



INDIANA STATE BOARD OF EDUCATION

To: Indiana State Board of Education
From: Chad E. Ranney, General Counsel – Indiana State Board of Education
Date: May 13, 2020
RE: **Options Charter School – Carmel; Objection to Recommended Decision**

Recommendation: Affirm the hearing officer’s Recommended Decision.

Background: Options Charter School – Carmel (“Options”) is a public charter school located in Carmel, Indiana that serves approximately 217 students in grades 9 through 12. Options received for the 2018-2019 school year and timely requested an appeal of its designation.

Basis of Appeal: Options asserts that the accountability calculation in 511 IAC 6.2-10, the Board’s current accountability rule, does not apply to the school because the school focuses primarily on providing academic programs for students with developmental, intellectual, or behavior challenges as described in IC 20-31-8-4.5 and, therefore, should be assigned a “null” or “no letter grade” category under IC 20-31-8-4(c).

Hearing Officer’s Recommended Decision: The Board’s accountability calculation for Options was correct and should be sustained. One hundred percent (100%) of Options’ students may have qualified for alternative education services under the eligibility requirements set forth in IC 20-30-8; however, it is clear that a student that qualifies for alternative education is not necessarily a student with developmental, intellectual, or behavior challenges. Moreover, the fact that Options is an alternative school “designed to meet the needs of at-risk students who have not succeeded in the traditional setting” does not support a finding that it focuses primarily on students with developmental, intellectual, or behavioral challenges. Because Options failed to show that it focuses primarily on academic programming for students with developmental, intellectual, or behavior challenges, it does not fall under the alternative accountability standards provided by IC 20-31-8-4.5, and the relief provided in IC 20-31-8-4(c) is not available to the school. Thus, the Board properly followed 511 IAC 6.2-10.

Objection to the Recommended Decision: Subsequent to the issuance of the Recommended Decision (attached), Options timely filed an objection with supporting material (attached).

Staff Recommendation: Affirm the hearing officer’s Recommended Decision. Pursuant to the requirements set forth in P.L.2-2020, Options should be assigned a “D” for the 2018-2019 school year.¹

¹ Pursuant to P.L.2-2020, a school’s category or designation of school performance for the 2018-2019 school year shall be calculated in the manner provided in 511 IAC 6.2-10, with the exception that a school’s category or designation of school performance for the 2018-2019 school year may not be lower than the school’s category or designation of school performance for the 2017-2018 school year.

**BEFORE THE INDIANA
STATE BOARD OF EDUCATION**

IN THE MATTER OF:)	
)	
OPTIONS CHARTER SCHOOL -)	APPEAL PURSUANT TO
CARMEL (SCHOOL #1701),)	511 IAC 6.2-10-11
)	
PETITIONER)	

**COMBINED FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND
RECOMMENDED DECISION**

I. Reason for Appeal

Options Charter School – Carmel appeals its 2018-2019 category placement of grade (points) asserting that the accountability calculation in 511 IAC 6.2-10 did not apply to the school because it focuses primarily on academic programs for students with development, intellectual, or behavioral challenges under Indiana Code § 20-31-8-4.5 and, therefore, should be assessed a “null” or “no letter grade” category under Indiana Code § 20-31-8-4(c).

II. Findings of Fact and Conclusions of Law

1. Options Charter School – Carmel is a public charter school, as defined by Indiana Code Section 20-24-1-4, and operates in Carmel, Indiana.

2. Options Charter School – Carmel educates students in grades 9 through 12.

3. Pursuant to Ind. Code § 20-31-8-4, the Indiana State Board of Education (Board) shall annually place each school in a category or designation of school performance based on the metrics outlines in 511 IAC 6.2-10.

4. Pursuant to 511 IAC 6.2-10-3(d)(2) through (4), the accountability category of Options Charter School – Carmel shall be based on the performance, growth, and multiple measures domains. The performance and growth shall each be 20% of the overall grade and the multiple measures domain shall equate to 60% of the overall grade.

5. All domains are calculated using the results of “eligible students” as defined by 511 IAC 6.2-10-1(15) including any student who:

(A) was enrolled at the school for at least one hundred sixty-two (162) days in the accountable year; (B) was tested on the mandatory statewide annual assessment, or the end of course assessment; (C) was not a limited English proficient student who has been enrolled in schools in the United States for less than twelve (12) months; and (D) obtained a valid result.

6. On November 1, 2019, Options Charter School – Carmel received an accountability category placement of (points) for the 2018-2019 school year.

7. On February 24, 2020, Options Charter School – Carmel timely appealed the Board’s 2018-2019 Accountability Calculation stating that the accountability calculation in 511 IAC 6.2-10 did not apply to the school because it focuses primarily on academic programs for students with development, intellectual, or behavioral challenges under Indiana Code § 20-31-8-4.5 and, therefore, should be assessed a “null” or “no letter grade” category under Indiana Code § 20-31-8-4(c).

8. Indiana Code § 20-31-8-4.5, which addresses an alternative assessment methodology for schools focused exclusively on students with “developmental, intellectual, or behavioral challenges,” provides as follows:

In addition to other benchmarks, performance indicators, and accountability standards developed under this article, the state board shall develop alternative benchmarks, performance indicators, and accountability standards to be used in the assessment of schools that focus *primarily* on providing an academic program for students with developmental, intellectual, or behavioral challenges.

(eff. July 1, 2019) (emphasis added).¹

¹ The amendment to the language in Indiana Code § 20-31-8-4.5 – from exclusively to primarily – was effective July 1, 2019, which was after the 2018-2019 school year. The general rule is that unless there are strong and compelling reasons, statutes will normally be applied prospectively. *Martin v. State*, 774 N.E.2d 43, 44 (Ind. 2002) (citation omitted). This hearing officer finds, however, that the amendment is retroactive and therefore applicable to the 2018-2019 school year. An exception to the general rule against retroactivity exists for remedial statutes, which are statutes intended to cure a defect or mischief

9. Pursuant to Indiana Code § 20-31-8-4(c), also effective July 1, 2019²:

Based on procedures adopted by the state board, a school corporation or school that focuses primarily on providing an academic program for students with developmental, intellectual, or behavioral challenges may petition the state board for review of the school corporation's or school's category or designation of school performance placement based on objective factors that the school corporation or school considers relevant because the annual assessment data does not accurately reflect, as applicable, school performance, growth, or multiple measures. Objective factors include:

- (1) significant demographic changes in the student population;
- (2) errors in data; or
- (3) other significant issues.

After considering the petition for review, the state board may direct the department to revise the category or designation assigned to the school corporation or school, including assigning a "null" or "no letter grade" category or designation to the school corporation or school. The state board may grant the "null" designation for multiple years.

10. Based on the information submitted in this appeal, Options Charter School - Carmel does not fall under the alternative accountability standards under Indiana Code § 20-31-8-4.5 and, thus, the "null" category under Indiana Code § 20-31-8-4(c) is not applicable.

11. Based on the clear statutory language of Indiana Code § 20-31-8-4.5, the alternative assessment only applies to schools that focus primarily on providing an academic program for students with developmental, intellectual, or behavioral challenges.

12. Options Charter School - Carmel states that it "provided educational services for 320 students in grades 9-12 in 17-18. 100% of those students qualified for alternative education

that existed in a prior statute. *Martin*, 774 N.E.2d at 44 (citations omitted). When a remedial statute is involved, a court must construe it to effect the evident purpose for which it was enacted. *Id.* (citation omitted). Accordingly, remedial statutes will be applied retroactively to carry out their legislative purpose unless to do so violates a vested right or constitutional guaranty. *Id.* This concept is applicable here.

² For the same reasons noted for the retroactive application of Indiana Code § 20-31-8-4.5, this Hearing Officer finds the amendment to Indiana Code § 20-31-8-4 to also be retroactive to the 2018-2019 school year.

services under the eligibility requirements outlined in IC 20-30-8” (Attachment IV). The website describes the school as one providing alternative education. See <https://optionsschools.org/alted>.

13. Pursuant to Ind. Code § 20-30-8-10, a student placed in an alternative education program must meet at least one of the following criteria:

- (1) The student intends to withdraw or has withdrawn from school before graduation.
- (2) The student has been identified as a student who:
 - (A) has failed to comply academically; and
 - (B) would benefit from instruction offered in a manner different from the manner of instruction available in a traditional school.
- (3) The student is a parent or an expectant parent and is unable to regularly attend the traditional school program.
- (4) The student is employed and the employment:
 - (A) is necessary for the support of the student or the student's immediate family; and
 - (B) interferes with a part of the student's instructional day.
- (5) The student is a disruptive student.

14. Neither Indiana statute nor regulation defines “developmental, intellectual, or behavioral challenges” as used in Ind. Code § 20-31-8-4.5.³ However, it is clear that a student that qualifies for alternative education pursuant to Indiana Code § 20-30-8-10 is not necessarily a student with developmental, intellectual, or behavioral challenges pursuant to Ind. Code § 20-31-8-4.5. For example, a student may be with child or employed and thus eligible for alternative education, but not have developmental, intellectual or behavioral challenges. Moreover, Options Charter School – Carmel’s statement that “[a]s an alternative school, OCSC is designed to meet the needs of at-risk students who have not succeeded in the traditional setting” does not support a finding that it focuses primarily on students with developmental, intellectual or behavioral challenges (Attachment IV).

³ Case law describes “behavioral challenges” as behaviors that cause a significant impediment to the attainment of educational or social progress. *See, e.g., N.C. v. Dep’t of Child Services*, 56 N.E.3d 65, 67 n.5 (Ind. Ct. App. 2016).

15. To sustain its burden on appeal, Options Charter School – Carmel had to show that it focuses primarily on providing an academic program for students with developmental, intellectual, or behavioral challenges. The school did not provide clear evidence of what proportion of their student enrollment fell within each of these three statutory categories. For example, stating that 75% of enrollment “failed to comply academically” does not show that this failure was due to developmental, intellectual, or behavioral challenges (Attachment IV). Specific evidence as to each statutory category is needed before the school can sustain its burden of falling under Indiana Code § 20-31-8-4.5.⁴

16. Because Option Charter School – Carmel did not show that it primarily focused on academic programing for students with developmental, intellectual, or behavioral challenges, it does not fall under the alternative accountability standards provided by Ind. Code § 20-31-8-4.5. As such, the relief provided in Indiana Code § 20-31-8-4(c) is not available.

III. Recommended Decision

The Board’s Accountability Category calculation for Options Charter School – Carmel was correct. The Board properly followed 511 IAC 6.2-10 in its calculation because the school did not fall under Indiana Code § 20-31-8-4.5, and there is no alternative assessment for schools that provide alternative education services under Indiana Code § 20-30-8 *et seq.* Thus, the Board’s calculation of a category placement of () was proper and should be sustained.

DATE: April 14, 2020

/s/ Jodi Kathryn Stein, Hearing Officer

⁴ This Hearing Officer encourages the school to provide more specific information as to categories that show developmental, intellectual, or behavioral challenges for its students and to more specifically define what disabilities constitute 25% of the enrollment as stated in its appeal materials.

NOTICE OF APPEAL RIGHT

Petitioner may file objections to the Hearing Officer’s Recommended Decision but must do so no later than ten (10) calendar days from the date the Petitioner receives the Recommended Decision. Any objections must be in writing and must state the legal basis for the objection. Written objections are to be submitted to the Indiana State Board of Education as follows:

ATTN: Chad Ranney, General Counsel
CRanney@sboe.in.gov

Certificate of Service

I certify that on April 14, 2020, I served the foregoing Recommended Decision on the following persons at the email addresses shown below.

Michelle Walden
Options Charter School – Carmel
mwalden@optionsined.org

Chad Ranney, General Counsel
Indiana State Board of Education
Email: CRanney@sboe.in.gov

Maggie Paino, Director of Accountability
Indiana Department of Education
Email: mpaino@doe.in.gov

/s/ Jodi Kathryn Stein, Hearing Officer

April 24, 2020

Objection to the Hearing Officer’s Recommended Decision
 in the matter of
 Options Charter School - Carmel (School #2524)

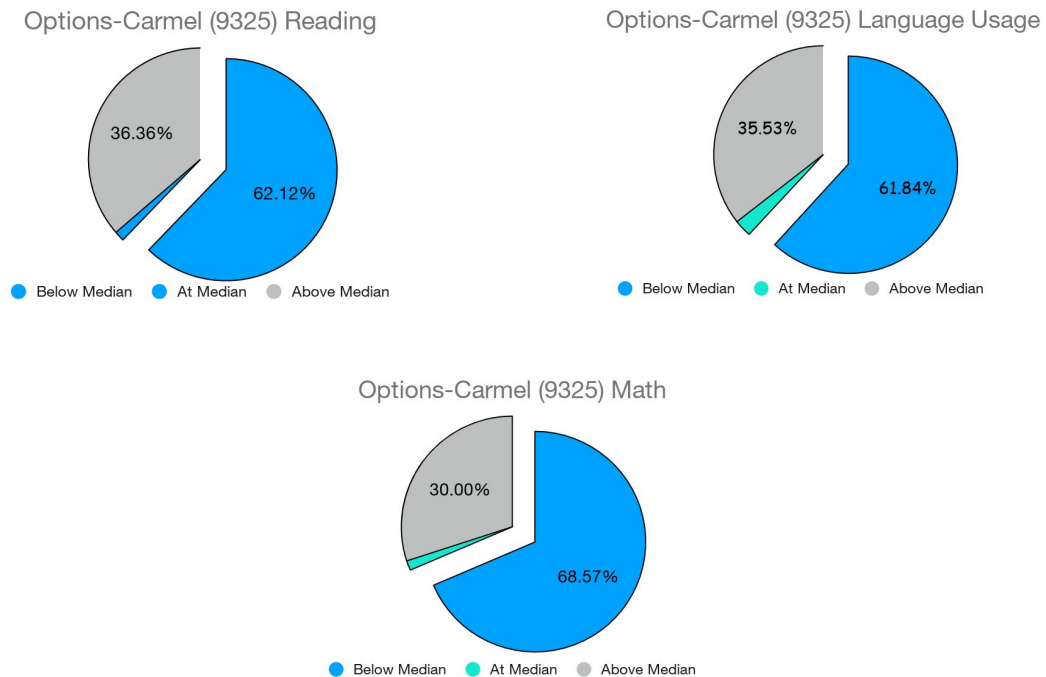
Background

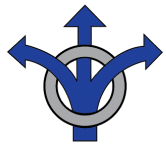
Options Charter School - Carmel filed a timely appeal to the Board’s 2018-2019 Accountability Calculation stating that the accountability calculation in 511 IAC 6.2-1.0 did not apply to the school because it focuses primarily on academic programs for students with developmental, intellectual, or behavioral challenges under IC 20-31-8-4.5 and, therefore, should be assessed a “null” or “no letter grade” category under IC 20-31-8-4(c). In this appeal, Options Charter School - Carmel provided data to support the appeal with evidence of school mission and evidence of student population using the IDOE-AL report. Additional evidence was provided as well, demonstrating high-quality results with the student population.

Upon review, the hearing officer’s report indicated that additional data was needed, beyond the IDOE-AL report to provide the evidence of students having developmental, intellectual, or behavioral challenges.

Evidence of Intellectual Challenged Student Population

Options Charter School - Carmel primarily serves a student population that demonstrates intellectual challenges as evidenced by their 2018 Fall NWEA MAP scores being below grade level in Reading, Language Usage, and Math.





Options Schools

BELONG. BELIEVE. ACHIEVE.

Each fall, all enrolled students participate in taking the NWEA MAP exam to help inform their instructional needs for the year. The NWEA MAP exam is designed to measure what students know and informs what they're ready to learn next (NWEA, 2020). Additionally, NWEA has provided schools with nationally normed studies for comparison, to help identify specific intellectual challenges by subject and grade as well as success in annual growth (NWEA, 2015).

Performance below grade level, in any subject area, is evidence of intellectual challenge.

An intellectual disability is defined by the demonstration of lower than average intellectual functioning, such as learning, problem-solving, and judgment, or in adaptive functioning, such as communication and independent living (American Psychiatric Association, 2020). Intellectual disabilities may be diagnosed through a medical exam or through standardized testing, like NWEA (American Psychiatric Association, 2020; van Wingerden, Segers, van Balkom, & Verhoeven, 2018). Furthermore, children having normal intelligence, but struggle to read at grade level demonstrate the same challenges with learning as those that have below level intelligence (van Wingerden et al., 2018).



References

- American Psychiatric Association. (2020). What is intellectual disability. Retrieved from <https://www.psychiatry.org/patients-families/intellectual-disability/what-is-intellectual-disability>
- NWEA. (2015). NWEA research 2015 comparative data: Comparative data to inform instructional decisions. Retrieved from <https://drive.google.com/file/d/11aeCh2r4w-zYh4ktOf0TF8XqHbLe1P6-/view?usp=sharing>
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- van Wingerden, E., Segers, E., van Balkom, H., & Verhoeven, L. (2018). *Cognitive constraints on the simple view of reading: A longitudinal study in children with intellectual disabilities* Scientific Studies of Reading. Retrieved from <http://search.ebscohost.com/login.aspx?direct=true&AuthType=sso&db=eric&AN=EJ1178459&site=eds-live&scope=site&authtype=sso&custid=ns083389>
<http://dx.doi.org/10.1080/10888438.2018.1446435>