

# Indiana Board of Special Education Appeals



Room 229, State House - Indianapolis, IN 46204-2798  
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## BEFORE THE INDIANA BOARD OF SPECIAL EDUCATION APPEALS

In the Matter of A.K., )  
And )  
MSD Mount Vernon, and ) **Article 7 Hearing No. 1437.04**  
Posey Special Education Cooperative )  
)  
Appeal from a Decision by )  
Laureanne Nordstrom, J.D. )  
Independent Hearing Officer )

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

#### **Procedural History**

The Student<sup>1</sup> is a sixteen-year-old high school student. MSD Mount Vernon and Posey Special Education Cooperative will be referred to as the "School." A request for a due process hearing was initiated by the Student in a letter dated May 24, 2004 to the Mount Vernon Junior High School. This letter was forwarded to and received by the Indiana Department of Education on June 2, 2004. Laureanne Nordstrom, J.D., was appointed on June 3, 2004, as the Independent Hearing Officer (IHO), with an original date for rendering a decision of July 17, 2004.

A prehearing conference was conducted via telephone on July 14, 2004. The Student requested an extension of time for the hearing to be conducted and the written decision to be issued. On July 16, 2004, the IHO issued an order granting the request and extended the deadline for conducting the hearing and issuing a written decision to and including August 31, 2004.

A prehearing conference was conducted via telephone on July 27, 2004. The Student requested an extension of time for the hearing to be conducted and the written decision to be issued. On August 2, 2004, the IHO issued an order granting the request and extended the deadline for issuing a written decision to and including September 27, 2004. On August 25, 2004, the Student requested an extension of time for the hearing to be conducted and the written decision to be issued. On August 25, 2005, the IHO issued an order which vacated the August 31, and September 1-3, 2004 hearing dates and extended the decision deadline to November 24, 2004.

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<sup>1</sup> "Student" shall refer to the Student and the Student's Parent, unless otherwise indicated.

On September 24, 2004, a prehearing conference was held for the purpose of scheduling the due process hearing.

The due process hearing was held on October 25, 26, and 27, 2004. Testimonial evidence was heard, and the exhibits of both parties were admitted into evidence without objection. At the conclusion of the hearing, the IHO requested that the attorneys submit proposed findings of fact and conclusions of law. On October 27, 2004, the Student requested an extension of time in order to prepare the proposed findings and conclusions and for the decision to be issued. On November 1, 2004, the IHO issued an order granting the request and extended the deadline for issuing a written decision to and including December 1, 2004.

The specific issues for the hearing were as follows:

1. Whether the school provided appropriate IEP's including an appropriate and timely functional behavior assessment and behavior intervention plan, an appropriate and timely transition plan, counseling services, and extended school year services.
2. Whether the child was inappropriately prevented from participating in extracurricular activities as a result of his disabilities.
3. Whether the school responded in a timely and appropriate manner to the parent's requests for an independent evaluation, case conference committee meetings, and records containing personally identifiable information about the child.
4. Whether the child was being educated in the least restrictive environment and whether the child experienced inappropriate unilateral change of placement.
5. Whether the school gave the parent the requisite prior written notice about proposed changes in the child's programming, placement and services and whether the school gave the parent proper and timely notice of case conference committee meetings.
6. Whether the school has complied with the provisions of the child's IEP.

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

The IHO's written decision was issued on November 30, 2004. In her decision, she determined fifty-three (53) Findings of Fact. These Findings of Fact are reproduced below.

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

1. This matter is properly before the Independent Hearing Officer (IHO) pursuant to Indiana

Code, IC 4-21.5, et seq., 511 IAC 7-30-3, and the IHO has the authority to hear and rule upon all matters presented herein.

2. All Findings of Fact that can be deemed Conclusions of Law are hereby deemed Conclusions of Law. All Conclusions of Law that can be deemed Findings of Fact are hereby deemed Findings of Fact.
3. The Student is a sixteen (16) year-old high school student, currently receiving services from Posey County Special Services at Mount Vernon High School.
4. In preschool, the Student was identified as eligible for speech/language services, and he received those services during the 1992-1993 and 1993-1994 school years from the Posey County Special Services.
5. At the annual case review held April 13, 1994, based upon evaluation, the Student was determined to have reached age appropriate skills and was exited from the speech/language program. No formal exit evaluation was conducted.
6. On August 29, 1994, the Student entered Kindergarten at St. Matthew's school. He also attended St. Matthew's for first grade.
7. The Student attended second grade at Hedges Elementary School in the Mount Vernon School District (1996/1997).
8. Because Student was not progressing academically, he was defiant, and he demonstrated disruptive behavior, Posey County Special Services evaluated Student for possible special education services in October 1996. The Student was found eligible as a student with a learning disability.
9. Following the evaluation, the School held a case conference on October 17, 1996 and offered an IEP with goals and objectives in the areas of reading skills, Language Arts, and behavior. The Parent was present at the case conference.
10. The Parent refused special education services.
11. The Parent enrolled him in St. Matthew's School in August of 1997.
12. The Student repeated second grade at St. Matthew's and remained as a student in that school through the first semester of his fifth grade year.
13. When the Student was a fifth grader at St. Matthew's, he was evaluated at Deaconess Cross

Pointe Center due to his anger and fighting with others.

14. In February, 2001, the Student returned to the Mount Vernon public school system and enrolled in fifth grade at Marrs Elementary. He was not re-evaluated upon his return to the public school.
15. A few days into his sixth grade year, he was removed from Marrs by his Parent in order to be schooled at home.
16. On September 23, 2002, the Student's Parent asked Posey County Special Services to conduct a special education evaluation.
17. The evaluation was conducted and results were discussed at a case conference held October 22, 2002. The Parent was present at the case conference. The case conference committee found the Student to be eligible for special education services as an Other Health Impaired student. Although the Student had significant discrepancies in the areas of basic reading skills, reading comprehension, written expression, math reasoning, and math calculation, the case conference qualified him as Other Health Impaired due to the behavioral diagnoses noted in the prior Deaconess Cross Pointe evaluation.
18. The IEP developed on October 22, 2002 contained goals and objectives which directly addressed the Student's discrepancies in the areas of math and Language Arts, as well as social skills/behavioral difficulties. It also contained an identification of the Student's present levels of performance, goals and measurable objectives relating to the Student's areas of deficit, documentation of necessary aids and services to allow the Student to function in the general education setting, a statement of the degree to which the Student will participate in general education, a behavioral intervention plan, and information on the length and duration of services as well as how those services will be evaluated.
19. At the Parent's request, the case conference developed an interim behavioral intervention plan ('BIP') for the Student at the October 22, 2002 case conference. This plan was to be used until a more formal plan could be put forward.
20. Although the Parent was not entirely happy with the order of the behavioral consequences in the interim BIP, she signed permission for the implementation of the IEP, including the BIP, on October 28, 2002.
21. The Student re-enrolled in the public school on October 28, 2002 and began receiving services as a seventh grader. He received Language Arts and Mathematics training from the Special Education teacher and he also spent a resource period with that teacher.

22. On January 13, 2003, a case conference was held to finalize the BIP. The Parent was present at the case conference committee and signed permission for implementation of the IEP including the BIP.
23. There was varying testimony by the Special Education teacher and the Student's Parent as to the cause for the delay in finalizing the BIP; however, the interim BIP developed at the October 2002 case conference was in effect during this interim period.
24. The BIP concentrated on the Student's handling of conflict and use of inappropriate language in the school setting since these were the areas which were identified as problematic.
25. During the Student's seventh grade year (2002/2003), the Student received two days of in-school suspension (Alternative Educational Placement "AEP") and two days of out-of-school suspension. The out-of-school suspension was for fighting.

26. The Student's grades during seventh grade were:

<u>Subject</u>	<u>Sem 1</u>	<u>Sem 2</u>
Lang Arts	C	B+
Social Studies	U (F)	D
PhysEd	S	S
Math	C	B
Science	D	C
Expl Music	A+	
Health		B

27. On April 25, 2003, the case conference committee met to develop the Student's IEP for his eighth grade year. The Parent attended the case conference committee meeting.
28. The IEP developed on April 25, 2003 contained goals and objectives for the Student's eighth grade year. It also contained an identification of the Student's present levels of performance, goals and measurable objectives relating to the Student's areas of deficit, documentation of necessary aids and services to allow the Student to function in the general education setting, a statement of the degree to which the Student will participate in general education, an individualized transition plan, a behavioral intervention plan, and information on the length and duration of services as well as how those services will be evaluated.
29. During his eighth grade year (2003-2004), the Student received two days of in-school suspension (AEP) and eight days of out-of-school suspension. The out-of-school suspensions consisted of one three-day suspension followed shortly thereafter by a five-day suspension. Both of these suspensions were for inappropriate language and behavior towards adult

authority figures and occurred during the last month of school. Student also received eight detentions in eighth grade, ranging in length from 30 minutes to one week.

30. The Student failed the eighth grade ISTEP. The school sent Parent a letter dated January 29, 2004 indicating that Student might be retained in the eighth grade if his grades did not improve. The Student's grades during eighth grade were:

<u>Subject</u>	<u>Sem 1</u>	<u>Sem 2</u>
Lang Arts	B+	C+
Social Studies	U	U
PhysEd	S	S
Pre-Alg	D-	U
Science	U	U
Technology	C	
Health		D-
Visual Arts		D+

31. Particularly in eighth grade, the Student did not complete his school work and did not bring books home to do homework assignments. His Parent notified the school that Student never brings any homework home, and he was claiming that he completed it all at school. He had a resource period which was intended to give him time to complete class work. His Science teacher encouraged him to return to her classroom immediately after the school day ended in order to have one-on-one time to work on Science. However, he did not take advantage of this opportunity
32. Three of the Student's eighth grade general education teachers experienced few if any behavioral difficulties with the Student in the classroom setting.
33. The eighth grade Art teacher, whose class was less structured, did experience some behavioral difficulties with the Student, including a situation for which he received a five-day out-of-school suspension at the end of the 2003-2004 school year. The Student did not complete some of his art projects on time even though he was given additional time to complete them.
34. The Student's Special Education teacher, who worked with the Student during his 7<sup>th</sup> and 8<sup>th</sup> grade years, noticed an improvement in the Student's behavior over that time.
35. The Special Education teacher currently works with Student as a ninth grader as well, and he has observed that the Student is doing quite well both behaviorally and academically as a ninth grader, with the same BIP which he has had over the last several years.

36. The Student's BIP was addressed as a component of his IEP at each of his annual case reviews.
37. The Parent requested extended school year ("ESY") services. ESY services were considered at the Student's seventh and eighth grade annual case reviews, April 25, 2003 and April 13, 2004, and no need was found for continued services during the summer months.
38. The Parent has obtained ongoing community counseling services for the Student; however, his school-related counseling took place with the school counselor and, at times, a building administrator as prescribed by his IEP.
39. The Student did not try to attend school dances because of another student's experience of being turned away from a dance.
40. The Student did not attend the "reality store" because it took place on a day when he was in in-school suspension.
41. The Student attended the eighth grade day celebration, even though his suspensions should have kept him from attendance. All eighth graders, even those ineligible due to suspensions, attended the celebration.
42. The annual field trip to Holiday World was attended only by those students who had three grading periods on the honor roll or perfect attendance, a number which constituted less than half of the student body. The Student was not on the honor roll, nor did he have perfect attendance in either seventh or eighth grade and, therefore, he did not take part in the field trip.
43. Because of his grades, the Student was ineligible to participate in wrestling meets in the eighth grade; however, he was allowed to participate in wrestling practices, an opportunity which the Student chose not to accept. Satisfactory grades were a pre-requisite for participation in sports for all students.
44. On May 24, 2004, following his second suspension, the Student's teachers, members of the administration and personnel from the special education office met to consider the Student's BIP and how it should be handled during the last few days of the school year. The Parent, who was scheduled to attend, did not do so.
45. On May 24, 2004, the Parent filed a request for a special education hearing. That same letter contained a request for an independent educational evaluation. ("IEE").
46. The Director of Special Education responded to the Parent's request for an IEE with a

telephone call in May, in which she gave the Parent two preliminary names that she could check with regarding an outside evaluation. During that same telephone conversation, the Director requested parental permission for the outside evaluation, and when that was not received, sent the Parent a letter dated June 10, 2004. The Director later provided the Parent with a list of eleven outside evaluators after the due process hearing request was initiated. The Parent later reported that all of these evaluators claimed they had a conflict of interest; however, the Parent did choose one to perform the IEE.

47. On May 17, 2004, the Parent signed an authorization to release information for the purpose of obtaining all of Student's records. In the July 26, 2004 letter from her attorney, the Parent again asked for a copy of the Student's records. The school principal provided the Parent with a copy of the records from the Student's file; however, he provided only a list of suspensions and expulsions without the underlying documentation. When notified that the Parent desired the underlying documentation, the Principal supplied it.
48. At each of the Student's case conferences, placement in the least restrictive environment was considered and documented.
49. The record contains no information as to any unilateral change of placement during either the 2002-2003 school year or 2003-2004 school year. The only "changes" in the Student's programming during the 2002-2003 and 2003-2004 school years dealt with items such as which lunch hour the Student would take and in what classes he would participate.
50. Notices of each of the Student's case conferences were provided to the Parent by the Student's special education teacher, and the Parent was in attendance at each of the case conference committee meetings.
51. The Student is currently identified as eligible for special education and related services as Other Health Impaired.
52. The Student's current individualized education program ("IEP") dated April 13, 2004, contains goals and objectives in the areas of transition to high school, achieving passing grades in all subjects and English/Language Arts.
53. The Student's current IEP contains a behavior intervention plan which addresses his difficulties with interpersonal relationships and occasional explosive behavior.

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

Based on the fifty-three (53) Findings of Fact, the IHO reached six (6) Conclusions of Law. These Conclusions of Law are reproduced below:



1. Whether the school provided appropriate IEP's including an appropriate and timely functional behavior assessment and behavior intervention plan, an appropriate and timely transition plan, counseling services, and extended school year services.
  - a. Ind. Admin. Code tit. 511, r. 7-27-6 sets out the requirements for an individualized education program (IEP).
  - b. The School formulated three IEP's for the Student during the school years in question, i.e. 2002-2003 and 2003-2004. These IEP's pertain to the Student's seventh, eighth, and ninth grade years. The IEP's contain an identification of the Student's present levels of performance, goals and measurable objectives relating to the Student's areas of deficit, documentation of necessary aids and services to allow the Student to function in the general education setting, a statement of the degree to which the Student will participate in general education, an individualized transition plan, a behavioral intervention plan, consideration of ESY, pertinent information on testing, and information on the length and duration of services as well as how those services will be evaluated. The Student's IEPs comport with the requirements of 511 I.A.C. 7-27-6.
  - c. Further, although the Student's grades, especially in eighth grade, showed him to be underachieving, staff testimony shows this to be a result of poor use of class time and unwillingness to complete homework rather than inappropriateness in either construction or implementation of the IEP. Finally, with the noted exception of the last few weeks of his eighth grade year, the Student seemed to benefit from the application of his behavior intervention plan, in that he was able to recognize situations in which his temper could escalate and to remove himself from these situations. Based upon the record, the Student was provided with appropriate IEP's, containing all of the provisions required by Article 7.
2. Whether the child was inappropriately prevented from participating in extracurricular activities as a result of his disabilities.
  - a. Ind. Admin. Code tit. 511, r. 7-27-9 (b) states that the public agency shall make available to students with disabilities the variety of education programs and services that are made available to nondisabled students.
  - b. The Student's testimony indicated that he was not inappropriately prevented from participating in extracurricular activities, either as a result of his disability or for any other reason. He was prevented from participating in activities due to suspension, low grades, or attendance, but that was a penalty applied to all students. Further, the Student chose not to participate in school dances because of his erroneous belief that he would not be allowed to participate. Therefore, there is no violation of 511 I.A.C. 7-27-9 (b).

3. Whether the school responded in a timely and appropriate manner to the parent's requests for an independent evaluation, case conference committee meetings, and records containing personally identifiable information about the child.
  - a. Ind. Admin Code tit. 511, r. 7-25-5 sets out the requirements for providing information about where an independent educational evaluation may be obtained.
  - b. The School responded in May, June and July to the Parent's request for an independent evaluation. The first response was through a telephone call, the second response through a letter, and the third response was a list of possible evaluators. Any delay in securing an outside evaluation seems to have been premised on the Parent's erroneous belief that all of the evaluators on the School's list were somehow barred by a conflict of interest. There was no violation of the requirements of 511 I.A.C. 7-25-5.
  - c. Ind. Admin. Code tit. 511, r. 7-23-1 (f) states the public agency shall comply with a request from a Parent for educational records in no case more than 45 calendar days after the request is made.
  - d. On May 17, 2004, the Parent signed an authorization to release information for the purpose of obtaining all of the Student's records. In the attorney's July 26, 2004 letter, the Parent again asked for a copy of the Student's records, The School responded to the attorney's request for student records, and followed up when it was informed that the Parent did not receive some documentation of disciplinary actions. All of this material was received on or before August 6, 2004, allowing the Parent and her attorney time to prepare their case. However, it was not received within 45 days of the Parent's May 17, 2004 request. There is a violation of 511 I.A.C. 7-23-1 (f).
  - e. The Parent attended case conference committees on October 22, 2002, January 13, 2003, April 25, 2003, and April 13, 2004. The parent was scheduled to attend the May 24, 2004 case conference committee meeting, but she did not attend it. There was no violation of the public agency's responsibility to conduct case conference committee meetings.
4. Whether the child was being educated in the least restrictive environment and whether the child experienced inappropriate unilateral change of placement.
  - a. Ind. Admin. Code tit. 511, r. 7-27-9 requires that to the maximum extent appropriate, a student with a disability be educated with non-disabled peers.
  - b. In each of the Student's case conferences, the committee considered the amount of time the Student should spend in both special education and general education, The

Student's grades in his special education classes, as compared to some of his general education grades, tended to show a greater degree of accomplishment in the special education setting. These grades indicate that the Student benefited from the amount of special education which the school built into his IEP. The school's placement of the Student in part-time special education, part-time general education was appropriate. There was no violation of Article 7's LRE requirement.

c. Ind. Admin. Code tit. 511, r. 7-29-1 (j) describes when a suspension constitutes a change of placement.

d. The Student received eight days of out-of-school suspension during May of his eighth grade year. Suspensions amount to a change of placement when they consist of more than ten consecutive days or more than ten cumulative days forming a pattern of suspension. There is no evidence to indicate the Student was assigned or served more than ten days of out-of-school suspension during the 2003-2004 school year. Therefore the requirements of 511 I.A.C. 7-29-1(j) were not met and the suspensions did not constitute a change in placement.

e. Following the Student's eighth day of suspension in May 2004, school personnel met to discuss how the Student's education plan, including the behavior plan would be handled for the last few days of school. The suggestions that were formulated by staff were relayed to the Parent by the Student's Special Education teacher.

5. Whether the school gave the parent the requisite prior written notice about proposed changes in the child's programming, placement and services and whether the school gave the parent proper and timely notice of case conference committee meetings.

a. Article 7 requires prior written notice when the School (1) proposes to initiate or change the identification, evaluation, or special education placement of the student or the provision of a free appropriate public education to the student; or (2) refuses to initiate or change the identification, evaluation, or special education placement of the student or the provision of a free appropriate public education to the student, (511 I.A.C. 7-22-2(a)).

b. There was no change of placement during the 2002-2003 or 2003-2004 school years. The Parent attended each of the case conferences at which the Student's programming was discussed, and though she wanted the student to spend more time in general education, she agreed and granted permission for implementation of each of the IEP's. In each instance, the Parent received copies of all of the case conference documentation which explained such things as present levels of performance, deficit areas, identification, amount and timing of special and general education, an ITP, a behavior plan, and many other elements which explain precisely what services the School was going to offer and details about those

services, as well as considerations upon which those services were based.

c. Ind. Admin. Code tit. 511, r. 7-27-2 sets out the requirements for notices of case conference committee meetings.

d. There is no evidence that the Parent was unaware of any case conference meetings pertaining to formulation of her son's IEP. On the contrary, the Parent attended and participated all but one of the Student's case conferences. There was no violation of 511 I.A.C. 7-27-2.

6. Whether the school has complied with the provisions of the child's IEP.

a. Ind. Admin, Code tit. 511, r. 7-27-8(a) requires a School to be accountable for providing the services listed in a Student's IEP and to make a good faith effort to assist the Student in achieving his goals and objectives.

b. The Student had goals and objectives in the areas of math, Language Arts, and behavior. He also had a behavior plan. School personnel followed the behavior plan and were aware of the Student's areas of learning disability. Annual case reviews were held to review the Student's progress, look at current functioning, and prescribe appropriate services for the next school year. The justifiable concern of the Parent regarding what appears to be a lack of academic progress does not equate either to an inappropriate IEP nor inappropriate implementation of an IEP. There was no violation of 511 I.A.C. 7-27-8(a).

### ***The IHO's Order***

The School committed a technical violation of Article 7 by not providing the Parent copies of the Student's educational records in a timely manner, and the Parent had to utilize the services of her attorney to obtain these records. For this violation, the School is ordered to pay \$500.00 to the attorney to compensate her for the time expended obtaining these records.

The IEP's formulated by the school were reasonably crafted to confer educational benefits to this Student, and the School followed the requirements of the IEP's, There were no violations of Article 7 beyond that stated in the preceding paragraph.

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

The School, by counsel, requested an extension of time within which to prepare and file a Petition for Review. The request was received on December 30, 2004. The BSEA granted the request and issued an Order on January 3, 2005, extending the time line to the close of business on

January 6, 2005, within which the School should file its Petition for Review. The timelines for review and issuance of a written decision was also extended to and including February 7, 2005. The School, by counsel, requested an extension of time within which to prepare and file a Response to the Student's Petition for Review. The request was received on January 6, 2005. The BSEA granted the request and issued an Order on January 7, 2005, extending the time line to the close of business on January 14, 2005, within which the School must prepare and file its Response to the Petition for Review. The timelines for review and issuance of a written decision by the BSEA were also extended to and including February 14, 2005.

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

The Student timely filed on December 30, 2004, a Petition for Review with the Indiana Board of Special Education Appeals (BSEA). The Petition for Review is reproduced, in part, as follows:

...[T]he Petitioners ask that any findings of fact and/or conclusions of law that are inconsistent with the evidence presented at hearing be reversed....

14. That the areas in which the IHO failed to correctly apply the law and to which the family takes exception are in bold-face type below:

**15. The IHO indicated in her decision that the school had provided appropriate IEPs, including an appropriate and timely functional behavior assessment and behavior intervention plan, an appropriate and timely transition plan, counseling services and extended school year services.**

16. The evidence clearly supported that the school did NOT provide the items mentioned above in #1 and would request the reversal of any findings of fact or conclusions of law that contradict such a finding.

#### **A. Functional Behavior Assessment, Behavior Intervention Plan deficiencies**

...31. That in addition to being wholly inappropriate due to its failure to be based on an *appropriate* functional behavior assessment that meets the requirements specified in Article 7, the BIP was also wholly inappropriate due to its incomplete and inappropriate contents. Specifically, the BIP states that the child will "follow all school rules" which is not a "plan" but a proposed outcome. Additionally, in the alleged BIP found on Petitioners' page 332, the behavior plan's "annual goals" are not really goals at all.

32. That in addition to the above-noted deficiencies, the school devised an inappropriate support plan in April 2003 that puts the burden on the child to tell when an incident is brewing for which he needs assistance. See Petitioners' page 373. That additionally, this plan requires that the child "ask before he gets in trouble."

33. That the document on Petitioners' page 184 and 334 and Respondents page 307 do NOT comport with the requirements for a behavior intervention plan detailed in Article 7. Specifically, as of June 21, 2000, Article 7 has required that behavioral intervention plans be linked to information gathered through a functional behavioral assessment. Pursuant to 511 IAC 7-17-38, a functional behavior assessment is a "systematic collection and analysis of data that will vary in length and scope depending on the severity of the student's behavior." Results and analysis of the data collection are used in developing the student's behavioral intervention plan. Here the LEA failed to meet the requirements of 511 IAC 7-17-8 and 7-17-38.

34. When asked what would trigger an FBA, Fran Osborne, director of special education, stated: "We're proactive here. ... If we have a student with disabilities and having problems with social or behavioral issues." (TR. Page 39 Lines 5-6 and 11-12, October 25, 2004.) However, in A.K.'s case, that clearly didn't happen.

35. Therefore, in addition to failing to follow the law, the school also failed to follow what its director testified was its own policy.

36. That the school devised a behavior plan on 04-13-04, Petitioners' page 542, which wasn't changed materially from previous inappropriate incarnations, despite an escalation of problem behaviors in the student.

#### **LACK OF APPROPRIATE TRANSITION PLANNING**

37. The IHO states that the transition planning for the student was appropriate.

38. That the school is required to devise an appropriate transition plan for the child at age 14, pursuant to 511 IAC 7-28-3.

...40. That absolutely NO transition plan was devised for the child until April 2003, which is found on Petitioners' page 386. Therefore, there could not POSSIBLY have been an appropriate plan because one had not been devised up until that time. Simply stated: It is impossible for a non-existent plan to be appropriate or comply with the law.

41. That once a transition plan was finally devised in April 2003, the plan was wholly

inappropriate. For example, the school failed to follow its own forms in regard to the requirements for transition planning. See p. 553, which says certain transition forms must be attached, but they're not attached. If the forms must be attached but are not, how can that plan be appropriate? It is incomplete. Incomplete plans cannot be appropriate.

...43. A later "transition plan" found on Petitioners' p. 416, dated 04-13-04, and again in the Petitioners page 528 and following, dated 04-25-04 documents is also inappropriate because it lacks specificity on HOW the child's post-school transition is to be made.

#### **FAILURE TO OFFER APPROPRIATE COUNSELING SERVICES FOR CHILD**

44. That the school failed to offer the child counseling service during any school year, even though the parent starting [sic] asking for counseling services for A.K. in 2001.

...46. That the school knew, as evidenced in its own records, that the child and his family have a history of behavior issues, depression, panic attacks and psychiatric substance abuse.

...52. That Dr. Cerling testified, in response to questions by the school's attorney as whether psychological counseling would be necessary for him to benefit from his education? He stated: "Without it, he wouldn't benefit from his education." (TR. Page 974, Lines 5-24 & Page 975, Lines 1-5, October 27, 2004)

53. Asked if A.K.'s grades would improve, Dr. Cerling testified that "It's possible he could without counseling; however, it's more likely that he would WITH counseling." (TR. Page 975 Lines 6-8, October 27, 2004.)

54. When special education director Fran Osborn was asked what would trigger counseling for a child, she said, "Child who is having great difficulty in school, perhaps difficulty completing assignments, behavioral issues." (TR. Page 47 Lines 13-24, October 25, 2004.) Here, despite the fact that A.K. met the criteria cited by the special education director, counseling was NEVER offered to him.

For these reasons, the IHO's Conclusion of Law #2 should be reversed because the school failed to devise and implement timely and appropriate functional behavior assessments, behavior intervention plans, transition plans and counseling services.

**55. In Conclusion of Law #3, the IHO incorrectly found that the school had responded appropriately to the parent's requests for case conference committee meetings. This is factually and legally incorrect and should be reversed.**

56. First, the IHO lists the dates on which case conferences were held and says that as a

result of the parent's *attendance* at those listed case conferences that the school did not violate its responsibility to conduct case conferences. However, *that* was not the issue. The issue was whether the school conducted case conferences *requested by the parent*, not whether it ever conducted any case conferences at all at any time in the past.

57. Specifically, on Nov. 22, 2003, the parent requested, IN WRITING in an email to teacher of record Nick Sears, that a case conference be held. See Petitioners' Exhibit book page 472, where mother states: "I would like to schedule a meeting to amend his IEP." However, despite this clearly provable written request, which was introduced into evidence at the hearing, there was no case conference held until April 2004. This is clearly a violation of 511 IAC 7-27-4 which states in relevant part "A case conference committee shall convene in the following circumstances: ... upon request of a teacher, parent or administrator."

**58. The IHO erred when she found that the school had given the parent proper prior written notice about proposed changes in the child's programming and services and whether the school gave the parent proper and timely notice of case conference committee meetings.**

...60. That when a parent requests a change in the child's identification, placement and/or services, the school is required by law to give prior written notice, as described in both 511 IAC 7-22-2 and 34 CFR 300.503 and which contains all of the list of elements described in both the state and federal laws.

61. That 20 U.S.C. § 1415(b)(3) provides that (1) prior written notice that meets the requirements of paragraph (c) of this section must be given to the parents of a child with a disability within a reasonable time....

62. Special education director Fran Osborne understood the definition of prior written notice, which she attempted to define during the hearing. She stated: "We give parent adequate notice of any change in placement in child's educational plan." (TR. Page 66 Lines 2-6, October 25, 2004.) Despite the director's knowledge of the existence of the law, though perhaps not all of its components, at no point did the school actually provide prior written notice as to ANY request made by the parent...

#### **NOTICE OF CASE CONFERENCE COMMITTEE MEETINGS LACKING**

64. 511 IAC 7-27-2 specifies what is required to be contained in a notice of case conference. In looking at proper notice, the question is *not* whether the parent attends, which is what the IHO appears to believe, based on her findings of fact and conclusions of law. The question is whether the notice contains all that is required by law. In this case, the parent's complaint about sufficiency of the notices is that she NEVER, not even once, received one of them *in*



*advance* of the meeting, so she was never able to use the information about who was to attend or what the subject matter was in order to prepare for the meeting. This is not the purpose or intent of the requirement for adequate notice, which common sense would dictate would be well enough in advance for her to know what the meeting was about and who would be there.

65. In this case, the mother was always asked to sign the notice while sitting AT THE ACTUAL CASE CONFERENCE. Instances when this occurred are found on Petitioners' page 327, dated 01-13-03; page 361, 362, 390, 532, 533, 556 and Respondents' exhibit page 270.

**65. The IHO erred when she found that the school had complied with the provisions of the child's IEPs.**

66. Examples of the school's failure to implement his IEPs, which were clearly contained in the hearing record, include:

a. The school was supposed to send daily emails to A.K.'s mother when assignments need to be completed. See page 383 of the 04-5-03 CC document...Petitioners" Page 466 appears to be the only example of one one-day period in which this provision of his IEP was complied with.

b. The school was supposed to provide for annual progress and quarterly summary reports on A.K.'s progress on his IEP goals and objectives. In fact, THERE WAS NOT EVEN ONE SCHOOL YEAR in which the parent received these progress reports on his goals and objectives, as required by his IEPs, although there was one and only one one-semester period in which the required reports were actually given to her, and those documents were presented in evidence.

67. Failure to provide the parent with progress reports on the student's goals and objectives is a basic failure in the provision of FAPE...

**FAILURE TO ADDRESS OBVIOUS SUBSTANTIAL FAILURES OF SCHOOL**

**68. Just as important as the errors that the IHO committed in what she wrote are the errors and omissions committed by the items that she should have written/addressed and did not.**

69. First, the IHO failed to address what she terms the student's "lack of academic progress." Just before the "Order" portion, the IHO states: "The justifiable concern of the Parent regarding what appears to be a lack of academic progress does not equate either to an inappropriate IEP nor inappropriate implementation of an IEP."

70. During A.K.'s 8<sup>th</sup> grade year, the 2003-04 school year, he failed both the English and math portions of the ISTEP. See Petitioners' exhibit page 434.

71. Despite having failed the ISTEP exam in 8<sup>th</sup> grade and despite the fact that the ISTEP document stated that he was eligible for remediation, the case conference did not reconvene to devise a plan for remediation for A.K. He was not offered a plan for remediation either during the school year or during ESY...

74. Second, she failed to even MENTION in her findings of fact, conclusions of law or order the 20-point drop in the child's IQ, even if merely to dismiss it as somehow the fault of the student himself or even if to dismiss it as irrelevant....

78. Despite this drop in scores, between 1996 and 2002 and again between 2002 and 2004, done with tests that are widely accepted among professionals and about which no evidence was presented to question their validity, the school made few, if any changes, in A.K.'s programming, another flaw that the IHO failed to note in her decision.

79. Third, the IHO failed to even mention, let alone attempt to remedy, the fact that the school did not program for the student's very clear severe learning disabilities. In an evaluation dated 10-16-96, A.K. was found to be eligible for LD services, see Petitioners' page 115, but he went back to private school and mother declined those services as a result. A.K. returned to the public school during his fifth-grade year, which was the 2000-01 school year. He was not reevaluated upon his return to the public school that year even though he had not been properly exited from special education services and even though the school knew, from the testing done by its own psychologist in 1996, that the student had multiple learning disabilities. That after several disciplinary incidents, the mother removed A.K. from school on 09-07-01. See Petitioners' p. 222. The school did not re-evaluate the child until Sept. 25, 2002, when R[.] N[.], his mother, initiated that request, when A.K. was in the 6<sup>th</sup> grade and which was almost six years since the last psychoeducational evaluation. See evaluation on Petitioners' page 137. *That A.K.'s scores fell into the mildly mentally disabled range on several scores on Petitioners' p. 178, dated 09-23-02.* A.K. again qualified for LD services in that a severe discrepancy was found in basic reading skills, reading comprehension, written expression, mathematical reasoning, mathematical calculation. See Petitioners' p. 122. Also, see Respondents' page 293, a document dated 10-22-02, which states that "math calculation and spelling are disability areas" during A.K.'s 7<sup>th</sup> grade year.

80. Despite the clear history of multiple learning disabilities, A.K. was offered the eligibility area of OHI only in 2002. Psychologist Preston Phillips stated at the hearing, "We can't assign multiple educational disabilities. It has to be one primary." When asked what that belief was based on, he stated merely, "It's just the way it has always been." (TR. Page 337,

Lines 17-19, October 26, 2004).

81. The IHO, by failing to address these severe shortcomings in the school's provision of educational services to the child, did a disservice to the child...

...84. And, in fact, the school failed to even acknowledge his learning disabilities in terms of eligibility, leading to a not-so-surprising failure of the child to make meaningful educational progress.

### **Failure to offer appropriate ESY services**

85. In the IHO's finding of fact #37, she states: "The Parent requested extended school year ("ESY") services. ESY services were considered at the Student's seventh and eighth grade annual case reviews April 25, 2004 and April 13, 2004, and no need was found for continued services during the summer months."

86. However, as noted earlier, the IHO indicated that the parent was rightfully concerned about the student's lack of academic progress, which also was detailed above. If he was indeed failing to progress, then it was not appropriate for the school to find "no need" for continued services during the summer months and it was not proper for the IHO to apparently indicate in her decision that that was A-OK.

87. The parent requested ESY but was informed by Nick Sears and Fran Osborn that ESY services were not available for A.K., despite the regression in his IQ, despite his unaddressed learning disabilities and despite the student's failures on the English and Math portions of the ISTEP examination. (TR. Page 631, Lines 9-13, October 26, 2004)...

92. In the IHO's Finding of Fact #18, she indicated in relevant part: "The IEP developed on Oct. 22, 2002, contained goals and objectives which directly addressed the Student's discrepancies in the areas of math and language arts, as well as social skills/behavioral difficulties." In addition, in the IHO's Finding of Fact #28, the IHO stated, in relevant part: "The IEP developed on April 25, 2003, contained goals and objectives for the Student's eighth grade year. It also contained an identification of the Student's present levels of performance, goals and measurable objectives relating to the Student's areas of deficit..."

93. The reality was that the students goals and objectives were inappropriate, unmeasurable and completely insufficient to address the child's needs.

94. Specifically, the goals and objectives that were devised for the child that were inappropriate and unmeasurable, including the 10-22-02 goals found on Petitioners' page 188, on p. 344 for the 01-13-03 goals, which are *exactly the same goals* devised the previous

year, p. 375 for 04-25-03 goals.

95. That the school failed to devise an appropriate number of goals for a child with such extensive needs, such that ALL of the child's goals and objectives for his entire academic year fit onto *one page* for two different years in a row. See p. 375 for the 04-25-03 goals and see p. 405 for the single 04-13-04 goals page written for a student with extensive learning disabilities, regression in IQ score of 20 points and intensive behavioral problems to the point of suspension for multiple days of the school year.

**PRESENT LEVELS OF PERFORMANCE  
WERE MISSING, INCOMPLETE INACCURATE**

96. That the IHO failed to conclude that the school failed to devise appropriate IEPs because the Present Levels of Performance were missing, incomplete or inaccurate. See Petitioners' p. 331 01-13-03 CC, p. 366, 04-25-03 IEP, and p. 396, dated 04-13-04.....

**PROCEDURALLY AND SUBSTANTIVELY, THE DISTRICT  
FAILED TO PROVIDE A.K. WITH A FAPE**

....In A.K.'s case, it is clear that his IEP failed to objectively measure goals and objectives. Clearly, this is a flaw in A.K.'s educational services. It is difficult to imagine how the school district could accurately assess A.K.'s progress and needs when there were no records being kept of what, if any, progress he was making on the goals and objectives that they did manage to include in his IEP. The failure to provide a mechanism by which the school would document goals and objectives is only one way, however, in which the devising and implementation of A.K.'s IEP was not reasonably calculated to provide FAPE.

The Provision of FAPE Under IDEA Is Measured By An Objective Standard And Is Not Excused By Evidence That A School District Is "Trying" To Provide A FAPE Or The General Maxim That "Something Is Better Than Nothing"

....The reason A.K. has not been successful educationally is that his IEPs have not been appropriate.

**THE HEARING OFFICER SHOULD HAVE INSISTED ON SCIENCE AND DATA AND PROPERLY EXERCISED THE "GATEKEEPER" FUNCTION TO SCREEN ALL "EXPERT" TESTIMONY FOR RELIABILITY AND RELEVANCE**

....The hearing officer failed to exercise caution in accepting the school district educators' testimony to the effect that all of A.K.'s educational needs had been met and could be met in their setting. Such is not the case, as was clearly illustrated by the school's failure to

comply with state and federal laws and by the child's lack of progress...

## CONCLUSION

The hearing officer, applying wholly erroneous standards and ignoring the substantial evidence, improperly blessed the District's IEPs while at the same time noting a lack of academic progress about which she said the parent was rightfully concerned.

For all the foregoing reasons, and for the reasons set forth in the Petition, the hearing officer's decision should be reversed to the extent that the BSEA determines that any of her findings of fact, conclusions of law and orders to be erroneous or inconsistent with the facts, law and evidence and/or arbitrary and capricious...

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

The School timely filed on January 14, 2005, its Response to the Student's Petition for Review with the BSEA. The School's Response to the Petition for Review is reproduced, in part, as follows:

As indicated in the School's Petition for Review filed on January 4, 2004, the Hearing Officer in this matter filed a decision which was in the School's favor on all issues except the part of Issue #3 dealing with the School responding in a timely manner to the parent request's for school records. The order pertaining to that section of Issue #3 is addressed in Respondents' Petition for Review and will not be commented on in this Response.

Petitioners seem to take issue with all portions of the decision save the last section of Issue #3....In Respondents' draft Findings and Conclusions, Respondent included citations to the record which supported each Finding of Fact and Conclusion of Law... Respondents will address the charge that the Hearing Officer's Findings are not supported by sufficient evidence in the record by repeating the citations it submitted in its Proposed Findings...Where the Hearing Officer's Findings do not track Respondents' Proposed Findings, Respondents submit cites to the record which support the Hearing Officer's Findings...

#### **....Conclusions of Law.**

....Respondents have already objected to the Hearing Officer's Conclusion that the School's untimely response to the parent's initial request for records caused harm, giving rise to an order for \$500.00 in attorneys fees. Therefore, Respondents will not address that issue in this response. The Findings made by the Hearing Officer, all of which are based on substantial evidence in the record (see above chart) give rise to the Conclusions, all of which

have their basis in the current requirements of Article 7.

....Respondents respectfully request that the State Board of Special Education Appeals find that the Hearing Officer's decision was neither arbitrary nor capricious nor an abuse of discretion, that it is not in violation of any law, constitutional right, power, privilege or immunity, that it did not exceed the jurisdiction given an independent hearing officer by Article 7, that it did not violate any established procedure, and that the decision is supported by substantial evidence in the record. Respondents also respectfully request that the State Board of Special Education Appeals uphold the Hearing Officer's decision in all aspects except for the attorneys fees order, which is addressed in Respondents' Petition for Review.

### ***The School's Petition for Review***

The School timely filed on January 4, 2005, the School's Petition for Review with the BSEA. The School's Petition for Review is reproduced, in part, as follows:

....[T]he Hearing Officer issued her opinion in this matter and ruled in favor of the School on all substantive issues. The Hearing Officer identified one procedural violation and for such violation, ruled that the School owed the parents attorney Five Hundred Dollars (\$500.00) in attorneys fees. The School takes issue with this Order and the Findings and Conclusions on which it is based.

....In Finding of Fact 47, the Hearing Officer notes that records were timely provided to the parent except for certain underlying documentation concerning disciplinary actions. The list provided to the parent contains a summary of disciplinary actions which the School took between August, 2001 and May, 2004. (R. Ex. K-3, pp. 483-484) Respondents' exhibits show that the parent received notification of each of these disciplinary actions either in writing or by phone at the time the disciplinary action was taken. (R. Ex. I-14, pp. 324-328; R. Ex. I-17, pp. 331-333; R. Ex. I-21, pp. 368-371; R. Ex. J-16, p. 389; R. Ex. J-24, p. 398; R. Ex. J-26, p. 399; R. Ex. J-30, p. 403; R. Ex. J-31, p. 405; R. Ex. J-36, p. 440; R. Ex. J-37, 411-415; R. Ex. J-39, p. 417-420; R. Ex. J-40, p. 421; R. Ex. J-41, p. 422; R. Ex. J-42, p. 423; R. Ex. J-49, pp. 461-464; R. Ex. J-50, pp. 465-468) Though it may be true that some of this underlying documentation was not formally provided in response to the parent's initial request for records, no harm was suffered by the parent, since she had already received notification of each of the events. A procedural error which causes no harm either to the student or to the parent does not call for a remedy.

Therefore, Respondents do not believe that Finding of Fact 47 gave the Hearing Officer grounds for the penalty she later levied in her order.

....Conclusion of Law 3.d. finds a violation of the 45 day timeline for delivery of student

records. However, this conclusion makes no mention of the fact that the parent had received the underlying documents at the time disciplinary penalties were levied by the School. In actuality, the parent had a copy of these materials long before her formal request for records. In order to penalize the School for this procedural error, the Hearing Officer would have to have found some harm that was suffered. Even though it fails to recognize the parent's prior possession of the disciplinary notices, Conclusion of Law 3.d. clearly states that the parent had copies of these records before the exhibit exchange deadline. Therefore, this finding should not be used as a basis to order any penalty against the School.

Further, under 511 IAC 7-30-6, only a court of law can order attorneys fees in a special education matter. Not only is the record devoid of evidence of harm because of the late delivery of documents of which the parent was already aware, but the law clearly states that a hearing officer does not have the power to grant attorney fees. Since, the Hearing Officer orders the School to pay the parent's attorney Five Hundred Dollars (\$500.00) in attorneys fees because of the "technical violation of Article 7", the Hearing Officer has exceeded the scope of her authority by granting an award that can only be made by a court.

....Because of the lack of harm suffered in any delay in records exchange, and because the Hearing Officer has exceeded her authority by granting attorneys fees, Respondents respectfully request the State Board of Special Education Appeals delete the first paragraph of the Hearing Officer's Order and rule that the technical records violation did not result in harm to the parent or the student.

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

The Student timely filed on January 12, 2005, his Response to the School's Petition for Review with the BSEA. The Student's Response to the School's Petition for Review is reproduced, in part, as follows:

....For the following reasons, the Petitioners request that the BSEA decline the invitation issued by the Respondents' to vacate the IHO's sanction of attorney fees for the Respondents' failure to comply with the 45-day rule and pre-due process hearing rule for the provision of records to the Petitioners.

1. First, Respondents appear to be confused as to the reasons that attorney fees can be awarded and attempt to apply an argument that does not apply in this circumstance.
2. In this case, the IHO awarded fees as a *remedy or sanction* for the school's failure to provide records during discovery to the family in the timeline specified by 511 IAC 7-23-1(f) which provides: "(f) The public agency shall comply with a request for a parent or eligible student to inspect and review the record:

- (1) without unnecessary delay;
- (2) before any meeting regarding an individualized education program, interim alternative educational setting, manifestation determination or a due process hearing; and
- (3) in no case more than forty-five (45) calendar days after the request is made.”....

5. While it is true that IHO's do not award attorney fees in regard to the issue of prevailing parties, they can and do issue monetary orders, such as sanctions, in matter such as this where the school failed to comply with clearly spelled out discovery request and for which the information-seeking party expended attorney hours and effort in order to enforce the right to the information sought.

6. In this case, the school did not comply with the parents's request for records, including disciplinary records and including NWEA testing results (the latter no [sic] receiving until after the hearing had already commenced), such that her attorney had to spend time, during the course of the hearing, insisting that the records be provided, and had to recruit the assistance of the IHO in order to get the school simply to comply with the records request.

7. Therefore, the IHO did not order the attorney fees paid because she was holding that the Petitioners were the prevailing parties in the due process matter but as a sanction against the school for failure to comply with a request for records made during the discovery process.

8. That accepting the school's argument that the IHO is not permitted to award attorney fees as a sanction, the BSEA would, in essence, be deciding that there IS no penalty for failure to comply with discovery requests for copies of records containing personally identifiable information, as defined in 511 IAC 7-17-58, to which the parents clearly have a right in discovery.

9. That the Petitioners would ask the BSEA that if the Petitioners are not entitled to attorney fees as a remedy for the records violation, what sort of remedy would remain for parties who make records requests, do not have those requests complied with pursuant to the law and who are forced to go to hearing without the requested records.

10. Ruling that such a sanction is improper would open the door to increased and continued failures to provide records to which the parties have very clear access by law.

....Therefore, the Petitioners request that the BSEA affirm the \$500 in attorney fees awarded as a sanction against the Respondents for their failure to comply with the law requiring that records requests be complied with before due process hearings.

**Review by the Indiana Board of Special Education Appeals**



A copy of the record was prepared and provided to each member of the BSEA on January 31, 2005. The BSEA, pursuant to 511 IAC 7-30-4(j), decided to review this matter without oral argument and without the presence of the parties. All parties were so notified by “Notice of Review Without Oral Argument,” dated January 24, 2005. Review was set for February 11, 2005, in Room 225 State House, Indianapolis. All three members of the BSEA appeared on February 11, 2005. After review of the record as a whole and in consideration of the Petition for Review and the Response to the Petition for Review, the BSEA makes the following determinations.

#### 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 Student timely filed the Student’s Petition for Review. The School timely filed a Response to the Student’s Petition for Review. The School timely filed the School’s Petition for Review. The Student timely filed a Response to the School’s Petition for Review. The BSEA has jurisdiction to determine this matter. 511 IAC 7-30-4.
2. The BSEA accepts Finding of Fact 18 as it is supported by substantial evidence and the record.
3. The BSEA accepts Finding of Fact 28 as it is supported by substantial evidence and the record.
4. The BSEA sustains the IHO’s Conclusion of Law 1 as the record supports Conclusion of Law 1.
5. The BSEA sustains the IHO’s Conclusion of Law 3 as the record supports Conclusion of Law 3.
6. The BSEA sustains the IHO’s Conclusion of Law 5 as the record supports Conclusion of Law 5.
7. The BSEA sustains the IHO’s Conclusion of Law 6 as the record supports Conclusion of Law 6.
8. All other issues raised in the Student’s Petition for Review were not identified issues for the

hearing.

9. An IHO can impose sanctions under 511 IAC 7-30-3(p) and I.C. 4-21.5-3-8.

### **ORDERS**

In consideration of the foregoing, the Board of Special Education Appeals now issues the following Orders:

1. The Independent Hearing Officer's Order is amended to read as follows:

“The School committed a technical violation of Article 7 by not providing the Parent copies of the Student's educational records in a timely manner but it was an harmless error under the facts of this case.

The IEP's formulated by the school were reasonably crafted to confer educational benefits to this Student, and the School followed the requirements of the IEPs. There were no violations of Article 7 beyond that stated in the preceding paragraph.”

2. Any allegation of error in the Petition for Review not specifically addressed above is deemed denied or overruled, as appropriate.
3. Any additional issues or motions not specifically addressed herein are deemed denied or overruled, as appropriate.

Date: February 14, 2005

/s/ Raymond Quist, Chair  
Indiana Board of Special Education Appeals

### **APPEAL STATEMENT**

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