



INDIANA STATE BOARD OF EDUCATION

BEFORE THE INDIANA STATE BOARD OF EDUCATION

In Re the Matter of:)
Metropolitan School District)
Of Wabash County)
)
Petitioner,)
)
v.)
)
Twin Lakes School Corporation,)
)
Respondent.)

Cause No.: 08-052018

Determination of Amount of Transfer Tuition

Pursuant to I.C. 20-26-11-15

COMBINED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED DETERMINATION

Procedural History

The Indiana State Board of Education ("Board") received a petition from Metropolitan School District of Wabash County ("MSD Wabash") asserting that it is entitled to \$9,447.60 in transfer tuition costs for student B.R., who was placed at Whites Jr-Sr High School ("Whites"), which is a part of MSD Wabash, during the 2012-2013 school year while the student had legal settlement within Twin Lakes School Corporation's ("Twin Lakes") district. Subsequently, MSD Wabash submitted a request for a hearing to the Indiana State Board of Education ("Board"), seeking transfer tuition funds due to B.R.'s transfer to MSD Wabash.

The undersigned was appointed as hearing examiner and the parties were notified of the hearing date and advised of their rights by notice, which was sent to parties via certified mail. Both parties notified the hearing examiner that they would like to forego the hearing and instead allow the hearing examiner to make a desk determination based on the materials submitted by the parties.

After consideration of the materials submitted by the parties, the hearing examiner makes the following findings of fact, conclusions of law, and recommended orders:

Findings of Fact and Conclusions of Law

Preliminary Issues:

1. Pursuant to the materials submitted to the hearing examiner by the Respondent, the Petitioner is asserting that it is entitled to transfer tuition under Indiana Code § 20-26-11-8(a) or (b). Subsection (a), which applies to placements by or with the consent of the Department of Child Services (“DCS”) or a court order, reads as follows:

(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.

Indiana Code § 20-26-11-8(b) applies to placements by parents and reads in relevant part as follows:

(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.

2. The Respondent contends that B.R.’s placement occurred under IC 20-26-11-8(a)(1) or (2), and not under Section 20-26-11-8(b). Respondent further asserts that because the placement occurred under Section 20-26-11-8(a)(1) or (2), this administrative matter is outside of the Board’s jurisdiction.
3. Despite the Respondent’s assertions, the Board has jurisdiction to review this matter pursuant to IC 20-26-11-15(a), which reads in relevant part:

(a) The state board shall hear the following:

(1) All appeals from an order expelling a child under IC 20-33-8-17.

(2) All appeals provided in this chapter.

(3) All disputes on the following:

(A) Legal settlement.

(B) Right to transfer.

(C) Right to attend school in any school corporation.

- (D) Amount of transfer tuition.
- (E) Any other matter arising under this chapter.

Thus, regardless of which subpart of IC 20-26-11-8 was applicable to B.R.'s placement, the Board has jurisdiction as this dispute pertains the B.R.'s legal settlement, amount of transfer tuition, and arises under IC 20-26-11.

4. The Respondent also claims that even if the Board has jurisdiction, the Respondent never received timely notice of legal settlement by DCS or by B.R.'s parent. As such, the requirements of IC 20-26-11 have not been met, and the Petitioner's request must be denied. While the Respondent correctly cites the notice provisions in IC 20-26-11, it is evident from that chapter it was not the Petitioner's obligation to provide the notice in question, nor is there any language in IC 20-26-11 supporting the contention that the Petitioner's right to state tuition funds for B.R. is contingent on the Respondent receiving notice from parties that are not subject to this action.
5. Therefore, the Board has the jurisdiction to consider this dispute and the Respondent's contentions regarding the notice issue does not prevent the Petitioner from pursuing transfer tuition fees from the Respondent.

B.R.'s Legal Settlement:

1. According to the materials submitted by both parties, B.R. attended Whites from November 26, 2012 through July 1, 2013, for a total of one-hundred and thirteen (113) days. Moreover, the Petitioner provided documentation demonstrating that student B.R. was placed at Whites by DCS.
2. The educational program at MSD Wabash is under the direction of Petitioner. The Petitioner provides teachers and other educational support for the educational program at Whites. Finally, the Petitioner asserts that it did not receive state funding for B.R. for the 2012-2013 school year.
3. The Petitioner provided the hearing examiner with transfer tuition materials that the Petitioner used to create transfer tuition statements for the 2012-2013 school year. According to the materials provided by the Petitioner, the Respondent owes Petitioner a total of \$9,447.60 in transfer tuition fees.
4. The legal settlement of a student is governed by the provisions set forth in IC 20-26-11-2. Under IC 20-26-11-2(1), if a student is less than eighteen (18) years of age, the legal settlement of the student is in the attendance area of the school corporation where the student's parents reside. However, under IC 20-26-11-2(9), if a juvenile court with jurisdiction over a student has made findings of fact concerning the legal settlement of a student, the legal settlement of the student is the attendance area specified as the legal settlement in the latest filings of fact issued by the juvenile court.

5. Pursuant to materials provided by the Petitioner, on March 8, 2013, the Carroll County Superior Court, made findings of fact concerning the legal settlement of B.R. and found B.R.'s legal settlement to be within Respondent's district. Further, the court determined that DCS was responsible for the child's placement and care.

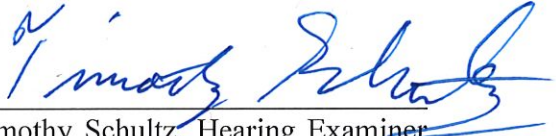
Conclusion:

As explained in a preceding section, the Board has jurisdiction to consider all disputes arising under IC 20-26-11, which includes this matter. Further, the parties agree that B.R. attended Whites during the 2012-2013 school year. And finally, the Petitioner provided a court order identifying the Respondent's school district as the location of B.R.'s legal settlement. Therefore, the Petitioner is entitled to transfer tuition from the Respondent.

RECOMMENDED ORDER

MSD Wabash provided evidence of legal settlement, via a court order and other materials deemed acceptable by the hearing examiner. Thus, Twin Lakes shall pay MSD Wabash at total of \$9,447.60 for tuition support associated with student B.R. that had legal settlement within Twin Lakes, although he did not attend Twin Lakes schools for a majority of the 2012-2013 school year.

Dated: October 30, 2018



Timothy Schultz, Hearing Examiner
for the State Board of Education

RIGHT TO APPEAL

Any party wishing to file objections to this recommended decision may do so in writing by Wednesday, November 7, 2018. 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 sent via electronic mail to TSchultz1@sboe.in.gov. Additionally, any party filing objections or responding to same must provide a copy of such written objections to the representative of the other party. If objections are timely submitted, the materials will be provided to the Board for consideration prior to any final action. The Board will vote to adopt this proposed determination during the November 14, 2018, Board meeting. Further, either party may attend the Board meeting and address the Board directly, regardless of whether an objection is filed.

Copies to (via electronic mail):

Petitioner:

Metropolitan School District of Wabash County
Attn: Christopher Kuhn
kuhnc@msdwc.k12.in.us

Respondent:

Twin Lakes School Corporation
Attn: Jonathan Mayes
jmayer@boselaw.com

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**OBJECTION TO COMBINED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND PROPOSED DETERMINATION**

The Twin Lakes School Corporation (“Twin Lakes”), by counsel Jonathan L. Mayes, respectfully objects to the Combined Findings of Fact, Conclusions of Law, and Proposed Determination ("Proposed Determination") dated October 30, 2018 for the following reasons:

1. Since Twin Lakes was never provided the required statutory notice, the transfer tuition request must be denied.

It is undisputed that Indiana Code required that notice be sent to Twin Lakes "[n]ot later than ten (10) days after the department of child services or a probation department places or changes the placement of a student." IND. CODE § 20-26-11-9(b). But in this case, that never happened. Notwithstanding this failure to comply with the explicit requirements of Indiana law, the Proposed Determination interprets the statute to have no effect or meaning. On the contrary, the Indiana Code does have meaning, failure to abide by it deprived Twin Lakes of an important opportunity to intervene or clarify an insufficient court order, and the request for transfer tuition must therefore be denied.

In this case, Section 20-26-11-9 applies. The Proposed Determination acknowledges that the placement was made by DCS (Proposed Determination, *B.R.'s Legal Settlement* ¶ 1). Thus,

Section 20-26-11-8(a)(1) applies. When DCS places a child under Section 20-26-11-8(a), notice under Section 20-26-11-9 must be given:

- (a) This section applies to each student:
 - (1) described in section 8(a) of this chapter;
 - (2) who is placed in a home or facility in Indiana that is outside the school corporation where the student has legal settlement; and
 - (3) for which the state is not obligated to pay transfer tuition.

(b) Not later than ten (10) days after the department of child services or a probation department places or changes the placement of a student, the department of child services or probation department that placed the student shall notify the school corporation where the student has legal settlement and the school corporation where the student will attend school of the placement or change of placement. Before September 1 of each year, the department of child services or a probation department that places a student in a home or facility shall notify the school corporation where a student has legal settlement and the school corporation in which a student will attend school if a student's placement will continue for the ensuing school year. The notifications required under this subsection must be made by:

- (1) the department of child services, if the child is a child in need of services; or
- (2) if subdivision (1) does not apply, the court or other agency making the placement.

IND. CODE § 20-26-11-9. The Proposed Determination does not contest Twin Lakes' reasoning that Section 9's notice requirements apply to Section 8(a) placements.

Additionally, and importantly, it is undisputed that Twin Lakes never received notice as mandated by Section 20-26-11-9. But despite Section 9 applying and despite the noncompliance with Section, the Hearing Examiner concluded that Section 9 has no effect on this request. This conclusion ultimately renders a statute meaningless, which is not allowed.

Our Supreme Court has given us guidance on how to interpret statutes. "In interpreting a statute, the first step is to determine whether the Legislature has spoken clearly and unambiguously on the point in question." *Anderson v. Gaudin*, 42 N.E.3d 82, 85 (Ind. 2015). "When a statute is clear and unambiguous, we apply words and phrases in their plain, ordinary, and usual sense." *Id.* "When faced with an ambiguous statute, our primary goal is to determine,

give effect to, and implement the intent of the Legislature with well-established rules of statutory construction." *Id.* Importantly, the Court instructed, "We examine the statute as a whole, reading its sections together so that no part is rendered meaningless if it can be harmonized with the remainder of the statute." *Id.* "And we do not presume that the Legislature intended language used in a statute to be applied illogically or to bring about an unjust or absurd result." *Id.*

The transfer tuition chapter—Chapter 20-26-11—unambiguously creates a process by which the SBOE must evaluate requests. First, specific forms must be created and used to start the process. IND. CODE § 20-26-11-3. Next, the chapter addresses transfers requested by parents or students to a school outside of legal settlement (IND. CODE §§ 20-26-11-5 through 6.5) and transfers of disabled students. IND. CODE § 20-26-11-7. Chapter 11 then addresses placements in public or private institutions. IND. CODE § 20-26-11-8 & 9.

The notice provision serves an important purpose. Notice of the placement allows Twin Lakes to evaluate any determination by a court as to legal settlement and challenge the decision.

The Proposed Determination's interpretation of Indiana Code renders an entire subsection of Indiana Code meaningless. The Hearing Examiner acknowledges that the disputed placement was made by DCS (Proposed Determination, *B.R.'s Legal Settlement* ¶ 1), and thus Section 20-26-11-8(a)(1) applies. The notice provision—Section 20-26-11-9—**by its terms** specifically applies to Section 20-26-11-8(a) placements:

(a) This section applies to each student:

- (1) **described in section 8(a) of this chapter;**
- (2) who is placed in a home or facility in Indiana that is outside the school corporation where the student has legal settlement; and
- (3) for which the state is not obligated to pay transfer tuition.

IND. CODE § 20-26-11-9(a) (emphasis supplied). But the Hearing Examiner concludes that this section does not apply here. (Proposed Determination, *Preliminary Issues* ¶ 4.) This conclusion assumes that the notice provision has no application even though the notice provision is housed in Chapter 20-26-11 and the notice provision—by its own terms—is inextricably linked to Section 20-26-11-8. In other words, the Proposed Determination renders Section 20-26-11-9(a) entirely meaningless.

The Hearing Examiner also wrongly concludes that the failure of a non-party (*i.e.*, DCS or the parents) to provide notice has no bearing here. That generates an absurd result. If that were true, then the SBOE must blindly accept every transfer tuition request without, for example, confirming whether a court order was properly entered. The non-party notice requirement makes sense—it assigns the notice requirement to the party making the placement. The school corporation receiving the placement can easily request confirmation of the notification to the school corporation of legal settlement as part of its intake process. Rather than ignore this notice mandate by the General Assembly, the SBOE must instead assign meaning.

In conclusion, the proper interpretation of Indiana Code compels an interpretation that notice to Twin Lakes must be provided before liability accrues. If the notice provision is not linked to liability, then it is a notice provision without meaning. The notice provision has meaning and purpose, and here, because it was never complied with, it must preclude enforcement of this Chapter against Twin Lakes.

2. The court's order does not comply with Indiana Code and cannot be considered.

Contrary to the Proposed Determination's statement that "the Carroll County Superior Court, [*sic*] made findings of fact concerning the legal settlement of B.R." (Proposed

Determination, *B.R.'s Legal Settlement* ¶ 5), that did not happen. The trial court's order does not follow the statutory requirements and is void.

The court's order states that it is pursuant to Indiana Code § 31-34-21-5. (Campbell Aff., Ex. C.) But that section does not apply to legal settlement. Rather, legal settlement for purposes of such proceedings under Chapter 31-34-21 are determined pursuant to Indiana Code § 31-34-20-5. *See* IND. CODE § 31-34-21-10(d).

Section 31-34-20-5(b) requires that the court make specific findings of fact concerning the legal settlement of the child by applying the factors in Section 20-26-11-2. IND. CODE § 31-34-20-5(b). But the court's order makes so such findings of fact. For example, it never addresses these necessary findings:

- who has custody of B.R.
- whether B.R.'s parents are divorced or separated
- where B.R.'s custodial parent resides

What is more, the court order is not binding because it fails to meet the notice requirements. Section 20-26-11-2(9) states:

If a juvenile court has:

(A) made findings of fact concerning the legal settlement of a student under IC 31-34-20-5, IC 31-34-21-10, IC 31-37-19-26, or IC 31-37-20-6 (or IC 31-6-4-18.5 before its repeal); and

(B) jurisdiction over the student under IC 31-34 or IC 31-37;
the legal settlement of the student is the attendance area specified as the legal settlement in the latest findings of fact issued by the juvenile court.

The court's order states that it is pursuant to Indiana Code § 31-34-21-5. (Campbell Aff., Ex. C.) But that section does not apply to legal settlement. Rather, legal settlement for purposes of such proceedings under Chapter 31-34-21 are determined pursuant to Indiana Code § 31-34-20-5. *See* IND. CODE § 31-34-21-10(d).

Section 31-34-20-5(d) expressly requires that "[t]he juvenile court **shall comply with the reporting requirements under IC 20-26-11-9 concerning the legal settlement of the child.**" (Emphasis supplied.) That, as Twin Lakes has previously explained, never happened. And so since the court did not comply with the notice requirement under Section 20-26-11-9, the court never made a finding under Section 31-34-20-5. In other words, the court's order must not be considered here.

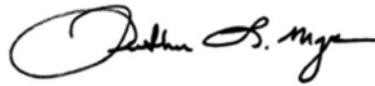
Accordingly, legal settlement with Twin Lakes is not established by the court's order since the order fails to follow Indiana Code. For this independent reason, the Proposed Determination must be rejected.

Conclusion

For the reasons stated herein, the request by M.S.D. Wabash must be denied.

WHEREFORE, Twin Lakes School Corporation, by counsel, respectfully requests that the State Board of Education deny the transfer tuition request by the Metropolitan School District of Wabash County.

Respectfully submitted,



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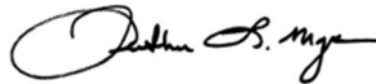
Attorney for Twin Lakes School Corporation

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Objection to Combined Findings of Fact, Conclusions of Law, and Proposed Determination" by Twin Lakes School Corporation have been served upon the following by electronic mail this 7th day of November 2018:

Mr. Timothy Schultz, Esq.
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