

**BEFORE THE INDIANA STATE BOARD OF EDUCATION**

In Re the Matter of: )  
Hamilton Heights School Corporation )  
 )  
Petitioner, )  
 )  
v. )  
Fayette School Corporation )  
Respondents )

**Cause Nos.: 1305009**

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

**PROPOSED FINDING OF FACTS, CONCLUSIONS OF LAW,  
AND PROPOSED ORDER**

Procedural History

This dispute arises over the transfer tuition of student, S.L. On May 15, 2013, Hamilton Heights filed a request with the Indiana State Board of Education requesting a transfer tuition hearing in order to seek payment of all costs and fees associated with the education and transportation of the student, along with fees associated with the administrative proceedings. Hamilton Heights filed several actions against multiple school districts at the same time, and they were all consolidated for efficiency purposes. A prehearing was held with all parties on August 1, 2013, and a hearing was set on this matter for September 6, 2013. Prior to the hearing, the parties reached an agreement with respect to this student's transfer tuition; however, the question of transportation costs remained. In addition, the parties agreed to several stipulations, which resulted in a hearing solely to determine how transportation costs should be determined.

Following the evidentiary hearing, the parties were invited to submit closing arguments in writing. Both parties submitted written closing arguments with supporting authority;

however, after further review and research, the hearing examiner requested the parties to further brief the question related to the transportation costs. An extension of the deadline for submitting the written arguments was granted to Hamilton Heights, and the matter was fully briefed by November 11, 2013.

#### Findings of Facts

1. S.L. is a student with autism whose school of legal settlement is at Fayette Community School Corporation (hereinafter, Fayette);
2. S.L. was placed by her mother at the Arcadia Development Center located within the attendance boundaries of Hamilton Heights (hereinafter, Hamilton Heights) School Corporation;
3. According to the Indiana State Department of Health, Arcadia Development Center is an Intermediate Care Facility for Individuals with Disabilities (ICF/ID).
4. Pursuant to Indiana Code section 20-26-11-8, the student was entitled to enroll at Hamilton Heights;
5. Hamilton Heights transported the student to and from school at considerable costs to the school. A special bus is provided to transport the students from Arcadia to Hamilton Heights and the students, including S.L., require an aide;
6. Hamilton Heights sought reimbursement from Fayette, seeking an agreement to transfer the tuition support to Hamilton Heights from Fayette;
7. Hamilton Heights also requested that Fayette enter into a Transportation Agreement to reimburse Hamilton Heights for the actual costs associated with transporting the student;
8. Fayette refused to sign the Transportation Agreement;

9. S.L.'s placement at Arcadia was a voluntary and unilateral placement by her parent and was not pursuant to a court order related to de-segregation of students, other court-ordered placement or due to a denial of the free and appropriate education in the least restrictive environment requirements of 511 IAC 7 ("Article VII");

10. The parties agree that the hearing examiner has authority to determine whether Fayette should pay the transportation costs associated with the student and the amount of those costs;

11. Throughout the 2012 and 2013 school years, Hamilton Heights sought guidance from the Indiana Department of Accounts ("IDOA") and the Indiana Department of Education ("IDOE");

12. Based on conversations with IDOA and IDOE, Hamilton Heights sought reimbursement for the actual costs associated with transporting the student;

13. Fayette believes that transportation costs should be distributed among all students who are transported and that it should only pay the transportation costs as outlined on the Form 515;

#### Conclusions of Law

1. Pursuant to Indiana Code section 20-26-11-8, the student was entitled to attend school at Hamilton Heights;

2. Fayette was required to pay the transfer tuition of the transferred student;

3. Indiana Code section 20-26-11-8 speaks only to tuition and does not specifically cover transportation costs;

4. Indiana Code section 20-26-11-13 explains the formula for determining the transfer tuition. The basic formula for determining the transfer tuition is:

STEP ONE: determine the student's FTE by dividing the total pupil days the student attended school in the transferee school district by the number of days the school was in session.

STEP TWO: determine the per capita costs by dividing the total operating costs by Pupil Enrollment.

STEP THREE: multiply the per capita costs (STEP 2) by the FTE (STEP 1).

STEP FOUR: subtract any state tuition support received by the transferee for the student (ADM & APC) from the number in step three.

5. Indiana Code sections 20-26-11-13(c) and 20-26-11-22(b) exclude "costs of transportation" from the calculation to determine a transferee's operating costs. Likewise, Indiana Code section 20-26-1-13(a)(2) excludes equipment used to transport a child from the definition of "special equipment";

6. It would appear that the formula outlined in Indiana Code section 20-26-11-13 does not cover the issue of transportation costs incurred by a transferee school corporation;

7. Hamilton Heights cites Indiana Code section 20-26-11-26 as authority for the argument that a transferor school is required to reimburse the transferee for transportation costs associated with transporting a student. However, that statute applies only to students who are transferred from one school corporation to another pursuant to a court order that was the result of litigation in a state or federal court—typically related to a desegregation order. That statute would not seem to apply here because this student was placed by her parent at Arcadia, and the placement was not pursuant to a court order;

8. Hamilton Heights has incurred significant expense transporting students with moderate to severe disabilities to and from the Arcadia Development Center and the school;

9. To not require the transferor school to contribute to the significant costs of transporting moderate to severely disabled children would lead to an absurd and unfair result. However, nothing in Indiana Code section 20-26-11 provides authority for which this hearing examiner can order transportation costs to be recouped by the transferee school;

10. Both parties point to Form 515, created by the State Board of Accounts, as authority for this hearing examiner to order the transferor school to reimburse the transferee school for transportation costs even though Indiana Code 20-26-11 *et seq.* is silent to this question;

11. Form 515, last updated in 2009, includes a section related to transportation costs associated with a student who has transferred to another school that is not the school of legal settlement. That form reads: "NOTE: Transportation can be included in the Transfer Tuition Statement ONLY in instances where the transferred students are furnished transportation by the school corporation to which they are transferred and there is a written transportation agreement between the transferor and transferee corporation";

12. Form 515 provides a formula for determining transportation costs;

13. In this case, Fayette did not enter into a transportation agreement with Hamilton Heights;

14. Regardless, Fayette concedes that Indiana Code section 20-26-11-13(c) requires schools to use the Form 515 created by the State Board of Accounts in determining allocation of costs between the transferee and transferor schools;

15. Thus, the hearing examiner FINDS that Form 515 provides sufficient authority to order Fayette to reimburse Hamilton Heights costs related to the transportation of the student;

16. The next question is the amount of transportation costs to be paid by Fayette, or, more importantly, the methodology for determining the amount;

17. Hamilton Heights argues that the costs associated with transporting students to and from Arcadia should be isolated to them and divided equally;

18. Specifically, Hamilton Heights argues that the formula used to determine the amount of reimbursement it should receive should be determined as follows: calculate the overhead cost adjusted by listed factors, divide that number by the total students served and then add the direct costs of the driver/aide specific to the bus on which the student is transported. A detailed explanation of Hamilton Heights' proposed formula is below:

### **Hamilton Heights' proposed formula**

STEP 1 – Calculate the total overhead cost by adding:

27010 Service Area Directions – Student Transportation	\$202,264.92
27100 Vehicle Operations	\$687,844.23
27200 Monitoring Services	\$62,602.41
27300 Vehicle Servicing and Maintenance	\$485,888.16
27500 Insurance on Buses	\$24,851.00
27700 Contracted Transportation Services	\$73.44
27900 Other Student Transportation Services	<u>\$14,050.00</u>
Total	<u>\$1,477,574.16</u>

STEP 2 – Subtract the following:

All driver costs in program 27100	(\$687,844.23)
Insurance proceeds	(\$9,022.45)
Revenue from towns paid for fuel	<u>(\$114,434.36)</u>
Adjusted total	<u>\$666,273.12</u>

STEP 3 – Determine overhead costs per pupil transported by dividing the adjusted total in STEP 2 by the average number of bus riders at Hamilton Heights

(\$666,273.12/1366.78)  
\$487.48

STEP 4 - Add totals related to the bus S.L. rides

Driver/Aide costs	\$43,670.81
Bus costs	\$8,098.83
Total	<u>\$51,769.64</u>

STEP 5 - Divide the total costs related to the bus S.L. rides by the number of students who also ride.	(\$51,769.64/13.71) \$3,776.05
Step 6 – Add STEP 3 Overhead costs per pupil	<u>+\$487.48</u>
Total Cost per student to be reimbursed by Fayette	<u>\$4,236.53</u>

19. In contract, Fayette argues that the formula outlined on Form 515, which was created by the State Board of Accounts, should control. Below is that formula:

**Fayette’s proposed formula**

STEP 1 – Calculate the total overhead cost by adding:

27010 Service Area Directions – Student Transportation	\$202,264.92
27100 Vehicle Operations	\$687,844.23
27200 Monitoring Services	\$62,602.41
27300 Vehicle Servicing and Maintenance	\$485,888.16
27500 Insurance on Buses	\$24,851.00
27700 Contracted Transportation Services	\$73.44
27900 Other Student Transportation Services	<u>\$14,050.00</u>
Total	\$1,477,574.16

STEP 2 Determine the total number of Pupils Transported 1368

STEP 4 Determine the Cost per Pupil Transported by dividing  
the total overhead by the number of pupils transported (\$1,477,574.16/1368)

Total	<u>\$1,080.00</u>
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STEP 5 Determine the daily cost per pupil (above) by divided  
by the number of days school was in session by the cost per  
pupil (\$1,080.00/180) \$6.00 per day

STEP 6 Determine the cost per pupil by multiplying the total  
days S.L. was transported equals by the daily cost per pupil  
(180 days \* \$6.00) \$1,080.00

20. Fayette notes that its formula is consistent with the formula that has been prescribed on Form 515 for several decades without change;

21. The formula provided on Form 515 spreads transportation costs to all students at the transferee corporation rather than isolating the costs associated solely with the transferred students and applying them to those students only;

22. Fayette is correct that this is the formula that has been prescribed on Form 515, and it appears that there has been no change in that formula for many years;

23. Absent any other guidance from the legislature, Fayette's proposed formula would seem to be the most appropriate;

24. This formula has been consistently used when there is a written transportation agreement between schools; thus, it makes logical sense to apply it, likewise, in the absence of an agreement;

**RECOMMENDED ORDER**

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that Fayette is to reimburse Hamilton Heights in the amount of \$1,080.00 for the costs of transporting the student, S.L.

Dated: 11/26/2013



Michael G. Moore  
Hearing Examiner for the  
State Board of Education  
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## APPEAL RIGHT

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 Laura Naughton, State Board Administrator, Indiana Department of Education, Room 229, State House Indianapolis, Indiana 46204-2798. 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.

Distribution via certified mail and electronic mail to:

Copies to (via United States and electronic mail):

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For Fayette County School  
Corporation

**BEFORE THE INDIANA STATE BOARD OF EDUCATION**

**IN THE MATTER OF:**

Hamilton Heights School Corporation	)	
	)	
Petitioner,	)	
	)	
v.	)	Cause No. 1305009
	)	
Fayette County School Corporation	)	
	)	
Respondent.	)	

**OBJECTIONS AND REQUEST FOR ORAL ARGUMENT**

**I. Introduction**

This case concerns how to properly calculate the costs owed from one school district to another when a parent places her child in a school district outside of her legal settlement pursuant to a specific Indiana statute. When the school district in which the student is placed provides tuition and transportation to that student, how much does the district of legal settlement reimburse the school for providing services to the student? The parties agree that the Indiana State Board of Accounts Form 515 should be used to calculate the costs, but they disagree about how many students those costs should be divided by.

**II. Background**

The Student, S.L., has legal settlement in the Respondent’s (“Fayette”) school district. For the 2011-12 school year, S.L.’s parent placed her at the Arcadia Developmental Center (ADC), located in the Hamilton Heights (“Heights”) school boundaries. This is not a special education placement but instead a placement under a specific statute, I.C. § 20-26-11-8(b), which allows a parent in one school district to place his or her child with severe needs in an approved facility, like ADC, located in another school district. Neither school district has any input into the parent’s placement. Heights has provided a detailed chronology under Exhibit “A” regarding the

S.L.'s background. Under Indiana law, legal settlement of the student does not change simply because the parents placed the student elsewhere. S.L.'s legal settlement is still Fayette.

When the parent placed S.L. at ADC, Heights forwarded a transfer agreement, correspondence, and a certificate approved by the Indiana State Board of Accounts (SBOA) to Fayette. See Exhibit "B." Indiana law allows the school district where the student has been placed (Heights) to recover the **actual** costs of educating and transporting the Fayette student. Fayette is responsible for the **actual** costs. Fayette acknowledged its financial obligation for the transportation of S.L., who continues to have legal settlement in Fayette. The SBOA publishes the School Form 515 which includes a section to recoup transportation expenses (Exhibit "B" page 13), and Fayette agreed that Form 515 controls the calculation of such costs.

Form 515 is a step-by-step form for a school to fill in appropriate numbers and calculate the costs of tuition and transportation. Form 515 includes a line for "total number of pupils transported." Included in Fayette's Exhibits is the Instructional Manual for the Form 515. See Fayette Exhibit "#30." This Instructional Manual speaks specifically to calculating costs for the "class of school" and the students participating in a **special, particular program**.

Heights was directed by the SBOA, Mr. Stan Mettler, and by the Indiana Department of Education (IDOE), Ms. Debby Hine, that **actual** transportation costs **should** be recovered in this type of situation and that Heights should calculate the formula for recouping the **actual** costs associated with transporting students placed pursuant to I.C. § 20-26-11-8(b). This means that Heights should be entitled to recoup the full amount of **actual** expenses associated with transporting the specific student S.L.; not the costs of transporting the Heights student body as a whole. S.L. has severe needs that require different transportation from the general student population. As such, Heights calculated the **actual** costs of transporting the student in her particular class of school and special program; not the general costs of transporting the entire Heights student population. Mr. Mettler at SBOA approved the Heights calculation which determined the actual costs of transporting S.L. in her particular program.

Following the 2011-2012 school year, Heights again provided Fayette with a transfer agreement and the Form 515, and despite Fayette's acknowledgement that it was responsible for S.L.'s transportation and that Form 515 controlled the calculation, Fayette refused to return the

transfer agreement and transportation agreement. Later however, Fayette submitted a letter on May 24, 2013 acknowledging that it owes Heights an outstanding balance for transportation under Exhibit “B – 9.” Heights continued to send follow-up documentation and correspondence to solicit payment from Fayette under Exhibit “B.” The efforts to collect costs associated with S.L. were both time consuming and burdensome. Fayette owed \$10,242 for tuition and transportation, but paid nothing to Heights. After two years of attempting to collect the amount still unpaid for S.L., Heights finally sought clarification before the State Board of Education Hearing Officer regarding the proper formula for calculating transportation costs under I.C. § 20-26-11-8(b).

This is an ongoing issue between Heights and Fayette, as well as with other school districts. It will be necessary to request another hearing between Heights and Fayette to tend to the 2012-2013 school year; that hearing has not yet been filed. Fayette did return an executed transportation agreement for the 2013-2014 school year under Exhibit “E-1.” In that agreement, Fayette agreed to contract with Heights for the 2013-2014 school year and to pay for ALL transportation costs associated with the student.

This matter deals with the proper formula from the 2011-2012 school year, although the formula will be applied to subsequent years as well. Heights has been instructed by SBOA and IDOE to recoup all the actual costs of transportation. To do so, the formula used must isolate costs to the students attending the ADC and not calculate the formula using the total number of students receiving transportation in the district. The students attending the ADC have severe needs and require different transportation than the total student population receiving transportation in Heights.

Mr. Michael Moore’s Proposed Order of November 26, 2013 calculates the costs improperly because it uses the total number of students in the district as the calculation, not the costs of the students like S.L. served by the severe program. This results in a drastically lower figure for Heights and does not provide them recovery of actual costs associated with transporting S.L. Mr. Moore’s Proposed Order is an advisory opinion that may or may not be adopted as a final order by the State Board of Education.

Petitioner Heights takes exception to Mr. Moore's Proposed Order as outlined below. Heights references the specific Finding of Fact or the Conclusion of Law by number assigned by the Hearing Examiner in his Proposed Order.

### **III. Specific Objections to Findings of Fact**

*11. Throughout the 2012 and 2013 school years, Hamilton Heights sought guidance from the Indiana Department of Accounts ("IDOA")<sup>1</sup> and the Indiana Department of Education ("IDOE) and*

*12. Based on conversations with IDOA and IDOE, Hamilton Heights sought reimbursement for the actual costs associated with transporting the student.*

#### **Objections to #11 and #12:**

The Hearing Examiner omitted from his Findings of Fact that Instructional Manual for Form 515 speaks specifically to the "class of school" and the students participating in a particular program. See Fayette Exhibit "#30." Therefore, the denominator in the equation for calculating costs should only be those attending the program. This is a material omission that should be a Finding of Fact.

Mr. Mettler at the SBOA provided guidance to Heights on how to calculate and charge for transportation services. Mr. Mettler discussed a calculation formula that charged for **actual** costs and divided by the total students served by the severe program at ADC, not the total student population attending Heights. Mr. Mettler advised Heights that their calculation was appropriate and fair to recoup the costs associated with transporting a student with severe needs. In addition, Ms. Debby Hineline at the IDOE, School Finance, advised Heights that it could charge for actual costs. Melissa Ambre at the IDOE, School Finance, also advised Heights that its proposed

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<sup>1</sup> The Hearing Examiner refers to the Indiana State Board of Accounts as the Indiana Department of Accounts (IDOA) in his Proposed Order. The parties referred to the entity as the Indiana State Board of Accounts, or SBOA. The terms are used interchangeably here.

formula was appropriate for calculating and charging school districts, provide there was a signed transportation agreement. None of this information was contested at hearing.

The Hearing Examiner must determine the proper weight to assign the advice and interpretive guidance from Mr. Mettler, Ms. Hineline, and Ms. Ambre. Advisory notes or commentary are “akin to an agency's interpretation of its own legislative rules [which] must be given ‘controlling weight unless it is plainly erroneous or inconsistent with the regulation.’” *Stinson v. United States*, 508 U.S. 36, 45 (1993) (citing *Bowles v. Seminole Rock Co.*, 325 U.S. 410, 414-15 (1945)). Interpretive agency letters are afforded the same deference. They aid the court “insofar as” or “to the extent that” they do not contradict clear statutory or regulatory mandates: “In administrative law . . . the first question is how the agency understands its own rules – for an agency possessed of the ability to adopt and amend rules also may interpret them, even if the interpretation chosen is not the one that most impresses an outside observer.” *Chicago School of Automatic Transmissions, Inc. v. Accreditation Alliance of Career Sch. and Colleges*, 44 F.3d 447, 450 (7th Cir. 1994); see also *Estate of Kurz v. Commissioner of Internal Revenue*, 68 F.3d 1027, 1030 (7th Cir. 1995) (deferring to agency's interpretive letter because agency has “substantial leeway in their interpretation” of their own regulations); *Jones v. Illinois Dept. of Rehabilitation Serv.*, 689 F.2d 724, 729 (7th Cir.1982) (holding agency’s interpretive letter was entitled to “substantial deference”).

Therefore, the Hearing Examiner can, and should, defer to the IDOE and SBOA’s interpretive guidance unless it violates the clear meaning or purpose of the statute, the regulation, or applicable legal precedents.

#### **IV. Specific Objections to Conclusions of Law**

2. *Fayette was required to pay the transfer tuition of the transferred student;*

**Objection:** The Hearing Examiner should have indicated that Fayette owes both the tuition and transportation for the student based on agency interpretation of the statute. The Hearing Examiner should have indicated that Fayette owes both the tuition and transportation for the student based on agency interpretation of the statute using the Form 515. Additionally,

included in Fayette's Exhibits is the Instructional Manual for the Form 515. See Exhibit "#30." This Instructional Manual speaks specifically to the "class of school" and the students participating in a particular program.

3. *Indiana Code section 20-26-11-8 speaks only to tuition and does not specifically cover transportation costs;*

**Objection:** The Hearing Examiner should have indicated that Fayette owes both the tuition and transportation for the student based on agency interpretation of the statute.

Transportation is a logical extension of the necessary costs associated with providing educational services to a special needs population of students pursuant to I.C. § 20-26-11-8; the students must be transported to the location where they can receive educational services.

In the absence of any clear rule, analogous statutes provide the guiding authority to develop a formula that accurately reflects the funds expended to transport students served by ADC. The Hearing Examiner should have indicated that Fayette owes both the tuition and transportation for the student based on agency interpretation of the statute using the Form 515.

Additionally, included in Fayette's Exhibits is the Instructional Manual for the Form 515.

See Exhibit "#30." This Instructional Manual speaks specifically to the "class of school" and the students participating in a particular program.

4. *Indiana Code section 20-26-11-13 explains the formula for determining the transfer tuition. The basic formula for determining the transfer tuition is:*

*STEP ONE: determine the student's FTE by dividing the total pupil days the student attended school in the transferee school district by the number of days the school was in session.*

*STEP TWO: determine the per capita costs by dividing the total operating costs by Pupil Enrollment.*

*STEP THREE: multiply the per capita costs (STEP 2) by the FTE (STEP 1).*

*STEP FOUR: subtract any state tuition support received by the transferee for the student (ADM & APC) from the number in step three.*

**Objection:** The Hearing Examiner should have indicated that STEP TWO means “Pupil Enrollment” for the students receiving transportation at the ADC. Using the actual number of students in the ADC program as the denominator isolates the **actual** costs. The Hearing Examiner should have indicated that Fayette owes both the tuition and transportation for the student based on agency interpretation of the statute using the Form 515. Additionally, included in Fayette’s Exhibits is the Instructional Manual for the Form 515. See Exhibit “#30.” This Instructional Manual speaks specifically to the “class of school” and the students participating in a particular program.

5. *Indiana Code sections 20-26-11-13(c) and 20-26-11-22(b) exclude “costs of transportation” from the calculation to determine a transferee’s operating costs. Likewise, Indiana Code section 20-26-1-13(a)(2) excludes equipment used to transport a child from the definition of “special equipment”;*

**Objection:** The Hearing Examiner should have indicated that Fayette owes both the tuition and transportation for the student based on agency interpretation of the statute. The Hearing Examiner should have indicated that Fayette owes both the tuition and transportation for the student based on agency interpretation of the statute using the Form 515. Additionally, included in Fayette’s Exhibits is the Instructional Manual for the Form 515. See Exhibit “#30.” This Instructional Manual speaks specifically to the “class of school” and the students participating in a particular program.

6. *It would appear that the formula outlined in Indiana Code section 20-26-11-13 does not cover the issue of transportation costs incurred by a transferee school corporation;*

**Objection:** The Hearing Examiner should have indicated that Fayette owes both the tuition and transportation for the student based on agency interpretation of the statute. The Hearing Examiner should have indicated that Fayette owes both the tuition and transportation for the student based on agency interpretation of the statute using the Form 515. Additionally, included in Fayette’s Exhibits is the Instructional Manual for the Form 515. See Exhibit

“#30.” This Instructional Manual speaks specifically to the “class of school” and the students participating in a particular program.

7. *Hamilton Heights cites Indiana Code section 20-26-11-26 as authority for the argument that a transferor school is required to reimburse the transferee for transportation costs associated with transporting a student. However, that statute applies only to students who are transferred from one school corporation to another pursuant to a court order that was the result of litigation in a state or federal court – typically related to a desegregation order. That statute would not seem to apply here because this student was placed by her parent at Arcadia, and the placement was not pursuant to a court order;*

**Objection:** The Hearing Examiner has discretion and flexibility under established Indiana case law to apply a corresponding statute to this set of facts. *New Horizon Maternity Home v. The Alexandria Community School Corporation*, Cause No. 9005028 (1990); *South Montgomery Community School Corporation and A.S.*, Cause No. 0703007 (2007). The Hearing Examiner should have indicated that Fayette owes both the tuition and transportation for the student based on agency interpretation of the statute using the Form 515. Additionally, included in Fayette’s Exhibits is the Instructional Manual for the Form 515. See Exhibit “#30.” This Instructional Manual speaks specifically to the “class of school” and the students participating in a particular program.

9. *To not require the transferor school to contribute to the significant costs of transporting moderate to severely disabled children would lead to an absurd and unfair result. However, nothing in Indiana Code section 20-26-11 provides authority for which this hearing examiner can order transportation costs to be recouped by the transferee school;*

**Objection:** The Hearing Examiner has discretion and flexibility under established Indiana case law to apply a corresponding statute to this set of facts. *New Horizon Maternity Home v. The Alexandria Community School Corporation*, Cause No. 9005028 (1990); *South Montgomery Community School Corporation and A.S.*, Cause No. 0703007 (2007). The

Hearing Examiner should have indicated that Fayette owes both the tuition and transportation for the student based on agency interpretation of the statute using the Form 515.

Additionally, included in Fayette’s Exhibits is the Instructional Manual for the Form 515.

See Exhibit “#30.” This Instructional Manual speaks specifically to the “class of school” and the students participating in a particular program.

*10. Both parties point to Form 515, created by the State Board of Accounts, as authority for this hearing examiner to order the transferor school to reimburse the transferee school for transportation costs even though Indiana Code 20-26-11 et seq. is silent to this question;*

**Objection:** The Hearing Examiner should have indicated that Fayette owes both the tuition and transportation for the student based on agency interpretation of the statute using the Form 515. Additionally, included in Fayette’s Exhibits is the Instructional Manual for the Form 515. See Exhibit “#30.” This Instructional Manual speaks specifically to the “class of school” and the students participating in a particular program.

*18. Specifically, Hamilton Heights argues that the formula used to determine the amount of reimbursement it should receive should be determined as follows: calculate the overhead cost adjusted by listed factors, divide that number by the total students served and then add the direct costs of the driver/aide specific to the bus on which the student is transported. A detailed explanation of Hamilton Heights' proposed formula is below:*

***Hamilton Heights’ Proposed Formula***

*Step 1 – Calculate total overhead cost by adding:*

<i>27010 Service Area Directions - Student Transportation</i>	<i>\$202,264.92</i>
<i>27100 Vehicle Operations</i>	<i>\$687,844.23</i>
<i>27200 Monitoring Services</i>	<i>\$62,602.41</i>
<i>27300 Vehicle Servicing and Maintenance</i>	<i>\$485,888.16</i>
<i>27500 Insurance on Buses</i>	<i>\$24,851.00</i>
<i>27700 Contracted Transportation Services</i>	<i>\$73.44</i>
<i>27900 Other Student Transportation Services</i>	<i>\$14,050.00</i>

Total \$1,477,574.16

Step 2 – Subtract the following:

All driver costs in program 27100 (\$687,844.23)  
Insurance Proceeds (\$9,022.45)  
Revenue from towns paid for fuel (\$114,434.36)

Adjusted Total \$666,273.12

Step 3 – Determine overhead costs per pupil transported by  
dividing the adjusted total in Step 2 by the average number (\$666,273.12/1366.78)  
of bus riders at Hamilton Heights \$487.48

Step 4 – Add totals related to the bus S.L. rides

Driver/Aide costs \$43,670.81  
Bus costs \$8,098.83  
Total \$51,769.64

Step 5 – Divide the total costs related to the bus S.L. rides (\$51,769.64/13.71)  
by the number of students who also ride. \$3,776.05

Step 6 – Add Step 3 Overhead cost per pupil +\$487.48

Total Cost per student to be reimbursed by Fayette \$4,236.53

**Objection:** The Hearing Examiner should have indicated that Fayette owes both the tuition and transportation for the student based on agency interpretation of the statute using the Form 515. For purposes of the hearing, Heights was requested to break down the itemized cost, and did so as a result of Fayette’s request. This breakdown of cost should not be viewed as a departure from the Form 515 formula. Additionally, included in Fayette’s Exhibits is the Instructional Manual for the Form 515. See Exhibit “#30.” This Instructional Manual speaks specifically to the “class of school” and the students participating in a particular program.

20. *Fayette notes that its formula is consistent with the formula that has been prescribed on Form 515 for several decades without change;*

**Objection:** The Hearing Examiner should have examined the fact that the Form 515 has been interpreted specifically by the SBOA and IDOE to reflect the Heights calculation that considers only those students in the program served. Included in Fayette’s Exhibits is the Instructional Manual for the Form 515. See Exhibit “#30.” This Instructional Manual speaks specifically to the “class of school” and the students participating in a particular program.

21. *The formula provided on Form 515 spreads transportation costs to all students at the transferee corporation rather than isolating the costs associated solely with the transferred students and applying them to those students only;*

**Objection:** The Hearing Examiner should have examined the fact that the Form 515 has been interpreted specifically by the SBOA and IDOE to reflect the Heights calculation that considers only those students in the program served. Included in Fayette’s Exhibits is the Instructional Manual for the Form 515. See Exhibit “#30.” This Instructional Manual speaks specifically to the “class of school” and the students participating in a particular program.

22. *Fayette is correct that this is the formula that has been prescribed on Form 515, and it appears that there has been no change in that formula for many years;*

**Objection:** The Hearing Examiner should have examined the fact that the Form 515 has been interpreted specifically by the SBOA and IDOE to reflect the Heights calculation that considers only those students in the program served. Included in Fayette’s Exhibits is the Instructional Manual for the Form 515. See Exhibit “#30.” This Instructional Manual speaks specifically to the “class of school” and the students participating in a particular program.

23. *Absent any other guidance from the legislature, Fayette's proposed formula would seem to be the most appropriate;*

**Objection:** The Hearing Examiner has discretion and flexibility pursuant to cases cited in Petitioner's Supplemental Brief to apply a corresponding statute to this set of facts and should have given deference to the SBOA and IDOE interpretations. Included in Fayette's Exhibits is the Instructional Manual for the Form 515. See Exhibit "#30." This Instructional Manual speaks specifically to the "class of school" and the students participating in a particular program.

24. *This formula has been consistently used when there is a written transportation agreement between schools; thus, it makes logical sense to apply it, likewise, in the absence of an agreement;*

**Objection:** The finding that it makes "logical sense" is not based in any Finding of Fact or Conclusion of Law. Instead, the Hearing Examiner should defer to agency interpretation. Included in Fayette's Exhibits is the Instructional Manual for the Form 515. See Exhibit "#30." This Instructional Manual speaks specifically to the "class of school" and the students participating in a particular program.

## **V. Conclusion**

Under I.C. § 20-26-11-8(b), parents may remove their child from her district of legal settlement and place her in a different district. The district of legal settlement (Fayette) may either provide transportation, appeal the payment, or enter into a transportation agreement with the district in which the child has been placed. When the district of legal settlement (Fayette) refuses to sign a transportation agreement (as Fayette refused in the 2011-12 school year), the district in which the child has been placed (Heights) faces the predicament to either (a) not transport the child to receive her educational services, thereby denying her an education, or (b) to provide transportation and hope to recoup the costs expended by the

Heights taxpayers on the Fayette student in the severe program. In this case, Heights chose to provide transportation, which was the best decision for S.L. With the help of the SBOA and IDOE, Heights developed a formula to recoup the specific, **actual** costs of transporting the student to her educational services.

The Hearing Examiner's Proposed Order is contrary to the statutory interpretation handed down from SBOA and IDOE. This case will not only affect Heights and Fayette, but also the many other school districts across the state that experience this situation and are without a bright line rule for calculating and recovering transportation costs in this position.

WHEREFORE, because this is an important public policy and unique issue, Heights requests this cause be set for oral argument in order for the State Board of Education may consider the case.

Respectfully submitted,

CHURCH, CHURCH, HITTLE & ANTRIM



---

Andrew A. Manna, #24290-49  
Jessica Heiser, #31339-29  
Attorneys for Petitioner  
Church Church Hittle and Antrim

**CERTIFICATE OF SERVICE**

I hereby certify that on this 11<sup>th</sup> day of December, 2013, a copy of the foregoing was sent via e-mail to the following parties:

Laura Naughton  
State Board Administrator  
lnaughton@doe.in.gov

Anne Davis  
Director, State Board of Education  
amdavis@ceci.in.gov

Michael Moore  
Hearing Examiner  
mmoore@doe.in.gov

Michelle McKeown  
General Counsel, State Board of Education  
mmckeown@ceci.in.gov

Robert Rund  
Attorney for Fayette County School Corporation  
rrund@lewis-kappes.com



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Andrew A. Manna, #24290-49

# **Exhibit A**

Fayette County School Corporation  
Stephanie Lakes

Guardian: Diana Brown (mother)  
Legal residence: 529 West 8<sup>th</sup> Street Connersville, IN 47331  
DOB: 4/4/1994  
Placement: July 1, 2011

## **2011-2012**

11/1/11: initial transfer certificate and transportation agreement mailed (exhibit #1)  
11/3/11: written response from Jane Kellam-Tollett, Director of Finance, with questions regarding the transfer certificate and transportation agreement (exhibit #2)  
11/21/11: letter sent to all districts describing Arcadia Development Center and corporation of legal settlement responsibilities outlined in IC 20-26-11-8(b). A copy of this code was included with the letter (exhibit #3)  
4/18/12: student information form including DOB, grade, date of placement, guardian residence, placement made by, etc. sent to all districts if certificate and agreements had not been received yet for 2011-2012 school year (exhibit #4)  
4/25/12: email received from Jane Kellam-Tollett stating that she could not request Superintendent to sign transportation agreement (exhibit #5)  
12/20/12: Form 515, Transfer Tuition Statement, for the 2011-2012 school year sent to all districts (exhibit #6)  
1/2/13 – 1/4/2013: multiple email correspondence with Jane Kellam-Tollett after receipt of Form 515 questioning tuition and transportation costs (exhibit #7)  
5/13/13: DOE hearing requested by HHSC (exhibit #8)  
5/24/13: letter from Jane Kellam-Tollett requesting vendor history for payments to LEA of general fund expense and discussion regarding transportation calculation (exhibit 2011-2012 #9)  
5/31/13: forwarded vendor history to Jane via email (exhibit #10)  
6/3/13: email received from Jane thanking me for the requested vendor history requested on 5/24/13 (exhibit #11)  
7/10/13: letter sent to Jane from Peggy Jackson (exhibit #12)  
7/22 – 7/26/13: multiple emails between HHSC and Fayette School Corporation to schedule time to discuss (exhibit #13)  
7/23/13: Peggy Jackson follow-up email with Dr. Hodges and formula calculation file outlining costs for transportation (exhibit #14)

## **2012-2013**

10/1/12: initial transfer certificate and transportation agreement mailed (exhibit #1)  
12/21/12: second request for transfer certificate and transportation agreement mailed (exhibit #2)

## **2013-2014**

3/25/13: initial request for transfer tuition and transportation agreement mailed certified requesting returned agreements within 30 days but no later than two weeks prior to start of school – return receipt dated 4/1/13 (exhibit #1)  
4/1/13: certified letter received and signed off by Lonnie Spurlock (exhibit #2)  
7/11/13: second request for transfer certificate and transportation agreement mailed certified to Jane Kellam-Tollett and Jan Dunham (Special Education Director) – return receipt dated 7/12/13 (exhibit #3)  
???: signed transportation agreement received signed by Superintendent (exhibit #4)

# **Exhibit B**

# HAMILTON HEIGHTS

*School Corporation*

Administration Office, P.O. Box 469 Arcadia, IN 46030 • Telephone: (317) 984-3538 • Fax: (317) 984-3042

November 1, 2011

Fayette County School Corporation  
1401 Spartan Drive  
Connersville, IN 47331

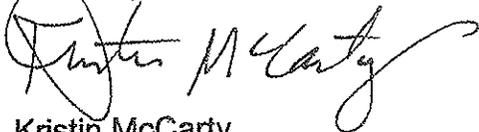
RE: Stephanie Lakes

To Whom It May Concern:

Stephanie Lakes resides at the Arcadia Development Center, but her mother is Diane Browne who resides in your district at 529 West 8<sup>th</sup> Street, Connersville, Indiana, 47331. I am enclosing a transfer certificate for your signature along with a transportation agreement for the 2011-2012 school year which began August 22<sup>nd</sup>. Please sign both certificates and return to the attention of Kristin McCarty at the address listed above.

Thank you.

Sincerely,



Kristin McCarty  
Treasurer

Enclosures

TRANSFER CERTIFICATE

2011 - 2012 SCHOOL YEAR

Date 11/01/11

SCHOOL CORPORATION Fayette County School Corporation

ADDRESS 1401 Spartan Drive, Connersville, IN 47331 COUNTY Fayette

Comes Now, \_\_\_\_\_ of the above named School Corporation and asks

that Stephanie Lakes Grade 12 Born April 4 1994
that \_\_\_\_\_ Grade \_\_\_\_\_ Born \_\_\_\_\_
that \_\_\_\_\_ Grade \_\_\_\_\_ Born \_\_\_\_\_
that \_\_\_\_\_ Grade \_\_\_\_\_ Born \_\_\_\_\_

be transferred to HAMILTON HEIGHTS SCHOOL CORP. 410 W MAIN STREET, ARCADIA IN 46030
(School Corporation) (Address)

HAMILTON County, Indiana for the following reason(s):

Legal Settlement: Signed \_\_\_\_\_ (Parent or Guardian)
Signed \_\_\_\_\_ (Representative, Co. Welfare Dept.)
Signed \_\_\_\_\_ (Representative of Court)

It is my (our) opinion that the above request be (approved) (denied) for the following reasons:

Approval of Transferring School Corporation Signed \_\_\_\_\_ (Supt., Sec. Of Board or Twp. Trustee of Transferring School Corp.)

School Corp. Fayette County School Corporation
Date 11/2/11

Approval of Receiving School Corporation Signed \_\_\_\_\_ (Supt., Sec. Of Board or Twp. Trustee)

School Corp. HAMILTON HEIGHTS SCHOOL CORP.
Date 11/01/11

APPEAL

If the request for transfer is denied or not acted upon within thirty (30) days, the parent, guardian or custodian may appeal to the Commission on General Education, Room 227 State House, Indianapolis; Provided, that appeal is made by registered or certified mail and, Provided, that a copy of such appeal be sent by registered or certified mail to the school corporation where the child resides and to the school corporation to which the transfer request was refused. Each school corporation concerned shall within ten (10) days after receipt of copy of such appeal, send by registered or certified mail a report to the Commission on General Education giving his recommendations for or against the transfer request. CH 273 Acts 1965.

## Transportation Agreement

This Transportation Agreement ("Agreement") shall govern transportation of all students with legal settlement in the Fayette County School Corporation (the "Transferor Corporation") by Hamilton Heights School Corporation (the "Transferee Corporation") from the Arcadia Development Center where students with legal settlement in Transferor Corporation have been placed a student's Parent, Legal Guardian, Court, or other placing agency to the school facility designated in the child's IEP.

The Transferor Corporation agrees to pay to Transferee School Corporation the transportation costs invoiced on the 515 Annual Statement.

Interest on unpaid transportation costs will begin to accrue six per cent (6 %) interest commencing forty five (45) days after the payment due date indicated in Exhibit "A".

Payment of transportation costs shall be sent to the following address:

Mrs. Peggy Jackson  
Director of Budget and Finance  
Hamilton Heights School Corporation  
PO Box 469,  
410 W. Main Street  
Arcadia, IN 46030-0469

This Transportation Agreement entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2011 pursuant to IC 20-27-11-4.

Approval of Transferring  
School Corporation

Signed

\_\_\_\_\_  
(Supt., Sec. Of Board or Twp. Trustee  
of Transferring School Corp.)

School Corp.

\_\_\_\_\_  
Fayette County School Corporation

Date

\_\_\_\_\_  
11/2/11

Approval of Receiving  
School Corporation

Signed

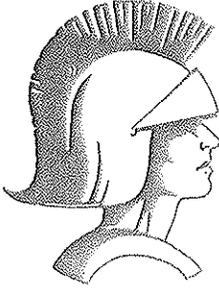
\_\_\_\_\_  
(Supt., Sec. Of Board or Twp. Trustee

School Corp.

\_\_\_\_\_  
HAMILTON HEIGHTS SCHOOL CORPORATION

Date

\_\_\_\_\_  
11/1/2011



# Fayette County School Corporation

1401 Spartan Drive • Connersville, IN 47331  
Phone (765) 825-2178 • Fax (765) 825-8060

November 3, 2011

Hamilton Height School Corporation  
Ms. Kristin McCarty  
Treasurer  
P.O. Box 469  
Arcadia, IN 46030

Dear McCarty,

Enclosed I am returning the Transfer Certificate requesting the following information be completed:

1. Reason for placement
2. Signature by the one of the following that ordered the placement—Parent or Guardian; Welfare Representative or Court Representative

I am also returning the Transportation Agreement requesting the following:

1. "all students" in line one be changed to Stephanie Lakes  
We will not agree to a blanket agreement for "all students".
2. The third paragraph references "Exhibit A" however, there was no such exhibit included in the packet. This exhibit should be in accordance for charging interest to governmental entities per Indiana statute.

Thank you for your assistance with these documents.

Sincerely,

Jane Kellam-Tollett, CPA  
Director of Finance

Enc.

# TRANSFER CERTIFICATE

2011 - 2012 SCHOOL YEAR

Date 11/01/11

SCHOOL CORPORATION Fayette County School Corporation

ADDRESS 1401 Spartan Drive, Connorsville, IN 47331

COUNTY Fayette

Comes Now, \_\_\_\_\_ of the above named School Corporation and asks

			Mo.	Day	Yr.
that <u>Stephanie Lakes</u>	Grade <u>12</u>	Born	<u>April</u>	<u>4</u>	<u>1994</u>
that _____	Grade _____	Born	_____	_____	_____
that _____	Grade _____	Born	_____	_____	_____
that _____	Grade _____	Born	_____	_____	_____

be transferred to HAMILTON HEIGHTS SCHOOL CORP.  
(School Corporation)

410 W MAIN STREET, ARCADIA IN 46030  
(Address)

HAMILTON County, Indiana for the following reason(s):  
\_\_\_\_\_  
\_\_\_\_\_

### Legal Settlement:

Signed \_\_\_\_\_

(Parent or Guardian)

Signed \_\_\_\_\_

(Representative, Co. Welfare Dept.)

Signed \_\_\_\_\_

(Representative of Court)

It is my (our) opinion that the above request be (approved) (denied) for the following reasons:  
\_\_\_\_\_  
\_\_\_\_\_

### Approval of Transferring School Corporation

Signed \_\_\_\_\_

(Supt., Sec. Of Board or Twp. Trustee  
of Transferring School Corp.)

School Corp. Fayette County School Corporation

Date 11/2/11

### Approval of Receiving School Corporation

Signed \_\_\_\_\_

(Supt., Sec. Of Board or Twp. Trustee)

School Corp. HAMILTON HEIGHTS SCHOOL CORP.

Date 11/01/11

## APPEAL

If the request for transfer is denied or not acted upon within thirty (30) days, the parent, guardian or custodian may appeal to the Commission on General Education, Room 227 State House, Indianapolis; Provided, that appeal is made by registered or certified mail and, Provided, that a copy of such appeal be sent by registered or certified mail to the school corporation where the child resides and to the school corporation to which the transfer request was refused. Each school corporation concerned shall within ten (10) days after receipt of copy of such appeal, send by registered or certified mail a report to the Commission on General Education giving his recommendations for or against the transfer request. CH 273 Acts 1965.

## Transportation Agreement

This Transportation Agreement ("Agreement") shall govern transportation of all students with legal settlement in the Fayette County School Corporation (the "Transferor Corporation") by Hamilton Heights School Corporation (the "Transferee Corporation") from the Arcadia Development Center where students with legal settlement in Transferor Corporation have been placed a student's Parent, Legal Guardian, Court, or other placing agency to the school facility designated in the child's IEP.

The Transferor Corporation agrees to pay to Transferee School Corporation the transportation costs invoiced on the 515 Annual Statement.

Interest on unpaid transportation costs will begin to accrue six per cent (6 %) interest commencing forty five (45) days after the payment due date indicated in Exhibit "A".

Payment of transportation costs shall be sent to the following address:

Mrs. Peggy Jackson  
Director of Budget and Finance  
Hamilton Heights School Corporation  
PO Box 469,  
410 W. Main Street  
Arcadia, IN 46030-0469

This Transportation Agreement entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2011 pursuant to IC 20-27-11-4.

**Approval of Transferring  
School Corporation**

Signed

\_\_\_\_\_  
(Supt., Sec. Of Board or Twp. Trustee  
of Transferring School Corp.)

School Corp.

\_\_\_\_\_  
Fayette County School Corporation

Date

\_\_\_\_\_  
11/2/11

**Approval of Receiving  
School Corporation**

Signed

\_\_\_\_\_  
(Supt., Sec. Of Board or Twp. Trustee

School Corp.

\_\_\_\_\_  
HAMILTON HEIGHTS SCHOOL CORPORATION

Date

\_\_\_\_\_  
11/1/2011

# HAMILTON HEIGHTS <sup>3</sup>

*School Corporation*

Administration Office, P.O. Box 469 Arcadia, IN 46030 • Telephone: (317) 984-3538 • Fax: (317) 984-3042

November 21, 2011

Fayette County School Corporation  
1401 Spartan Drive  
Connersville, IN 47331

RE: Stephanie Lakes

To Whom It May Concern:

After several phone calls and letters regarding questions concerning the Transfer Certificates and Transportation Agreements that I sent earlier this month I thought it was necessary to clarify the situation.

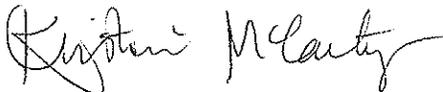
Arcadia Development Center is a private health care facility located in our school district. The facility houses severe and profound students from all over the State of Indiana. The student(s) referenced above resides at the Arcadia Development Center, but their legal guardian(s) reside in your school district.

IC 20-26-11-8(b) outlines your responsibilities for payment of the transfer tuition. I have attached a copy of this section of the Indiana Code. Hamilton Heights School Corporation includes these students in our ADM and Special Education counts for the school year however the costs associated with these students is costly. The transfer tuition that your district is responsible for would be the total cost less the ADM and Special Education money that our district receives.

I am requesting you to sign the Transfer Certificate and Transportation Agreement and return to my attention at the address listed above. If you have further questions please contact me at (317) 984-3538 or by e-mail [kmccarty@mail.hhsc.k12.in.us](mailto:kmccarty@mail.hhsc.k12.in.us).

Thank you.

Sincerely,



Kristin McCarty  
Corporation Treasurer

Anthony J. Cook – Superintendent  
Peggy D. Jackson – Associate Superintendent  
Kimberly Luckey – Special Education Coordinator  
Heather Elliott - District Literacy & Curriculum Coordinator  
Kathy Alexander – Registrar/Student Services

Kristin McCarty – Treasurer  
Cathy Pickett – Deputy Treasurer  
Kathy Godby – Purchasing/Acct. Pay.  
Camille Bill – Food Service Dir. & LHLC Dir.  
Patty Brackett – Secretary

4

# HAMILTON HEIGHTS *School Corporation*

Administration Office, P.O. Box 469 Arcadia, IN 46030 • Telephone: (317) 984-3538 • Fax: (317) 984-3042

April 18, 2012

Student Name: Stephanie Lakes

DOB: 4/4/1994

Grade 2011/2012 School Year: 12

Date of Placement: 7/1/2011

Time of placement - Parent/Guardian residence: 529 West 8th Street Connersville, Indiana 47331

Time of placement - School Corporation of legal settlement: Fayette County School Corporation

Current - Parent/Guardian residence: 3009 Richmond Avenue Connersville, Indiana 47331

Current - School Corporation of legal settlement: Fayette County School Corporation

Name of placing person: Diana Brown (mother)

Hamilton Boone Madison Co-Op: FIATS Program

I certify that this information is correct.

Arcadia Developmental Center  
303 Franklin Avenue  
Arcadia, Indiana 46030  
317-984-9321

Beverly Sayre Cowart Administrator  
Signature Title

4-17-12  
Date

Beverly Sayre Cowart  
Printed Name



**Kristin McCarty**

---

**From:** Jane Kellam-Tollett <jkellam@fayette.k12.in.us>  
**Sent:** Wednesday, April 25, 2012 1:55 PM  
**To:** Kristin McCarty  
**Subject:** Transfer Certification

Kristin,

Good afternoon! I received your letter today but I believe the original transfer certificate and transportation agreement were sent back to you so we cannot sign unless you resend. This is testing my memory so I may be wrong but I thought the transportation agreement had some sort of statement about us approving in advance transportation for any other student placed there. I am sorry but I cannot recommend to our supt. That he sign a blind statement like that as we will want to review transportation along with the transfer certificate just to verify the student did have actual legal settlement within our corporation before placement within your district.

Thanks!

*Janie*

*Stephanie Labes*

Jane Kellam-Tollett, CPA  
Director of Finance  
Fayette County School Corporation  
1401 Spartan Drive  
Connersville, IN 47331  
(765)825-2178  
(765)825-8060 Fax

Do nothing out of selfish ambition or vain conceit. Rather, in humility value others above yourself.

---

CONFIDENTIALITY NOTICE

This e-mail message and any attachments may contain legally privileged, confidential or proprietary information. It is for the sole use of the intended recipient(s). If you are not the intended recipient(s), or the employee or agent responsible for delivery of this message to the intended recipient(s), you are hereby notified that any dissemination, distribution, or copying of this e-mail message is strictly prohibited. If you have received this message in error, please immediately notify the sender and delete this e-mail message and any attachments from your computer.

# HAMILTON HEIGHTS<sup>®</sup> *School Corporation*

Administration Office, P.O. Box 469 Arcadia, IN 46030 • Telephone: (317) 984-3538 • Fax: (317) 984-3042

December 20, 2012

CC COPY

Fayette County School Corporation  
1401 Spartan Drive  
Connersville, IN 47331

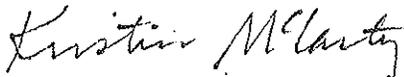
RE: Stephanie Lakes

To Whom It May Concern:

Enclosed you will find Form 515 Transfer Tuition Statement for the 2011-2012 School Year. I have also included a copy of the final billing from our Special Education Cooperative and the detail of the transportation costs for your review. Please contact me with any questions at (317) 984-3538 ext. 5011 or email [kmccarty@mail.hhsc.k12.in.us](mailto:kmccarty@mail.hhsc.k12.in.us).

Thank you.

Sincerely,



Kristin McCarty  
Corporation Treasurer



TRANSFER TUITION STATEMENT  
School Year 2011-2012

TO: Fayette County School Corporation

1401 Spartan Drive Connersville, IN 47331

FROM:	<u>Hamilton Heights</u>	<u>School Corporation</u>	<u>Hamilton</u>	<u>County</u>
Number of Days School was in Session for Pupil Attendance		<u>180</u>		
	ADM	%	ADM	%
Kindergarten	_____	_____	Special Program #1	<u>16.92</u>
Full Day Kindergarten	_____	_____	Special Program #2	_____
Elementary	_____	_____	Special Program #3	_____
Middle/Jr. High	_____	_____	Special Program #4	_____
Senior High School	_____	_____	Special Program #5	_____

GENERAL FUND OPERATING COSTS ACCORDING  
CLASSIFIED BUDGET ACCOUNTS

HBM Special Ed. Co-Op - FIATS  
Class of School

1. INSTRUCTION - REGULAR AND SPECIAL PROGRAMS Accounts 11000 and/or 12000, and 16100 and/or 16200 - General Fund Only	
2. SUPPORT SERVICES - ADMINISTRATION Accounts 21800, 23120, 23160, 23190, 23200, and 24000 - General Fund Only	
3. SUPPORT SERVICES - ATTENDANCE, HEALTH AND GUIDANCE Accounts 21100 through 21700 - General Fund Only	
4. SUPPORT SERVICES - OPERATION AND MAINTENANCE Accounts 26000 - General Fund Only	
5. SUPPORT SERVICES - CENTRAL Accounts 25000 (excluding 25191-25196 and 25910-25950) - General Fund Only	
6. SUPPORT SERVICES - OTHERS Accounts 22000, 31000 - General Fund Only	
7. INSTRUCTION - PAYMENTS TO OTHER GOVERNMENTAL UNITS WITHIN STATE Accounts 17000 (excluding 17800) above paid from General Fund through agencies for appropriate class of school	\$ 318,315.18
8. TOTAL OPERATING COSTS Lines 1 through 7 - General Fund Only	\$ 318,315.18

TRANSPORTATION

NOTE: Transportation expenses can be included in the Transfer Tuition Statement ONLY in instances where the transferred students are furnished transportation by the school corporation to which they are transferred and there is a written transportation agreement between the transferor and transferee corporations.

Costs of Transportation Fund - Accounts 27000 (except 27400)	<u>\$ 76,538.96</u>
Total Number of Pupils Transported	<u>16.04</u>
Cost per Pupil Transported	<u>\$ 4,771.76</u>
AMOUNT DUE FOR TRANSPORTATION	
Cost per pupil (above) divided by number of days school was in session equals cost per pupil per day:	<u>\$ 26.51</u>
$\$ 4,771.76 / 180$	
Cost per pupil day multiplied by total days transported equals cost of transporting pupils named in this statement:	
$\$ 26.51 \times 180$	<u>\$ 4,771.76</u>

A. Total pupil days enrolled divided by the number of days school was in session for pupil attendance equals full time pupil equivalent.

$$\frac{180}{180} = 1.00$$

B. Total Operating Costs (from line 8, page 1) divided by Pupil Enrollment equals Per Capita Cost.

$$\frac{\$ 318,315.18}{16.92} = \$ 18,812.95$$

C. Per Capita Cost (Section B) times full time pupil equivalent (Section A) equals Gross Amount due for Operating.

$$\frac{\$ 18,812.95}{1.00} = \$ 18,812.95$$

D. LESS the following state or local distributions that are computed in any part using ADM or other pupil count in which the student(s) is included: (Refer to the instructions in the Accounting and Uniform Compliance Guidelines Manual for Indiana Public School Corporations)

Prime time grant under IC 20-43-9 (Grades K-3)		
Tuition Support for basic programs	\$	(4,992.59)
Full Day Kindergarten Grant		
Academic Honors Diploma Award under 20-43-10-2		
Vocational Education Grant under IC 20-43-8		
Special Education Grant under IC 20-43-7	\$	(8,350.00)
The following do not apply to transfers under IC 20-26-11-6 (Cash Transfers):		
Financial Institutions Tax (FIT) (IC 20-43-3-2)		
Excise Tax Revenues (IC 20-43-1-12):		
Motor Vehicle Excise Tax (IC 6-6-6.5)		
Boat Excise Tax (IC 6-6-6.5)		
Aircraft License Excise Tax (IC 6-6-6.5)		
Commercial Vehicle Excise Taxes (IC 6-6-5.5)		
(Note: FIT & Excise Tax are amounts received in Calendar Year in which school year begins)		
Property Tax		
County Adjusted Gross Income Tax (CAGIT)	\$	(13,342.59)

Be aware only the monthly Basic Grant State distributions will be received starting January 1, 2009.

E. Net Amount Due for Operating (Section C Minus Section D) \$ 5,470.36

Net Amount Due for Transfer Tuition - Operating (E)	\$	5,470.36
Net Amount Due for Transfer Tuition - Special Equipment (G page 4)	\$	-
Net Amount Due for Transportation (from Bottom page 1)	\$	4,771.76
TOTAL net amount due for Transfer Tuition and Transportation	\$	10,242.12

Less Quarterly Payments:

	Date	Estimated Amount
First Quarter	_____	_____
Second Quarter	_____	_____
Third Quarter	_____	_____
Total Quarterly Payments		\$ -
Balance Due		\$ 10,242.12

**Hamilton Boone Madison Special Education Cooperative**  
**Final Billing Analysis**  
**2011-2012 School Year**

	Central (Dept 91)	FIATS (SMD) (Dept 92)	Elementary (Dept 93)	Secondary (Dept 94)	Mosaics (Dept 95)	Life Skills (MID/ID) (Dept 96)	Totals
ances (incl. ARRA)	\$ 1,246,694	\$ 1,477,614	\$ 514,120	\$ 811,204	\$ 1,219,147	\$ 2,595,338	\$ 7,854,069
an Claims	-	1,365	-	-	-	-	1,365
an P.O.s	-	24,366	2,309	9,355	-	31,863	67,893
an rental charges	-	49,000	-	-	-	84,000	133,000
Sub-Totals	\$ 1,246,694	\$ 1,552,344	\$ 516,430	\$ 820,559	\$ 1,219,147	\$ 2,701,201	\$ 8,056,314
CA Reimbursement	\$ (25,828)	\$ (49,415)	\$ (35,714)	\$ (55,780)	\$ (51,003)	\$ (95,328)	\$ (313,057)
funds & Reimbursements	(13,480)	(224)	-	-	(188)	-	(13,882)
1A Forfeitures	-	-	-	-	-	-	-
ARRA expenditures	-	-	-	-	-	-	ARRA exps: Nov/Dec '11
Net Billable Expense	\$ 1,207,318	\$ 1,502,705	\$ 480,715	\$ 764,778	\$ 1,167,975	\$ 2,605,873	\$ 7,693,245

% AD/ID	Contract, incl. ARRA	FIATS		Elementary		Secondary		Mosaics		Life Skills		ARRA credit	Subtotal	Total
		# Days Per Day	Tchr Count	Per Teacher	Tchr Count	Per Teacher	# Days Per Day	Tchr Count	Per Teacher	# Days Per Day	Tchr Count			
27.81%	393,340	2,772	1	80,119	1	80,503	1,842	207,046	12,577	828,695	(10,214)	1,793,326	1,783,112	
4.97%	60,004	740	-	-	1	80,503	963	108,244	2,503	184,922	(1,758)	484,048	482,290	
4.02%	48,534.2	3,046	-	-	1	80,503	7,324	36,418	1,233	81,242	(1,526)	536,378	534,852	
33.70%	408,860.0	2,832	-	-	2	161,006	2,150	241,868	10,868	719,080	(11,223)	1,794,956	1,783,733	
16.50%	199,207.4	3,442	-	320,477	2	161,006	2,934	329,789	7,716	509,405	(6,399)	1,846,225	1,839,826	
1.98%	23,904.9	668	-	80,119	0.5	40,252	253	28,438	1,103	72,978	(801)	308,918	308,117	
11.22%	135,491.0	2,301	-	-	2	161,006	1,925	216,375	3,549	233,943	(4,099)	965,514	961,415	
100.00%	\$ 1,207,318	15,891	6	\$ 480,715	9.5	\$ 764,778	10,391	\$ 1,167,975	39,549	\$ 2,605,873	\$ (38,019)	\$ 7,729,265	\$ 7,693,245	

Control Exp. 592  
 28,635.18  
 318,315.18  
 17% 8250.81  
 89,492.81

Capital Expenditures:	Hamilton SE	Sheridan	Noblesville	Westfield	Total
Computer Tech	2,492	993	8,272	5,625	50,182
Purchase of Equip	-	-	-	-	-
HM/EC Facility Rental	14,434	5,750	47,918	32,564	280,414
Repairs	-	6,743	65,499	-	-
Totals	16,926	114,784	54,291	38,209	340,645

11/12 Transportation Costs

Operational Costs 300+	
Drug Testing	1,558.00
Water/Sewage	1,161.17
Trash Removal	899.47
Telephone	3,128.72
Natural Gas	1,322.52
Electric	6,476.04
Mileage/Conference	830.00
Contracted Repairs	29,303.29
Insurance claim repairs	11,522.45
less insurance proceeds	(9,022.45)
Supplies	128,978.66
Tires	16,949.43
Gas	256,171.83
less revenue from Towns	(114,434.36)
Other	250.00
Software	14,050.00
Equipment	8,743.69
Insurance	24,851.00
	382,739.46
Director/Mechanic/Secretary	146,385.32
	529,124.78
number buses in service	38
cost per bus	13,924.34

Driver/Aide Wages & Benefits  
11/12 Contract Year

	Wages	FICA	Health	Life	LTD	Vision	Annuity	Total
Driver 1	15,067.50	1,152.66	5,101.00	71.00	N/A	198.44	452.03	22,042.63
Aide 1	8,458.08	647.04	N/A	N/A	N/A	N/A	N/A	9,105.12
								31,147.75
Driver 2	15,095.18	1,154.78	N/A	71.00	N/A	90.32	452.86	16,864.14
Aide 2	13,057.48	998.90	4,387.00	71.00	N/A	90.32	391.72	18,996.42
								35,860.56
Driver 3	23,285.95	1,781.38	5,101.00	71.00	N/A	90.32	698.58	31,028.22
Aide 3	12,325.48	942.90	N/A	N/A	N/A	N/A	N/A	13,268.38
								44,296.60
Mechanic	44,825.60	3,429.16	N/A	71.00	N/A	198.44	1,344.77	49,868.97
Director	45,500.78	3,460.81	11,469.00	71.00	200.20	198.44	1,365.02	62,285.26
Secretary	23,299.28	1,782.39	8,181.00	71.00	N/A	198.44	698.98	34,231.09
								146,385.32

Total Cost per Bus

	Bus 1	Bus 2	Bus 3
Operational	13,924.34	13,924.34	13,924.34
Driver & Aide	31,147.75	44,296.60	35,860.56
	45,072.09	58,220.94	49,784.89
50% of total costs	22,536.04	29,110.47	24,892.45
Students on Bus	3	6	6
Cost per Student	7,512.01	4,135.01	4,148.74
			4,771.76



## Kristin McCarty

---

**From:** Jane Kellam-Tollett <jkellam@fayette.k12.in.us>  
**Sent:** Friday, January 04, 2013 12:33 PM  
**To:** Kristin McCarty  
**Subject:** RE: Transfer Tuition Statement 515

I knew she was FIAT program but didn't know if a generic number was being used for the salaries in that category since there is no break down on that.

---

**From:** Kristin McCarty [mailto:KMcCarty@mail.hhsc.k12.in.us]  
**Sent:** Friday, January 04, 2013 12:39 PM  
**To:** Jane Kellam-Tollett  
**Subject:** RE: Transfer Tuition Statement 515

Thank you.

Those are teachers that are on a Carmel contract as Carmel was our LEA for our Co-op last year. For the 2012-2013 school year our Co-op has changed and our new LEA is Noblesville so this cost should decrease. I am not sure why they are using the same amount unless this was agreed to among the Co-op members. However, the program including the cost of those teachers you are questioning is for the Secondary Co-op program. The student on your 515 was in the FIATS program, the second column of costs on our final billing analysis.

Hope this helps.

*Kristin McCarty*

---

**From:** Jane Kellam-Tollett [mailto:jkellam@fayette.k12.in.us]  
**Sent:** Friday, January 04, 2013 12:21 PM  
**To:** Kristin McCarty  
**Subject:** RE: Transfer Tuition Statement 515

Totally understand year end.....up to my knees in it also. I have prepared but not sent the letter to DOE so we have time to work through it.

Why does it look like every teacher makes the exact same amount of \$80,503?

---

**From:** Kristin McCarty [mailto:KMcCarty@mail.hhsc.k12.in.us]  
**Sent:** Friday, January 04, 2013 12:27 PM  
**To:** Jane Kellam-Tollett  
**Subject:** RE: Transfer Tuition Statement 515

Jane,

I will need to call you on Monday. We are preparing for our board meeting and I am finishing procedures for year end.

I can tell you that the tuition is completely paid out of general fund.

I understand your explanation of the transportation calculation. I actually do this a little differently following the calculation that was in place prior to me. I will redo the calculation over the weekend and see what the effect is. The children placed in the center in Arcadia are isolated to three buses and this is the cost that I calculated included with a cost for overhead related expense, fuel, maintenance, mechanic, director, and secretary.

Sorry for the delay.

Thanks,

*Kristin McCarty*

---

**From:** Jane Kellam-Tollett [<mailto:jkellam@fayette.k12.in.us>]  
**Sent:** Thursday, January 03, 2013 2:59 PM  
**To:** Kristin McCarty  
**Subject:** RE: Transfer Tuition Statement 515

It is fine to call tomorrow. I would like verification these are Hamilton Heights GENERAL fund expenses (not Part B or other grant funds) for the proper classification of student. I know it is expensive to educate Severe Needs.

The transportation calculation is not in accordance with the form. The form indicates 27000 expenses, except 27400 are divided by the total students transported divided by 180 days. This is not categorized by the student type as the top part of the form is for educational services. I would also want to verify her attendance was 180 days.

---

**From:** Kristin McCarty [<mailto:KMcCarty@mail.hhsc.k12.in.us>]  
**Sent:** Thursday, January 03, 2013 1:58 PM  
**To:** Jane Kellam-Tollett  
**Subject:** RE: Transfer Tuition Statement 515

Jane,

I would like to discuss why you feel this to be excessive. I have to leave in a little while to attend a funeral however if you have time tomorrow I would like to contact you to discuss if you would like.

Thank you,

*Kristin McCarty*

---

**From:** Jane Kellam-Tollett [<mailto:jkellam@fayette.k12.in.us>]  
**Sent:** Wednesday, January 02, 2013 11:19 AM  
**To:** Kristin McCarty  
**Subject:** Transfer Tuition Statement 515

Kristin,

The transfer tuition statement for educational and transportation services appears to be excessive. We will be filing an appeal with the Board of Education. I just wanted to let you know so you would not wonder about payment.

*Janie*

Jane Kellam-Tollett, CPA  
Director of Finance  
Fayette County School Corporation  
1401 Spartan Drive  
Connersville, IN 47331

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DAVID R. DAY, P.C.  
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FAX: 317-572-1609

-----  
OF COUNSEL  
MANSON E. CHURCH  
JOHN M. DAVIS

May 15, 2013

Ms. Laura Naughton  
Indiana Department of Education  
South Tower, Suite 600  
115 W. Washington Street  
Indianapolis, IN 46204

Dear Ms. Naughton:

On behalf of Hamilton Heights School Corporation, our office is requesting that a transfer tuition hearing be set for the following situation:

Stephanie Lakes: Student  
Diane Browne: Legal guardian  
Fayette County School Corporation: Transferring Corporation  
Amount owed: \$10,242.12 in tuition and transportation costs for 2011-2012 school year

Pursuant to 20-26-11-15 and 16, Hamilton Heights is requesting payment of all costs and fees associated with these proceedings.

Sincerely,

CHURCH, CHURCH, HITTLE & ANTRIM

Andrew A. Manna  
Attorney for Hamilton Heights School Corporation

AAM/jw

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-----  
OF COUNSEL  
MANSON E. CHURCH  
JOHN M. DAVIS

May 15, 2013

Fayette County School Corporation  
1401 Spartan Drive  
Connersville, IN 47331

Re: Stephanie Lakes

To Whom it May Concern:

This letter is written on behalf of Hamilton Heights Schools. Hamilton Heights has retained Church, Church, Hittle & Antrim to pursue payment of transfer tuition costs for Stephanie Lakes. Stephanie Lakes legal guardian lived in your school district during the 2011-2012 school year and his/her legal settlement was 529 West 8<sup>th</sup> Street, Connersville, IN 47331.

During the 2011-2012 school year, Stephanie Lakes was placed at Arcadia Children's Home (ACH) located in Arcadia, Indiana. Families of students attending ACH place students pursuant to IC 20-26-11-8 (b) which allows them to attend a private health care facility. Hamilton Heights School Corporation is the local public school district that provides educational services to these students.

Hamilton Heights does not have any authority to regulate the reason behind the student attending ACH. The family chose to place the student at ACH but still maintain the legal settlement of the student in your district. The reason for the placement is not necessarily something which conditions can be imposed. In a case decided by the Indiana State Board of Education called East Porter School Corporation vs. Plymouth Community School Corporation (Cause No. 1102033), the IDOE Hearing Examiner determined that:

**IC 20-26-11-8(b) does not impose condition on when a parent may place a student in a state licensed private or public health care facility.**

**Neither the State Board of Education nor a local school corporation has any authority, right, or power to impose conditions on a parent seeking medical treatment or healthcare for his or her child.**

**A parent is not required to seek the school's approval or provide medical justification to the school for the parent's decision to seek medical treatment. Rather, this statute provides for the right of the student to attend school in the school corporation where the healthcare facility is located.**

There is also no condition under the law that the parent notify you prior to removing the student from your district or that you be made aware of this student having legal settlement in the first place. Hamilton Heights understands that these may be the initial questions you raise after reviewing this letter. Additionally, if you feel that the student should have participated in your local program then your remedy is to pursue litigation against the family under 511 IAC 7-34-10. Regardless, the transfer tuition is owed to Hamilton Heights.

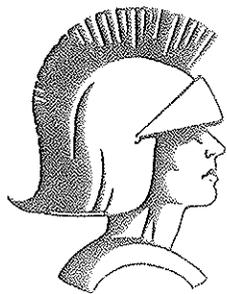
On November 1, 2011, Hamilton Heights sent you a Transfer Certificate and Agreement. See attached. The amount due to Hamilton Heights School Corporation is \$10,242.12. Please contact Ms. Kristin McCarty to make payment arrangements immediately. A hearing has been requested before the Indiana State Board of Education. Hamilton Heights has the right to recover attorney fees for the transfer tuition owed under IC 20-26-11-6.

Sincerely,

CHURCH, CHURCH, HITTLE & ANTRIM



Andrew A. Manna



# Fayette County School Corporation

1401 Spartan Drive • Connersville, IN 47331  
Phone (765) 825-2178 • Fax (765) 825-8060

May 24, 2013

Mrs. Peggy Jackson  
Hamilton Heights School Corporation  
Administration Office  
P.O. Box 469  
Arcadia, IN 46030

Dear Peggy,

We are in receipt of your attorney's letter requesting a Department of Education hearing. As I explained to Kristen before she turned the communication over to you, I only need one more item to verify the calculation of the General Fund operating expense portion--a copy of the printout of the vendor history where you paid the LEA. We have never disputed Stephanie Lakes has legal settlement in our district and are fully aware how expensive the education of S & P students is. I am sure you can understand that I just want to be able to document the verification of the calculation and show due diligence on my part.

Regarding the transportation charges, we may or may not be able to come to resolution without a hearing and I respect that. I appreciate that the Circuit Breaker is impacting all schools, especially Transportation and Capital Projects Funds. My position is that the transportation calculation section does not ask for a "class of school" like the operating expense section does. The total transportation costs should be divided by the entire population of pupils transported and multiplied by the number of days Stephanie was transported. In addition to that we should receive credit on a per student basis on page three for the property taxes, license excise, CVET, and FIT collected for the Transportation Fund. I appreciate that the Circuit Breaker is impacting all schools, especially Transportation and Capital Projects Funds. Further, as noted on Form 515, reimbursement for transportation costs can be include only if "there is a written transportation agreement between the transferor and transferee corporations." However; even absent a signed transportation agreement we are willing to reimburse Hamilton Heights for the transportation cost for Stephanie Lakes calculated in the manner described above.

If you would like to at least attempt to resolve the operating expense component before the hearing please just send me the vendor payment history to the LEA so I can verify.

Best Regards,

Jane Kellam-Tollett, CPA  
Director of Finance

CC: A. Manna  
R. Rund



**Kristin McCarty**

---

**From:** Kristin McCarty  
**Sent:** Friday, May 31, 2013 1:30 PM  
**To:** Jane Kellam-Tollett (jkellam@fayette.k12.in.us)  
**Subject:** FW: Attached Image  
**Attachments:** 2346\_001.pdf

Vendor history for Co-op transfer tuition payments for 2011-2012 school year.

Thank you,

*Kristin McCarty*  
*Hamilton Heights School Corporation*

**From:** adcopier@mail.hhsc.k12.in.us [mailto:adcopier@mail.hhsc.k12.in.us]  
**Sent:** Friday, May 31, 2013 1:27 PM  
**To:** Kristin McCarty  
**Subject:** Attached Image

5/31/13  
11:49:50

V E N D O R   H I S T O R Y   R E P O R T

BD050/KMCCARTY  
PAGE 1

FROM: 1/01/11 TO: 99/99/99

TRANS													
DEL NO.	DATE	CHECK PO NUMBER	VOUCH BK	DESCRIPTION	FUND	PROGRAM	OBJECT	COST	LOC	EXPENDED	LIQUIDATED		
29	CARMEL CLAY SCHOOLS												
5911	3/17/11	46560	46560 99	3RD COOP INSTALLMENT INVOICE # 3RD COOP INSTALL.	100	17400.00	561.00			141,817.41			
20340	9/15/11	47674	47674 99	1ST INSTALLMENT INVOICE # 2011-12 HBM CO-OP	100	17400.00	561.00			176,989.00			
24009	10/20/11	47934	47934 99	HBM COOP RETIREES HEALTH	630	17400.00	241.00			5,014.16			
29297	12/15/11	48366	48366 99	11/12 2ND INSTALL HBM CO	100	17400.00	561.00			176,051.32			
29298	12/15/11	48367	48367 99	10/11 FINAL BILLING	100	17400.00	561.00			142,423.58			
6259	3/15/12	49003	49003 99	3RD INSTALLMENT 2011-12	100	17400.00	561.00			173,851.37			
9779	4/19/12	49233	49233 99	2010/11 RETIREE INSURANC	630	17400.00	241.00			14,232.53			
				VENDOR TOTAL...						830,379.37			
				GRAND TOTAL.....						830,379.37			

} 526,891.69

937.68  
 3,137.63  
6,491.47  
 10,566.78    Sub Credits

526,891.69    →  
537,458.47    total paid

534,852.28    final bill  
2,606.19

→ Variance due to amount owed to other district for ADM/SE funding issue.



**Kristin McCarty**

---

**From:** Jane Kellam-Tollett <jkellam@fayette.k12.in.us>  
**Sent:** Monday, June 03, 2013 8:09 AM  
**To:** Kristin McCarty  
**Subject:** RE: Attached Image

Awesome, thank you! Sorry for the delayed reply, I was out last week.

---

**From:** Kristin McCarty [mailto:KMcCarty@mail.hhsc.k12.in.us]  
**Sent:** Friday, May 31, 2013 1:29 PM  
**To:** Jane Kellam-Tollett  
**Subject:** FW: Attached Image

Vendor history for Co-op transfer tuition payments for 2011-2012 school year.

Thank you,

*Kristin McCarty*  
*Hamilton Heights School Corporation*

**From:** [adcopier@mail.hhsc.k12.in.us](mailto:adcopier@mail.hhsc.k12.in.us) [mailto:[adcopier@mail.hhsc.k12.in.us](mailto:adcopier@mail.hhsc.k12.in.us)]  
**Sent:** Friday, May 31, 2013 1:27 PM  
**To:** Kristin McCarty  
**Subject:** Attached Image

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July 10, 2013

Fayette County School Corporation  
1401 Spartan Drive  
Connersville, IN 47331  
Attn: Jane Kellam-Tollett

Dear Jane:

In response to your letter dated May 24, 2013, Kristin McCarty sent to you documentation to support that Hamilton Heights School Corporation did in fact pay the HBM Cooperative for the cost of educating Stephanie Lakes. This should have resolved your concern regarding the general fund payment; however, there is still a charge of 5470.36 outstanding.

Regarding the transportation charges and pursuant to IC 20-26-11-27, the student's school of legal settlement is responsible for transportation for the student. You had the ability to contract with Hamilton Heights and multiple attempts were made to obtain a signed transportation agreement so that we would be reimbursed our cost of transporting your student Stephanie Lakes but to no avail. We continued to transport for the good of the student despite not receiving signed agreements. Your explanation of how you feel we should calculate our cost is not going to reimburse us actual cost incurred to transport Stephanie and that is all we are trying to recoup. We have not added cost for central office staff time, attorney fees or to purchase a bus. It is my opinion that your explanation of how we calculate the cost based on statues references the general fund calculation and please keep in mind that it is not our responsibility to transport, it is yours and we are simply trying to assist your districts and these students to make transporting a simpler process for all.

Form 515 does give a brief outline for calculation, however, in my discussion with staff from the DOE (Debby Hinline) and State Board of Accounts (Stan Mettler) when we first determined how to charge for transportation, they were not clear on how the formula should be derived and so we calculate the cost that we incur.

For the 2011/2012 school year, there is still \$10,242.12 outstanding and we are calculating cost for the 12/13 school year and we do not have an agreement for the 13/14 school year informing us on how to handle transportation services for 2013/2014. Since the original bill from 2011/2012 was sent, we have obligated additional cost for attorney fees and central office staffing time to continue to try to collect the paperwork and payments relative to this student. Additionally, we have absorbed the cost of purchasing the bus that transports students as a local cost; however, future ability to do this is limited.

In the past, Hamilton Heights School Corporation absorbed hundreds of thousands of dollars in cost for students that are not our responsibility because districts have not worked with us to accommodate the

Thank you.

Sincerely,

Peggy D. Jackson  
Associate Superintendent

Encl.



**Kristin McCarty**

---

**From:** Peggy Jackson  
**Sent:** Friday, August 02, 2013 3:07 PM  
**To:** Kristin McCarty  
**Subject:** FW: Dates and Times

*Peggy D. Jackson  
Associate Superintendent  
Hamilton Heights School Corporation  
410 W Main Street  
PO Box 469  
Arcadia IN 46030  
317-984-3538*



---

**From:** Peggy Jackson  
**Sent:** Friday, July 26, 2013 11:31 AM  
**To:** Dr. Russell Hodges; 'Jan Dunham'  
**Cc:** Tony Cook  
**Subject:** RE: Dates and Times

Dr. Hodges: I wanted to verify that you had received my email with the information that was requested regarding the transportation calculation? We did receive the signed transportation agreement and are planning to provide transportation services.

*Peggy D. Jackson  
Associate Superintendent  
Hamilton Heights School Corporation  
410 W Main Street  
PO Box 469  
Arcadia IN 46030  
317-984-3538*



---

**From:** Jan Dunham [mailto:jdunham@fayette.k12.in.us]  
**Sent:** Tuesday, July 23, 2013 8:11 AM  
**To:** Peggy Jackson  
**Cc:** bcowart.adc@gmail.com; Dr. Russell Hodges; Jane Kellam-Tollett; Cindy Young  
**Subject:** RE: Dates and Times

Ms. Jackson,  
Would Monday, July 29, be a possibility for you and the Center?  
Thank you,  
Jan Dunham  
Director of Special Education  
1200 Spartan Drive  
Connersville, IN 47331  
765-827-8400  
765-827-8822 (FAX)  
[jdunham@fayette.k12.in.us](mailto:jdunham@fayette.k12.in.us)

---

**From:** Peggy Jackson [mailto:PJackson@mail.hhsc.k12.in.us]  
**Sent:** Monday, July 22, 2013 4:53 PM  
**To:** Jan Dunham  
**Cc:** bcowart.adc@gmail.com; Dr. Russell Hodges; Jane Kellam-Tollett; Cindy Young  
**Subject:** RE: Dates and Times

Jan: We have very limited availability with all parties as teachers return on July 31<sup>st</sup>, however, I did send July 30<sup>th</sup> at 1:00 p.m. as a possibility. Does this date/time work for your group?

*Peggy D. Jackson  
Associate Superintendent  
Hamilton Heights School Corporation  
410 W Main Street  
PO Box 469  
Arcadia IN 46030  
317-984-3538*



---

**From:** Jan Dunham [mailto:jdunham@fayette.k12.in.us]  
**Sent:** Monday, July 22, 2013 2:25 PM  
**To:** Peggy Jackson  
**Cc:** [bcowart.adc@gmail.com](mailto:bcowart.adc@gmail.com); Dr. Russell Hodges; Jane Kellam-Tollett; Cindy Young  
**Subject:** Dates and Times

Ms. Jackson,  
Ms. Cowart asked that I work with you and Ms. Lucky on a time when Fayette County might come and meet regarding transportation. If you could give me a couple of days and times that would work for you, I will check with Dr. Hodges on his availability. I know Ms. Cowart said she could not meet on July 26.

Thank you,  
Jan Dunham  
Director of Special Education  
1200 Spartan Drive  
Connersville, IN 47331  
765-827-8400  
765-827-8822 (FAX)  
[jdunham@fayette.k12.in.us](mailto:jdunham@fayette.k12.in.us)

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## Kristin McCarty

---

**From:** Peggy Jackson  
**Sent:** Friday, August 02, 2013 3:07 PM  
**To:** Kristin McCarty  
**Subject:** FW: Dates and Times

*Peggy D. Jackson  
Associate Superintendent  
Hamilton Heights School Corporation  
410 W Main Street  
PO Box 469  
Arcadia IN 46030  
317-984-3538*



---

**From:** Peggy Jackson  
**Sent:** Tuesday, July 23, 2013 10:58 AM  
**To:** Jan Dunham  
**Cc:** bcowart.adc@gmail.com; Dr. Russell Hodges; Jane Kellam-Tollett; Cindy Young; Tony Cook; Kristin McCarty; Kim Luckey; Chris Franklin  
**Subject:** Re: Dates and Times

Jan. Our team would be available at 1:00 pm on July 29th. Please let me know today if that works for your schedule.

Sent from my iPad

On Jul 23, 2013, at 8:09 AM, "Jan Dunham" <[jdunham@fayette.k12.in.us](mailto:jdunham@fayette.k12.in.us)> wrote:

Ms. Jackson,  
Would Monday, July 29, be a possibility for you and the Center?  
Thank you,  
Jan Dunham  
Director of Special Education  
1200 Spartan Drive  
Connersville, IN 47331  
765-827-8400  
765-827-8822 (FAX)  
[jdunham@fayette.k12.in.us](mailto:jdunham@fayette.k12.in.us)

---

**From:** Peggy Jackson [<mailto:PJackson@mail.hhsc.k12.in.us>]  
**Sent:** Monday, July 22, 2013 4:53 PM  
**To:** Jan Dunham  
**Cc:** [bcowart.adc@gmail.com](mailto:bcowart.adc@gmail.com); Dr. Russell Hodges; Jane Kellam-Tollett; Cindy Young  
**Subject:** RE: Dates and Times

Jan: We have very limited availability with all parties as teachers return on July 31<sup>st</sup>, however, I did send July 30<sup>th</sup> at 1:00 p.m. as a possibility. Does this date/time work for your group?

*Peggy D. Jackson  
Associate Superintendent  
Hamilton Heights School Corporation  
410 W Main Street  
PO Box 469  
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317-984-3538  
<image001.png>*

---

**From:** Jan Dunham [<mailto:jdunham@fayette.k12.in.us>]  
**Sent:** Monday, July 22, 2013 2:25 PM  
**To:** Peggy Jackson  
**Cc:** [bcowart.adc@gmail.com](mailto:bcowart.adc@gmail.com); Dr. Russell Hodges; Jane Kellam-Tollett; Cindy Young  
**Subject:** Dates and Times

Ms. Jackson,

Ms. Cowart asked that I work with you and Ms. Lucky on a time when Fayette County might come and meet regarding transportation. If you could give me a couple of days and times that would work for you, I will check with Dr. Hodges on his availability. I know Ms. Cowart said she could not meet on July 26.

Thank you,  
Jan Dunham  
Director of Special Education  
1200 Spartan Drive  
Connersville, IN 47331  
765-827-8400  
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[jdunham@fayette.k12.in.us](mailto:jdunham@fayette.k12.in.us)

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**Kristin McCarty**

---

**From:** Peggy Jackson  
**Sent:** Friday, August 02, 2013 3:07 PM  
**To:** Kristin McCarty  
**Subject:** FW: Formula Calculation.xlsx  
**Attachments:** Formula Calculation.xlsx

*Peggy D. Jackson  
Associate Superintendent  
Hamilton Heights School Corporation  
410 W Main Street  
PO Box 469  
Arcadia IN 46030  
317-984-3538*



---

**From:** Peggy Jackson  
**Sent:** Tuesday, July 23, 2013 5:02 PM  
**To:** Dr. Russell Hodges  
**Cc:** Tony Cook; Kristin McCarty  
**Subject:** Formula Calculation.xlsx

Dr. Hodges: Thank you for calling today. My Administrative Assistant/Treasurer is on vacation this week, but I have outlined the cost as she had calculated for the students residing at ADC. I think the best resolution would be for Jane to review our line by line calculation and then schedule a conference call with us next Monday so that we can understand her specific questions relative to how we calculate cost. She can reach me at 317-984-3538 extension 5091.

As I mentioned, we have a sincere interest in recouping our actual cost, no more, no less. We are also working on alternative transportation options to reduce cost for districts.

We look forward to working with you and your staff on a satisfactory resolution for all.

Thank you.

Peggy Jackson  
Associate Superintendent  
Hamilton Heights School Corporation

11/12 Transportation Costs

OPERATIONAL COST PER BUS

<u>Program</u>	<u>Description</u>	<u>Total Cost 6/30/11 to 7/31/12</u>	
410-25570-319	Drug Testing	\$	1,558.00
410-26200-411	Water/Sewage	\$	1,161.17
410-26200-412	Trash Removal	\$	899.47
410-26200-531	Telephone	\$	3,128.72
410-26200-622	Natural Gas	\$	1,322.52
410-26200-621	Electric	\$	6,476.04
410-27010-580	Mileage/Conference	\$	830.00
410-27300-430	Contracted Repairs	\$	29,303.29
410-27300-430	Insurance claim repairs	\$	11,522.45
	less insurance proceeds	\$	(9,022.45)
410-27300-611	Supplies	\$	128,978.66
410-27300-612	Tires	\$	16,949.43
410-27300-613	Gas	\$	256,171.83
	less revenue from Towns	\$	(114,434.36)
410-27300-614	Other	\$	250.00
410-27900-747	Software	\$	14,050.00
410-27300-730	Equipment	\$	8,743.69
410-27500-520	Insurance	\$	24,851.00
	Sub Total	\$	382,739.46
410-27010/27300-100-299	Director/Mechanic/Secretary	\$	146,385.32
	Number buses in service	\$	529,124.78
		\$	38
	Operational Cost per Bus x 3 buses	\$	41,773.01
	Direct Bus Driver/Aide direct cost	\$	111,304.91
	Total Cost	\$	153,077.92
	Divided by 50%	\$	76,538.96
	Divided by the # of students in program 16.04	\$	4,771.76

Not included

Bus Purchase	\$	51,911.00
Legal Fees	\$	5,316.00
Associate Superintendent - Daily Rate/Fringe	\$	482.51
Treasurer-Adm Asst. - Daily Rate/Fringe	\$	261.00

# **Exhibit E**

**IC 20-26-11-8**

**Public and private institutions; payment of transfer tuition**

Sec. 8. (a) A student who is placed in a state licensed private or public health care 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. If 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.

(b) A student who is placed in a state licensed private or public health care or child care facility by a parent may attend school in the school corporation in which the facility is located if:

- (1) the placement is necessary for the student's physical or emotional health and well-being and, if the placement is in a health care facility, is recommended by a physician; and
- (2) the placement is projected to be for not less than fourteen (14) consecutive calendar days or a total of twenty (20) calendar days.

The school corporation in which the student has legal settlement shall pay the transfer tuition of the student. The parent of the student shall notify the school corporation in which the facility is located and the school corporation of the student's legal settlement, if identifiable, of the placement. Not later than thirty (30) days after this notice, the school corporation of legal settlement shall either pay the transfer tuition of the transferred student or appeal the payment by notice to the department. The acceptance or notice of appeal by the school corporation must be given by certified mail to the parent or guardian of the student and any affected school corporation. In the case of a student who is not identified as having a disability under IC 20-35, the state board shall make a determination on transfer tuition according to the procedures in section 15 of this chapter. In the case of a student who has been identified as having a disability under IC 20-35, the determination on transfer tuition shall be made under this subsection and the procedures adopted by the state board under IC 20-35-2-1(b)(5).

## **IC 20-26-11-14**

### **Estimated transfer tuition payments; statements of amount; method of payment**

Sec. 14. (a) Not later than March 1, a school corporation shall estimate the:

(1) transfer tuition payments that the school corporation is required to pay for students transferring from the school corporation; and

(2) transfer tuition payments that the school corporation is entitled to receive on behalf of students transferring to the school corporation.

A school corporation shall send a preliminary statement of the amount of transfer tuition due to the state agency and to any school corporation that owes transfer tuition to the school corporation.

(b) Not later than October 1 following the end of a school year, a school corporation shall send a final statement of the amount of transfer tuition due to the state agency and to any school corporation that owes transfer tuition to the school corporation.

(c) A statement sent under subsection (a) or (b) must include the following:

(1) A statement, to the extent known, of all transfer tuition costs chargeable to the state or school corporation for the school year ending in the current calendar year.

(2) A statement of any transfer tuition costs chargeable to the state or school corporation and not previously billed for the school year ending in the immediately preceding calendar year.

(3) A statement of any transfer tuition costs previously billed to the state or school corporation and not yet paid.

(d) Transfer tuition for each school year shall be paid by the transferor corporation or state, if the entity is obligated to pay the tuition, in not more than four (4) installments. These installments must be paid not later than October 30, January 10, April 10, and July 10 following the school year in which the obligation is incurred, unless another schedule is mutually agreed upon.

(e) Payment of operating costs shall be paid from and receipted to the respective general funds of the transferor and transferee corporations. Payment of capital costs shall be made by the transferor corporation at its discretion from any fund or source and shall be receipted by the transferee corporation at its discretion either to the capital projects fund or to the debt service fund, or if the transferee corporation has neither of these two (2) funds, to its general fund.

*As added by P.L.1-2005, SEC.10.*

**IC 20-26-11-26**

**Court ordered transfers; transportation**

Sec. 26. The transferor corporation shall provide each transferred student transportation to and from the school in the transferee corporation to which the student is assigned. However, the transferor corporation may require the transferred student to walk a reasonable distance from the student's home to school or to a transportation pickup point.

*As added by P.L. 1-2005, SEC. 10.*

## **IC 20-26-11-27**

### **Court ordered transfers; transportation contracts**

Sec. 27. Transportation must be provided by the transferor corporation to each transferred student under IC 20-27. However, the transferor corporation may contract with the transferee corporation to provide transportation to the transferred students at the expense of the transferor corporation, and that the transferor corporation, in addition to the other means of financing the purchase of transportation equipment, may make the purchases out of its capital projects fund.

*As added by P.L.1-2005, SEC.10. Amended by P.L.2-2006, SEC.134.*

# **FCSC Exhibit #30**

2-6 – Revised 2009

The form is a cumulative record for the teacher and should be preserved, even though the teacher leaves the system. It is recommended that when a teacher (not reaching the age of retirement) leaves the school system, all Forms 514 for the teacher be placed in a "Former Teacher File" to be preserved as a permanent record.

EMPLOYEE'S SERVICE RECORD (General Form 99A)

The Employee's Service Record (General Form 99A) is designed for use by the school principals in providing the business office the attendance information for preparing Payroll Form 99. A page should be prepared for each employee other than teaching personnel (see use of Form 514). The space for each scheduled work day should be marked per the code on the lower margin to indicate whether the employee worked, lost time or was on authorized leave of absence. Space is provided for a twelve month record on each side of the page. IC 5-11-9-4(b) states in part ". . . shall require that records be maintained showing which hours were worked each day by employees employed by more than one (1) public agency or in more than one (1) position by the same public agency . . ." Form 99A may be used for providing the information.

EMPLOYEE'S EARNINGS RECORD (General Form 99B)

A page of the form shall be prepared for each employee and shall be posted from the information on the payroll schedule and voucher, General Form No. 99. In addition to the personal history data on the upper margin, space is provided for recording the earnings and deductions for one year by utilizing both sides of the page. These are totaled by quarter and quarterly totals are accumulated for the year to provide information for preparing earnings and payroll deduction reports to the governmental agency concerned and annual statements to the employee.

A page of the form should also be set up as a "Control" over all earnings and deductions to which the "totals" of all earnings and deductions would be posted, thus furnishing a proof of the individual ledger sheets.

TRANSFER TUITION STATEMENT (Form 515)

The following instructions are applicable only for transfer tuition statements issued for periods starting with calendar year 2009.

The Transfer Tuition Statement (Form 515) must be prepared in duplicate for each school corporation transferring school children to your school corporation or for cash transfers. One copy is sent to the transferring corporation or parent and the other copy is retained in the school business office. The first page, in addition to pertinent school information to be entered at the top, provides for entering lawful costs according to classified budget accounts and according to school organizations maintained by the receiving school corporation. Lawful costs, listed by program expenditures, are set out below:

1. INSTRUCTION - REGULAR AND SPECIAL PROGRAMS  
Include costs under Accounts 11000 and/or 12000 and 16100 and/or 16200. General Fund only.
2. SUPPORT SERVICES - ADMINISTRATION  
Includes costs under Accounts 21800, 23120, 23160, 23190, 23200, 24000. General Fund only.
3. SUPPORT SERVICES - ATTENDANCE, HEALTH AND GUIDANCE  
Include costs under Accounts 21100 through 21700. General Fund only.
4. SUPPORT SERVICES - OPERATION AND MAINTENANCE  
Accounts 26000 – General Fund Only

5. SUPPORT SERVICES - CENTRAL  
Accounts 25000 (excluding 25191-25196 and 25910-25950 – General Fund Only)
6. SUPPORT SERVICES - OTHER  
Accounts 22000, 30000 - General Fund only
7. INSTRUCTION – PAYMENTS TO OTHER GOVERNMENTAL UNITS WITHIN STATE  
Account 17000 (excluding 17800) for expenses on line 1-6 above paid from General Fund through other agencies for appropriate class of school
8. **TOTAL OPERATING COSTS** Lines 1 through 7 – General Fund Only

INSTRUCTIONS FOR COMPLETING TRANSFER TUITION STATEMENT (Form 515) (Revised 2008)

Page One

Begin by identifying the school year, such as 2009-2010; name the transferring school corporation (the one whose pupils you have received) and the name of the receiving (your) school corporation and identify each with the county in which it is located. Enter the number of days that school was in session for pupil attendance and the number of pupils in Average Daily Membership (ADM) (kindergarten students count as one-half). Enter the identity of the class of school at the top of the column (i.e., kindergarten, elementary, middle/junior high, high school).

On lines 1 through 7 enter the amount of cost or expense for the school year for the account classifications listed which are applicable for the class of school for which the billing is being prepared. Costs shown on page 1 for remediation (16100 and/or 16200) are limited to remediation expenses from the general fund. Please remember, specifically on line 7, use only costs that apply to the class of school the form is being completed for. Use only the amounts expended from the General Fund for these operating costs. Where an expense or costs cannot be allocated to a class of school it shall be prorated to all classes of school on the basis of the Pupil Enrollment for each class in the receiving corporation as compared to the total Pupil Enrollment in the school corporation. To be included in the billing, the expense must be applicable to the class of school for which the billing is being prepared. The "classes of school" shall include kindergarten, elementary, middle/junior high, high school, each of the various classifications of special education (handicapped) classes and other special programs. However, "classes of school" does not include students attending vocational education classes in another school corporation on a one-half day (or less) basis. These vocational education students are not transferred and Form 515 does not apply. Total lines 1 through 7 of the column and enter the total amount on line 8. The result is the total operating cost for the class of school.

Stimulus – Chart of Accounts

The State Board of Accounts will not take audit exception to the inclusion from appropriate expenditure accounts for the line items listed on Form 515, Transfer Tuition, distributed from Fund 7950 for applicable federal stimulus funds received and used in lieu of regular State distributions for appropriate time periods if a determination has been made stimulus payments are equivalent to General Fund Expenditures.

### Transportation Section

If a transportation contract has been entered into by the transferring and receiving corporations, calculate the transportation cost per pupil transported by dividing transportation costs by the number of students furnished transportation.

In the TRANSPORTATION section on page 1, calculate the cost per pupil per day by dividing the Cost Per Pupil Transported by the number of days school was in session for pupil attendance (from upper portion of page 1). Carry this result to the next line and multiply by the total days the transferred pupils were furnished transportation (page 2) to obtain the costs of transporting the pupils named in the statement. Enter the product on the line provided.

### Page Two

Each pupil transferred in (from the transferring corporation named on page 1 and for the class of school identified) must be listed in the first column and the information detailed in each of the columns. On the line with the pupils name, enter the date of the pupil's birth, grade level, and the first date and last date of the pupil's enrollment for the school year for which you are billing. Show the actual number of days the pupil was enrolled in the program. Also affirm if the pupil was enrolled on the ADM count day.

If transportation was provided per written agreement, enter the number of days the pupil was furnished transportation. If the child qualifies for a special education grant or a vocational education additional pupil count factor, enter such information in the column provided. Total the columns for which the form indicates totals are required.

### Page Three

In Item A, calculate the full time pupil equivalent by dividing the total pupil days enrolled (Page 2) by the number of days school was in session for pupil attendance (from Page 1) and enter such full time pupil equivalent on the appropriate line.

In Item B, calculate the per capita operating cost by dividing the total operating cost (from Line 8 on Page 1) by the number of pupils in Pupil Enrollment for the class of school (from Page 1). Enter the quotient on the appropriate line.

In Item C, per capita cost (Item B) multiplied by the full time pupil equivalent (Item A) provides the gross amount due for the operating cost for the transferring corporation for the class of school. The amount is entered on the line under class of school.

In Item D, A transferee school shall allocate revenues described to a transfer student by dividing: (1) the total amount of revenues received; by (2) the ADM of the transferee school for the school year that ends in the calendar year in which the revenues are received. However, for any state distribution computed using less than the total ADM of the transferee school, the transferee school shall allocate the revenues to the transfer student by dividing the revenues that the transferee school is eligible to receive in a calendar year by the student count used to compute the state distribution. Therefore, complete each line as appropriate.

### State Support

Prime time grant for school year under IC 20-43-9. Divided by Kindergarten through third grade ADM to get a per student amount.

Tuition Support per ADM for basic programs. The amount should be from information provided by the Department of Education DOE SA 54.

Academic Honors Diploma Award under IC 20-43-10-2. Per eligible pupil who successfully completed an academic honors diploma program ending in the previous calendar year, (current amount is \$900).

Vocational education grants under IC 20-43-8 (For students enrolled in an approved vocational program consider labor wage category and class credit hours in determining the credit).

Special education grants under IC 20-43-7 based on a student's exceptionality area.

Restoration Grants under IC 20-43-12 Contact Department of Education Office of School Finance.

Small Schools Grants under IC 20-43-12.2 Contact Department of Education Office of School Finance.

#### Local Support

**Be aware only the monthly Basic Grant State distributions will be received starting January 1, 2009.**

In Item E, subtract the total credits of state distributions from the gross amount due for operating (Item C).

Enter on the bottom of page 3 the amount due for transfer tuition for operating (E); the amount due for transfer tuition for special equipment (from Page 4, column G total); and the net amount due for transportation (from Page 1). Sum the three items for the Total Net Amount Due for Transfer Tuition and Transportation.

If quarterly payments have been received to apply against the total net amount due, enter the date and amount of each on the spaces provided, total them and subtract the total quarterly payments from the total net amount due. The difference will be the balance due.

#### Page Four

Complete the listing of Special Equipment, including the description (A), the original cost (B), the year purchased (C), the estimated life of the equipment (D) and the number of students using the special equipment during at least part of the school year (F). Divide the Original Cost (B) for each piece of equipment by the Estimated Life (D) to obtain the annual allocated cost (E). Next divide the annual allocated cost (E) by the number of students who used the special equipment during at least part of the school year (F) to obtain the portion of special equipment cost attributable to the student named on Page 2. Sum all the special equipment costs in column G to obtain the total special equipment costs for the student named.

We would recommend that a separate Form 515 be completed for each student that used special equipment or a separate page four.

Complete the certification which must be dated and signed by the school corporation treasurer before presenting Form 515 to the transferring party.

#### CHECK IN DUPLICATE (Form 509)

The check form is to be used for all disbursements, other than payroll, and each check must be supported by an itemized claim (Accounts Payable Voucher) allowed by the school board. The original check must be signed by the Treasurer of the School Corporation and both the original and copy must show the name of the depository on which the check is drawn. The original, when returned by the depository after payment, must be carefully preserved by the treasurer. The duplicate copy is the register of checks and will serve as the source document for posting to the disbursements column of the Fund Ledger; the Ledger of Appropriations, Allotments, Encumbrances, Disbursements and Balances; and, the Treasurer's Daily Balance of Cash and Depositories record.

**BEFORE THE INDIANA STATE BOARD OF EDUCATION**

IN THE MATTER OF: )  
Hamilton Heights School Corporation, )  
Petitioner, ) Cause No. 1305009  
v. )  
Fayette County School Corporation, )  
Respondent. )

**RESPONDENT’S RESPONSE TO PETITIONER’S OBJECTIONS  
AND REQUEST FOR ORAL ARGUMENT**

**I. Introduction, Background, and Issues Presented**

Fayette County School Corporation (“Fayette”) and Hamilton Heights School Corporation (“Hamilton Heights”) (or collectively, “the Parties”) settled on an amount to settle their dispute for both transfer tuition and transportation costs for a certain student with legal settlement in Fayette, placed unilaterally by her parent in the Arcadia Development Center (“ADC”), a residential facility with Hamilton Heights for the 2011-2012 school year. As part of that oral settlement agreement the parties agreed to seek the guidance on the appropriate method to calculate transportation costs going forward. Fayette believes the parties agreed to abide by the decision of the Hearing Examiner on this issue. Hamilton Heights apparently instead believes that the Parties’ agreement was only tentative and the Parties agreed to abide by a final decision by the Indiana Department of Education (“IDOE”) or the State Board of Education. If the State Board has continuing jurisdiction under these circumstances, the issue before the Board, is how transportation costs are to be determined for purposes of reimbursement by a transferor corporation to a transferee corporation for transporting a student placed by a parent

unilaterally in a residential facility within the transferor district and transported to and from the residential facility to the transferor's school building where she is educated.

Fayette believes Indiana Code specifically defines in IC 20-26-11-13 how transfer tuition is to be calculated based on "class of school," but that neither IC 20-26-11-13, nor any other possibly applicable Indiana Code provision prescribes a method of calculating transportation costs incurred by a transferee school corporation, other than certain Indiana Code provisions specifically applicable only to court order busing.

Hamilton Heights argues that because Form 515, the form prescribed by the State Board of Accounts for calculating transfer costs owed by a transferor corporation to a transferee corporation calculates transfer tuition by "class of school" in accordance with the specific provisions of IC 20-26-11-13, that class of school costs must likewise be calculated for transportation costs, even though neither IC 20-26-11-13 nor any other applicable provision prescribes calculation of transportation costs by "class of school."

Form 515, pursuant to IC 20-26-11-13(b), does provide that transferor and transferee school corporations may agree to "fix a method for determining the amount of transfer tuition and the time of payment that is different from the method, amount or time of payment that is provided by this section IC 20-26-11-13." Pursuant to this provision some districts have included transportation costs as a component of a transfer tuition agreement.

In order to provide a fair and equitable method to determine transportation costs in absence of an agreement, the transportation cost section of Form 515 does not specify calculation of transportation costs by class of school, but rather the form uses the total number of students transported by the transferor corporation, and not the number of students transported by class of school transported.

The Transportation Section of Form 515 (Revised 2009) has been used in substantially its present form for decades. Except by agreement, transferee corporations are not paying transportation costs by class of school. In fact, uncontested evidence at the hearing was that a number of area transferee school corporations with healthcare or residential facilities within their boundaries do not charge transferor corporations any transportation costs. See Hearing Exhibits 22, 23, and 24, attached.

Fayette agreed to pay Hamilton Heights transportation costs calculated in accordance with Form 515, using all students transported by Hamilton Heights as the divisor to determine a per student cost, not because it is statutorily required, but because State Board of Accounts Form 515 provides a uniform and reasonable methodology, and approximates what Fayette would have had to pay if the parent of S.L. had not unilaterally placed her child in the Arcadia Development Center (ADC) in Hamilton Heights.

It should be noted that the ADC shut down in late November, and S.L. is now being educated in neither Hamilton Heights, nor Fayette.

S.L. received a free and appropriate education in Fayette prior to her mother placing her unilaterally in the ADC in Hamilton Heights at the beginning of the 2011-2012 school year.

Fayette had no input into S.L.'s current IEP which though not specifically requiring transportation on a special education bus, does require she not be required to wait at a bus stop for a bus. S.L. has no problem walking and is able to ride a regular bus without an aide if accompanied by someone at the bus stop.

It is not uncommon for school corporations with healthcare and residential facility somewhat similar to the ADC to not charge the transferor corporation any transportation costs (uncontested evidence at hearing).

Fayette does not dispute its obligation to pay transfer tuition for parentally placed children in the ADC or similar facilities. This is required by 20-26-11-8(b); transportation is not.

Hamilton Heights claims that it was “directed by” a former State Board of Accounts representative and a former staffer at the IDOE “that actual transportation costs should be recovered in this type of situation and that Hamilton Heights should calculate the formula for recouping the actual costs associated with transporting students placed pursuant to IC 20-26-11-8(b),” the provisions applicable to determining transfer tuition costs, not transportation costs.

First, it should be noted that this testimony was entirely oral hearsay. The quoted agency staff members did not testify; Mr. Stan Mettler is no longer employed by the State Board of Accounts and Debbie Hine is no longer employed by the IDOE. Though Melissa Ambre is a current IDOE employee, no document from any of the authors of the purported “directives” was introduced at the hearing.

While hearsay is admissible in an administrative hearing, such hearsay should only be given the weight to which it is entitled. The Hearing Examiner appropriately gave it little or no weight.

It is more likely that Hamilton Heights asked these individuals whether Hamilton Heights could bill transferor corporations using the method Hamilton Heights proposed, and may have been told it was acceptable to try since the statutes allow a transferor and a transferee corporations to enter into a transfer agreement which may include an agreement on how transportation is to be handled.

## **II. Fayette's Response to Specific Objections to Findings of Fact**

**Response to Objections to Findings of Fact #11 and #12:** 11. *Throughout the 2012 and 2013 school years, Hamilton Heights sought guidance from the Indiana Department of Accounts ("IDOA") and the Indiana Department of Education ("IDOE) and*

*12. Based on conversations with IDOA and IDOE, Hamilton Heights sought reimbursement for the actual costs associated with transporting the student.*

Fayette has no knowledge as to whether or not Hamilton Heights sought guidance from the State Board of Accounts or the Indiana Department of Education or not. But, if they did, Hamilton Heights apparently received no written guidance from either agency or Hamilton Heights would presumably have introduced any such written guidance from one or both agencies at the hearing.

Neither individual alleged to have provided such guidance is still employed by their former employing agency. Stan Mettler has retired and Debbie HineLine is now employed by the Indianapolis Public Schools. It is more likely that Mr. Mettler, formerly of the State Board of Accounts, and Ms. HineLine, formerly with the IDOE, may have commiserated with Hamilton Heights representatives on the burden of having a healthcare or residential facility in their district, where at least for the 2011-2012 and 2012-2013 school years, none of the students had legal settlement in Hamilton Heights. These individuals may have expressed an oral, but personal opinion, that there was no harm in asking transferee school corporations to pay transportation costs based on class of school, rather than the prescribed Form 515 methodology which treats all students the same for computing transportation costs.<sup>1</sup>

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<sup>1</sup> While Fayette has no personal knowledge of what former IDOE staffer, Debbie HineLine may have told Peggy Jackson, we do know that in her current position at IPS she has not been in agreement with Hamilton Heights on how transportation costs for IPS students in the ADC are to be calculated. See attached e-mail from Debbie HineLine. (Appeal Hearing Exhibit 1)

Further, it is our understanding from Ms. Hineline that she does not agree with the method proposed by Hamilton Heights for calculating transportation costs for transporting students from the ADC the short distance of about 2 blocks to the high school where many of the transferred students are educated, if one were to walk, or the no more than 1-1½ miles the students are transported by highway on the actual bus route for S.L. and other ADC students that were educated at Hamilton Heights High School. See Fayette Hearing Exhibit 1 (Google map of ADC and Hamilton Heights High School); and Appeal Hearing Exhibit 2 (testimony of Peggy Jackson concerning distance of ADC from school where S.L. was educated by Hamilton Heights).

Fayette has no knowledge of what Melissa Ambre, a current IDOE employee, may or may not have told Hamilton Heights concerning the appropriate methodology for calculating transportation costs in these circumstances. No written agency opinion, guidance, or even letter to Hamilton Heights was submitted at the hearing. Again, such testimony regarding discussions with a single party is unpersuasive hearsay when offered to prove agency policy or administrative practice.

Further, Hamilton Heights' testimony was that she [Melissa Ambre] advised them "that its [Hamilton Heights'] proposed formula was appropriate for calculating and charging school districts, provide(d) (sic) there was a signed transportation agreement." If there is a signed agreement as to the method or amount of transportation, any method of computing or charging transportation costs would be acceptable, but Fayette never agreed to or signed any such

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Oral hearsay of discussions with a former SBOA agency staff member, a former IDOE staff member, and a misreading of the SBOA Instructional Manual, together with a fairness argument, comprise most of Hamilton Heights' case and its objections to the Hearing Examiner's Proposed Finding of Fact, Conclusions of Law, and Proposed Order.

It should be noted that whether or not these former agency staffers held the opinion ascribed to them by Hamilton Heights, current school SBOA staff member Preston Ryan does not share the opinion that transportation costs may be charged, absent an agreement. See e-mail from Preston Ryan, Indiana State Board of Accounts, dated October 29, 2013, attached. (Appeal Hearing Exhibit 2)

agreement. So, testimony by an IDOE representative that Hamilton Heights proposed formula is appropriate “provide[d] there is a signed agreement” has no relevance to circumstances where there is no such signed agreement.

Fayette has no way to contest hearsay about oral advice that may or may not have been given to Hamilton Heights in the past. This testimony was oral hearsay entitled to little or no weight, and the Hearing Examiner appropriately gave it the weight it deserved, which was little to none.

The uncontested evidence was that “for decades” the Transportation Section of Form 515 had not been changed, and the Form 515 Transportation Section had not based calculation of transportation costs by class of school, but rather, it was a common practice for transferee corporations not to charge transportation costs to transferor corporations for transporting institutionalized children to the transferee’s educational facilities in similar circumstances.

Hamilton Heights is asking this Board to ignore applicable law and decades of administrative practice that has been based on a state form prescribed by the agency empowered to prescribe such forms in favor of alleged oral guidance given by two now former and one current agency employee to a single school corporation. Further, the current IDOE staff member’s opinion as to the appropriateness was conditioned on signed agreement between the transferor and transferee school corporation. Further, as noted in the footnote on pages 5 and 6, and the related e-mail attachments, the testimony on SBOA and IDOE staff members’ opinions on how transportation costs are to be calculated is not persuasive and of little to any relevance.

Hamilton Heights cites administrative law applicable to interpretative agency guidance letters and advisory notes or commentary to support its argument that a report by one school corporation of oral discussions it had with two former agency staffers and one current staffer are

entitled to the same or higher level of deference than decades of consistent formal agency use of an officially prescribed and audited form. This argument simply is not supported by applicable law, and the Hearing Examiner reached the appropriate conclusion to not give this one party's oral communications with individual agency staff members greater weight than decades of formal administrative practice and the clear import of applicable law.

The Hearing Examiner properly deferred to the State Board of Accounts prescribed Form 515 method of transportation cost calculation, decades of unchanged cost calculation methodology and practice, and the clear language of IC 20-26-11-13(c), and IC 20-26-11-22(b) exclude transportation related costs from the definition of "operating costs," and IC 20-26-11-13(a)(2) defining "special equipment" does not include equipment "used to transport a child to or from a place where the child is attending school."

### **III. Specific Objections to Conclusions of Law**

**Response to Conclusion of Law #2:** *Fayette was required to pay the transfer tuition of the transferred student.*

The Hearing Examiner appropriately determined that Fayette was required to pay transfer tuition of the transferred student, and appropriately found that IC 20-26-11-8 speaks only to tuition, and does not specifically cover transportation costs. Fayette did not contest its statutory obligation to pay S.L.'s transfer tuition calculated in accordance with IC 20-26-21-13.

Nowhere in IC 20-26-11-8, addressing the obligation of a transferee corporation to pay transfer tuition to a transferor corporation where the transferor corporation educates a student from the transferee corporation placed by his or her parent in a healthcare or residential facility, does this section, or any other applicable section specify how transportation costs are to be calculated.

**Response to Conclusions of Law #3 and #4:** 3. *Indiana Code section 20-26-11-8 speaks only to tuition and does not specifically cover transportation costs.*

4. *Indiana Code section 20-26-11-13 explains the formula for determining the transfer tuition. The basic formula for determining the transfer tuition is:*

*STEP ONE: determine the student's FTE by dividing the total pupil days the student attended school in the transferee school district by the number of days the school was in session.*

*STEP TWO: determine the per capita costs by dividing the total operating costs by Pupil Enrollment.*

*STEP THREE: multiply the per capita costs (STEP 2) by the FTE (STEP 1).*

*STEP FOUR: subtract any state tuition support received by the transferee for the student (ADM & APC) from the number in step three.*

The Hearing Examiner appropriately cited the basic transfer tuition formula. Hamilton Heights incorrectly argues that an Indiana Code provision clearly and expressly addressing transfer tuition also addresses transportation costs. It plainly does not.

Hamilton Heights cites the State Board of Accounts' Instructional Manual, Fayette Exhibit #30 in support of its objections to the Hearing Examiner's Conclusions of Law No. 2, No. 3, No. 4, No. 5, No. 6, No. 7, No. 9, No. 10, No. 18, No. 20, No. 21, No. 22, No. 23, and No. 24. All the references to the SBOA Instruction Manual "speaking specifically to the class of school" are in the portion of the Instruction Manual section entitled Instructions for Completing Transfer Tuition Statement (Form 515) (Revised 2008), Page One. None of the references to class of school are in the section of Form 515 entitled Transportation Section. See attached Fayette Hearing Exhibit 30.

Hamilton Heights argued the Hearing Examiner should look to “analogous statutes” to “provide the guiding authority to develop a formula that accurately reflects the funds expended to transport students served by the ADC.”

The “analogous statutes” which Hamilton Heights unsuccessfully urged the Hearing Examiner to use to determine the appropriate transportation cost methodology at the hearing and in its Post Hearing Brief of Fayette County School Corporation was IC 20-26-11-26 and 27, which explicitly apply only to transportation costs to be paid by the transferee corporation to a transferor corporation where the corporations are subject to court order busing.

The public policy reasons for requiring corporations to pay the actual costs in court ordered busing rests on the premise that a significant number of the bussed students might have lived within the corporation boundaries of the transferee school corporation, but for unlawful discrimination in education or housing.

Here, Fayette is not at fault in any sense. Fayette was providing a free and appropriate education to S.L. and providing her the transportation that met her needs. S.L. is fully capable of walking and getting on a regular school bus and does not require an aide to ride the bus, but does require someone to wait with her at the bus stop. S.L.’s mother unilaterally placed S.L. in the ADC. Fayette had no choice in this matter; neither IDOE, nor any other agency determined Fayette was not providing a free and appropriate education or transportation, or even that she could be better educated by Hamilton Heights. In these circumstances, not only are the court ordered busing transportation obligation Indiana Code provisions not applicable, they are also, for these purposes, not analogous.

**Response to Conclusion of Law #5:** *Indiana Code sections 20-26-11-13(c) and 20-26-11-22(b) exclude “costs of transportation” from the calculation to determine a transferee’s*

*operating costs. Likewise, Indiana Code section 20-26-1-13(a)(2) excludes equipment used to transport a child from the definition of “special equipment.”*

The Hearing Examiner properly found the statutory meaning clear. Transfer tuition is to be calculated by class of school; transportation costs are not.

The Hearing Examiner appropriately determined that IC 20-26-11-13(c) and IC 20-26-11-22(b) exclude costs of transportation, and that IC 20-26-11-13(a)(2) excludes equipment used to transport a child from the definition of “special equipment,” which is a recoverable cost of transfer tuition. The above-cited provisions as found by the Hearing Examiner are very clear. Transportation costs are not included in the term “transfer tuition,” “operating costs,” or in the term “special equipment.” The transfer tuition statutes, other than for court ordered busing, do not require the payment of transportation costs. While depending on the circumstances this may or may not be equitable, this is an issue to be addressed legislatively, not by administrative modification of decades old administrative practice under existing law.

As indicated above in Fayette’s Response to Objections to Conclusions of Law No. 3, No. 4, No. 5, No. 6, No. 7, No. 9, No. 10, No. 18, No. 20, No. 21, No. 22, No. 23, and No. 24, the SBOA Instructional Manual, only addresses “class of school” in the Transfer Tuition statement section (multiple times), and not once references calculation by “class of school” in the Transportation Section.

The Hearing Examiner properly found that the formula outlined in IC 20-26-11-13 does not cover transportation costs incurred by a transferee corporation. For more detailed discussion, see pages 3 to 5 of Post Hearing Brief of Fayette County School Corporation, a copy of which is submitted with this Response.

Hamilton Heights argues that the Hearing Examiner should have indicated that Fayette owes both the tuition and transportation for the student based on the agency's interpretation of the statute.

Based on a decades old use of the Transportation Section of Form 515 without material change, and decades of administrative practice by those corporations that agreed to pay transportation costs, transportation costs in Indiana have been calculated by use of the Form 515 methodology which divides the transferee corporations transportation costs (Account 27000, except account 27400) by the total number of all students transported by the transferee corporation, to determine a per student cost.

The Hearing Examiner did follow agency (SBOA) formal guidance (Form 515's Transportation Section) and the related Transportation Section of the Instructional Manual, as well as the almost universal practice among transferor and transferee corporations in those cases where the transferor corporation have agreed to sign the Transportation Section of the form.

**Response to Conclusion of Law #6:** *It would appear that the formula outlined in Indiana Code section 20-26-11-13 does not cover the issue of transportation costs incurred by a transferee school corporation.*

The Hearing Examiner appropriately found that the formula outlined in IC 20-26-11-13 does not cover the issue of transportation costs incurred by a transferee school corporation.

Costs of transportation is specifically excluded by IC 20-26-11-13(c) which provides:

Operating costs shall be determined for each class of school where a transfer student is enrolled. The operating cost for each class of school is based on the total expenditures of the transferee corporation for the class of school from its general budget forms prescribed by the state board of accounts. This calculation excludes:

- (1) capital outlay;
- (2) debt service;

- (3) costs of transportation;
- (4) salaries of board members;
- (5) contracted service for legal expenses; and
- (6) any expenditure that is made from extracurricular account receipts.

[emphasis added]

Further, IC 20-26-11-13(a)(2) specifically excludes from the definition of “special equipment,” equipment “used to transport a child to or from a place where the child is attending school.” Special equipment, as defined, is a recoverable transfer tuition cost; equipment used to transport students to school is plainly not under IC 20-26-11-13.

For a more thorough discussion of this issue, see attached Post Hearing Brief of Fayette County School Corporation, p. 3.

**Response to Conclusion of Law #7:** *Hamilton Heights cites Indiana Code section 20-26-11-26 as authority for the argument that a transferor school is required to reimburse the transferee for transportation costs associated with transporting a student. However, that statute applies only to students who are transferred from one school corporation to another pursuant to a court order that was the result of litigation in a state or federal court – typically related to a desegregation order. That statute would not seem to apply here because this student was placed by her parent at Arcadia, and the placement was not pursuant to a court order.*

The Hearing Examiner appropriately found that IC 20-26-11-26 only applies to students who are transferred from one school corporation to another pursuant to a court order that was the result of litigation in a state or federal court – typically related to a desegregation order.

Again, Hamilton Heights argues that the Hearing Examiner should have applied this inapplicable, non-analogous statute, to the current circumstances. For the reason given in Fayette’s response to Hamilton Heights’ Objection to Conclusions of Law No. 3 and No. 4, the present circumstances are not analogous. Fayette has done no wrong and was lawfully educating

the student and providing all services, including transportation required by her IEP and state and federal law.

A statute applicable to a school corporation, or its community found to have engaged in unlawful discrimination is simply inapplicable to the current circumstances.

Again, the SBOA Instructional Manual does not support Hamilton Heights' position. While it specifies use of "class of school" for purposes of transfer tuition calculation multiple times in the Transfer Tuition Statement section, it pointedly does not once prescribe or use the term "class of school" in the Transportation Section, but rather specifically provides: "If a transportation contract has been entered into by transferring and receiving corporations, calculate the transportation cost per pupil transported by dividing transportation costs by the number of students furnished transportation."

**Response to Conclusion of Law #9:** *To not require the transferor school to contribute to the significant costs of transporting moderate to severely disabled children would lead to an absurd and unfair result. However, nothing in Indiana Code section 20-26-11 provides authority for which this hearing examiner can order transportation costs to be recouped by the transferee school.*

The Hearing Examiner appropriately followed the law, rather than overstep his purview and authority as a Hearing Examiner of an administrative agency empowered to enforce, but not make new laws. For a more thorough discussion of this issue, see pp. 7, 9, 12, and 14 of Post Hearing Brief of Fayette County School.

If the Indiana Department of Education or the State Board of Accounts believes a change from their long held administrative position and practice is now required, the Department or the

IDOE must seek legislative change. Administrative agencies should not usurp or frustrate the will of the people acting through their elected representatives.

Again, Hamilton Heights misconstrues the directives of the SBOA Instruction Manual with respect to the directives regarding class of school which only apply to transfer tuition. The Transportation Section pointedly does not reference “class of school.”

**Response to Conclusion of Law #10:** *Both parties point to Form 515, created by the State Board of Accounts, as authority for this hearing examiner to order the transferor school to reimburse the transferee school for transportation costs even though Indiana Code 20-26-11 et seq. is silent to this question.*

The Hearing Examiner appropriately found that IC 20-26-11 et seq. is silent on transportation costs. Fayette has offered to pay transportation costs pursuant to the calculation method prescribed on the Transportation Section of Form 515 because the Form 515 is the only state prescribed form for use for both determinations of transfer tuition and in the Transportation Section determining transportation costs, if there is a transportation agreement. IC 20-26-11 et seq. is silent on transportation costs; however, if the student had remained in Fayette, the transportation costs for Fayette to transport her would have been similar, but somewhat less than the \$1,080 determined by the Hearing Examiner pursuant to the Form 515 formula.

**Response to Conclusion of Law #18:** *Specifically, Hamilton Heights argues that the formula used to determine the amount of reimbursement it should receive should be determined as follows: calculate the overheard costs adjusted by listed factors, divide that number by the total students served and then add the direct costs of the driver/aide specific to the bus on which the student is transported. A detailed explanation of Hamilton Heights’ proposed formula is below:*

*Hamilton Heights' Proposed Formula*

*Step 1 – Calculate total overhead cost by adding:*

<i>27010 Service Area Directions – Student Transportation</i>	<i>\$202,264.92</i>
<i>27100 Vehicle Operations</i>	<i>\$687,844.23</i>
<i>27200 Monitoring Services</i>	<i>\$62,602.41</i>
<i>27300 Vehicle Servicing and Maintenance</i>	<i>\$485,888.16</i>
<i>27500 Insurance on Buses</i>	<i>\$24,851.00</i>
<i>27700 Contracted Transportation Services</i>	<i>\$73.44</i>
<i>27900 Other Student Transportation Services</i>	<i>\$14,050.00</i>
<i>Total</i>	<i>\$1,477,574.16</i>

*Step 2 – Subtract the following:*

<i>All driver costs in program 27100</i>	<i>(\$687,844.23)</i>
<i>Insurance Proceeds</i>	<i>(\$9,022.45)</i>
<i>Revenue from towns paid for fuel</i>	<i>(\$114,434.36)</i>
<i>Adjusted Total</i>	<i>\$666,273.12</i>

*Step 3 – Determine overhead costs per pupil transported by dividing the adjusted total in Step 2 by the average number of bus riders at Hamilton Heights* *(\$666,273.12/1366.78)*  
*\$487.48*

*Step 4 – Add totals related to the bus S.L. rides*

<i>Driver/Aide costs</i>	<i>\$43,670.81</i>
<i>Bus costs</i>	<i>\$8,098.83</i>
<i>Total</i>	<i>\$51,769.64</i>

*Step 5 – Divide the total costs related to the bus S.L. rides by the number of students who also ride.* *(\$51,769.64/13.71)*  
*\$3,776.05*

*Step 6 – Add Step 3 Overhead cost per pupil* *+\$487.48*

*Total Cost per student to be reimbursed by Fayette* *\$4,236.53*

The Hearing Examiner properly refrained from finding that there was any requirement to pay transportation costs, pursuant to the formula proposed by Hamilton Heights based on purported oral guidance providing Hamilton Heights in individual discussions with former agency employees, or on a strained and incorrect reading of Form 515 and the SBOA Instructional Manual.

The Instructional Manual references to “class of school” do not apply at all to transportation costs, which are addressed in the Transportation Section. All references to “class of school” calculations relate only to transfer tuition. See Fayette Hearing Exhibit 30.

The Hearing Examiner’s Conclusion of Law No. 18 is correct. The formula prepared by Fayette is consistent with the formula that has been prescribed on Form 515 for several decades without change.

The formula used by Indiana school corporations for decades without change is that proposed by Fayette, not the formula proposed by Hamilton Heights, or the formula purportedly orally suggested by a former SBOA employee, and a former and current IDOE employee in 2011 and/or 2012.

**Response to Conclusion of Law #20:** *Fayette notes that its formula is consistent with the formula that has been prescribed on Form 515 for several decades without change.*

The Hearing Examiner appropriately notes that the formula proposed by Fayette is consistent with the formula that has been prescribed on Form 515 for several decades without change.

The only testimony that either the State Board of Accounts or the State Board of Education ever “interpreted” the Transportation Section of Form 515 other than the way it has always been interpreted and used for several decades was oral hearsay testimony by Peggy Jackson concerning conversations she had in 2011 or 2012 with Stan Mettler, a now former staff member of the SBOA, and conversations she had in 2011 or 2012 with Debbie Hinehline, a former staff member of the IDOE now employed by IPS. As noted in footnote 1, Ms. Hinehline has informed Fayette that she does not share Hamilton Heights’ understanding of how transportation costs are to be determined in these circumstances, and an oral conversation in

2013 with Melissa Ambre, a current IDOE staff member. Neither any formal rule or written administrative guidance on this issue, nor even a letter summarizing, or confirming Hamilton Heights' hearing testimony on oral agency guidance on how to determine recoverable transportation costs from a transferor corporation has ever been issued.

If the State Board of Education is going to consider oral hearsay, then it should consider the fact that a current SBOA school representative has, based on his research of SBOA files concerning the Transportation Section of Form 515 and applicable statutes concluded that the Form 515 method of calculation of transportation costs has remained unchanged since at least 1978, and only applies if there is an agreement to pay.

Again, the SBOA Instructional Manual, Transportation Section, never once references calculation of transportation costs by class of school. The invitation to misread the Instructional Manual should be declined.

**Response to Conclusion of Law #21:** *The formula provided on Form 515 spreads transportation costs to all students at the transferee corporation rather than isolating the costs associated solely with the transferred students and applying them to those students only.*

The Hearing Examiner properly found that the formula on Form 515 spreads transportation costs to all students at the transferee corporation rather than isolating the costs associated solely with the transferred students and applying them to those students only.

The Transportation Section of Form 515 has remained unchanged for several decades, and absent an agreement between the transferor and transferee school corporation, school corporations have spread transportation costs to all students at the transferee school corporation rather than isolating the costs associated solely with the transferred students and applying them

to those students only. The Hearing Examiner properly construed the Transportation Section of Form 515, and properly recognized how it has been used for at least several decades.

The appropriate methodology as prescribed by the State Board of Accounts and proposed by Fayette is as follows:

Form 515 provides for calculation of the Amount Due for Transportation in the following manner:

Cost of Transportation Fund – Accounts 27000 (27400)	_____
Total Number of Pupils Transported	_____
Cost per Pupil Transported	_____
AMOUNT DUE FOR TRANSPORTATION	_____
Cost per pupil (above) divided by number of day’s school was in session equals cost per pupil per day:	_____
\$ /	_____
Cost per pupil multiplied by total days transported equals cost of transporting pupils named in this statement:	_____
\$ x	_____

Using the prescribed School Form 515 (Revised 2009) methodology the Transportation Section of the form should be completed as follows assuming, as Hamilton Heights indicated, that Hamilton Heights transports approximately 60% of its students (ADM) on a daily basis.

Cost of Transportation Fund – Accounts 27000 (27400)	\$1,477,574
Total Number of Pupils Transported	1,368
Cost per Pupil Transported	\$1,080
AMOUNT DUE FOR TRANSPORTATION	\$1,080
Cost per pupil (above) divided by number of day’s school was in session equals cost per pupil per day:	
\$1,080/180	6
Cost per pupil multiplied by total days transported equals cost of transporting pupils named in this statement:	
\$6 x 180	\$1,080

Further, there was no evidence introduced at the hearing that the SBOA ever found an audit exception in auditing schools budgets where school corporations determined the per pupil cost of transportation for transfer students by dividing allowable transportation costs by the total number of all students transported by the transferor (receiving school corporation).

If the SBOA and transferor and transferee school corporations have been misconstruing the appropriate way to determine transportation costs, absent an agreement, there would have been hundreds of audit exceptions noted by the SBOA, or appeals to this Board before now if a transferor corporation had refused to pay transportation costs based on the class of school method proposed by Hamilton Heights.

**Response to Conclusion of Law #22:** *Fayette is correct that this is the formula that has been prescribed on Form 515, and it appears that there has been no change in that formula for many years.*

The Hearing Examiner properly found that the Form 515 formula as construed by Fayette is correct, and that there has been no change for many years.

Again, Hamilton Heights invites the Board to misread the SBOA Instructional Manual. There is no reference to “class of school” cost calculation in the Transportation Section of the Manual.

**Response to Conclusion of Law #23:** *Absent any other guidance from the legislature, Fayette’s proposed formula would seem to be the most appropriate.*

The Hearing Examiner properly declined the invitation to act outside of his authority and purview, and outside the authority and purview of this Board. If there is to be a change of a several decades long administrative interpretation of how transportation costs should be calculated, absent an agreement, for transferred students in general, or in circumstances where a student has been unilaterally placed by a parent in a healthcare or residential facility, such change needs to come through legislation. Administrative agencies should not usurp the authority of the Indiana General Assembly.

**Response to Conclusion of Law #24:** *This formula has been consistently used when there is a written transportation agreement between schools; thus, it makes logical sense to apply it, likewise, in the absence of an agreement.*

The Hearing Examiner properly found that the Form 515 method of calculating the transportation costs of transferred students “when there is a written transportation agreement” has been consistently used, and that it makes logical sense to apply it, likewise, in the absence of an agreement.

The Hearing Examiner properly understood that IC 20-26-11 *et seq.* does not require transferor school corporations to pay transferee corporations for transporting transfer students; but, that for several decades transferor and transferee school corporations have used the transportation cost section of Form 515 prescribed by the State Board of Accounts to calculate, charge and pay transportation costs based on the allowable transportation costs of a transfer school divided by the total number of all students transported by the transferee School Corporation.

Although Hamilton Heights and Fayette never reached an agreement on how much transportation costs, if any, was owed, or how to calculate such transportation costs for S.L., Fayette has offered to pay transportation costs in accordance with the Form 515 methodology and consistent with long-term practice.

In most cases, except for court order busing, parents of transfer students choose where their children will attend. Fayette, as the transferor school corporation, like many transferor school corporations had no say in the transfer, no opportunity to present evidence why the transfer was unnecessary. Fayette was providing a free and appropriate education in accordance with her IEP and providing her appropriate transportation. It is fair and logical for Fayette to

only pay transportation costs similar to what it would pay if her parent had not placed the student in the ADC in Hamilton Heights. In fact, the \$1,080 determined to be the appropriate cost is about \$300 more than it would cost Fayette to transport her, using the Form 515 methodology, since Hamilton Heights apparently has somewhat higher 27000 account costs than Fayette, but Hamilton Heights is asking this Board to order Fayette to pay \$4,771.76 to transport S.L. to and from the ADC to Hamilton Heights High School which is about 2 town blocks away. See Fayette Hearing Exhibit 1.

Absent our agreement, Fayette is not obligated to pay any transportation costs, but believes Form 515 and its consistent decades old prescribed formula provides a uniform and equitable method to calculate transportation costs.

For the reasons cited in greater detail in Post Hearing Brief of Fayette County School Corporation, attached (pp. 8 to 11), great deference should be afforded long-term administrative practice evidenced by an agency's formally prescribed forms. Recent reports of conversations to a single party, not even supported by a formal written guidance or advisory opinion, or even a letter are entitled to no deference by this Board.

#### **IV. Conclusion**

The Hearing Examiner's Proposed Findings of Fact, Conclusions of Law, and Proposed Order is in accordance with the evidence presented at the hearing and applicable law and decades of continuous and consistent administrative practice.

While existing law, IC 20-26-11-8, does place an undue burden on school corporations with state licensed healthcare or residential facilities housing school age children unilaterally placed by their parents or legal guardians in their districts, this burden requires action by the Indiana General Assembly to amend the law allowing unilateral parental placement in such

facilities and/or substantially increasing funding of special education tuition support especially for moderate to severely disabled children. Under existing laws and regulations, there is no lawful resolution of the burden about which Hamilton Heights complains.

The existing statutory framework also burdens transferee school corporations who have invested considerable resources to house and staff classes for students with moderate to severe disabilities, and provide those students with legal settlement in their districts a free and appropriate education and required transportation, only to have the children institutionalized, educated elsewhere, and sent a bill for education services and transportation previously provided in an educationally and legally satisfactory manner by the school corporation of legal settlement without an opportunity to dispute the need to be educated elsewhere.

The Hearing Examiner appropriately declined to usurp the legislative authority of the Indiana General Assembly by substituting what he may have personally believed to be fair and equitable in the circumstances for what applicable law required.

Fayette does not agree that the Hearing Examiner's proposed Conclusions of Law and Proposed Order is unfair to Hamilton Heights or results in any unjust enrichment of Fayette. Fayette was providing the student with a free and appropriate education and appropriate transportation.

However, whether the Order concerning transportation costs is fair and equitable, or unfair, is not relevant to the issue before this Board. The only issue before this Board is whether the Hearing Examiner's Proposed Findings of Facts, Conclusions of Law, and Proposed Order is in accordance with existing law.

The Hearing Examiner's Proposed Findings of Facts, Conclusions of Law, and Proposed Order is in accordance with existing law and should be affirmed.

Respectfully submitted,

FAYETTE COUNTY SCHOOL CORPORATION

By its counsel:

*Robert W. Rund*

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Robert W. Rund, #6235-49  
Lewis & Kappes, P.C.  
One American Square, Suite 2500  
Indianapolis, IN 46282  
Phone: (317) 639-1210  
Fax: (317) 639-4882  
[rrund@lewis-kappes.com](mailto:rrund@lewis-kappes.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on December 31, 2013, a copy of the foregoing *Respondent's Response to Petitioner's Objections and Request for Oral Argument* was sent via e-mail addressed to the individuals set forth below:

Michael Moore  
Hearing Examiner  
[mmoore@doe.in.gov](mailto:mmoore@doe.in.gov)

Andrew Manna  
Attorney for Hamilton Heights  
School Corporation  
[andrew@cchalaw.com](mailto:andrew@cchalaw.com)

Laura Naughton  
State Board Administrator  
[linaughton@doe.in.gov](mailto:linaughton@doe.in.gov)

Anne Davis  
Director, State Board of Education  
[amdavis@ceci.in.gov](mailto:amdavis@ceci.in.gov)

Michelle McKeown  
General Counsel  
State Board of Education  
[mmckeown@ceci.in.gov](mailto:mmckeown@ceci.in.gov)

*Robert W. Rund*

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Robert W. Rund

**FCSC**  
**EXHIBIT #1**

Google

To see all the details that are visible on the screen, use the "Print" link next to the map.



**FCSC**  
**EXHIBIT #22**

## Jane Kellam-Tollett

---

**From:** Dr. Williams [WilliamsJ@rushville.k12.in.us]  
**Sent:** Thursday, August 08, 2013 4:50 PM  
**To:** Sandy London; Jane Kellam-Tollett; Megan Bell; CO; Karen Cartmell; Janet Elstro; robc@rcs.k12.in.us  
**Subject:** Re: Foster Care, Court Placements, etc.

We have not charged Transportation.

*Dr. John E. Williams*

Superintendent

Rush County Schools

330 W. 8th Street

Rushville, IN 46173

1-765-932-4186 >>> Jane Kellam-Tollett <jkellam@fayette.k12.in.us> 8/8/2013 4:30 PM >>>

Dear Friends,

Do you have no resident students that are in after count days and you bill transfer tuition on....Foster Care placements, group home placements, Court order placements?

If so, do you bill transportation on these folks? We never have because we always have a bus in the area anyhow but we have an outrageous bill from another corporation and I am fact finding on what others do.

Thanks for any help you can give!!!!

*Janie*

Jane Kellam-Tollett, CPA  
Director of Finance  
Fayette County School Corporation  
1401 Spartan Drive  
Connersville, IN 47331

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**FCSC**  
**EXHIBIT #23**

**Jane Kellam-Tollett**

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**From:** Karen Cartmell [KCartmell@pjke.k12.in.us]  
**Sent:** Friday, August 09, 2013 7:27 AM  
**To:** Jane Kellam-Tollett  
**Subject:** RE: Foster Care, Court Placements, etc.

We do not charge for Transportation.

Hope this helps!!!

---

**From:** Jane Kellam-Tollett [mailto:jkellam@fayette.k12.in.us]  
**Sent:** Thursday, August 08, 2013 4:30 PM  
**To:** 'robc@rcs.k12.in.us'; Dr. Williams; Megan Bell; Elstro, Janet; CO; Sandy London; Karen Cartmell  
**Subject:** Foster Care, Court Placements, etc.

Dear Friends,

Do you have no resident students that are in after count days and you bill transfer tuition on....Foster Care placements, group home placements, Court order placements?

If so, do you bill transportation on these folks? We never have because we always have a bus in the area anyhow but we have an outrageous bill from another corporation and I am fact finding on what others do.

Thanks for any help you can give!!!!

*Janie*

Jane Kellam-Tollett, CPA  
Director of Finance  
Fayette County School Corporation  
1401 Spartan Drive  
Connersville, IN 47331

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**FCSC**  
**EXHIBIT #24**

**Dr. Russell Hodges**

---

**From:** David Adams [daadams@shelbycs.k12.in.us]  
**Sent:** Wednesday, August 21, 2013 2:37 PM  
**To:** Dr. Russell Hodges  
**Subject:** Re: Spec Ed Transportation

Hello Russ,

SCS does not charge the school corporations of out of district students who attend the Especially Kidz nursing home for transportation costs. SCS does not think that the transportation costs are high enough that it is worth charging for the transportation. The Especially Kidz nursing home is located next to our high school. Although over the years we have transferred students to many of our buildings (elementary, middle, high school), we have not felt like this transportation has been a financial burden on the SCS corporation that would justify charging for the transportation.

David Adams

David A. Adams, Ph.D.  
Superintendent  
Shelbyville Central Schools  
803 St. Joseph St.  
Shelbyville, IN 46176  
(317)392-2505  
Fax (317)392-5737

FIRST CLASS, CLASS FIRST

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**From:** Dr. Russell Hodges [mailto:rhodges@fayette.k12.in.us]  
**To:** David Adams (daadams@shelbycs.k12.in.us) [mailto:daadams@shelbycs.k12.in.us]  
**Sent:** Wed, 21 Aug 2013 14:00:53 -0500  
**Subject:** Spec Ed Transportation

Dave,

I wanted to follow up on our phone conversation regarding the transportation of students from the residential care facility in your district to your schools. As per our conversation you indicated that there were no charges related to transportation sent to the home school corporation of those students being transported. We are preparing for a Hearing to contest the charges we are being assessed by another school corporation and wanted to document our conversation. Would you be so kind as to confirm our conversation with a return email on this topic?

Thanks and have a terrific day!

**FCSC**  
**EXHIBIT #30**

Transportation Section

If a transportation contract has been entered into by the transferring and receiving corporations, calculate the transportation cost per pupil transported by dividing transportation costs by the number of students furnished transportation.

In the TRANSPORTATION section on page 1, calculate the cost per pupil per day by dividing the Cost Per Pupil Transported by the number of days school was in session for pupil attendance (from upper portion of page 1). Carry this result to the next line and multiply by the total days the transferred pupils were furnished transportation (page 2) to obtain the costs of transporting the pupils named in the statement. Enter the product on the line provided.

Page Two

Each pupil transferred in (from the transferring corporation named on page 1 and for the class of school identified) must be listed in the first column and the information detailed in each of the columns. On the line with the pupil's name, enter the date of the pupil's birth, grade level, and the first date and last date of the pupil's enrollment for the school year for which you are billing. Show the actual number of days the pupil was enrolled in the program. Also affirm if the pupil was enrolled on the ADM count day.

If transportation was provided per written agreement, enter the number of days the pupil was furnished transportation. If the child qualifies for a special education grant or a vocational education additional pupil count factor, enter such information in the column provided. Total the columns for which the form indicates totals are required.

Page Three

In Item A, calculate the full time pupil equivalent by dividing the total pupil days enrolled (Page 2) by the number of days school was in session for pupil attendance (from Page 1) and enter such full time pupil equivalent on the appropriate line.

In Item B, calculate the per capita operating cost by dividing the total operating cost (from Line 8 on Page 1) by the number of pupils in Pupil Enrollment for the class of school (from Page 1). Enter the quotient on the appropriate line.

In Item C, per capita cost (Item B) multiplied by the full time pupil equivalent (Item A) provides the gross amount due for the operating cost for the transferring corporation for the class of school. The amount is entered on the line under class of school.

In Item D, A transferee school shall allocate revenues described to a transfer student by dividing: (1) the total amount of revenues received; by (2) the ADM of the transferee school for the school year that ends in the calendar year in which the revenues are received. However, for any state distribution computed using less than the total ADM of the transferee school, the transferee school shall allocate the revenues to the transfer student by dividing the revenues that the transferee school is eligible to receive in a calendar year by the student count used to compute the state distribution. Therefore, complete each line as appropriate.

State Support

Prime time grant for school year under IC 20-43-9. Divided by Kindergarten through third grade ADM to get a per student amount.

Tuition Support per ADM for basic programs. The amount should be from information provided by the Department of Education DOE SA 54.

Academic Honors Diploma Award under IC 20-43-10-2. Per eligible pupil who successfully completed an academic honors diploma program ending in the previous calendar year, (current amount is \$900).

Vocational education grants under IC 20-43-8 (For students enrolled in an approved vocational program consider labor wage category and class credit hours in determining the credit).

Special education grants under IC 20-43-7 based on a student's exceptional area.

Restoration Grants under IC 20-43-12 Contact Department of Education Office of School Finance.

Small Schools Grants under IC 20-43-12.2 Contact Department of Education Office of School Finance.

Local Support

**Be aware only the monthly Basic Grant State distributions will be received starting January 1, 2009.**

In Item E, subtract the total credits of state distributions from the gross amount due for operating (Item C).

Enter on the bottom of page 3 the amount due for transfer tuition for operating (E); the amount due for transfer tuition for special equipment (from Page 4, column G total); and the net amount due for transportation (from Page 1). Sum the three items for the Total Net Amount Due for Transfer Tuition and Transportation.

If quarterly payments have been received to apply against the total net amount due, enter the date and amount of each on the spaces provided, total them and subtract the total quarterly payments from the total net amount due. The difference will be the balance due.

Page Four

Complete the listing of Special Equipment, including the description (A), the original cost (B), the year purchased (C), the estimated life of the equipment (D) and the number of students using the special equipment during at least part of the school year (F). Divide the Original Cost (B) for each piece of equipment by the Estimated Life (D) to obtain the annual allocated cost (E). Next divide the annual allocated cost (E) by the number of students who used the special equipment during at least part of the school year (F) to obtain the portion of special equipment cost attributable to the student named on Page 2. Sum all the special equipment costs in column G to obtain the total special equipment costs for the student named.

We would recommend that a separate Form 515 be completed for each student that used special equipment or a separate page four.

Complete the certification which must be dated and signed by the school corporation treasurer before presenting Form 515 to the transferring party.

CHECK IN DUPLICATE (Form 509)

The check form is to be used for all disbursements, other than payroll, and each check must be supported by an itemized claim (Accounts Payable Voucher) allowed by the school board. The original check must be signed by the Treasurer of the School Corporation and both the original and copy must show the name of the depository on which the check is drawn. The original, when returned by the depository after payment, must be carefully preserved by the treasurer. The duplicate copy is the register of checks and will serve as the source document for posting to the disbursements column of the Fund Ledger; the Ledger of Appropriations, Allotments, Encumbrances, Disbursements and Balances; and, the Treasurer's Daily Balance of Cash and Depositories record.

**FCSC  
HEARING APPEAL  
EXHIBIT #1**

## Jane Kellam-Tollett

---

**From:** Jane Kellam-Tollett  
**Int:** Tuesday, July 16, 2013 5:19 PM  
**to:** 'Debra Himeline'  
**Subject:** RE: Fwd: FW: Arcadia Center

Did you agree to them transporting your kids this year?

I agree they are trying to get us to fund their transportation fund, we are going to a DOE hearing with them. ☹

---

**From:** Debra Himeline [<mailto:hinelind@ips.k12.in.us>]  
**Sent:** Tuesday, July 16, 2013 5:17 PM  
**To:** Jane Kellam-Tollett  
**Subject:** Re: Fwd: FW: Arcadia Center

Sorry I didn't get your e-mail. However, please feel free to call me or e-mail me now that you know my e-mail address. It sounds like Hamilton Heights is funding their transportation through billings to all other corporations. I got them to agree to half the amount they billed us last year, which was still more than if they calculated it the way the transfer tuition bill would allot them.

My phone number is (317) 226-3550 - my direct line.

Debra Himeline  
Chief of Financial and Business Services  
Indianapolis Public Schools

>>> John Perkins 7/15/2013 3:10 PM >>>  
Forward from Jane

>>> Jane Kellam-Tollett <[jkellam@fayette.k12.in.us](mailto:jkellam@fayette.k12.in.us)> 7/15/2013 1:41 PM >>>  
John,

I don't have Debbie's address....this bounced back. Any chance you can forward it for me?

Thanks,

Janie

---

**From:** Jane Kellam-Tollett  
**Sent:** Monday, July 15, 2013 1:38 PM  
**To:** 'hinelined@ips.k12.in.us'  
**Subject:** Arcadia Center

Debbie,

hope this email reaches you. I know IPS was named in the request DOE hearing with Hamilton Heights (I don't like them very much) but has since been removed from that hearing.

**FCSC  
HEARING APPEAL  
EXHIBIT #2**

## Robert W. Rund

---

**From:** Preston, Ryan <RPreston@sboa.IN.gov>  
**Sent:** Tuesday, October 29, 2013 3:33 PM  
**To:** Robert W. Rund  
**Subject:** Form 515 Transfer Tuition Statement  
**Attachments:** School Form 515 Revised 1978.pdf

Mr. Rund,

I have attached the earliest Form 515 that I could find. It appears to be from 1978 and include a similar Transportation section on the bottom of page one and page three. I looked at IC 20-26-11 that contains the transfer tuition formula. Unfortunately, since the form was created prior to when I was born, I am not able to tell you why it was included. It does appear that the only way that it can be included in the calculation is if the two or more schools that are involved in the transfer situation agree and sign a written agreement to do so.

If you have any questions or need anything else, then please let me know.

Thanks,  
Ryan Preston  
Indiana State Board of Accounts

# Statement of Moneys Owning on Account of Transfers of School Children

School Year 19\_\_\_\_\_ — 19\_\_\_\_\_

TO: \_\_\_\_\_ School Corporation. \_\_\_\_\_ County  
(Transferring Corporation)

FROM: \_\_\_\_\_ School Corporation. \_\_\_\_\_ County  
(Receiving Corporation)

Number Of Days School Was In Session For Pupil Attendance \_\_\_\_\_

Number Of Pupils In A.D.M.: Kindergarten \_\_\_\_\_ Senior High School \_\_\_\_\_  
 Elementary \_\_\_\_\_ Special Program (1) \_\_\_\_\_  
 Middle/Jr. High \_\_\_\_\_ Special Program (2) \_\_\_\_\_

LAWFUL COSTS ACCORDING TO CLASSIFIED BUDGET ACCOUNTS	Class of School	
	_____	_____
1. INSTRUCTION - REGULAR AND SPECIAL PROGRAMS Include costs under Accounts 11000 or 12000.	\$	\$
2. SUPPORT SERVICES - ADMINISTRATION Include costs under Accounts 21600, 23120, 23190, 23200, 24000.		
3. SUPPORT SERVICES - ATTENDANCE, HEALTH AND GUIDANCE Include costs under Accounts 21100 through 21500.		
4. SUPPORT SERVICES - OPERATION AND MAINTENANCE Include costs under Account 25400.		
5. SUPPORT SERVICES - BUSINESS Include costs under Accounts 25100, 25200, 25700.		
6. SUPPORT SERVICES - OTHER Include costs under Accounts 22000, 25600, 26000, 29000.		
7. Total Costs, Lines 1 to 6 inclusive (General Fund only).	\$	\$
8. EITHER: 5% of the cost of physical plant, equipment, etc. not more than 20 years old at the beginning of the school year.	\$	\$
9. OR: Amount budgeted from the General Fund for Capital Outlay for physical plant, equipment and appurtenances.		
10. And amount levied for the Cumulative Building Fund for the calendar year in which the school year ends.		
11. And amount levied for the Debt Service Fund for the calendar year in which the school year ends.		
12. The lesser of amount on Line 8 or total of Lines 9, 10, 11 and 12.	\$	\$
13. Total of above amounts (Line 7 plus Line 13).	\$	\$

### TRANSPORTATION

Costs of transportation may be added only if there is a transportation agreement contract between the transferring corporation and the receiving corporation

Cost of transportation (include all costs under Account 25500 Except 25550) \$ \_\_\_\_\_

Total Number of resident and non-resident pupils furnished transportation \_\_\_\_\_

Cost per pupil transported \$ \_\_\_\_\_



	Class of School	Class of School	Total
A. Total pupil days enrolled divided by number of days school was in session for pupil attendance equals full time pupil equivalent.			
_____ ÷ _____ =			
_____ ÷ _____ =			
B. Expense (from line 7, page 1) divided by A.D.M. equals Gross Per Capita Cost of expense items included on lines 1 to 6 on page 1.			
\$ _____ ÷ _____ = \$			
\$ _____ ÷ _____ = \$			
C. Gross Per Capita Cost (Section B) times full time pupil equivalent equals gross amount due for expense items included in Section B.			
\$ _____ x _____ = \$			
\$ _____ x _____ = \$			
Total Gross Amount Due - Section C			\$
D. Expense (from line 13, page 1) divided by A.D.M. equals Gross Per Capita Cost of expense items included on lines 8 to 12 on page 1.			
\$ _____ ÷ _____ = \$			
\$ _____ ÷ _____ = \$			
E. Gross Per Capita Cost (Section D) times full time pupil equivalent equals gross amount due for expense items included in Section D.			
\$ _____ x _____ = \$			
\$ _____ x _____ = \$			
Total Gross Amount Due - Section E (See Note Next Page)			\$
TOTAL GROSS AMOUNT DUE - Sections C and E			\$
Less total amounts distributed by State on account of transferred pupils named in this statement:			
Tuition Support (State Support per A.D.M. times Actual A.D.M.)		\$ _____	
A.D.A. Flat Grant (For students reported as residents)		_____	
Additional Pupil Count Support (When student qualifies)		_____	
Other State and Federal Support applicable		_____	
NET AMOUNT DUE FOR TRANSFER TUITION			\$
TRANSPORTATION			
F. Cost per pupil (from page 1) divided by number of days school was in session equals cost per pupil per day:			
\$ _____ ÷ _____ = \$ _____			
G. Cost per pupil per day times total days transported (from page 2) equals cost of transporting pupils named in this statement:			
\$ _____ x _____ = \$ _____			
Less amount of State transportation distribution on account of transferred pupils herein:			
H. State distribution per pupil (transportation distribution divided by total number of pupils transported):			
\$ _____ ÷ _____ = \$ _____			
I. State transportation distribution: (state distribution per pupil divided by days school was in session times total days transported):			
\$ _____ ÷ _____ = \$ _____ x _____ =			
NET AMOUNT DUE FOR TRANSPORTATION			\$

Net Amount Due for Transfer Tuition (from previous page)		\$	_____
Net Amount Due for Transportation (from previous page)			_____
Total Net Amount Due for Transfer Tuition and Transportation		\$	_____
Less Quarterly Payments:			
	<u>Date</u>	<u>Amount</u>	
First Quarter	_____	\$	_____
Second Quarter	_____		_____
Third Quarter	_____		_____
Total Quarterly Payments		\$	_____
Balance of Net Amount Due		\$	_____

NOTE: All transfer tuition amounts received by a creditor corporation on account of Section E shall be receipted to the Debt Service Fund or the Cumulative Building Fund. If a creditor corporation does not maintain either of these funds, said transfer tuition amounts shall be receipted to the General Fund.

CERTIFICATION OF COST OF SCHOOL PLANT

I, \_\_\_\_\_, Secretary of the Governing Body of the \_\_\_\_\_ School Corporation, \_\_\_\_\_ County, Indiana, hereby certify that the cost of this corporation's physical plant, equipment and all appurtenances thereto, the age of which was 20 years or less on \_\_\_\_\_, 19\_\_\_\_, the beginning date of the school year identified herein, is as follows:

<u>Building</u>	<u>Cost</u>
_____	\$ _____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

The amount included on Line 8 of Page 1 is 5% of this Total \$ \_\_\_\_\_

I further certify that the within named children were lawfully transferred to the above named school corporation; that the transfers were issued by the proper legal officers of: \_\_\_\_\_ County, Indiana; or, \_\_\_\_\_ (name of transferring corporation) in the instance of a cash transfer, authorized by \_\_\_\_\_, residing at \_\_\_\_\_ address, as the parent or other person responsible for such transfer tuition.

Also that the foregoing statement of transfers, attendance, cost of school operation, cost of transportation, amount due for tuition, amount due for transportation of children who by law were furnished transportation by this school corporation is true and correct, as I verily believe.

Date: \_\_\_\_\_, 19\_\_\_\_ (Signed) \_\_\_\_\_ Secretary of Governing Body

**FCSC  
POST-HEARING  
BRIEF**

**BEFORE THE INDIANA STATE BOARD OF EDUCATION**

**IHO MICHAEL MOORE**

**IN THE MATTER OF:**

Hamilton Heights School Corporation	)	
	)	
Petitioner,	)	
	)	
v.	)	Cause No. 1305009
	)	
Fayette County School Corporation	)	
	)	
	)	
Respondent.	)	

**POST HEARING BRIEF OF FAYETTE COUNTY SCHOOL CORPORATION**

**Introduction**

This brief is submitted pursuant to the Hearing Officer’s Order For Further Briefing issued on September 27 on issues related to whether the Fayette County School Corporation (“Fayette”) has an obligation to reimburse Hamilton Heights School Corporation (“Heights”) for transporting S. L., a student with disabilities with current legal settlement in Fayette; and, if so, what is the appropriate methodology for calculating the transportation costs to be reimbursed?

The Hearing Officer’s Order for Further Briefing apparently also seeks briefing on the issue of whether Heights is entitled to recover its costs for transporting S.L. from the Arcadia Development Center, (“ADC”) a residential childcare facility where she has been placed by her parent, to Hamilton Heights High School, under the equitable doctrine of *quantum meruit* to avoid “unjust enrichment” of Fayette.

Fayette and Heights reached agreement on the overall transfer costs relating to S.L. to be paid Heights for the 2011-2012 school years, but failed to reach an agreement on the appropriate methodology for calculating the amount of transportation costs to be paid by Fayette to Heights going forward. Fayette and Heights agreed to request the Hearing Examiner determine the appropriate methodology for calculating transportation costs to be paid by Fayette, as the transferor corporation for S.L. going forward, and to abide by such determination.

**Indiana Transfer Tuition Laws**

Indiana law governing transfers and transfer tuition is set out in IC20-26-11-1 et seq. IC 20-26-11-8 provides that the school corporation with legal settlement is responsible for the payment of transfer tuition in circumstances where a parent places their child in a state licensed public or private health or childcare facility. Although the parties are in agreement that IC 20-26-

11—8 applies, this Indiana code provision is, however, silent on the obligation to pay transportation costs.

IC 20-26-11-13 governs the determination of how transfer tuition is to be calculated, but this provision specifically excludes transportation. IC 20-26-11-13 includes “Capital expenditures for any special equipment” used by the transfer student and a proportionate share of “operating costs”, but the definition of “Special equipment” in IC 20-26-11-13 (a) (2) specifically excludes equipment “used to transport a child to or from a place where the child is attending school”; in addition, IC 20-26-11-13 (c) specifically excludes “costs of transportation” from the definition of “Operating costs” to be reimbursed. Further, IC 20-26-11-13 (h) authorizes, but does not require, transferor and transferee corporations to enter into “transfer tuition agreements”.

While IC 20-26-11-13, which addresses the determination of transfer tuition specifically provides for transfer tuition by “class of school”, the same code provision specifically excludes, as noted above, among other costs, the “costs of transportation”.

IC 20-26-11-13 (c) provides in relevant part:

(c) Operating costs shall be determined for each class of school where a transfer student is enrolled. The operating cost for each class of school is based on the total expenditures of the transferee corporation for the class of school from its general budget forms prescribed by the state board of accounts. This calculation excludes:

- (1) capital outlay;
- (2) debt service;
- (3) costs of transportation;

- (4) salaries of board members;
- (5) contracted service for legal expenses; and
- (6) any expenditure that is made from extracurricular account receipts

It is clear that the legislature intended to exclude the costs of transportation from the transfer tuition calculation, but, at the same time it is evident from IC 20-26-11-13 (c) that school corporations are to use State Board of Accounts prescribed forms in allocating costs between the transferor and transferee school corporations. It is also evident that while certain other operating costs are to be determined by class of school, transportation costs are not to be allocated by class of school.

Form 515 appropriately allocates transportation costs on a general corporation wide cost per student basis.

Fayette and Heights have been unable to agree on a transfer tuition agreement in the broad sense, but have agreed upon a compromised amount to settle Heights' overall claim related to S.L. for school year 2011-2012, which claim included transportation costs.

#### **Specific Issue Before the Hearing Officer**

The parties as indicated above disagree on the methodology of determining the amount of transportation costs for S.L. that may be owed by Fayette to Heights as long as S.L. maintains legal settlement in Fayette and is a transfer student educated and transported by Heights.

The specific statute applicable to transferred students is, as noted above, silent on whether there is an obligation for a "transferor corporation" to pay transportation costs to the

“transferee corporation” for non-court ordered busing of a transferred student.<sup>1</sup> And, in fact, the Indiana code provision specifying how transfer tuition is to be calculated specifically excludes transportation costs from the definition of “Operating costs.” “Operating costs”, as defined by IC 20-26-11-13(c), and the number of students in a particular class of school, minus certain revenues for the student received by the transferee corporation provide the basis for determining transfer tuition costs. Further, no applicable Indiana code provision or regulation addresses the methodology for determining the transportation cost obligations of a transferee corporation.

There is an obligation under 511 IAC 7-36-8 for the school corporation of legal settlement to be ultimately responsible for the transportation of a student with disabilities whose IEP specifies the need for transportation, but the regulation is silent on how transportation related costs are to be calculated.

Nevertheless, Fayette has asked the Hearing Officer to determine that Fayette should pay transportation costs determined in accordance with State Board of Accounts Form 515 (Revised 2009).

Form 515 provides for calculation of the Amount Due For Transportation in the following manner:

Costs of Transportation Fund – Accounts 27000 (27400)	_____
Total Number of Pupils Transported	_____
Cost per Pupil Transported	_____
AMOUNT DUE FOR TRANSPORTATION	_____

<sup>1</sup> It should be noted that the provisions requiring the payment of transportation costs for students transferred pursuant to court ordered busing pursuant to IC 20-26-11-26, as noted in the Hearing Officer’s Order for Further Briefing, are not applicable to this matter. Further, Court ordered busing pursuant to IC 20-26-11-26 involves solely corporation to corporation transportation, and not pick up and transportation within the transferee corporation of students who physically reside within the transferee corporation boundaries.

Cost per pupil (above) divided by number of day's \_\_\_\_\_

School was in session equals cost per pupil per day: \_\_\_\_\_

\$ /

Cost per pupil multiplied by total days transported \_\_\_\_\_

equals cost of transporting pupils named in this statement:

\$ x

Using the prescribed School Form 515 (Revised 2009) methodology the TRANSPORTATION section of the form should be completed as follows assuming, as Heights indicated, that Heights transports approximately 60% of its students (ADM) on a daily basis.

Costs of Transportation Fund – Accounts 27000 (27400)	\$1,477,574
Total Number of Pupils Transported	1368
Cost per Pupil Transported	\$1080
AMOUNT DUE FOR TRANSPORTATION	\$1080
Cost per pupil (above) divided by number of days school was in session equals cost per pupil per day:	6
\$1,080 / 180	
Cost per pupil day multiplied by total days transported equals cost of transporting pupils named in this statement:	\$1,080

6 X 180

The above numbers are from Heights' Form 9; and testimony at the hearing concerning Heights' ADM and percentage of pupils transported.

**Indiana State Board of Accounts Empowered to Formulate, Prescribe and Install a Uniform System of Accounting and Reporting For Use By Indiana School Corporations.**

The Indiana State Board of Accounts is empowered to formulate, prescribe and install a uniform system of accounting and reporting for use by the Indiana School Corporations. IC 5-11-1-6 reads:

Sec. 6. The state board of accounts shall formulate, prescribe, and approve the forms for reports required to be made by this chapter. The state examiner shall annually furnish to the officers required to make reports by this chapter such printed blanks and forms, on which shall be indicated the information required, together with suitable printed instructions for filling out the same. *(Formerly: Acts 1909, c. 55, s. 6.) As amended by Acts 1980, P.L. 30, SEC. 5.*

This authority to prescribe and require the use of the prescribed forms applies to “every municipality and every state or local governmental unit, entity, or instrumentality...” IC5-11-1-4

“Municipality” is defined by IC 5-11-1-16 (a) to “mean(s) any county, township, city, town, school corporation, special taxing district, or other political subdivision of Indiana”. Public Officers in Indiana are obligated to adopt and use the forms prescribed by the State Board of Accounts. IC5-11-1-21 provides:

Sec. 21. All public officers shall adopt and use the books, forms, records, and systems of accounting and reporting adopted by the state board of accounts, when directed so to do by the board, and all forms, books, and records shall be purchased by those officers in the manner provided by law. An officer who refuses to provide such books, forms, or records, fails to use them, or fails to keep the accounts of his office as directed by the board commits a Class C infraction and forfeits his office. *(Formerly: Acts 1909, c. 55, s. 22.) As amended by Acts 1978, P.L. 2, SEC. 510.*

### **Transportation Provisions of Form 515 Remain Unchanged Despite Numerous Amendments To Applicable Indiana Code Provisions Since 1988**

The transportation cost provision and its state prescribed methodology for calculating transportation costs on Form 515 has not been significantly revised for many years (uncontradicted testimony at the hearing) despite numerous amendments to IC 20-26-11-13 or its predecessor provision. A copy of the law as it existed in 1988 is attached as Appendix A.

For more recent amendments to IC20-26-11-8, which have not changed the basic language relating to the obligation of a transferor corporation to pay transfer tuition for parental placed students in health or childcare facilities, see P.L. 1-2005, SEC. 10; P.L. 89-2005, SEC. 4; P.L. 231-2005, SEC 33; P.L. 1-2006, SEC. 331; P.L. 141-2006, SEC. 94; P.L. 145-2006, SEC. 148; P.L. 99-2007; SEC. 168; P.L. 159-2007, SEC. 1; P.L. 65-2012; P.L. 160-2012, SEC. 48. A 1992 version of the predecessor code provisions, IC 20-8.1-6.1-5, is attached as Appendix B.

For more recent amendments to IC 20-26-8-13 or its predecessor provision, IC 20-8.1-6.1-8, relating to the determination of the amount of transfer tuition to be paid by a transferor corporation, see P.L. 1-2005, SEC. 10; P.L. 2-2006; SEC 130; P.L. 1-2007, SEC. 144; P.L. 234-2007, SEC. 105; P.L. 146-2008, SEC. 471; P.L. 229-2011, SEC. 173; P.L. 205-2013, SEC. 242. A 1988 version of the predecessor provision of IC 20-26-11-13, IC 20-8.1-6.1-8, is as noted above, attached as Appendix A.

#### **Longstanding Administrative Construction of a Statute Entitled to Great Deference**

Despite numerous amendments to IC 20-26-11-13 and its predecessor IC 20-8.1-6.1-8, the relevant provisions governing the determination of the amount of transfer tuition to be paid by the transferor corporation have not addressed transportation or transportation costs, except to exclude such costs first from the definition of “Operating costs,” and, subsequently, also from the definition of “Special equipment”.

Pursuant to its general powers to prescribe a uniform system of accounts and forms, the State Board of Accounts has not substantively revised the transportation cost section of Form 515, which has provided a uniform method to calculate transportation costs for many years.

An administrative body can be delegated responsibility for methods or details that are necessary to implement a law enacted by the legislature. 1 I.L.E. Administrative Law and Procedure §6, p. 212; Stanton v. Smith, 429 N.E. 2d 224 (Ind. 1981).

Generally, permissible constructions given to ambiguous statutes by agencies responsible for their administration are entitled to great weight or deference, if the interpretation is neither irrational, nor unreasonable. 2 Am Jur 2d Administrative Law §77, p. 98.

Where a law has been administered in a particular manner by an administrative agency and the legislature has either not revised the statute(s) construed by the agency, or where, as here, the legislature has amended the applicable code provision numerous times, but leaves unchanged specific provisions applicable to the administrative interpretation, policy, or practice that are in dispute, the statutory construction of the agency is entitled to great deference unless clearly erroneous.

Reenactment of a statutory provision without material change indicates legislative approval of its administrative construction, especially where (as here) there are repeated reenactments. 2 Am Jur 2d Administrative Law §80, p. 101.

“[A]n interpretation of statutes and regulations by the administrative agency charged with enforcing those statutes and regulations is entitled to great weight, and a reviewing court should accept the agency’s reasonable interpretation of such statutes and regulations, unless the agency’s interpretation would be inconsistent with the law itself.” Ind. Dept. of Env’tl. Mgmt v. Steel Dynamics, Inc., 894 N.E. 2<sup>nd</sup> 274, 274 (Ind. Ct. App. 2008), as favorably quoted in Kranz v. Meyers Subdivision Property Owners, 973 N.E. 2d 615 (Ind. App. 2012) at p. 617.

Statutory Construction, and related actions and practices of state agencies, including the State Board of Accounts, are entitled to deference where, as in these circumstances, the agency with the statutory authority to prescribe a uniform form for the calculation of transportation tuition has exercised its authority by prescribing School Form 515, which also includes a prescribed transportation cost calculation methodology. Considerable deference is especially warranted where, as here, the agency has prescribed a calculation methodology that has been in place for many years, and though recently revised (2009), no change has been made to the prescribed transportation calculation methodology. School Form 515 is used almost universally by Indiana school corporations to calculate transportation costs, except where both the transferor and transferee school corporations have entered into an agreement on the amount of any transportation costs to be paid by the transferee corporation.

**Administrative Construction of Financial Cost Allocation Provisions of Transfer Tuition Code Provisions within State Board of Accounts General Purview**

An administrative agency may appropriately construe general statutes within the subject area of their delegated authority and expertise, even if the statute is silent, very general, or ambiguous on the particular power in question, so long as the administrative interpretation is not unreasonable or unconstitutional. Though an agency's administrative interpretations are not binding on a court, its agency interpretations are entitled to considerable deference or "great weight" as noted above, if the administrative construction has not been clearly rejected by the courts, or amended by the legislature to indicate clearly a differing legislative intent.

**Indiana General Assembly Has Acquiesced to the State Board of Accounts' Statutory Construction Re: Methodology to Calculate Transfer Tuition and Use of Prescribed Form 515**

The State Board of Accounts for decades has prescribed Form 515, which provides a clear statutory methodology for calculating transportation costs to be paid by transferor corporations to transferee corporations, even though the statute governing transfer student costs is silent on the issue of transportation costs.

The methodology prescribed for transportation costs calculations is based appropriately on the premise that the transferor corporation pay the transferee corporation an amount equal to its overall corporation wide cost per child to transfer its (the transferee's) own students. In absence of clear direction from the legislature, the State Board of Accounts has prescribed a reasonable methodology to use to calculate transportation costs.

Moreover, it is a methodology prescribed and used for several decades, without legislative direction or clarification that the legislature intended a different methodology be used to calculate transportation costs.

In Fratus v. Marion Community Schools Bd., 749 N.E. 2d 40 (Ind. 2001), the Indiana Supreme Court in a case brought by teachers suing their union for breach of "the duty of fair representation" upheld on unfair practice finding by the Indiana Employment Relations Board based on the agency's consistent long-standing administrative interpretation. The Court, citing Ind. Bell Tel.Co, Inc. v. Indiana Utility Reg. Comm'n, 715 N. E. 2d. 351, 358 (Ind. 1999), stated:

"The conclusion is supported also by the doctrine of legislative acquiescence. Although not binding, "[a] long adhered to administrative interpretation dating from the legislative enactment, with no subsequent change having been made in the statute involved, raises a presumption of legislative acquiescence which is strongly persuasive upon the courts." Ind. Bell Tel. Co., Inc. v. Indiana Utility Reg. Comm'n, 715 N. E. 2d 351. 358 (Ind. 1999). The Certificated Educational Employee Act was first enacted in 1983. For at least a quarter of a century the IEERB has interpreted the Act as including the duty of fair representation as an unfair practice and has routinely adjudicated such claims. See, e.g., Ruth Ann Teague, U-76-5-

4690, 1976-1977 IEERB Ann. Rep. 593 (1976-77); Independent Educators of Fort Wayne, Inc., U-83-3-0235, 1973 IEERB Ann. Rep. 103 (1983); Sondra G. Estep, U-92-06-4710, 1994 IEERB Ann. Rep. 111 (1994); Margaret M. Bunce, U-95-26-0235, 1996 IEERB Ann. Rep. 70 (1996); Linda C. Sharp, U-98-11-2940, 1998 IEERB Ann. Rep. 26 (1998); Carolyn Ursey, U-98-13-5705, 1999 IEERB Ann. REP (1999). If the General Assembly was dissatisfied with the IEERB's long-standing interpretation, we presume it would have amended the Act accordingly".

Though Fratu involved deference to formal administrative decisions, the courts have recognized that longstanding informal administrative decisions are likewise entitled to deference by the courts. As noted by the commentator in 2 Am Jur 2d Administrative Law §74, p. 95.

"The power of an administrative agency to construe and interpret the law is applied in several different ways. As an alternate to acting formally through rulemaking or adjudication, administrative agencies may act informally. \*\*\* Informal action constitutes the bulk of the activity of most administrative agencies."<sup>2</sup>

Indeed, the evidence at the hearing indicated that other transferor schools with residential facilities often charged the transferor corporations nothing for transporting students from nearby residential facilities to the school where the transferred student was educated. The transportation cost methodology prescribed by the State Board of Accounts in Form 515 strikes a reasonable balance.

**Fayette Is Not Unjustly Enriched by Use of the Form 515 Transportation Cost Methodology**

The Order For Further Briefing raises the issue of whether Fayette is unjustly enriched by not being required to pay Heights' transportation costs based on Heights' proposed transportation cost methodology.

Heights' proposed methodology for determining transportation costs is an amalgamation of all transportation related overhead costs, (very broadly defined), "divided by total students

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<sup>2</sup> The Administrative Orders and Procedures Act, IC 4-21.5 - 1 et seq. does not apply to the State Board of Accounts. Sec IC 4-21.5-2-4 (a) (2).

served”, plus the “added direct cost of driver/aide specific to student transported.” See written Closing Argument of Heights, page 2-9.

The Order For Further Briefing questions whether Fayette should be required to pay Heights according to the equitable doctrine of “quantum meruit” pursuant to which a party may be permitted to recover the reasonable value of services rendered just as if there were a true contract. 1 I.L.E. Administrative Law and Procedure §6; Mueller v. Karns, 873 N.E. 2d 652 (Ind. Ct. App.2007). In order to be entitled to recover under a quantum meruit theory, the party must establish that a benefit was rendered to the other party at the express or implied consent of that party, that allowing the party to retain the benefit without paying for it would be unjust, and that the party seeking recovery expected payment for his or her services.

But, recovery usually will be denied where, as in this case, “a benefit” [if there is one] “has been thrust officiously upon the recipient.” 1 I.L.E. Administrative Law and Procedure §6, p.105; Wagoner v. Joe Mater and Associates, Inc., 461 N.E. 2<sup>nd</sup> 706 (Ind.Ct. App. 1984).

The equitable doctrines of “unjust enrichment” and “quantum meruit” are considered remedies for enforcing contracts implied by law, or “constructive” or “quasi” contracts. 1 I.L.E. Administrative Law and Procedure §6, p. 103-104.

In Wagoner the Indiana Court of Appeals found no “constructive contract” where a divorced father was willing to pay for his son’s therapy, but was not willing for the son to have therapy from a particular treatment center to which the boy’s mother took him.

The equitable remedies of “unjust enrichment” are unavailable to Heights for four reasons.

First, the State Board of Education is not empowered to afford equitable remedies. The State Board of Education's authority to impose remedies on school corporations is solely limited to obligations arising out of the law. Administrative boards, agencies and officers have no common law or inherent powers. 1 I.L.E. Administrative Law and Procedure §9, p. 217; Smith v. Thompson Const. Co., 69 N.E. 2d 16 (1946).

Second, administrative agencies, including the State Board of Education or the Indiana Department of Education are not empowered to enforce contracts, constructive, quasi, or regular. Administrative officers or agencies generally are not empowered to consider or adjudicate contractual rights and obligations between parties, and thus may not construe contracts, 1 I.L.E. Administrative Law and Procedure §3, p. 222; In re Gumm, 83 N.E. 2d 487 (1949).

Third, the principles of Wagoner apply to the instant case. Fayette educated and transported S.L. for several years before her mother unilaterally placed her in the ADC. Although S. L.'s mother had the legal right without Fayette's consent to place her child in the ADC, this placement was done without foreknowledge or consent of Fayette.

Fayette is fully able to educate and transport S.L. if she returns to Fayette where her mother resides. There was no evidence that S.L. was not doing well at Fayette, or that Fayette could not meet her educational needs.

Because Fayette was and is able to provide education and transportation to S.L. under the standard enunciated in Wagoner, there exists no constructive or quasi contract, and therefore, the equitable doctrines of unjust enrichment and the equitable remedy of *quantum meruit* do not apply to this matter, even if the State Board of Education had the authority to grant such relief, which as noted above, it does not.

Finally, Fayette has not been “enriched”, unjustly or otherwise. If a child were transferred from Heights to Fayette, Fayette would charge Heights according to the same Form 515 methodology, or waive transportation costs.

The undisputed evidence was that a number of transferee school districts do not bill transferor corporations for transportation costs for transporting students residing in residential health care or childcare facilities to the schools within their district. See, Fayette, Exhibits: 22-24; hearing testimony by Dr. Hodges.

Heights’ receives all General Fund state tuition support for S.L. based on both ADM and Additional Pupil Count (APC) monies, as a student with disabilities. While both parties agreed that state and federal support for students with disabilities is sorely inadequate, there is no legal basis for allowing Heights to make up this deficit by charging excessive transportation costs.

S.L. rode the regular school buses while a student at Fayette (Hearing Testimony of Dr. Hodges). Hamilton Heights High School is less than 2 town blocks from the ADC where S.L. resides. Fayette, Exhibit 1 (google aerial photo). The ADC is only 1-1.5 miles by bus using the highway from Hamilton Heights High School where S.L. is educated. Cross examination testimony of Peggy Jackson.

Heights is asking for nearly \$5,000 per year to transport S.L. this short distance.

Under Form 515 methodology, but using the transportation costs figures provided by Heights from its Form 9, and Heights’ own estimate of the percentage of all its students that it buses (60 percent), the per student cost of transporting a child by Heights is \$1,080.

If S.L. had legal settlement with Heights and were transported by Fayette to and from a residential facility within Fayette, Fayette would charge Heights, using the same prescribed Form 515 methodology, or waive transportation costs.

Even, if one accepted Heights' basic argument or calculation of transportation by class of transportation, which position directly contradicts the statute, transportation of S.L. adds little, to no, extra incremental costs to Heights' cost of transporting S.L. from the ADC to Hamilton Heights High School and return. She is one of approximately 16 students transported from and back to the ADC facility daily. It is Fayette's understanding that the aide who rides S.L.'s bus serves multiple students and is not specifically assigned to S.L., whose IEP does not require an aide to ride with her on the bus.

Heights' position on recoupment of all transportation costs for transporting ADC student residents rather than use of the Form 515 methodology, or even an incremental cost approach is most likely based on the current student legal settlement population of the ADC. There are currently no students with Heights legal settlement currently residing in the ADC. (Testimony of Peggy Jackson on cross-examination) The absence of any Heights students in the ADC is most likely a temporary anomaly.

In any case, the very real burden on Heights resulting from the parental placement of many students with disabilities in the ADC requires a legislative solution beyond the authority of the State Board of Education to address under existing law.

## Conclusion

The parties agreed and stipulated at the hearing to jointly ask the Hearing Officer to determine the appropriate methodology for determining how to calculate transportation costs going forward.

IC 20-26-11-13 (a) 2) and (c) preclude a determination that transportation costs are to be calculated or allocated by class of school or program. Therefore, the approach suggested by Heights should be rejected.

Although the Indiana Code is silent on whether a transferor corporation is obligated to pay transportation costs to a transferee corporation in circumstances other than court ordered busing, the State Board of Accounts through its authority to prescribe a system of accounting and related forms determined and prescribed Form 515, used by all school corporations, including Heights and Fayette. Form 515, as noted elsewhere, prescribes a formula in which total transportation costs, except 27400 account expenses, are divided by the total number of students transported. This is a fair and reasonable approach and one in which the Indiana General Assembly has acquiesced for decades, despite enacting numerous amendments to IC 20-26-11-8 and IC 20-26-11-13, or its predecessors that do not specify that a transferor corporation must pay a transferee corporation based on a class of school, or based on the costs to transport a particular student, disabled or regular.

Respectfully submitted,

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## APPENDIX A

### 20-8.1-6.1-8 Transfer tuition

Sec. 8. (a) As used in this section, the following terms have the following meanings:

(1) "Class of school" refers to a classification of each school or program in the transferee corporation by the grades or special programs taught at the school. Generally, these classifications are denominated as kindergarten, elementary school, middle school or junior high school, high school, and special schools or classes, such as schools or classes for special education, vocational training, or career education.

(2) "ADM" has the meaning set forth in IC 21-3-1.6-1.1, except that each kindergarten student shall be counted as one (1).

(b) Each transferee corporation is entitled to receive for each school year on account of each transferred student, except a student transferred under section 3 of this chapter, transfer tuition from the transferor corporation, or from a county or the state as provided in this chapter. Transfer tuition shall be calculated in two (2) parts:

(1) Operating costs.

(2) Capital costs.

These costs must be allocated on a per student basis separately for each class of school.

(c) The operating cost for each class of school is based on the total expenditures of the transferee corporation for the class from its general fund expenditures as specified in the classified budget forms prescribed by the state board of accounts. This calculation excludes:

(1) capital outlay;

(2) debt service;

(3) costs of transportation;

(4) salaries of board members;

(5) contracted service for legal expenses; and

(6) any expenditure which is made out of the general fund from extracurricular account receipts;

for the school year.

(d) The capital cost for each class of school consists of the lesser of the following two (2) alternatives:

(1) An amount equal to five percent (5%) of the cost of the transferee corporation's physical plant, equipment, and all appurtenances thereto (including buildings, additions, and the remodeling of buildings and additions, except ordinary maintenance, onsite and offsite improvements such as walks, sewers, waterlines, drives, and playgrounds) paid or obligated to be paid in the future out of the general fund, capital projects fund, or debt service fund, including principal, interest, and lease rental payments (or out of funds which were legal predecessors to these funds). When any item of physical plant, equipment, appurtenances, or portion thereof is more than twenty (20) years old at the beginning of the school year, the capital cost thereof is disregarded in making the computation.

(2) The amount budgeted from the general fund for capital outlay for physical plant, equipment and appurtenances, and the amounts levied for the debt service fund and the capital projects fund, for the calendar year in which the school year ends.

(e) When an item of expense or cost cannot be allocated to a class of school, it shall be prorated to all classes of schools on the basis of the ADM of each class in the transferee corporation compared to the total ADM in the school corporation.

(f) The transfer tuition for each student transferred for each school year shall be calculated by dividing:

(1) the sum of:

(A) the transferee school corporation's total operating costs; and

(B) the total capital costs for the class of school in which the student is enrolled; by

(2) the ADM of the transferee school corporation.

When a transferred student is enrolled in a transferee corporation for less than the full school year of pupil attendance, the transfer tuition shall be calculated by the portion of the school year for which the transferred student is enrolled. A school year of pupil attendance consists of the number of days school is in session for pupil attendance. A student, regardless of the student's attendance, is enrolled in a transferee school unless the student is no longer entitled to be transferred because of a change of residence, the student has been excluded or expelled from school for the balance of the school year or for an indefinite period, or the student has been confirmed to have withdrawn from school. The transferor and the transferee corporation may enter into written agreements concerning the amount of transfer tuition due in any school year. Where an agreement cannot be reached, the amount shall be determined by the state board of education, and costs may be established, when in dispute, by the state board of accounts.

(g) In lieu of the payments provided in subsection (f), the transferor corporation, or the county or state owing transfer tuition, may enter into a long term contract with the transferee corporation governing the transfer of students. This contract is for a maximum period of five (5) years with an option to renew, and may specify a maximum number of pupils to be transferred and fix a method for determining the amount of transfer tuition and the time of payment, which may be different from that provided in section 9 of this chapter.

(h) If the school corporation can meet the requirements of IC 21-1-29-5, it may negotiate transfer tuition agreements with a neighboring school corporation that can accommodate additional students. Agreements under this section may be for one (1) year or longer and may fix a method for determining the amount of transfer tuition or time of payment that is different from the method, amount, or time of payment that is provided in section 9 of this chapter. A school corporation may not transfer a student under this section without the prior approval of the child's parent or guardian. *As added by Acts 1976, P.L. 101, SEC. 16. Amended by P.L. 111-1984, SEC. 3; P.L. 20-1984, SEC. 98; P.L. 135-1988, SEC. 9.*

## APPENDIX B

### 20-3.1-6.1-5 School attendance by child in institutional care; payment of transfer tuition

Sec. 5. (a) A student who is placed in a state licensed private or public health care facility, child care facility, or foster home:

- (1) by or with the consent of the division of family and children;
- (2) by a court order; or
- (3) by a child-placing agency licensed by the division of family and children;

may attend school in the school corporation in which the home or facility is located. If the school corporation in which the home or facility is located is not the school corporation in which the student has legal settlement, the county of the student's legal settlement shall pay the transfer tuition of the student.

(b) A student who is placed in a state licensed private or public health care or child care facility by a parent or guardian may attend school in the school corporation in which the facility is located if:

- (1) the placement is necessary for the student's physical or emotional health and well-being; and
- (2) the placement is for no less than four (4) weeks.

The school corporation in which the student has legal settlement shall pay the transfer tuition of the student. The parent or guardian of the student shall notify the school corporation in which the facility is located and the school corporation of the student's legal settlement, if identifiable, of the placement. No later than thirty (30) days after this notice, the school corporation of legal settlement shall either pay the transfer tuition of the transferred student or appeal the payment by notice to the department of education. The acceptance or notice of appeal by the school corporation shall be given by certified mail to the parent or guardian of the student and any affected school corporation. In the case of a student who is not identified as handicapped under IC 20-1-6, the Indiana state board of education shall make a determination on transfer tuition in accordance with the procedures set out in section 10 of this chapter. In the case of a student who has been identified as handicapped under IC 20-1-6, the determination on transfer tuition shall be made in accordance with this subsection and the procedures adopted by the Indiana state board of education under IC 20-1-6-2.1(a)(5).

(c) A student who is placed in an institution operated by the division of aging and rehabilitative services or the division of mental health may attend school in the school corporation in which the institution is located. The state shall pay the transfer tuition of the student.

(d) Where transfer tuition is paid under this chapter by the county, the transfer tuition shall be paid by the

county commissioners, or their successors in office, from the county general fund without appropriation. If the county fails to pay the transfer tuition as required under this section, the auditor of state may withhold money from the county under section 11 of this chapter for payment of the transfer tuition owed. *As added by Acts 1976, P.L.101, SEC.10. Amended by Acts 1979, P.L.130, SEC.18; Acts 1982, P.L.48, SEC.3; P.L.20-1984, SEC.96; P.L.225-1987, SEC.3; P.L.135-1988, SEC.6; P.L.1-1990, SEC.232; P.L.2-1992, SEC.703.*

**CERTIFICATE OF SERVICE**

I hereby certify that on November 11, 2013, a copy of the foregoing Post-Hearing Brief of Respondent Fayette County School Corporation was sent via e-mail to the Hearing Officer and to Counsel for the Petitioner addressed to the individuals set forth below:

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