

TO: State Board of Education

FROM: John Snethen, SBOE General Counsel

DATE: October 15, 2014

RE: Recommendation to approve transfer tuition order Cause No. 140701

In this transfer tuition appeal, the Board's hearing officer recommends granting the Student's transfer tuition request. **I recommend the Board approve the hearing Officer's recommendation** for three reasons: (1) the Transferor School has not appealed the Hearing Officer's recommendation; (2) the Hearing Officer's findings of fact are supported by substantial evidence; and (3) the Hearing Officer's legal analysis is correct.

First I will provide a brief summary of the facts, and then I will explain my recommendation.

I. O.A. is a Frontier school corporation sophomore who attended Harrison school corporation in 2013–14, and wants to attend Harrison again in 2014–15, because Harrison has better academic offerings

O.A. will be a sophomore within the Frontier School Corporation in 2014–15, but would like to attend within the Harrison School Corporation, which she did in 2013–14 while residing within the Frontier School Corporation. Frontier denied O.A.'s request for 2014–15 (as it did for 2013–14), and O.A. appealed to the Board. A Hearing Officer was assigned to the case.

The Hearing Officer received evidence showing that O.A.'s aspires to be a physical therapist, and that O.A.'s academic aspirations included taking dual credit courses, and in taking Project Lead The Way (PLTW) courses pertaining to medicine, physiology, and bioscience. The dual credit courses O.A. sought include: Business Law, French, Calculus, Chemistry, Communications, and Psychology. O.A. believes Harrison to be better for two reasons: first, Frontier does not offer these courses for dual credit, and second, of these courses, Frontier does not offer French or Psychology, nor does it offer a Business course that teaches business law. As for the PLTW classes, O.A. believes Harrison to be the better choice because it offers the PLTW courses on site, whereas Frontier offers its PLTW classes at neighboring schools only, and would thus require O.A. (who does not drive), to find transportation to the PLTW courses.

The Hearing Officer granted O.A.'s request.

II. The Board should approve the Hearing Officer’s recommendation that the Student’s transfer request be granted

A. The Transferor School has not appealed the Hearing Officer’s recommendation

Because Frontier has not appealed the Hearing Officer’s recommendation, it presumably does not believe the outcome here is unfair or prejudicial to it. It is therefore fair and equitable to approve the Hearing Officer’s recommendation.

B. Substantial evidence supports the Hearing Officer’s findings

If a court were to review the Board’s final determination of an appeal, the court would ask whether “substantial evidence” supported the findings. “Substantial evidence” is simply any evidence in the record that could support a given fact. It does not need to be un-contradicted evidence. It does not need to be evidence sufficient to prove a case to a jury in a civil trial. “Substantial evidence” is therefore a low evidentiary threshold, which is met in this case. The evidence the Hearing Officer relied on included testimony from the parties, and copies of the Frontier and Harrison course catalogues. I have reviewed the evidence and it supports the Hearing Officer’s findings, and so satisfies the “substantial evidence” test.

C. The Hearing Officer’s conclusions of law are sound

To prevail in this appeal, the law requires O.A. to show three things: (1) that O.A. has an established academic or vocation aspiration; (2) that Harrison has an “important” high school curriculum that is “necessary” to O.A.’s aspirations; and (3) that such a curriculum or a “substantially similar” curriculum is unavailable at Frontier.¹ The Hearing Officer correctly applied this legal standard to the facts of this case.

For the reasons stated in this memorandum, I recommend that the Board approve the Hearing Officer’s Recommended Order.

¹ See Indiana Code § 20-26-11-5(a)(2); 511 I.A.C. 1-6-3(1)(A).

BEFORE THE INDIANA STATE BOARD OF EDUCATION

In Re the Matter of:)	
O.A.)	Cause No.: 140701
Petitioner,)	
)	Open to the Public
v.)	
)	
Frontier School Corporation)	
Respondent)	

Appeal from denial of transfer tuition
Pursuant to I.C. 20-26-11-15

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED ORDER

Procedural History

Petitioner resides within the attendance area of Respondent Frontier School Corporation (“Frontier”). O.A. will be a sophomore in high school in the 2014-15 school year. On June 3, 2014, Petitioner requested an appeal of Frontier’s transfer denial that was subsequently received by the Indiana State Board of Education (“SBOE”) staff. The undersigned was appointed as hearing examiner and the parties were so notified on July 28, 2014, by certified mail. Petitioner’s father gave written consent for the hearing to be open to the public. The parties provided the hearing examiner with available dates for a hearing. The hearing was scheduled for August 11, 2014. The parties were notified of the hearing date and location on July 28, 2014, and were advised of their rights by notice on July 28, 2014.

On August 11, 2014, present were the Petitioner, the Petitioner’s father, and the Petitioner’s mother. Present on behalf of the Respondents were Cathy Rowe, Frontier’s Superintendent, and Jeff Hettinger, Principal of Frontier Junior-Senior High School (“Frontier High”). A brief pre-hearing conference was conducted prior to the start of the hearing during which time the hearing examiner advised the parties of their hearing rights and appeal procedures. Witnesses were sworn and testified. Petitioner offered exhibits one through five, which were admitted without objection. Respondent offered exhibit A, a packet of information, which was admitted without objection.

After consideration of the testimony and exhibits, the hearing examiner makes the following findings of fact, conclusions of law, and recommended order:

Findings of Fact

1. O.A. is 15 years old and is going to be a sophomore in the 2014-15 school year. O.A. resides within the boundaries of Frontier and would attend Frontier High if O.A. attended school within Frontier. However, O.A. wishes to attend William Henry Harrison High School (“Harrison”), which part of the Tippecanoe School Corporation (“Tippecanoe”), for the 2014-15 school year. O.A. believes Tippecanoe has course offerings necessary for O.A.’s vocational and academic aspirations, and that the same or substantially similar curriculum offerings are not available at Frontier. Specifically, O.A. is interested in 1) attending classes and studying to pursue a career in physical therapy, 2) completing certain dual credit courses, 3) studying French, including French III, a dual credit course at Harrison, and 3) completing medical related Project Lead the Way (“PLTW”) courses offered at Harrison.
2. On March 11, 2014 O.A.’s transfer request application for the 2014-15 school year was filled out and faxed to Frontier.¹ The transfer application reads “Transferee school offers curricula better suited for [O.A.]’s academic aspirations. Transferor school does not offer the same or substantially similar curricula.” Frontier provided affidavits from employees who have access to the fax machine and are responsible for retrieving faxes, showing Frontier never received this faxed transfer request. On May 20, 2014 Petitioner’s father emailed Superintendent Rowe inquiring about the transfer request. Ms. Rowe responded the same day and stated Frontier did not receive the transfer request. Ms. Rowe indicated in her email response that the request would be denied like in previous years and asked that the transfer request be resent. The next communication between the parties was a June 3, 2014 notice of transfer appeal to the SBOE that Frontier received from the Petitioner’s father. This notice had the original March 11, 2014 transfer request attached to it, and indicated that the “Transferor school was non responsive.” On July 2, 2014 Frontier completed the transfer form paperwork, indicated it denied the request because it offers a substantially similar curriculum.
3. O.A. had requested transfer for the 2013-14 school year, and Frontier denied it, citing the same reason. Notwithstanding, O.A. attended Harrison pursuant to Tippecanoe’s open enrollment policy and paid a cash tuition charge to attend.
4. At the hearing, O.A. asserted the following courses offered at Harrison are important and necessary to O.A.’s vocational and academic aspirations:
 - a. Business Law and Ethics – dual credit;
 - i. The Harrison course guide describes this course as an overview of the legal system in the business setting.
 - b. Personal Financial Responsibility;
 - c. French II-IV (O.A. took French I at Harrison during the 2013-14 school year);
 - i. French III is a dual credit course.
 - d. Calculus – dual credit;

¹ Petitioner’s Exhibit 1 is Petitioner’s March 11, 2014 transfer request paperwork; it includes a fax cover sheet that says “SUCCESSFUL TX NOTICE.”

- e. Chemistry II – dual credit;
 - f. Psychology – dual credit;
 - g. Anatomy and Physiology;
 - h. Communications – dual credit;
 - i. PLTW: Human Body Systems;
 - j. PLTW: Principles of Biomedical Sciences;
 - k. PLTW: Medical Interventions; and
 - l. PLTW: Biomedical Intervention.
5. Frontier High lists the following courses it believes are substantially similar:
- a. Principles of Business Management – dual credit;
 - i. The Frontier course guide describes this course as focusing on the roles and responsibilities of managers as well as the challenges and opportunities of ethically managing a business in a free enterprise system.
 - b. Personal Financial Responsibility - dual credit;
 - c. Spanish I-IV;
 - d. Calculus;
 - e. Chemistry II;
 - f. Psychology;
 - g. Speech;
 - h. Anatomy and Physiology - dual credit;
 - i. PLTW: Human Body Systems (requires the student to provide their own transportation to Twin Lakes High School);
 - j. PLTW: Medical Intervention (requires the student to provide their own transportation to Twin Lakes High School); and
 - k. PLTW: Principles of Biomedical Sciences (requires the student to provide their own transportation to Twin Lakes High School).

Conclusions of Law

1. The SBOE has jurisdiction to determine the right to attend school in any school corporation. IC 20-26-11-15.
2. IC 20-26-11-5 states that “The parents of any student . . . may request a transfer from a school corporation in which the student has a legal settlement to a transferee school corporation in Indiana or another state if the student may be better accommodated in the public schools of the transferee corporation.” 511 IAC 1-6-3 provides “. . . a student will be better accommodated in the transferee than in the transferor, as provided by IC 20-26-11-5, on a showing of one or more of the following:
 - (1) Curriculum:
 - (A) the student has established an academic or vocational aspiration, a curriculum offering at the high school level that is important and necessary to that aspiration is available to the student at the transferee, and that curriculum

offering at the high school level or a substantially similar curriculum offering at the high school level is unavailable to the student at the transferor; or

(B) the student is capable of earning an academic honors diploma, the school corporation does not offer the required academic honors diploma courses, and the student has completed all academic honors diploma courses offered by the transferor and available to the student.

3. The issue is whether O.A. is better accommodated, within the requirements of IC 20-26-11-5 and 511 IAC 1-6-3, by Tippecanoe School Corporation (transferee), than by Frontier Community School Corporation (transferor).
4. As a procedural matter, Petitioner asserted that this transfer should be deemed granted because Frontier did not respond with an approval or denial of Petitioner's March 11, 2014 transfer request until July 2, 2014. "If the transferor school corporation fails to act on the transfer request within thirty (30) days after the request is *received*, the transfer is considered approved." IC 20-26-11-5(b) (emphasis added).
5. Frontier did not receive the March 11, 2014 fax sent by the Petitioner. In fact it did not receive the March 11, 2014 transfer request paperwork until a few days after June 3, 2014, which is the date on Petitioner's appeal notice; Frontier responded with a denial on July 2, 2014, within thirty (30) days. Therefore, the request was not approved by a failure to respond.
6. Petitioner's mother testified that physical therapy has become a very competitive field. Tippecanoe offers significantly more advanced placement and/or dual credit courses, which are important and necessary for O.A.'s aspiration of completing dual credit courses to pursue higher education and a career in physical therapy. For example, O.A. is interested in Chemistry II – dual credit, Calculus - dual credit, Business Law and Ethics – dual credit, Communications – dual credit, and Psychology - dual credit, which are not offered at Frontier.
7. Additionally, O.A. took French I during the 2013-14 school year, and is interested in continuing to take French courses. Frontier also does not offer French courses.
8. Moreover, Petitioner aspires to take medical related PLTW courses. Frontier offers those PLTW courses but requires transportation to Twin Lakes High School, where the courses are held, during the middle of the school day. Petitioner's father testified that transportation would be difficult during the middle of the school day because O.A. does not have a driver's license. Respondent testified that some parents and students car pool to Twin Lakes but that Frontier does not provide transportation. Harrison offers the same PLTW courses without requiring students to travel to another school to attend the classes.
9. Frontier does not have curriculum offerings that are substantially similar to Tippecanoe's regarding what is important and necessary to O.A.'s vocational and academic aspirations to study French, enroll in dual credit courses, and pursue a career as a physical therapist.

RECOMMENDED ORDER

The Respondent, Frontier School Corporation, shall be responsible for the payment of tuition, on behalf of the Petitioner O.A., to the Tippecanoe School Corporation for the 2014-15 school year.²

Dated: September 29, 2014

Brian Murphy, Hearing Examiner for the
Indiana State Board of Education

² The fee or tuition charged by Tippecanoe to attend Harrison was not raised as an issue and was not addressed in this case.

RIGHT TO APPEAL

Any party wishing to file objections to this recommended decision may do so in writing within fifteen (15) calendar days from the receipt of this 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 Brian Murphy, Hearing Examiner, at the Center for Education and Career Innovation, 143 West Market Street, Suite 500, Indianapolis, Indiana 46204, (317) 233-6809. If objections are filed or the Board, by majority vote, decides to set this cause for oral argument, you will be advised of the date the Board will consider the case. The Board will adopt this recommended decision as its final order if no objections are filed and the Board does not decide to hear oral arguments.

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 your appeal.

Copies to (via certified mail):

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cc: Laura Naughton, Indiana State Board of Education Administrator
Robert Guffin, Executive Director of the Indiana State Board of Education
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