

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

In the Matter of D.E. and the)
Michigan City Area Schools) **Article 7 Hearing No. 1134.99**

The hearing and appeal issues were determined to be:

1. Whether the school’s proposed Individualized Education Program (IEP) and placement provide the student with an appropriate education in the least restrictive environment, including issues related to the location and physical nature of the classroom.
2. Whether the parents were denied an opportunity to meaningfully participate in the special education decision making process of their child, including IEP development and placement decisions and communication training.

PROCEDURAL HISTORY OF THE DUE PROCESS HEARING

It should be noted from the outset that any references to the “Student” or the “Student’s representative” include the parent or parents of the student.

- November 17, 1999* The Student filed a request for a due process hearing with the Indiana Department of Education (IDOE).
- November 19, 1999* Joseph R. McKinney, J.D., Ed.D., was appointed Independent Hearing Officer (IHO) under 511 IAC 7-15-5.
- December 3, 1999* A prehearing conference was held telephonically. The hearing was set for January 4-5, 2000. The School and Student agreed to waive the 45-day deadline for a hearing decision. A new hearing decision date was set for January 20, 2000 which was later extended to February 7, 2000, by

agreement of the parties.

December 27, 1999 Deadline for the exchange of witness lists and exhibit lists.

January 4-5, 2000 The due process hearing was conducted.

February 7, 2000 The IHO issued his written decision.

The due process hearing was conducted over two days -- January 4 and 5, 2000. The IHO's decision found that the student is a seventeen-year-old who is in the tenth grade at Michigan City High School. The student was diagnosed with autism, and mild mental retardation in October 1987, at the age of five. An evaluation conducted in 1988 when the student was six years old indicated severe delays in language and language expression. Adaptive behavior skills were also deemed to be delayed.

The student receives special education services, and his identified disability is autism. The school and the parents previously requested a due process hearing in September 1997. On January 9, 1998, the IHO rendered his written decision in that case. The parents appealed the January 9, 1998 decision of the IHO to the Board of Special Education Appeals (BSEA). The BSEA heard oral argument, and the BSEA issued its unanimous written decision in that case on April 17, 1998.

The student attended Michigan City Junior High School for the ninth grade during the 1998-99 school year. The student made progress in meeting his IEP goals during the 1998-99 school year, however, the parents were concerned about the student's progress in developing communication skills during the 1998-99 school year. The school and parents met to develop or amend the student's 1999-2000 IEP, usually in the form of case conference committee meetings. The school and the parents disagree as to the meaning, interpretation and implementation of the BSEA's finding of fact and conclusion of law number 14 which reads in pertinent part ". . .the BSEA determines that the parent will provide translation training at the beginning of school terms and any other times as determined by a case conference committee. The training will be provided in the classroom under the direction of the teacher or off-site." The special education director and the

student's 10th grade teachers believe that training in translation by the mother would be beneficial to them in working with the student.

A case conference meeting was convened on April 27, 1999 where the student's communication needs were addressed, as well as a discussion about the student's placement. The parents indicated that they did not think the student's language arts class was going well. The parents were concerned that the language arts work was too advanced for the student. A case conference meeting was held on May 12, 1999. The student's social skills/socialization needs were discussed. Eligibility for special education was determined under autism. The parents requested that "communication disorder" not be listed as an eligibility category. The case conference committee made progress developing an IEP in the area of speech/language.

A case conference meeting was convened on May 24, 1999. The reading teacher presented reading/language arts proposed goals for the student. The mother expressed concerns about not having enough information about classes at the high school, and asked to observe 25 classes at the high school. The committee worked on reading and written language skills goals and objectives. A case conference committee meeting was held on June 1, 1999. The parents discussed math and socialization needs and goals with school personnel, including the principal of the high school. A case conference meeting was convened on June 9, 1999 to continue to develop, review and revise the student's IEP for the 1999-2000 school year. The parents were unable to stay to complete the IEP.

A case conference meeting was held on June 14, 1999. The parents were notified that the IEP would be completed at this case conference. The parents did not attend this meeting. The case conference committee discussed the student's least restrictive environment, and social skill needs. The Secondary Supervisor for special education and the Teacher of Record (TOR) also discussed how they would instruct teachers on the use of a written log for home/school communication. The committee also discussed translation training by the mother, and how it would be scheduled through the TOR. On June 28, 1999 the parents indicated that they disagreed with the school's

proposed IEP.

Another case conference was convened on July 22, 1999. The mother requested that the student be taught reading only on a one-on-one basis. Teacher translation training was discussed, and the mother indicated that she would like to observe classes and then conduct translation training. The school agreed that translation training would be arranged with individual teachers through the TOR. Some of the student's teachers and the student's para-professionals received translation training from the mother.

A case conference meeting was held on July 28, 1999. The mother indicated that she felt there was friction between herself and the TOR. The mother asked that the meeting be terminated. At a meeting on August 18, 1999 with the special education director and the school's attorney, the parents indicated that they would home school the student for math and language arts. On August 24, 1999, the parents gave written permission for the 1999-2000 school year IEP to be implemented.

A case conference committee meeting was held on September 3, 1999 to address the parents' decision to have the student attend a pre-vocational English class instead of home schooling for English. The student's mother participated in the meeting. At a case conference committee meeting on November 2, 1999, the parents expressed their concerns about several of the student's classes. A case conference was held on November 16, 1999 to discuss the parents' concerns regarding the student's reading program. The parents notified the school that they did not wish to meet.

The student's proposed 1999-2000 school year IEP contains goals for reading, written language, social skills, and communication. The school is also prepared to provide services in math. The case conference committee agreed that while in school, the student would have general education instruction for most of the school day, with special education instruction or related services provided in a resource room for part of the day. The student would also have a paraprofessional

with him all day to assist with communication. The student was making progress in the classes he was attending while in school. The student could not advance toward the annual goals and progress in the general curriculum without program modification, substantial adaptations, and support for school personnel, provided by the school. The special education director and TOR testified that the student's IEP is appropriate, though both were concerned about his home-school.

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

Conclusions of Law

1. The school's proposed IEP (found at S-1) and placement provide the student with an appropriate education in the least restrictive environment in compliance with Article 7. The special education classroom, Room 0109 is in compliance with 511 IAC 7-6-4.
2. The parents have not been denied an opportunity to meaningfully participate in the special education decision making process of their child, including I.E.P. development and placement decisions and communication (translation) training. Evidence and testimony clearly demonstrate that the school painstakingly listened to parental concerns and information in considering, developing and reviewing the student's I.E.P. The school and its teachers made reasonable and good faith efforts to facilitate translation training by the mother in accordance with the 1998 BSEA decision.

The IHO's Order read as follows:

The school is Ordered to continue to offer and implement the proposed I.E.P. in its entirety.

PROCEDURAL HISTORY OF THE APPEAL

The IHO's written decision was issued on February 7, 2000. On February 25, 2000, the Student requested an extension of time in order to prepare a Petition for Review. The Indiana Board of Special Education Appeals (BSEA), by order dated February 25, 2000, granted the Student until close of business on March 22, 2000, to prepare and file his Petition for Review. The Student's Petition for Review was received on March 22, 2000. On March 24, 2000, the School filed a

Motion to Dismiss and/or Request for Extension of Time to Respond to Petition for Review. The BSEA, by order dated March 24, 2000, granted the School an extension of time to file its Response to the Petition for Review until close of business on April 17, 2000. The BSEA, by order dated March 24, 2000, denied the School's Motion to Dismiss.

The BSEA notified the parties by order dated April 5, 2000, that it would conduct its review on May 11, 2000, beginning at 10:00 a.m., but without oral argument and without the presence of the parties. 511 IAC 7-15-6(k). The BSEA also notified the parties that the review would be tape recorded and a transcript prepared. A copy of the transcript is to be sent to the representatives of the parties when available.

Student's Petition for Review

The Student's Petition for Review was timely filed on March 22, 2000. The Student appealed for the following reasons:

IHO's Findings of Fact

The Student objects to Findings of Fact #21, #22, #23, #24, #26, #27, #28, #29, and #32.

The Student objects to Finding of Fact #21, #22 and #23 on the grounds that the IHO used five sentences or less to summarize three case conferences and did not state that the parent was only allowed to observe four classes. The Student claims that the IHO omitted mentioning the subject matter and discussion that dominated all of these case conference meetings.

The Student objects to Finding of Fact #24 on the grounds that the IHO did not state that the parents had informed the School that they were not planning to attend the case conference meeting held on June 14, 1999 because they were initiating a Due Process Hearing.

The Student objects to Finding of Fact #26, #27 and #28 on the grounds that the IHO summarized what he called "case conferences" when these meetings were "mediation meetings." The Student

also objects to Finding of Fact #28 on the grounds that the IHO did not state that the parents had proposed home-school as a solution to alleviate the pressures of providing autism and translation training for the Math and Language Arts teachers.

The Student objects to Finding of Fact #29 on the grounds that the IHO did not state that August 24, 1999 was the date the parents wrote to withdraw the Due Process Hearing request.

The Student objects to Finding of Fact #32 on the grounds that the IHO did not state that the parents had informed the School that they were initiating a Due Process Hearing.

The Student claims the IHO ignored facts that were germane to the issue of “meaningful involvement” as follows: 1) Petitioner’s exhibit P8-19 is a letter to the Special Education Director which was written in response to the Director’s “veto powers” on who could attend case conferences. 2) Petitioner’s exhibit P8-7 is a letter to the Secondary coordinator questioning why a case conference had continued after the parents left the meeting. 3) The School’s decision to use a written log rather than micro-cassette tape records for home-to-school communication hampered the meaningful involvement of the parents in the special education decision making process. 4) The School’s decision to not switch the Student to a different Language Art teacher hampered the meaningful involvement of the parents in the special education decision making process. 5) The School’s decision to conduct case conference meetings on June 14, 1999 and October 16, 1999, after the parents had informed the School that they were seeking a Due Process Hearing. 6) The School’s Special Education Director never wanted the translation training, and the School’s parameters for translation training made the translation training ineffective.

The Student claims the IHO ignored facts that were germane to the issue of an “appropriate education in the least restrictive environment” when the evidence and testimony showed that the School’s special education self-contained classrooms have no curriculum.

School’s Response to the Petition for Review

The School filed its Response to the Petition for Review on April 5, 2000. In summary, the School argues that there is no basis for overturning the IHO's decision as the IHO's findings of fact and conclusions of law are correct and based upon the evidence. The School argues:

1. The IHO's Findings of Fact #21, #22, #23, and 24 are accurate and based upon the evidence. The parents are in error as to the purpose of a finding of fact, and the parents' claim that the IHO's findings are too brief is no reason for overturning them.

2. The IHO's Findings of Fact #26, #27, and #28 are supported by substantial evidence. The parents are in error when they suggest that the July 22, 1999 and July 28, 1999 meetings were not case conference meetings. Only the meeting on August 18, 1999 was a meeting and not a case conference. The parents have misstated the evidence concerning their decision to home school their child.

3. The IHO's Finding of Fact #29 is supported by the evidence and the fact that the parents decided to withdraw their due process hearing request is irrelevant and has nothing to do with the two issues that were heard by the IHO.

4. The IHO's Finding of Fact #32 is accurate and based on the evidence, and that the IHO's decision to not include a statement which the parents believe is relevant does not render the finding inappropriate or inaccurate.

5. The parents' "explanation" of the conclusion that should be reached from Petitioner's exhibit P8-19 is inappropriate and should be struck. The parents' attempt to explain and interpret Petitioner's exhibit P8-7 is inappropriate as the evidence speaks for itself and their comments are unsworn testimony and cannot form the basis for the BSEA to overturn the IHO's decision. This letter, dated November 4, 1998, has nothing to do with the two issues in the instant case. The parents' have mischaracterized testimony in the transcript. All of the information provided by the parents in the petition should be struck as an attempt to provide unsworn testimony and incorrectly

and inaccurately editorialize on the testimony before the IHO.

6. The parents characterization of the “Case Conference Chairperson Acting as Conference of One” is an attempt by the parents to testify and present new evidence to the BSEA which is inappropriate.

7. The School argues that the parents incorrectly refer to a case conference on October 16, 1999 when there was no conference held on that date, as is clear in the list of all conferences found at S1.

8. The allegations by the parents that the School has failed to properly implement the BSEA’s April 17, 1998 decision with regards to translation training is a complainable issue which is not subject to appeal before the BSEA. The parents’ personal attack on the School’s Director of Special Education is inappropriate and all of their statements in this regard should be stricken.

9. The parents address the issue of curriculum incorrectly. There is no basis for the parents’ allegations of no curriculum. Furthermore, this is not one of the issues before the IHO. The parents’ suggestion that the BSEA “investigate this” is inappropriate.

10. The parents have raised no specific error as to any other Finding of Fact or any Conclusions of Law, therefore, pursuant to 511 IAC 7-15-6 all other Findings of Fact and Conclusions of Law must be deemed to be accepted and cannot be subject to further review by the BSEA. The School also claims that the parents have made no allegation of error concerning the IHO’s Order.

11. The parents’ statement “In ending, we implore you to help us” is inappropriate and should be struck. The parents are attempting to bring up matters which they allege to have occurred since the IHO’s decision, and may not be raised at this point in an appeal.

REVIEW BY THE BOARD OF SPECIAL EDUCATION APPEALS

The BSEA convened on Thursday, May 11, 2000, to review the Petition for Review and the Response thereto in consideration of the record as a whole. All members were present and had reviewed the record. The review was tape recorded. A transcript will be made from the tape and provided to the parties by the IDOE.

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

Combined Findings of Fact and Conclusions of Law

1. The BSEA has jurisdiction in the matter pursuant to 511 IAC 7-15-6.
2. The BSEA accepts Findings of Fact #21, #22 and #23 as written.
3. The BSEA accepts Finding of Fact #24 as written.
4. The BSEA accepts Findings of Fact #26, #27 and #28 as written.
5. The BSEA accepts Finding of Fact #29 as written.
6. The BSEA accepts Finding of Fact #32 as written.

Due Process Hearing Issue #2 — Meaningful Involvement

The BSEA will clarify Mr. Therrien's remarks which were made at the last BSEA hearing by placing emphasis as follows:

“Rightly or wrongly, I’m perceiving the parents’ role here in the classroom as very, very similar to an aid and that they don’t disrupt instruction but they are available to help the student understand — make sure that communication is taking place, and if indeed asked, can help the teacher understand.”

The BSEA discussed and considered the Student's claims that the IHO ignored facts that were germane to the issue of “meaningful involvement” as follows:

1. The Special Education Director can determine the composition of who attends the case conference committee in terms with Article 7. The reading teacher was not able to come, and there is no indication that there had been a request and the Special Education Director had said “no.”
2. A case conference can be held without the presence of the parents so there is no violation.

3. The School can make the decision with regards to a written log or a micro-cassette tape record for home-to-school communication.
4. It is the School's responsibility to schedule classes so that the School's decision to not switch the Student to a different Language Art teacher is not a legitimate complaint.
5. The School's decision to conduct case conference meetings on June 14, 1999 and October 16, 1999, after the parents had informed the School that they were seeking a Due Process Hearing is not relevant.
6. It is a personal impression of the parents that the Special Education Director never wanted the translation training.

Due Process Hearing Issue #1—Appropriate Education in the Least Restrictive Environment

The BSEA discussed and considered the Student's claim that the IHO ignored facts that were germane to the issue of an "appropriate education in the least restrictive environment" as follows:

1. Self-contained classrooms have a curriculum. It is not necessary to have a specific textbook for there to be a curriculum.
2. There is no reason to change the IHO's decision.

Orders of the Indiana Board of Special Education Appeals

In consideration of the above Combined Findings of Fact and Conclusions of Law, the Indiana Board of Special Education Appeals now holds:

1. The decision of the IHO is upheld.
2. Any other matters not specifically addressed by the BSEA in this written decision are hereby deemed denied or dismissed.

Date: May 15, 2000

/s/Cynthia Dewes
Cynthia Dewes, Chair
Board of Special Education Appeals

Appeal Right

Any party aggrieved by the written decision of the Indiana Board of Special Education Appeals has thirty (30) calendar days from receipt of this decision to request judicial appeal from a civil

court with jurisdiction, as provided by I.C. 4-21.5-5-5 and 511 IAC 7-15-6(p).