.1 The student's positive response to his alternative education placement indicates that the student can be successful with a general education curriculum and can avail himself of special help when motivated to do so. The student's IEP provisions for a general education placement and curriculum with Resource Room assistance were appropriate to meet his needs.

F 4.2 The student can and often did conform his behavior to the expectations of the school and his teachers. The common element in the student's disciplinary behaviors and lack of academic success is poor decision-making on the part of the student such as:

- a. His frequent decisions to be tardy to classes, especially his Resource Room.
- b. His decisions to come to class unprepared.
- c. His decisions to avoid work by being disruptive or sleeping in class.<sup>9</sup>

F. 4.3 The case conference committee completed a Functional Behavior Analysis and Behavioral Intervention Plan on May 10, 2006 dealing with the other behavioral issues, namely, general classroom disruption and non-compliance with the rules and expectations of the school / teachers, as well as the illegal possession of drugs. The strategies devised to address the student's behaviors were as follows:

- a. Modification of Setting Events / Antecedents: No modifications
- b. Assistive Programming / Replacement Behavior to Be Taught / Interventions: [Blank]
- c. Reinforcement Strategies: Reinforcement of rules/expectations by the school and [Student's] teachers. [Student's] father will also reinforce the importance

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<sup>9</sup> It is also likely that the student was making decisions regarding out-of-school activities that prevented him from getting adequate rest at home.

of complying with the rule [sic] / expectations set forth by the school / teachers.

- d. Redirection Strategies / Staff Response to Recurrence of Target Behavior: After re-direction (when applicable, i.e. sleeping in class), staff will respond to the target behavior by following the procedures set forth by the school / classroom, such as referrals, detention.
- e. Additional School Based Support: Access to Counselor / Teacher of Record / Assistant Principal when [Student] is frustrated and feels that he is not in control of his behavior.

F 4.4 Given the student's poor history of utilizing his Resource Room assistance, it is doubtful that the student will avail himself of other school-based support on a voluntary, as-needed, basis.

F 4.5 The student's Transition Skills Checklist from his prior school in Pennsylvania indicated that the student had not had training/instruction in or had not demonstrated competency in the basic principles of decision-making. The Checklist also indicates that he had not completed training in basic employments skills, such as punctuality, teamwork, appearance and attitude. The student has demonstrated a lack of understanding of these principles and their importance to his education. The student needs instruction and counseling support in these areas in order to benefit from his special education program.

F 4.6 The student's records indicate a history of depression and sadness over not having more contact with his mother.<sup>10</sup> Respondent needs to be alert and sensitive to the student's emotional situation so it can identify and address a possible Emotional Handicap.

***ISSUE FIVE: Whether Respondent wrongfully withheld credit for the student's school work completed after he was placed in an alternative education setting.***

F 5.1 There was no provision in the student's individualized education program to indicate that the student's grades were to be determined by a process different than that of his non-handicapped peers. The Consent For Services signed by the parent on May 10, 2006 did not indicate that after the manifestation determination case conference, Respondent intended to use special grading criteria for this student while he was in his AEP.

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<sup>10</sup> Although not a part of the hearing documents or testimony, the father has informed this hearing officer and the parties that he has a serious medical condition. This condition is likely be of significant concern to the student. Reference to the father's medical issues can be found in the Record of Proceedings.

F 5.2 The Respondent's alternative educational placement program serves only special education students. It operates with a shortened school day (3:15 p.m. until 6:00 p.m.) and a shortened week (Mondays through Thursdays). The testimony at hearing was that students in the alternative educational placement are able to earn *up to* three credits per semester, the maximum allowable under State law by virtue of the shortened school day and week.<sup>11</sup>

F.5.3 There was no evidence to suggest that other students attending Respondent's AEP were guaranteed credits for completing their course work. There was nothing in the record to explain why School administrators would promise this student, or any other student in an AEP disciplinary placement, course credit (i.e., a passing grade) for completing assignments, while students not in a disciplinary placement were not guaranteed a passing grade.

F 5.4 The student did receive a passing grade in Math. He received failing grades in World Geography, English, and Biology because his good work while in his alternative educational placement was not sufficient to overcome the poor work effort and poor work product prior to his alternative educational placement.

### **Conclusions of Law**

C 0.1 The United States Supreme Court as ruled that the party who is the petitioner has the burden of proof in an action under IDEIA. To meet the burden of proof on an issue, the petitioner must present sufficient relevant evidence to *outweigh* the respondent's evidence to the contrary.

C 0.2 A party's opinions, beliefs, suppositions, interpretations, characterizations, explanations, conclusions or arguments relating to events or evidence, no matter how sincere or heartfelt, are not in and of themselves evidence. A hearing decision must be based on facts determined to be true and relevant by the hearing officer.

#### ***ISSUE ONE: Whether Respondent failed in any duty to re-evaluate the student.***

C 1.1 The student's former school district performed a triennial psycho-educational evaluation in May 2005. There was no evidence submitted to show that the May 2005 evaluation was in any way deficient. There was no evidence submitted to show that the parent requested any further evaluation after the student transferred to Respondent local education agency. The student's disciplinary history showed no clear pattern of misbehavior sufficient to trigger a duty to do further evaluation to determine whether the student might have additional handicapping conditions.

Respondent did not fail in any duty to re-evaluate the student.

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<sup>11</sup> Another two credits may be earned through work-study

***ISSUE TWO: Whether Respondent failed to identify all of the student's handicapping conditions.***

C 2.1 The student's test scores indicated his intellectual functioning was in the Borderline to Low Average range. Although the parent believed the student to be "slow," there was no evidence presented at hearing to indicate that the student qualified for services for Mild Mental Handicap.

C 2.2 The student's 2002 Social Security records indicated that the student's application for benefits was based on Learning Disabilities and Major Depression. The parent has not pursued medical assistance or therapeutic counseling for the student's depressive condition and testified that the student was "much better." There was no evidence presented at hearing sufficient to make a finding that the student qualified for services for Emotional Handicap.

C 2.3 There was no evidence in the record to support a conclusion that the student qualified for services by reason of any other handicapping condition. The parent has not met his burden of proof to establish that the student qualified for service for handicaps other than a Learning Disability.

***ISSUE THREE: Whether the student's behavior leading to his expulsion was a manifestation of his handicapping condition(s), i.e., whether the student's behavior (a) was caused by, or had a direct and substantial relationship to the student's disability; or (b) was the direct result of Respondent's failure to implement the student's IEP.***

C 3.1 The only evidence offered to show that the student's possession of drugs was a manifestation of the student's handicapping condition(s) was the parent's belief that the student was "slow," and a "follower" who had associated himself with peers the parent did not like or trust. The undisputed evidence clearly shows that the student purchased a substance he believed to be marijuana, he knew it was illegal to possess marijuana, and he formulated a plan to distribute marijuana that included repackaging the marijuana. There was no substantial evidence to support a finding that the student's possession of marijuana on school property was caused by, or had a direct and substantial relationship to the student's learning disability.

There was no evidence that any other handicapping condition caused or had a direct and substantial relationship to the student's possession of drugs.

C 3.2 There was no evidence that Respondent did not provide the services set out in the student's IEP prior to his being found in possession of marijuana. The parent's evidence that the student did not receive direct services from a teacher licensed in learning disabilities while in his alternative educational placement, i.e., *after* the student was found with marijuana, is not relevant to the issue of whether Respondent failed to implement the student's IEP *prior* to student's being found in possession of marijuana.

The student's possession of illegal drugs on school property was not the result of any failure of Respondent to properly implement the student's IEP.

C 3.3 Although the expulsion Hearing Examiner considered other disciplinary incidents involving the student, there was no evidence presented that any of those other incidents were caused by or had a direct and substantial relationship to the student's disability or that they were the direct result of Respondent's failure to implement the student's IEP.

The student's other disciplinary incidents were not a manifestation of his Learning Disability or any other handicapping condition, nor were they the result of the Respondent's failure to properly implement the student's IEP.

***ISSUE FOUR: Whether the placement and services set out in the student's IEP prior to his expulsion, were appropriate to meet his needs.***

C 4.1 The common ground for the majority of the student's disciplinary misbehaviors is poor decision-making. His poor decisions have prevented him from benefiting from his special educational program. He also evidences a lack of understanding of the importance of punctuality, teamwork,<sup>12</sup> attitude, and following instructions which are also essential for him to benefit from his special education program and later, for success in the workforce. The student needs counseling as a related service to help him learn better decision-making and work skills and to support him in exercising those skills.

C 4.2 The student has had a history of serious depression. Counseling as a related service is indicated to monitor the level of the student's depression and to explore the possibility that the student might need services for an Emotional Handicap.

C 4.3 The student's case conference committee developed the student's September 2005 individualized education program in good faith. The parent's expressed concern was to improve the student's academic performance and the parent approved that IEP. There is no clear evidence to establish that Respondent knew or should have known that the student needed counseling as a related service. There was no evidence that the parent felt that the student needed counseling prior to this hearing. The student's IEP developed in September 2005 was reasonably calculated to confer educational benefit to the student but in hindsight, did not address his need for skills necessary for the student to benefit from his special education program.

***ISSUE FIVE: Whether Respondent wrongfully withheld credit for the student's school work completed after he was placed in an alternative education setting.***

C 5.1 Respondent gave the child credit for the work done in his alternative educational placement. The parent's differing interpretation of how the student's final grades were to be

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<sup>12</sup> For example, working along side others and following instructions without disrupting their educational or work experience.

calculated – one not required by the student’s individualized education program - does not require that Respondent adopt a different grading system for the student.<sup>13</sup>

Based upon the Findings of Fact and the Conclusions of Law, the hearing officer issued the following order on September 15, 2006:

2. Respondent is ordered to amend the student’s individualized education program to add 30 minutes per week counseling, as a related service. The counselor shall assist the student in learning and understanding the importance of principles relating to good decision-making and work behaviors. The counselor shall also monitor the student’s emotional concerns and possible need for additional services. The student’s counselor shall attend all future case conference committee meetings prepared to discuss the same.
3. This hearing officer’s interim order that the student receive direct instruction from a teacher licensed in learning disabilities is hereby rescinded. While in his alternative education placement, the student’s general education teachers shall consult weekly with a teacher licensed in learning disabilities regarding any academic difficulties the student is experiencing. After the period of expulsion ends, the student shall return to Resource Room assistance by a teacher licensed in the area of Learning Disabilities.

The parties are ordered to implement the provisions of this decision within thirty (30) calendar days from the date this decision is received unless, during that same time period, an appeal to the Special Education Board of Appeals is filed.

NOTHING IN THIS DECISION SHOULD BE CONSTRUED SO AS TO PREVENT THE PARTIES FROM MODIFYING THE EFFECT OF THIS DECISION BY THEIR AGREEMENT.

The IHO notified the parties of their right to appeal the decision to the Indiana State Board of Special Education Appeals.

***APPEAL TO THE STATE BOARD OF SPECIAL EDUCATION APPEALS (BSEA)***

**Petition for Review**

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<sup>13</sup> The parent has contended that he would never have agreed to the student’s alternative educational placement had he known that the student would not receive passing grades for completing his assignments while in his alternative educational placement. He has interpreted federal and state laws giving the school district the *unilateral* right to expel a special education student for drug possession at school to mean that the school and parent must agree to the placement. This hearing officer’s download of the Merriam-Webster dictionary definition for *unilateral* states in relevant part: *1 (a) : done or undertaken by one person or party.* [Emphasis added.]

The Petition for Review was timely received by the Indiana Department of Education (IDOE) on September 19, 2006. Respondent filed a request for an extension of time which was received by the IDOE on September 25, 2006. The request was granted on September 26, 2006, and Respondent filed a timely response on October 11, 2006. Notice of the State Board of Special Education's impartial review date without oral argument was sent to the parties on October 23, 2006. The parties were notified of the review date of November 6, 2006, and advised of their judicial review rights.

In the Petition for Review, the Student, represented by his father<sup>14</sup>, did not identify particular Findings of Facts or Conclusions of Law with which he took exception. Petitioner's objections were numbered and stated in narrative form. Therefore, the issues on appeal are identified as follows:

1. Petitioner alleges that the IHO erred in not finding the 5/25/2006 expulsion from Warren Central was handled with prejudice and discrimination. Petitioner also claims that the IHO covered up prejudice and discrimination.
2. The IHO erred in not finding that Respondent's administrators failed to take into account Petitioner's disabilities.
3. The IHO erred in not finding that Respondent's Assistant Principal made false "school book" allegations against Petitioner.
4. Petitioner claims that the IHO failed in not finding that the Hearing Examiner's decision on 5/30/06 shows cover-ups by the Assistant Principal and the school's prejudice and discrimination against Petitioner because he is black.
5. Petitioner contends that the IHO erred in not finding the six-month expulsion was excessive. Petitioner alleges that federal and state laws regarding special education students state that students can only be expelled for up to 45 days for drug possession at school.
6. Petitioner argues that the IHO should have relied upon Petitioner's statements in her decision.
7. Petitioner argues that special education teachers were not available at Student's Alternative Education Program (AEP) in accordance with the requirements of his IEP. Petitioner claims the IHO's findings that special education teachers were available at the Alternative Education Program shows more prejudice and discrimination.
8. Petitioner claims the school officials did not know what a medical release form was, but falsely denied such lack of knowledge at the Due Process Hearing.

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<sup>14</sup> Any reference to "Petitioner" will include both the student and his father who represented him.

## **Response to the Petition for Review**

Respondent argues that the Petitioner's claims of "cover-ups" and discrimination were beyond the purview of the IHO and, hence, the Board of Special Education Appeals. Such claims should be pursued in civil court, not in the Article 7 process. Further, Respondent contends Petitioner's other claims of misconduct and discrimination are not supported by the evidence.

Respondent contends the teachers' licenses entered into the record are evidence that Petitioner's claim the school did not provide special education teachers to Petitioner in accordance with his IEP is untrue. Further the Respondent argues, nothing in the IEP requires a licensed special education teacher to deliver services to Petitioner and this is further supported by the facts in the record that indicate Petitioner earned credit in math due to the efforts of the regular education teacher at the AEP.

Respondent contends that Petitioner's argument he was promised credits for the entire semester is adequately addressed by the IHO's decision.

Respondent argues that the Social Security Administration (SSA) records for which Petitioner sought medical releases dated back nearly six years and were not included or mentioned in the records transferred to Respondent when Petitioner enrolled. Prior to Petitioner's misconduct, no mention of these records was ever made by Petitioner. When Respondent learned that Petitioner wanted the SSA records considered, arrangements were made to obtain those records. The IHO fully considered those records in deciding whether Respondent had identified all of Student's disabilities.

### **REVIEW BY THE STATE BOARD OF SPECIAL EDUCATION APPEALS**

On November 6, 2006, 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 BSEA is a three-member administrative appellate body appointed by the State Superintendent of Public Instruction pursuant to 511 IAC 7-30-4(a). In the conduct of its review, the BSEA is to review the entire record to ensure due process hearing procedures were consistent with the requirements of 511 IAC 7-30-3. The BSEA will not disturb the Findings of Fact, Conclusions of Law, or Orders of an IHO except where the BSEA determines either a Finding of Fact, Conclusion of Law, or Order determined or reached by the IHO is arbitrary or capricious; an abuse of discretion; contrary to law, contrary to a constitutional right power, privilege, or immunity; in excess of the IHO's jurisdiction; reached in violation of established procedure; or unsupported by substantial evidence.

511 IAC 7-30-4(j). The BSEA has jurisdiction to determine this matter. 511 IAC 7-30-4(h).

2. The Student timely filed a Petition for Review.
3. Petitioner presented no evidence to support Issue No. 1. Petitioner's expulsion for possession of illegal drugs was supported by evidence and testimony. The IHO's Findings of Fact and Conclusions of Law are accepted by the BSEA.
4. Findings of Fact Nos.: F1.4, F2.1, F2.5, F3.4, and Conclusions of Law Nos.: C1.1., C2.1, C2.2., C2.3, C3.1, demonstrate the IHO considered Petitioner's disability. Therefore, Petitioner's allegation stated in Issue No. 2 is not supported by the record.
5. Petitioner's allegation that "false school book allegations" (Issue No. 3) were made is unsupported by the evidence and testimony. The IHO's Findings of Fact and Conclusions of Law are supported by the record and accepted by the BSEA.
6. A Due Process Hearing, under Article 7, is not the forum for an allegation of racial discrimination (Issue 4). 511 IAC 7-30-3. The BSEA saw nothing in the proceedings to substantiate Petitioner's allegations of discrimination.
7. The BSEA accepts the IHO's Findings of Facts and Conclusions of Law as to Issue No. 5. The Indiana Code (I.C. 20-33-8-15) does not limit expulsion for drug possession to forty-five (45) days as Petitioner alleges.
8. The record and testimony given at the hearing support the IHO's Findings of Fact which must be based upon evidence which is substantial and reliable. I.C. § 4-21.5-3-27(d). The IHO's Conclusion of Law No.C0.2 recognizes the statements and comments made by Petitioner. The BSEA accepts the IHO's Findings of Fact and Conclusions of Law with respect to Issue No. 6, as to whether or not the IHO should have relied upon Petitioner's statements or included them in her decision.
8. The evidence in the record includes the teaching licenses of teachers assigned to the AEP. Petitioner's allegations that the teachers did not have contact with Petitioner is addressed by the IHO in Findings of Fact No. F3.10, F3.11, and Conclusions of Law No.3.2. The BSEA accepts the IHO's Findings of Fact and Conclusions of Law with respect to Issue No. 7.
9. Issue No. 8, related to Respondent's staff knowledge of medical release forms is not relevant to the IHO's decision. The Social Security Administration record is part of the record as is a release of information form signed by Petitioner.

### **Orders**

After careful and thorough consideration of the foregoing, the Board of Special Education Appeals rules as follows:

1. The IHO's decision is affirmed in its entirety.
2. Any allegation of error in the Petition for Review not specifically addressed above is deemed denied.

Date: November 6, 2006

/s/ Ray Quist  
Ray Quist, Ph.D., 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 IA 7-30-4(n).