



**MEMO**

To: State Board of Education  
From: Becky Bowman, State Board Administrator  
Date: July 25, 2012  
RE: In the Matter of School City of Mishawaka and Fort Wayne Community Schools  
Cause No. 1110009  
Determination of Transfer Tuition

School City of Mishawaka (“Mishawaka”) requested a hearing before the State Board seeking a determination on transfer tuition from Fort Wayne Community Schools (“Fort Wayne”) for educational services provided to students placed at a residential facility located in Mishawaka during the 2008-2009 school year, as well as for ten summers between 1998 and 2010. A hearing officer was appointed, and a hearing date was set. At the parties’ request the hearing date was vacated and replaced with a Briefing Schedule. By subsequent agreement of the parties, the sole issue before the hearing officer was whether Fort Wayne owed transfer tuition to Mishawaka for the summer services for the years in question. Briefs were filed by both parties, and the hearing officer heard oral argument on the matter.

The hearing officer’s findings and conclusions resulted in a recommended order that Fort Wayne did not owe transfer tuition for the summer services. The hearing officer concluded that the services provided during the summer months were not part of Mishawaka’s regular 180 day school year and as a result, Fort Wayne did not owe Mishawaka any transfer tuition for the ten summers in question.

Mishawaka timely objected to the recommended decision and asserts that the hearing officer’s findings and conclusions with respect to the school year being limited to 180 days are erroneous. Mishawaka further asserts that even if the corporation’s school year is 180 days, transfer tuition is properly due and owing for summer services because the school year at the residential facility is year round. Fort Wayne filed a timely response to the objections noting that Mishawaka did not take issue with the 180 day school year at the hearing and that the provision of services to students at the residential facility during the summer months does not mean that Mishawaka’s school year is longer than 180 days.

A copy of the recommended decision, objections, and response are attached hereto.

**BEFORE THE INDIANA STATE BOARD OF EDUCATION**

In Re the Matter of:	)	
School City of Mishawaka	)	
Petitioner,	)	
	)	
v.	)	<b>Cause No.: 1110009</b>
	)	
	)	
Fort Wayne Community Schools,	)	
Respondent	)	
	)	
Determination of Transfer Tuition	)	
Pursuant to I.C. 20-26-11-15 and 20-26-11-16	)	

**PROPOSED FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND ORDER**

**Procedural History**

On October 21, 2011, the School City of Mishawaka (Petitioner) made a formal request to the Indiana State Board of Education (SBOE) to hear and determine the amount of transfer tuition payments the Fort Wayne Community Schools (Respondent) owed to the Petitioner pursuant to Ind. Code § 20-26-11-15 and 511 Ind. Admin. Code § 1-6-1, *et seq.* Petitioner requested the Respondent to pay tuition for services rendered during the 2008-2009 school year and ten summers between 1998 and 2010.

On November 11, 2011, a Notice of Appointment of Hearing Examiner and Notice of Hearing were mailed to the parties. A hearing was set on November 29, 2011 which was continued following a request for continuance made by the parties and reset for hearing on December 21, 2011.

Prior to the hearing, on December 12, 2011, the parties filed a Joint Motion to Vacate Hearing Date and Establish Briefing Schedule (Joint Motion). The parties included in the Joint Motion that an agreement was reached as to the transfer tuition owed for the School Year 2008-2009. The parties agreed in the Joint Motion that the remaining issue to be decided was whether the Respondent owed the Petitioner transfer tuition for the ten summers. The parties also agreed that the remaining issue of transfer tuition was a question of law and requested a briefing schedule be set. The parties agreed in their Joint Motion that no issue related to legal settlement, notice of placement, and transfer certificates existed.

An order vacating the December 21, 2011 hearing and setting a briefing schedule was mailed to the parties on or about December 15, 2011. The briefing schedule required the Petitioner to file its brief on or before January 16, 2012 and the Respondent to file its brief on or before February 20, 2012. The Petitioner filed its "Petitioner, School City of Mishawaka's, Brief

in Support of Payment of Transfer Tuition by Fort Wayne Community Schools” on January 13, 2012 and the Respondent filed its “Respondent Fort Wayne Community Schools’ Brief in Opposition to Payment of Transfer Tuition for Summer School” on January 20, 2012.

On May 31, 2012, a telephonic oral argument on the briefs was held with both parties represented by counsel.

After consideration of the briefs submitted by the parties, the oral argument on the briefs, the administrative file in this matter and existing case law and laws, the hearing examiner makes the following Findings of Fact, Conclusions of Law and recommended Order:

### **FINDINGS OF FACT**

1. Pursuant to I.C. 20-26-11-15, the hearing and proceedings in this matter are not governed by IC 4-21.5.
2. The parties do not dispute the legal settlement, notice of placement or transfer certificates for any of the students who received services which are covered in the charges listed in the Petitioner’s complaint.
3. The Petitioner provided services during the summer months of the following years: 1998, 1999, 2001, 2003, 2005, 2006, 2007, 2008, 2009 and 2010.
4. The Petitioner operates a residential treatment facility (“facility”) which is part of the Petitioner’s school corporation that offers classes year-round to the students residing at its facility.
5. Students ordered or placed at this facility are required to attend classes on a year round basis while residing there.
6. Students did not have the option to miss or not attend classes held during the summer months.
7. Petitioner’s lists its school year as being one hundred eighty days on its website. (See attachment to Respondent’s brief, copy of Petitioner’s website.)
8. No evidence was provided by the Petitioner to show the facility’s school year length, the school corporation’s school year, or the number of instructional days certified by the superintendent of the school corporation. The only evidence provided with the briefs provided by the parties was a copy of the Petitioner school corporation’s website attached to the Respondent’s brief incorporated by reference and admitted as evidence as R-1.

### **CONCLUSIONS OF LAW**

1. The SBOE has jurisdiction to determine the amount of transfer tuition under Indiana Code 20-26-11-16.

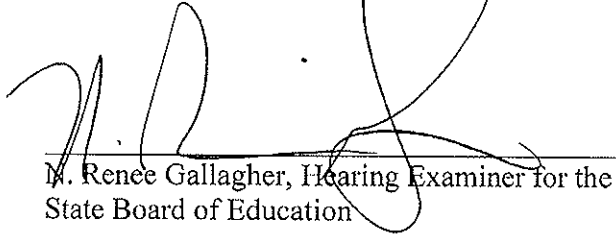
2. The hearing examiner takes official notice of her file, the pleadings and documents contained therein and the issues raised and discussed during oral argument.
3. Any Finding of Fact that may be considered a Conclusion of Law shall be so considered. Any Conclusion of Law that may be considered a Finding of Fact may be considered as such.
4. Indiana Code 20-26-11-(8)(a) provides that “[a] student who is placed in a state licensed private or public health facility or child care facility: (1) by or with the consent of the department of child services; (2) by a court order; or (3) by a child placing agency licensed by the department of child services; may attend school in the school corporation in which the facility is located.”
5. Indiana Code 20-26-11-8(a) also provides that “[i]f the school corporation in which the facility is located is not the school corporation in which the student has legal settlement, the school corporation in which the student has legal settlement shall pay the transfer tuition of the student.”
6. Indiana Code § 20-30-2-3 provides, in pertinent part, that “[f]or each school year, a school corporation shall conduct at least one hundred eighty (180) student instructional days.”
7. A “school year” is not specifically defined in the law as excluding or including the summer months. Instead, a minimum number of required instructional days are mandated for each school year.
8. The statute however, requires that a *school corporation* provide at least one hundred and eighty days of instruction and the superintendent of the school corporation is required to certify *how many days of instruction are conducted in the school corporation during that school year*. (See Ind. Code. 20-30-2-3.)
9. No evidence was provided as to what the superintendent certified to the department as the school corporation’s school year however, the Petitioner’s webpage provides that the school corporation’s school year is one hundred and eighty days in length.
10. The facility, as part of the school corporation, therefore, operates on a one hundred and eighty day school year and any classes offered during the summer months would be during the summer period or summer school for the school corporation.
11. The ten periods of instruction that occurred over the summer months do not fall within the Respondent’s payment responsibilities under Indiana Code 20-26-11-8 and the Respondent does **not** owe the Petitioner for the transfer tuition for the summer months in the following years: 1998, 1999, 2001, 2003, 2005, 2006, 2007, 2008, 2009 and 2010 as alleged in the Petitioner’s complaint.

**RECOMMENDED ORDER**

**IT IS THEREFORE ORDERED**, that the Respondent does not owe the Petitioner for the services rendered for the summer school sessions for years: 1998, 1999, 2001, 2003, 2005, 2006, 2007, 2008, 2009 and 2010.

Date:

6/7/12



M. Renee Gallagher, Hearing Examiner for the  
State Board of Education

**Appeal Right**

Any party wishing to file objections to the recommended decision may do so in writing within fifteen (15) calendar days of the receipt of the order. The basis of any objections must be stated with particularity. A party must cite to any Finding of Fact, Conclusion of Law, or Order with which the party takes exception. Objections must be mailed to Ms. Rebecca Bowman, State Board Administrator, Indiana Department of Education, Room 229 State House, Indianapolis, Indiana 46204-2798. The order will become final after fifteen (15) days of receipt with no further action required by the Indiana State Board of Education unless written objections are filed, or the State Board, by majority vote, decides to set this cause for oral argument. In either of those situations, you will be notified of the date on which the Board will consider the case.

Any party filing objections or responding to same must provide a copy of such written objections or written responses to the representative of the other party. Failure to do so may result in dismissal of the appeal.

Copies to (via certified mail):

Petitioner:

Michael Trippel  
Thorne Grodnick, LLP  
420 Lincolnway West  
P.O. Box 1210  
Mishawaka, IN 46546

Respondent:

William Sweet as counsel  
Dr. Wendy Robinson, Superintendent  
Fort Wayne Community Schools  
1200 S Clinton St  
Fort Wayne, IN 46802

File CC: Becky Bowman, SBOE Administrator

**BEFORE THE INDIANA STATE BOARD OF EDUCATION**

In Re the Matter of:	)	
School City of Mishawaka	)	
Petitioner,	)	
	)	Cause No.: 1110009
v.	)	
	)	
Fort Wayne Community Schools,	)	
Respondent	)	
	)	

Determination of Transfer Tuition  
Pursuant to I.C. 20-26-11-15 and 20-26-11-16

**PETITIONER, SCHOOL CITY OF MISHAWAKA’S,  
OBJECTIONS TO PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND  
ORDER**

COMES NOW, the Petitioner, School City of Mishawaka (“School City”), by its counsel of record, and submits its Objections to Proposed Findings of Fact, Conclusions of Law and Order.

**I. SPECIFIC OBJECTIONS**

School City objects to the following Findings of Fact, Conclusions of Law, and Recommended Order as proposed by the Hearing Examiner on June 7, 2012:

Finding No. 7: “Petitioner’s lists [sic.] its school year as being one hundred eighty days on it website. (See attachment to Respondent’s brief, copy of Petitioner’s website.)”

Finding No. 8: “No evidence was provided by the Petitioner to show the facility’s school year length, the school corporation’s school year, or the number of instructional days certified by the superintendent of the school corporation. The only evidence provided with the briefs provided by the parties was a copy of the Petitioner school corporation’s website attached to the Respondent’s brief incorporated by reference and admitted as evidence as R-1.”

Conclusion of Law No. 7: “A ‘school year’ is not specifically defined in the law as

excluding or including the summer months. Instead, a minimum number of required instructional days are mandated for each school year.”

Conclusion of Law No. 10: “The facility, as part of the school corporation, therefore, operates on a one hundred and eighty day school year and any classes offered during the summer months would be during the summer period or summer school for the school corporation.”

Conclusion of Law No. 11: “The ten periods of instruction that occurred over the summer months do not fall within the Respondent’s payment responsibilities under Indiana Code 20-26-11-8 and the Respondent does not owe the Petitioner for the transfer tuition for the summer months in the following years: 1998, 1999, 2001, 2003, 2005, 2006, 2007, 2008, 2009 and 2010 as alleged in the Petitioner’s complaint.”

Recommended Order: **IT IS THEREFORE ORDERED**, that the Respondent does not owe the Petitioner for the services rendered for the summer school sessions for years: 1998, 1999, 2001, 2003, 2005, 2006, 2007, 2008, 2009 and 2010.

## II. ARGUMENT

### A. School City of Mishawaka’s School Year.

The Proposed Findings of Fact, Conclusions of Law and Order, including Findings of Fact No. 7, is based on the Hearing Officer’s erroneous use of an alleged page from School City of Mishawaka’s website which lists the school year as consisting of one hundred and eighty (180) days. The page was attached to Respondent’s brief. No proper foundation or authentication of the page was made by Respondent in its brief or at the hearing nor was any time frame or similar designation set forth regarding when the page was printed or in existence. Further, the page does not state that the school year period set forth therein was in fact the number of student instructional days certified by School City for the years at issue as required by

I.C. 20-30-2-3. Rather than requesting that the parties submit additional evidence regarding the actual number of certified student instructional days for each of the years at issue, the Hearing Officer simply assumed that the number set forth in the webpage was factually accurate and binding on the parties and used said information as the basis for the entire Proposed Findings of Fact, Conclusions of Law, and Order. Such a finding clearly makes the entire Proposed Findings of Fact, Conclusions of Law and Order erroneous, including Finding No. 7.

Further, at no point during the hearing did any party move to admit the webpage into evidence. As a result, the webpage was never properly before the Hearing Officer for her consideration and the use of the same is paramount to using facts not in evidence.

In addition to Finding No. 7, Finding No 8 is also erroneous. Finding No. 8 states that School City failed to provide evidence to show the length of the school year at the facility. Such a finding is contrary to Findings of Fact Nos.: 4 and 5 which state and find that the students at the facility were required to attend classes on a year round basis. As a result, evidence was presented to show the length of the school year. The school year at the facility in question is year round as set forth in Findings Nos. 4 and 5. To hold then that School City is restricted to receiving payment of transfer tuition for the alleged one hundred and eighty (180) day period is erroneous.

Further, in Conclusion of Law No. 10, the Hearing Officer assumes that the facility, as part of the school corporation, operates on a one hundred eighty (180) day school year. Such a conclusion is contrary to Findings Nos. 4 and 5. Further, the Hearing Officer cites no statutory authority which holds that the facility at issue cannot hold classes in attendance longer than the one hundred eighty (180) day period. Simply put, the school year at the facility is year round and transfer tuition should be paid accordingly.



**B. School Year is Defined in Law Contrary to Conclusion of Law No. 7.**

The definition of the term “school year” is at the center of the controversy currently before the State Board of Education (the “Board”). As set forth in I.C. 20-26-11-13, a transferee corporation is entitled to receive for **each school year**, transfer tuition from the transferor corporation. As a result, if a student attends the school during the “school year” the transferee corporation is entitled to transfer tuition.

At the time of the hearing all parties and the Hearing Officer correctly believed that no definition of the term “school year” existed within the transfer tuition statutes. Based on this information, the Hearing Officer relied on the one hundred and eighty (180) day instructional requirement as set forth in I.C. 20-30-2-3 to determine the meaning of “school year.” Accordingly, the Hearing Officer concluded at Conclusion of Law No. 7 that a “school year” was not defined in law. However, subsequent research has shown that a definition of “school year” does exist within Title 20 of the Indiana Code. Despite being in a separate chapter of the title, the definition still applies to the transfer tuition statutes.

I.C. 20-18-2-17 defines a “school year” as the period beginning after June 30 of each year and ending before July 1 of the following year except when a different period is specified for a particular purpose. The definition of “school year” as set forth in the statute applies throughout Title 20 of the Indiana Code and thereby includes the transfer tuition statutes. (See I.C. 20-18-2-1). As a result of this definition, the Hearing Officer’s Conclusion of Law No. 7 is clearly erroneous. Further, Conclusion of Law No. 11 and the Recommended Order are also erroneous.

Based on the above definition, School City is entitled to receive transfer tuition for all of the days that students attend class at the facility regardless if it is more than one hundred and eighty (180) days. The relevant code section states, that:

Each transferee corporation is entitled to receive **for each school year** on account of each transferred student, except a student transferred under section 6 of this chapter, transfer tuition from the transferor corporation or the state as provided in this chapter. [Emphasis added]. I.C. § 20-26-11-13(b).

The statute is clear that a transferee corporation is entitled to transfer tuition from the obligated party, in this case Fort Wayne Schools, for each “school year.” The school year period, as defined by I.C. 20-18-2-17, is from June 30 of the each year to July 1 of the following year. Because the “school year” includes the entire year and not just one hundred and eighty (180) days, School City is entitled to receive transfer tuition for the periods requested in its Complaint.

### III. CONCLUSION

The students at the facility at issue in this matter attend school during the “school year” as defined by I.C. 20-18-2-17. As a result, School City is entitled to receive transfer tuition payments for the entire time the students attend the facility during the school year regardless of the number of days certified to the State or the time of year in which the students attend the facility.

Respectfully submitted,

THORNE•GRODNIK, LLP



Michael A. Trippel (#16537-71)

THORNE•GRODNIK, LLP

420 Lincolnway West

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(574) 256-5660

Attorney for School City of Mishawaka

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above document was served via ordinary United States mail, postage prepaid, on the 20<sup>th</sup> day of June, 2012, upon:

William Sweet, Esq.  
General Counsel  
FORT WAYNE COMMUNITY SCHOOLS  
1200 S. Clinton Street  
Fort Wayne, Indiana 46802



A handwritten signature in cursive script, appearing to read "W. Sweet", is written above a horizontal line.

**BEFORE THE INDIANA STATE BOARD OF EDUCATION**

In Re the Matter of: )  
School City of Mishawaka, )  
Petitioner )  
v. )  
Fort Wayne Community Schools, )  
Respondent )

Cause No.: 1110009

**RECEIVED**

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**IND. DEPT. OF EDUCATION**

Determination of Transfer Tuition  
Pursuant to I.C. 20-26-11

**RESPONDENT'S OPPOSITION TO  
PETITIONERS OBJECTIONS TO PROPOSED  
FINDINGS AND CONCLUSIONS**

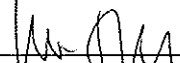
Respondent, by counsel, submits the following in response to the objections filed by petitioner:

1. Both parties agreed and stipulated that this case could be tried on agreed facts and legal briefs without the necessity of an evidentiary hearing; Petitioner, throughout the briefing and argument, never took issue with the 180 day school year as presented on its web site or Respondent's brief, nor did it produce any evidence disputing that or that its Superintendent ever certified some other number to the state; the fact that students might attend over summer months does not address the question of the number of days in the school year.
2. The Transfer Tuition statutes, as well as the accompanying State forms with computation directions, all focus on what we would all call a "regular" school year; no school system has ever been able to receive transfer tuition for summer classes, which are funded and treated differently.
3. Petitioner has referred to this as a summer school tuition case throughout these proceedings.

For the foregoing reasons, the Petitioner's objections should be denied.

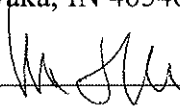
Respectfully submitted,

Fort Wayne Community Schools

By  \_\_\_\_\_  
William L. Sweet, Jr.  
Its General Counsel

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing was served by U.S. Mail, postage prepaid, on the 11<sup>th</sup> day of July, 2012, upon Michael A. Trippel, Thorne Grodnik, LLP, 420 Lincolnway West, Mishawaka, IN 46546-1210.

  
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