



MEMORANDUM

TO: Indiana State Board of Education

FROM: Dana L. Long, Legal Counsel *DLL*

RE: Ca.N., E.N. and Ch.N. v. Tippecanoe School Corporation
Expulsion Due to Lack of Legal Settlement
Right To Attend School
Pursuant to I.C. 20-33-8-17 and I.C. 20-26-11-15
Hearing No. 1110010
Open Hearing

DATE: Dec. 21, 2011

The students were expelled from school due to lack of legal settlement on October 20, 2011, effective November 1, 2011, following an expulsion meeting conducted on October 13, 2011. The parents appealed. The students' parents reside in different school corporations, with the father residing in the attendance area of Tippecanoe School Corporation. The school's expulsion examiner determined the father did not reside within the school corporation, however, there was no credible or substantial evidence to support the expulsion examiner's determination. The only testimony indicating that the father did not reside there was hearsay, as the principal stated that three or four patrons told her the father did not reside there. The school refused to disclose the identity of the patrons to permit the parents to question or cross-examine these individuals. As such, the hearing examiner has determined that such hearsay evidence cannot form the basis of any order in this matter. The evidence of the father's residency within the school corporation is both substantial and reliable: Court records requiring the father to pay child support, records concerning house arrest, and the probation office all provide evidence of the father's address, within the school corporation boundaries. When parents are divorced or separated and reside in different school corporations, the parent with custody has the right to determine whether the children will attend school in the school corporation in which the mother resides or the school corporation in which the father resides. The mother has determined the children should attend school in the school corporation in which the father resides. The determination of the expulsion examiner was reversed.

The school corporation submitted, by email, its Supplemental Summary Statement of Position to supplement the Summary Statement of Position that it submitted at the conclusion of the hearing. This supplement was submitted after the recommended decision had been issued. The school corporation indicated that although it disagrees with aspects of the recommended decision it does not object to the recommended decision nor does it request oral argument. On Dec. 21, 2011, the school corporation submitted by email its Amended Supplemental Statement of Position in

which it acknowledged that its Supplemental Statement of Position was submitted more than 15 days after receipt of the recommended decision. The school corporation indicated that it presents no objection to the recommended order, that it has complied with the recommended order by re-enrolling the students, and that it affirms its Summary Statement of Position. The school corporation stated “TSC offers no objection to the recommended decision. TSC does not object and does not intend to object to the SBOE adoption of the Recommended Order as the final determination of the SBOE in this matter.”

No timely objections to the hearing examiner’s recommended decision have been filed.

BEFORE THE INDIANA STATE BOARD OF EDUCATION

In Re the Matter of:)	
Ca.N., E.N. and Ch.N.,)	Cause No.: 1110010
Petitioners,)	
)	
v.)	Status: Open to the public
)	
Tippecanoe School Corporation,)	
Respondent)	

Expulsion Due to Lack of Legal Settlement
Right to Attend School
Pursuant to I.C. 20-33-8-17 & I.C. 20-26-11-15

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED ORDER

Procedural History

The Students¹ were expelled from school due to lack of legal settlement on October 20, 2011, effective November 1, 2011, following an expulsion meeting conducted on October 13, 2011. On October 25, 2011, the Indiana State Board of Education received a letter of appeal from Petitioners' mother. The undersigned was subsequently appointed as the hearing examiner in this matter. On October 27, 2011, the parties were notified of the appointment and were also notified the hearing in this matter would be conducted on November 15, 2011. The Tippecanoe School Corporation (School) was directed to provide the hearing examiner with a copy of the record of the expulsion proceedings in this matter. The Parent was requested to indicate whether the proceedings would be open or closed to the public. The Parent subsequently returned the consent to disclose student information form indicating the proceedings would be open. The School provided the hearing examiner with a copy of the record of the expulsion proceedings.

On October 31, 2011, the Students' father contacted the undersigned indicating that he wished to obtain the names of unknown individuals who had provided information to the School in connection with the expulsion as he wished to *subpoena* them to testify in this matter. The hearing examiner directed the father to inquire of the School as to the identity and addresses of the individuals. He could then request a *subpoena* from the hearing examiner. He subsequently left a message for the hearing examiner indicating that the School refused to provide the names of the witnesses. The hearing examiner then issued a notice of *ex parte* communication and discovery order to compel the School to provide such information. The School still refused to provide the information. When questioned about the failure to comply with the discovery order during the hearing, the School argued that it did provide the parents with information as to the witnesses it intended to call at the hearing. The hearing examiner finds this a disingenuous

¹ "Students" shall refer to the Petitioners or the Petitioners' parents, depending upon the context.

argument, as, after reviewing the record of the expulsion proceedings there is no question as to the individuals the parents seek to identify. The School next argued that the information supplied by these individuals is not relevant. The hearing examiner reminded the School that such objections are to be made to the hearing officer and the hearing officer has the authority and discretion to rule upon the admissibility of evidence. This was a discovery request, not a request to admit testimony or evidence. As such, the School should have complied with the request. Because the School refused to provide the information to the parents without addressing their objections to the hearing examiner, the hearing examiner will consider any hearsay evidence provided by the School based upon information provided by these individuals to be inadmissible in these proceedings, and any reliance upon such information by the School or by the expulsion examiner will be given no weight in these proceedings.

The hearing in this matter was conducted on November 15, 2011. Petitioners were represented by their parents. The School was represented by legal counsel, Mark DeYoung. The School's superintendent, Dr. Scott Hanback, Klondike Middle School principal Chris Cannon, and Expulsion Examiner Dr. Christy Fraley were also present. The hearing examiner allowed the expulsion examiner to observe the proceedings but directed that she not participate in any way in this hearing. Prior to the start of the hearing a brief prehearing conference was conducted wherein hearing and appeal procedures were discussed. Witnesses were sworn. All tendered exhibits were admitted without objection. The School's record of the expulsion proceedings is considered a part of the record.

Petitioners' Exhibits:

1. Application for Marriage License.
2. Father's Certificate of Birth.
3. Letter from Tippecanoe County Adult Probation Department verifying father's address.
4. Dwelling House Lease.
5. Screen shot of Community Corrections showing father's address.

Respondent's Exhibits:

- A. November 3, 2011, letter from the expulsion examiner to the father.
- B. Handwritten comments made by Petitioners on a copy of the expulsion examiner's determination.

During the course of the hearing, the School's attorney questioned Petitioner's as to a court order concerning child support. The father used his smart phone² to pull up the docket for these court proceedings. The School's attorney viewed the records on the phone, questioned Petitioners concerning these documents, and identified the cause number for the hearing examiner: 70D02-0812-DR-00472. Subsequent to the hearing, the hearing examiner notified the parties of her intent to take official notice of these court records. The parties were provided the opportunity to offer objections. No objections were received. At the conclusion of the hearing, the School's attorney submitted a written summary of its position.

² The undersigned does not know whether this was an iPhone, droid, or other smart phone.

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

Findings of Fact

1. The students, Ca.N., E.N, and Ch.N. are 14, 13 and 11 respectively. Ca.N. and E.N. attended Kondike Middle School while Ch.N. attended Klondike Elementary School within Respondent's school district during the 2010-2011 school year and at the beginning of the 2011-2012 school year.
2. The Students' mother does not reside within Respondent's school district. She has resided outside of the school district boundaries during the past two school years.
3. The Student's father does reside within Respondent's school district. The testimony at the expulsion meeting from the father's landlord, the testimony of both parents at the appeal, and the court records from the father's house arrest, probation, and the child support orders provide uncontroverted evidence that the father resides in a trailer with Mr. Randy Ledman within the boundaries of Respondent school corporation.
4. The Students' parents were married in May, 2003. They separated when the father was on house arrest. The father pays child support pursuant to court order.
5. During the 2010-2011 school year the School sought to expel the Students due to lack of legal settlement. After an expulsion meeting it was determined the Students should not be expelled.
6. The Students and their parents reside in the same residences as they did during the 2010-2011 school year.
7. The parents share custody of the children with the father paying child support pursuant to court order (70D02-0812-DR-00472).
8. The children primarily reside with their mother although they may stay with their father on weekends and during the summer. The father often picks the students up after school and sometimes takes them to his residence after school.
9. No evidence was provided either before the expulsion examiner or before the hearing examiner which would indicate that the father resides anywhere other than where he claims, within Respondent school district.
10. The extent of the School's investigation was to call the office of the trailer park where the father resided and leave a message and to ask the resource officer to verify the father's residence. No response to either of these requests was received.

11. The School and the expulsion examiner concluded the father did not reside with Randy Ledman, in part, because the lease agreement had been altered. Neither the school officials nor the expulsion examiner questioned Mr. Ledman during the expulsion meeting as to why the alteration had occurred. Mr. Ledman did testify that the father resided with him. No evidence was presented that the father maintained any other residence.
12. The lease agreement from the previous year was revised by agreement of Mr. Ledman and the father, the signatories to the lease agreement, as that was less expensive than buying new lease forms.
13. Much of the School's testimony and evidence presented at the expulsion meeting addressed allegations made by unidentified individuals that the students do not reside within the school corporation. The school also provided evidence and testimony concerning incidents which it claims show a pattern of deception and false information about residency. These incidents include: the mother arriving late to pick the students up after school; the mother picking up a student after school and not coming in to talk with the principal, and: confusion over a student's cell phone. None of this evidence shows deception, nor is it in any way relevant to the issue of legal settlement or residency.

Conclusions of Law

1. Although the expulsion examiner determined that the father does not have legal settlement in TSC, this shows a lack of understanding of legal settlement. Parents have residency, not legal settlement. The expulsion examiner also determined the father does not have residency within Respondent's school district. However, there is absolutely no evidence to support this determination. The expulsion examiner's determination could only have been based upon unsubstantiated hearsay evidence which the hearing examiner has determined is not entitled to any credibility or weight, or it is based upon conclusory statements made without any substantial evidence to support them. The expulsion examiner's determinations were not based upon substantial or credible evidence.
2. The father resides within Respondent's school district. The Petitioners reside primarily with the mother outside Respondent's school district. There is a court order for child support requiring the father to pay support to the mother.
3. Legal settlement of a student is governed by the provisions of I.C. 20-26-11.

IC 20-26-11-2 Legal settlement

The legal settlement of a student is governed by the following provisions:

(1) If the student:

(A) is less than eighteen (18) years of age; or

(B) is at least eighteen (18) years of age but is not emancipated;

the legal settlement of the student is in the attendance area of the school corporation where the student's parents reside.

(2) If the student's mother and father, in a situation to which subdivision (1) otherwise applies, are divorced or separated, the legal settlement of the student is the school corporation whose attendance area contains the residence of the parent with whom the student is living, in the following situations:

(A) If a court order has not been made establishing the custody of the student.

(B) Except as provided in subdivision (3), if both parents have agreed on the parent or person with whom the student will live.

(C) If the parent granted custody of the student has abandoned the student.

In the event of a dispute between the parents of the student, or between the parents and a student at least eighteen (18) years of age, the legal settlement of the student shall be determined as otherwise provided in this section.

(3) If, in a situation in which subdivision (1) otherwise applies, the student's mother and father are divorced or separated, and if a court order grants the student's:

(A) mother;

(B) father; or

(C) both mother and father;

custody of the student, the legal settlement of the student is the school corporation whose attendance area contains the residence of the mother or father, as elected under section 2.5(a) of this chapter. If the custodial parent (or the student, if at least eighteen (18) years of age) does not make an election under section 2.5(a) of this chapter, the legal settlement of the student is the school corporation whose attendance area contains the residence of the parent granted physical custody by the court order.

* * *

IC 20-26-11-2.5 Election to have legal settlement

Sec. 2.5. (a) In the case of a student described in section 2(3) of this chapter, the:

(1) parent granted physical custody by a court; or

(2) student, if the student is at least eighteen (18) years of age;

may, not later than fourteen (14) days before the first student day of the school year, elect for the student to have legal settlement in the school corporation whose attendance area contains the residence of the student's mother or the school corporation whose attendance area contains the residence of the student's father.

(b) An election under subsection (a) may be made only on a yearly basis.

(c) The parent or student who makes an election under subsection (a) is not required to pay transfer tuition.

4. Although the provisions of I.C. 20-26-11-2 and 2.5 cover a variety of living situations for children, statutory provisions cannot cover every conceivable living arrangement that might apply to a child. In this case, the parents are not legally separated. Therefore, neither I.C. 20-26-11-2(2) or 2(3) would technically apply. The parents live separately and share custody. There is a court order concerning child support. The parents have determined it would be in the best interest of their children to attend school in the school corporation in which the father resides. The General Assembly provided in 2006 that when parents are divorced or separated and reside in different school corporations, the parent granted custody has the right to determine whether the children have legal settlement in the school

corporation where the mother resides or in the school corporation where the father resides. These parents should be provided the same rights. Of particular import and application are I.C. 20-26-11-2.5 and 3.

IC 20-26-11-3 Forms concerning legal settlement

Sec. 3. The state superintendent shall prepare the form of agreement to be used under section 2(2) of this chapter and a form to be executed by any individual with whom the student is living under section 2(2), 2(3), 2(4), or 2(6) of this chapter. The execution of the form by the individual and its continuance in force is a condition to the application of section 2(2), 2(3), 2(4), or 2(6) of this chapter. The form must contain an agreement of the individual that the individual shall, with respect to dealing with the school corporation and for all other purposes under this article, assume all the duties and be subject to all the liabilities of a parent of the student in the same manner as if the individual were the student's parent. On the execution of that form and for as long as it remains in force, the individual has these duties and liabilities.

Custodial Form No. III, which is designed specifically to address I.C. § 20-26-11-2(3), is included with this decision as Attachment A. The Forms and instructions for their use are presently available on-line at http://doe.in.gov/legal/docs/form_III.pdf and http://doe.in.gov/legal/docs/custodial_statement_instructions.pdf.

The instructions for Form III provide: **Form III** is utilized where the student's parents are divorced or separated but live in different public school corporations. The parent with physical custody (or the student, if the student is 18 years of age and competent) can make an election on an annual basis regarding which school corporation the student will attend: the one in which the parent with physical custody lives or the one in which the other parent lives. The election must be made not later than fourteen (14) days before the first student day of attendance. The election is good for one school year and must be renewed for any subsequent school years. The student is deemed to have legal settlement where the election is made. Transfer tuition cannot be charged. If no election is made, the student is deemed to have legal settlement in the school corporation where the parent with physical custody resides.

Respondent School is charged with knowing the applicable law and the existence of Form III which permits the parents of divorced or separated students to choose whether the students will have legal settlement in the school corporation where the mother resides or in the school corporation where the father resides. Respondent should have requested the parents to execute Form III prior to the start of the school year. Petitioners' cannot be faulted for the School's failure to provide such relevant information to the parents.


The State Board of Education (SBOE) has previously opined that neither local schools nor the SBOE have the authority to or should attempt to dictate child custody arrangements in contravention of either court orders or parental agreements. *In Re the Matter of G.H., Cause No. 0103005*, Dana L. Long, Hearing Examiner, decided by the SBOE on June 7, 2001.

5. Petitioners have been wrongfully expelled from Respondent's schools.

Recommended Order

The School's decision to expel the Students due to lack of legal settlement is reversed. The Students have legal settlement within the Tippecanoe School Corporation.

Dated: November 22, 2011


Dana L. Long, Hearing Examiner for the
State Board of Education

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 Ms. Rebecca Bowman, State Board Administrator, Indiana Department of Education, Room 229, State House, Indianapolis, Indiana 46204-2798. This order will become final after fifteen (15) calendar days with no further action required by the Indiana State Board of Education unless objections are filed or the Board, by majority vote, decides to set this cause for oral argument. In either situation, you will be advised of the date the Board will consider the case.

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

Copies to (via Certified Mail):

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cc: Rebecca Bowman, State Board Administrator

Indiana Department of Education

Room 229, State House - Indianapolis, IN 46204-2798
Telephone: 317/232-6676

CUSTODIAL STATEMENT AND AGREEMENT INSTRUCTIONS FOR SCHOOL CORPORATIONS, PARENTS, GUARDIANS, AND CUSTODIANS

“Legal settlement” of a student refers to the student’s status with respect to the public school corporation that has the responsibility to permit the student to attend its local public schools without the payment of tuition. I.C. 20-18-2-11. In most cases, legal settlement is determined by where the student’s parent lives. I.C. 20-26-11-2. Due to a variety of family circumstances, some students may not have legal settlement where the parent, or custodial parent, resides.

Indiana Code 20-26-11-3 requires the State Superintendent of Public Instruction to prepare the form of agreement to be used when the legal settlement of the student is other than where the parent or custodial parent resides. **Form I:** *Custodial Statement and Agreement: Divorce, Separation, or Abandonment*; **Form II:** *Custodial Statement and Agreement: Third Party Custody*; and **Form III:** *Election to Attend School Where the Parents Are Divorced or Separated* have been prepared pursuant to I.C. 20-26-11-3. In completing these forms, the parent(s), guardian(s), custodian(s) or student(s) should be certain to fill in all requested information and identify the reason the form is being utilized. Persons signing the form are affirming, under penalty of perjury, the accuracy of the information provided. Persons with whom the student resides must agree to accept the responsibilities and liabilities of the parent with respect to dealing with the school. Should it be determined that false information has been provided, or the student is residing with an individual other than the parent primarily for the purpose of attending a particular school, the parent(s), guardian(s), custodian(s), or student(s) may be responsible for the payment of tuition.

Form I: Custodial Statement and Agreement: Divorce, Separation, or Abandonment I.C. 20-26-11-2(2)

Form I is utilized when the student is residing with a parent. Where the student’s mother and father are divorced or separated, the legal settlement of the student is the school corporation whose attendance area contains the residence of the parent with whom the student is living, in the following situations:

1. Where no court order has been made establishing the custody of the student.
2. Where both parents have agreed on the parent with whom the student will live, including the following situations:
 - a. There is no court order establishing custody.
 - b. There is a court order establishing custody, but the parents have agreed the student will live with the non-custodial parent.
 - c. The court order grants the parents joint custody. With joint physical custody, the student could establish legal settlement in either of the school districts in which his parents reside. In this situation, the parents can agree upon the parent with whom the student will reside for school attendance purposes. It is not required that the student reside with this parent 100% of the time.
3. Where the parent granted custody of the student has abandoned the student.

Form I is signed by both parents. If the student has been abandoned by the custodial parent, only one parent need sign the form.

Form II: Custodial Statement and Agreement: Third-Party Custody

I.C. 20-26-11-2(2), (3), or (5)

Form II is utilized when the student is residing with a person other than a parent. In the following circumstances, the legal settlement of the student is the attendance area of the person with whom the student is residing. **Form II** should be used in the following situations:

1. The student has been abandoned by the parent and left in the custody of another person.
2. The student is being supported by, cared for by, and living with some other person. (If the parents are able to support the student but placed the student in the home of another person, or permitted the student to live with another person, primarily for the purpose of attending school in that attendance area, the legal settlement of the student remains with the parent.)
3. The student's parents are living outside the United States due to educational pursuits or a job assignment; they maintain no permanent home in any school corporation in the United States; and they have placed the student in the home of another person.

Under typical situations, both the parent and the custodian or guardian with whom the student is residing are to sign **Form II**, verifying the accuracy of the information provided. However, there will be situations where the parent has effectively abandoned the child or cannot be located. Under such circumstances, signature of the parent is not necessary.

Form III: Election to Attend School Where the Parents Are Divorced or Separated

I.C. 20-26-11-2.5

Form III is utilized where the student's parents are divorced or separated but live in different public school corporations. The parent with physical custody (or the student, if the student is 18 years of age and competent) can make an election on an annual basis regarding which school corporation the student will attend: the one in which the parent with physical custody lives or the one in which the other parent lives. The election must be made not later than fourteen (14) days before the first student day of attendance. The election is good for one school year and must be renewed for any subsequent school years. The student is deemed to have legal settlement where the election is made. Transfer tuition cannot be charged. If no election is made, the student is deemed to have legal settlement in the school corporation where the parent with physical custody resides.

Disputes Concerning Legal Settlement

A school corporation must enroll a student who is presented for enrollment when the parent, guardian, or custodian claims the student has legal settlement within the school corporation. If the situation warrants, after enrolling the student, the school can initiate expulsion proceedings for lack of legal settlement, as permitted by I.C. 20-33-8-17. The student cannot be suspended from school for legal settlement purposes pending the outcome of the expulsion proceeding. The determination of the local expulsion examiner can be appealed to the Indiana State Board of Education. I.C. 20-26-11-15.

Additionally, or as an alternative to expulsion due to lack of legal settlement, either the school or the parent, guardian, or custodian of the student may request a hearing before the Indiana State Board of Education for a determination of the student's legal settlement or right to attend school.

If it is ultimately determined the student did not have legal settlement within the school corporation, the school may be entitled to recover tuition costs.

Appropriate utilization of **Form I**, **Form II**, or **Form III** may help to resolve such disputes. Although statute dictates the creation of these forms, neither statute nor the forms will be able to address every custodial situation that may arise. Any questions concerning **Form I**, **Form II**, **Form III** or any aspect of legal settlement should be directed to the Legal Section of the Indiana Department of Education, (317) 232-6676.

FORM III
DOE 7/06

*ELECTION TO ATTEND SCHOOL WHERE
THE PARENTS ARE DIVORCED OR SEPARATED*

This agreement is prepared by the State Superintendent of Public Instruction, as required by Indiana Code 20-26-11-3, to implement I.C. 20-26-11-2.5. **Form III** is to be used where the student's parents are divorced or separated but live in different public school corporations. **Form III** must be signed by the parent with physical custody or by the student if the student is eighteen (18) years of age and competent.

Student Information

Name: (last) _____ (first) _____ (mi) _____
(street) _____
(city) _____ (state) _____ (zip code) _____
(date of birth) _____
Last school corporation attended: _____
School corporation elected: _____

Parent Information

Mother:
Name: (last) _____ (first) _____ (mi) _____
(street) _____
(city) _____ (state) _____ (zip code) _____
(telephone) _____ (email) _____

Father:
Name: (last) _____ (first) _____ (mi) _____
(street) _____
(city) _____ (state) _____ (zip code) _____
(telephone) _____ (email) _____

Parent with whom the student will live: _____.

In order to make an election under I.C. 20-26-11-2.5, the parent or student, if the student is eighteen (18) years of age, understand and agree:

- This form must be completed and presented not later than fourteen (14) days before the first student day of the school year to the school corporation where the election to attend has been made.
- In order to make this election, one or both of the student's parents must live in the school corporation where the election to attend has been made.
- The election to attend the school corporation is effective for one (1) school year.
- This form must be completed and presented to the school corporation for each subsequent school year.

I affirm, under the penalties for perjury, that the foregoing representations are true.

Name (printed) **Parent with Physical Custody**

Name (printed) **Student (if 18 Years of Age)**

Signature

Signature

Date

Date

Attachment A, Page 3 of 3