

# Indiana Board of Special Education Appeals



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## BEFORE THE INDIANA BOARD OF SPECIAL EDUCATION APPEALS

**In the Matter of Y.E.** )  
**and the** )  
**Fort Wayne Community Schools** )  
 )  
 ) **Art. 7 Hearing No. HR 248-2008**  
 )  
**Appeal from the Decision of:** ) **Status: Closed to the Public**  
**Christina Sepiol, Esq.** )  
**Independent Hearing Officer** )

### COMBINED FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND ORDERS

#### Procedural History

A request for a due process hearing was initiated by the Student<sup>1</sup> in a letter dated March 21, 2008 and received by the Indiana Department of Education, Division of Exceptional Learners, on March 31, 2008. Christina Sepiol, Esq. was appointed as the Independent Hearing Officer (IHO) on March 31, 2008. A Preliminary Scheduling Order, dated April 8, 2008, was mailed to both parties. The School informed the IHO that it did not receive the Order; a copy was faxed to the School on April 18, 2008.

In a letter dated April 18, 2008, the parties indicated that they wished to waive both the resolution session and mediation. A telephonic prehearing conference was scheduled for May 2, 2008. During the prehearing conference the parties were advised of their rights, and the issues were framed for hearing. The hearing was set for May 30, 2008. The Student was represented by her mother and the School was represented by William L. Sweet, Jr., Esq.

The following issues were heard at the hearing, with the burden of proof upon the Student to establish the factual basis for said issues.

1. Was the transfer to Blackhawk School during the 2007-08 school year appropriate, specifically allowing the parent to have information in advance of the transfer so as to make an informed decision?
2. Did the School follow the Behavior Intervention Plan (BIP) for the 2007-2008 school year, specifically at Lane Middle School in August 2007 and during the Student's enrollment at Blackhawk?
3. Has the educational record of the Student been altered?

<sup>1</sup> The term "Student" shall refer to the Student or Student's parents, unless otherwise indicated.

4. Has the School falsified information regarding a disciplinary referral, specifically with regard to an incident on February 8, 2008 and a subsequent suspension?

### **The Written Decision of the IHO**

The IHO issued her decision on June 6, 2008. She determined six Findings of Fact and four Conclusions of Law.<sup>2</sup>

### **The IHO's Findings of Fact**

1. The Student qualifies for special education under the Mild Mental Disability category.
2. For the 2006-2007 school year, the Student attended Lane Middle School.
3. For the 2007-2008 school year, the Student started at Lane Middle School but was given the opportunity for a welfare transfer to Blackhawk Middle School. The parent agreed to the transfer based on the information that was given to her at the time.
4. The Student's Behavior Intervention Plan was forwarded to Blackhawk Middle School for implementation.
5. The Student exhibited behavioral challenges to the Blackhawk Middle School environment and, as a result, the welfare transfer was revoked. The Student returned to her home school, Lane Middle School, in January, 2008.
6. The Student engaged in inappropriate bus behavior on February 8, 2008. As a result, the Student was placed at Ward School and thereafter provided homebound instruction.

### **The IHO's Conclusions of Law**

#### **Issue #1**

1. The testimony and evidence support that the parent met with Ms. Jennifer Peckham, the principal of Lane School, to discuss the Student's behavioral challenges and the parent's concerns regarding the same. Additionally, the parent had concerns about the learning environment at Lane School. Ms. Peckham outlined the option of a welfare transfer and the parent agreed to its implementation. The parent was referred to the principal at Blackhawk School for purposes of a meeting to further explore this option. The parent understood that the Student's BIP would be transferred to Blackhawk School and implemented at that site. She was unaware, because it was not fully explained, of the administration's access to the disciplinary file.

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<sup>2</sup> The IHO's decision is reproduced in its entirety. It is edited only as to format. The substance of the IHO's decision remains intact.

Specifically, the parent thought that the disciplinary file would not be accessed by administration at Blackhawk School in order to give the Student “a fresh start.”

After the Student engaged in disruptive behavior at Blackhawk School, the principal did access the disciplinary file and obtained information about the Student’s disciplinary history. The parent asserted that this information compromised the “fresh start” concept and ultimately led to the revocation of the welfare transfer.

Although the parent may have decided differently with different information, there was no testimony or evidence to support that the omission of information was done with intent or malice. The Blackhawk principal did not access the disciplinary file until had reason to do so. He personally worked with the Student in an effort to improve her behavior through office consultation. Although he originally wanted to revoke the welfare transfer sooner, he refrained from doing so until months after his initial decision. Accordingly, the transfer to Blackhawk School is deemed to have been an appropriate option.

#### **Issue #2**

2. The staff at both Lane and Blackhawk Schools consistently testified that they were aware of the BIP and made efforts to implement it. Although the parent believed that she should have been made aware of incidents on a more immediate basis, there was ample testimony of the frequent contacts made with the parent. To the parent’s credit, she presented and was thought of by the staff as a very involved parent. She did not make excuses for her daughter’s behavior and held her daughter responsible for any acts of misbehavior. The Schools tried to address the Student’s ongoing behavioral challenges and in the process, may have refrained from contacting the parent. As with Issue #1 however, there was no malice or ill intent in such action. A school should be responsible for addressing the needs of its students on a routine basis. There was nothing to support that the BIP was not being followed.

#### **Issue #3**

3. There was much testimony regarding the educational record of the Student and the consistency in which records were maintained. At one point, referrals were deleted from the record pursuant to parent concern over the implementation of the BIP and proper procedure regarding parent notification. Later in time, it appears as if these referrals resurfaced. However, the Student’s current disciplinary file is accurate. Any errors in the record cannot be attributable to anything less than a large computer network that is utilized by several schools at one time. Falsification of the record implies malicious intent and there was no evidence or testimony to support that accusation.

#### **Issue #4**

4. The parent continues to have questions regarding the event of February 8, 2008 involving her daughter and a bus incident. There seems to be a significant disconnect between the information gleaned from the Student(s) and the bus personnel. The school opted for the account made by the bus staff and acted accordingly. Neither

party holds the monopoly on truth and this hearing officer has not been appointed to review disciplinary matters. A finding of falsification of the incident, from the testimony and evidence presented, cannot be found.

### **The IHO's Orders**

Based on the Findings of Fact and Conclusions of Law, the IHO issued four Orders

1. The schools have been found to be in compliance with the requirement for implementation of the Student's BIP.
2. The schools have been found to be cleared of any allegation that records or incidents have been falsified, resulting in detriment to the Student.
3. Lane School staff have been found to have provided enough information to the parent from which to make an informed decision regarding the welfare transfer.
4. The orders are to be implemented no later than thirty (30) calendar days from the date the independent hearing officer's written decision is received, unless the decision is appealed to the Board of Special Education Appeals per 511 IAC 7-30-4.

### **APPEAL TO THE BOARD OF SPECIAL EDUCATION APPEALS**

#### **Procedural History of the Appeal**

On July 14, 2008, the Indiana Department of Education received a letter from the Student that purportedly constituted an appeal of the findings of Christina Sepiol, the Hearing Officer in this matter. The letter was undated and difficult to understand. Ms. Susan Langston, Office Manager for the Office of Legal Affairs, sent a letter to the Student asking that she clarify her letter and that she specify her disagreements with the Findings of Fact, Conclusions of Law, and Orders. The Student did not respond.

On September 16, 2008, Dana Long, Assistant Director of the Office of Legal Affairs sent the Student another letter seeking clarification and asking that she comply with the procedural requirements by specifying the portions of the findings, conclusions, and orders with which she disagrees. The Student was instructed to send her specific objections no later than September 26, 2008. On September 26, 2008 the Student sent a copy of her objections via facsimile to the Indiana Department of Education. Her Petition for Review was sent to Mr. William L. Sweet, attorney for Fort Wayne Community Schools, on September 29, 2008. On October 3, 2008, the School filed its response to the Student's Petition for Review.

#### **Student's Petition for Review**

The Student does not identify any specific findings, conclusions, or orders to which she objects. Instead, she makes a general objection to the IHO's findings, conclusions and orders.

## **School's Response to the Petition for Review**

In a short letter, the School states that the Findings of the Hearing Officer adequately address the issues discussed in the Petition. Additionally, the School notes that the Student's argument regarding the de-escalation strategies of the Behavior Intervention Plan is factually implausible.

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

### **BSEA Review**

On October 10, 2008, the BSEA convened in Indianapolis for the purpose of conducting its review in this matter. All three members of BSEA participated. Each had received and reviewed the record from the due process hearing below, including the Petition for Review and the School's Response to the Petition for Review. Based upon the record as a whole, the requirements of state and federal law, the Petition for Review, and the Response thereto the BSEA finds the following to be true and relevant and determines as follows. Because the IHO failed to make separately stated findings of fact to support the conclusions of law, the BSEA supplements the IHO's decision with the following findings of fact.

### **FINDINGS OF FACT**

1. The Student in this matter is a 13 year old middle school student in the Fort Wayne Community School Corporation. She qualifies for special education services as a result of a mild mental disability. The Student's mother agreed to the services included in the Student's most recent IEP. At the beginning of the 2007-2008 school year the Student attended Lane Middle School. The Student's BIP provided for discipline to be imposed pursuant to the school's behavior code. This resulted in conflicts between the Student and school staff, conflicts between the Student and other students, and numerous disciplinary referrals. Due to these referrals and ongoing conflicts at Lane Middle School the Student was offered a "welfare and adjustment" transfer to Blackhawk Middle School.
2. Fort Wayne Community School Corporation provides an opportunity for students needing a "clean slate" to transfer intra-district to another school in the school corporation. The transfer is known as a "welfare and adjustment transfer", and it is at the discretion of the principals of the transferring and receiving schools. Since a transfer under this policy is separate from the recommendations of a Case Conference Committee, the transfer is made with the consent of the parent. Student's parent agreed to the transfer of the Student to Blackhawk Middle School from Lane Middle School pursuant to this policy.
3. The Student's mother was given a brief explanation of the School's welfare and adjustment transfer policy. The Student's mother was informed that the Student's

BIP would go to Blackhawk but her disciplinary records would not follow her to the school. The Student would have a clean slate at Blackhawk.

4. School personnel and the parent agreed that the welfare and adjustment transfer would be in the Student's best interest. All parties believed the Student would benefit from a clean start at Blackhawk.
5. Lane Middle School did not transfer the Student's disciplinary history, but the records remained in the School Corporation's computer system which was accessible to all schools. This information was not shared with the Student's mother.
6. The Student engaged in inappropriate behavior at Blackhawk, which prompted the Principal to access her disciplinary records at Lane Middle School. Based on this information and the Student's ongoing conflicts, the Student was returned to Lane Middle School.
7. The Student's mother contends that if she had known the Principal at Blackhawk could access her daughter's disciplinary history, she would not have agreed to the welfare and adjustment transfer.
8. The mother's misunderstanding or lack of information may have impacted her decision regarding the transfer. However, her lack of understanding did not negate consent and did not result in a denial of FAPE. The Student's mother was given sufficient information to make an informed decision regarding her daughter's welfare and adjustment transfer.
9. The transfer was not a case conference committee decision. The transfer was pursuant to the School's intra-district policy and it merely changed the location where the Student received educational services. It did not impact the level or type of services the Student received.
10. The Student's previous BIPs required School personnel to call the Student's mother for significant behavioral problems.
11. The 2007-2008 BIP did not require school personnel to call the mother. However, Lane Middle School personnel continued to contact the mother on certain occasions when they deemed it appropriate to deal with behavioral problems and conflicts involving the Student.
12. The failure of School personnel to contact the mother on other occasions led the mother to conclude that school personnel were not using the de-escalation strategies included in the Student's BIP

Both Lane and Blackhawk were unable to meet the mother's expectation that she would be called whenever her daughter experienced conflict. Immediate action was

required in some instances, therefore the school did not have time to contact the mother for her come to the school and deescalate the situation.

13. The IEP did not specify circumstances which would trigger a call to the mother.
14. Any deviations from the BIP were minor.
15. The Student's educational records in the SMART system were changed to correct an administrative error. Specifically, a code was used to indicate that the Student's mother had been contacted for some disciplinary referrals. This was factually incorrect. The Student's mother had not been contacted.
16. The Student's mother requested that the error be corrected and the Principal agreed. However, rather than removing the incorrect code the entire referral was removed.
17. Although the witness reports of the 2/8/08 incident differ, there is no evidence indicating that the school was unreasonable in accepting the bus driver's version of events.

### **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 7-45-9(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 7-45-7. 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 determine 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 7-45-9(j). The Student timely filed a Petition for Review. The BSEA has jurisdiction to determine this matter. 511 IAC 7-45-9(i).
2. Article 7 hearings are conducted pursuant to the Administrative Orders and Procedures Act, I.C. 4-21.5-3 *et seq.* and 511 IAC 7-45-7.
3. The BSEA's review of the entire record indicates that the due process hearing procedures were consistent with the requirements 511 IAC 7-45-7.
4. A student's right to a free appropriate education does not entitle that student to a "perfect" IEP or the perfect implementation of that IEP. Although the implementation of the Student's BIP may have been imperfect, both Lane and Blackhawk Middle Schools substantially complied with the Student's BIP. These deviations did not deny the student a free appropriate education.

5. The Student had the burden of proving to the IHO, by a preponderance of evidence, that the School's actions or inactions violated the Student's procedural or substantive legal rights to a free appropriate education.
6. The IHO's ultimate determination that the Student had not presented sufficient relevant evidence to meet that burden complies with the standard required by 511IAC 7-45-9(j) as set out above and should be upheld by the BSEA.
7. The BSEA's review of the entire record does not support any finding that actions or inactions of the School violated the procedural or substantive provisions of Article 7.
8. Because no violation of Article 7 was found, no orders should have been issued.

### **ORDERS**

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

1. The BSEA upholds the IHO's determination that the School did not violate the procedural or substantive rights of the student under Article 7.
2. Any allegation of error in the Petition for Review not specifically addressed above is deemed denied.

DATE: October 27, 2008

/s/Cynthia Dewes \_\_\_\_\_  
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 7-45-9(n).