

STATE BOARD OF ACCOUNTS
302 West Washington Street
Room E418
INDIANAPOLIS, INDIANA 46204-2769

SPECIAL INVESTIGATION REPORT
OF
SOUTH NEWTON SCHOOL CORPORATION
NEWTON COUNTY, INDIANA
July 1, 2014 to December 31, 2019



FILED
01/25/2021

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AN EQUAL OPPORTUNITY EMPLOYER

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TO: THE OFFICIALS OF SOUTH NEWTON SCHOOL CORPORATION, NEWTON COUNTY, INDIANA

This is a special investigation report for South Newton School Corporation (School Corporation), for the period July 1, 2014 to December 31, 2019, and is in addition to any other report for the School Corporation as required under Indiana Code 5-11-1. All reports pertaining to the School Corporation may be found at www.in.gov/sboa/.

We performed procedures to determine compliance with applicable Indiana laws and uniform compliance guidelines established by the Indiana State Board of Accounts and were limited to records associated with student enrollment reporting. The Results and Comments contained herein describe the identified reportable instances of noncompliance found as a result of these procedures. Our tests were not designed to identify all instances of noncompliance; therefore, noncompliance may exist that is unidentified.

Any Official Response to the Results and Comments, incorporated within this report, was not verified for accuracy.

Paul D. Joyce
Paul D. Joyce, CPA
State Examiner

August 20, 2020

SOUTH NEWTON SCHOOL CORPORATION RESULTS AND COMMENTS

BACKGROUND

South Newton School Corporation (School Corporation) was required to submit a Report of Average Daily Membership (ADM) to the Indiana Department of Education (IDOE) twice per year, in September and February; however, only the September ADM Reports for the school years 2017-18 and 2018-19 were required by the IDOE to calculate the tuition support payments due to the schools for those years. For the school years 2014-15, 2015-16, 2016-17, and 2019-20, both the September and February ADM Reports were used by the IDOE to calculate the tuition support payments due to the School Corporation.

Officials who signed the ADM Reports certified, "The undersigned certify that this report is true and accurate in every respect to the best of their knowledge and belief." The Superintendent and the Treasurer signed the ADM Reports certifying the accuracy of the included figures.

It came to the attention of the State Board of Accounts that ADM reporting for the School Corporation included students with Illinois addresses. We performed an investigation of the School Corporation's ADM reporting for the period of July 1, 2014 to December 31, 2019. The results of our investigation are described in the following comments.

OVERPAYMENT OF STATE TUITION SUPPORT AND TRANSFER STUDENTS

Eligibility for State Tuition Support

For the school years 2014-15 through 2019-20, between 6 and 34 students with Illinois addresses were improperly reported as having legal settlement in the attendance area of the School Corporation on the School Corporation's ADM reporting.

The School Corporation received state tuition support totaling \$751,907.53 that it was not entitled to due to the inclusion of the Illinois students. The following schedule details the overpayment of state tuition support by school year.

	SY 2014-15	SY 2015-16	SY 2016-17	SY 2017-18	SY 2018-19	SY 2019-20	Total
<u>Basic and Complexity Grants:</u>							
Illinois Students Included	6	13	25	33	34	27	
State Support Overpayment	\$ 34,070.36	\$ 74,879.00	\$ 124,240.66	\$ 201,979.47	\$ 210,786.06	\$ 85,659.66	\$ 731,615.21
<u>Curricular Materials Reimbursement:</u>							
Illinois Students Included	3	8	9	13	15	12	
State Support Overpayment	231.75	636.56	734.58	1,023.10	1,193.85	972.48	4,792.32
<u>Special Education (Mild/Moderate):</u>							
Illinois Students Included	0	1	1	1	1	1	
State Support Overpayment	-	2,300.00	2,300.00	2,300.00	2,300.00	2,300.00	11,500.00
<u>Special Education (Communication/Homebound):</u>							
Illinois Students Included	0	1	2	2	2	1	
State Support Overpayment	-	500.00	1,000.00	1,000.00	1,000.00	500.00	4,000.00
Total State Support Overpayment	<u>\$ 34,302.11</u>	<u>\$ 78,315.56</u>	<u>\$ 128,275.24</u>	<u>\$ 206,302.57</u>	<u>\$ 215,279.91</u>	<u>\$ 89,432.14</u>	<u>\$ 751,907.53</u>

The School Corporation provided reports of the data submitted to the IDOE for the ADM. One of the required reporting descriptions is ADM Type: "Resident Enrollment," "Cash Transfers," etc. Per the reporting instructions, "Resident Enrollment" were students with legal settlement in the School Corporation and who were attending the same School Corporation. "Cash Transfers" were "students with legal settlement in a different School Corporation who are enrolled in and attending the reporting school based upon an agreement between the parent(s) and the enrolling School Corporation. . . ."

SOUTH NEWTON SCHOOL CORPORATION
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For the school years 2014-15 and 2015-16, the out-of-state students were first reported as "Cash Transfers." While they may attend a School Corporation based on the foregoing, "Cash Transfers" are not eligible for state tuition support.

Subsequently, per reports from the IDOE, the out-of-state students were changed from "Cash Transfers" to "Resident Enrollment."

For the school years 2016-17 through 2019-20, the students were reported as "Resident Enrollments."

Furthermore, School Corporations were required to report the "County of Legal Residence" (residence) in the ADM report. Per the reports provided by South Newton School Corporation of the data submitted to the IDOE for ADM reporting, the reports showed Illinois students were identified as "Out-of-State" for residence. Per a report from the IDOE of ADM report submission errors, for each submission year, for each student reported by South Newton School Corporation as "out-of-State," an error was identified. These errors had to be remedied or the ADM report would not be accepted. To remedy the error, South Newton School Corporation changed the "Out-of-State" for the residence to Newton County.

Indiana Code section 20-43-4 addresses determination of pupil enrollment, ADM, and adjusted ADM.

Indiana Code 20-43-4-1(a) regarding determination and eligible pupils states:

"(a) An individual is an eligible pupil if the individual is a pupil enrolled in a school corporation and:

(1) the school corporation has the responsibility to educate the pupil in its public schools without the payment of tuition;

(2) subject to subdivision (5), the school corporation has the responsibility to pay transfer tuition under [IC 20-26-11](#) because the pupil is:

(A) transferred for education to another school corporation; or

(B) placed in an out-of-state institution or facility by or with the consent of the department of child services;

(3) the pupil is enrolled in a school corporation as a transfer student under [IC 20-26-11-6](#) or entitled to be counted for ADM purposes as a resident of the school corporation when attending its schools under any other applicable law or regulation;

(4) the state is responsible for the payment of transfer tuition to the school corporation for the pupil under [IC 20-26-11](#); or

(5) all of the following apply:

(A) The school corporation is a transferee corporation.

(B) The pupil does not qualify as a qualified pupil in the transferee corporation under subdivision (3) or (4).

(C) The transferee corporation's attendance area includes a state licensed private or public health care facility or child care facility where the pupil was placed:

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- (i) by or with the consent of the department of child services;
- (ii) by a court order;
- (iii) by a child placing agency licensed by the department of child services;
- (iv) by a parent or guardian under [IC 20-26-11-8](#); or
- (v) by or with the consent of the department under [IC 20-35-6-2](#)."

Indiana Code 20-43-4-2(a) states in part regarding determination of ADM; adjustments; estimates:

"(a) A school corporation's ADM is the number of eligible pupils enrolled in:

- (1) the school corporation; or
- (2) a transferee corporation; . . ."

Transfer Students and Transfer Tuition

For school years 2014-15 through 2019-20, the School Corporation had the option of charging the students' parents transfer tuition. For all of these school years, the School Corporation officials incorrectly chose to claim state tuition support over charging transfer tuition or no tuition.

Indiana Code sections 20-26-11 address legal settlement and transfer of students, and transfer tuition.

The applicable version of Indiana Code 20-26-11-1 regarding residence and comparable terms states:

"As used in this chapter with respect to legal settlement, transfers, and the payment of tuition, the words 'residence', 'resides', or other comparable language means a permanent and principal habitation that an individual uses for a home for a fixed or indefinite period, at which the individual remains when not called elsewhere for work, studies, recreation, or other temporary or special purpose. These terms are not synonymous with legal domicile. Except as provided in section 2(a)(3) of this chapter, where a court order grants an individual custody of a student, the residence of the student is where that individual resides."

The applicable version of Indiana Code 20-26-11-2 regarding legal settlement states in part:

". . . 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. . . ."

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Indiana Code 20-26-11-5 states in part:

"(a) The parents of any student, regardless of the student's age, or the student after the student has become eighteen (18) years of age may request a transfer from a school corporation in which the student has a legal settlement to a transferee school corporation in Indiana or another state if the student may be better accommodated in the public schools of the transferee corporation. Whether the student can be better accommodated depends on such matters as:

- (1) crowded conditions of the transferee or transferor corporation; and
- (2) curriculum offerings at the high school level that are important to the vocational or academic aspirations of the student.

(b) The request for transfer must be made in writing to the transferor corporation, which shall immediately mail a copy to the transferee corporation. The request for transfer must be made at the times provided under rules adopted by the state board. The transfer is effected if both the transferee and the transferor corporations approve the transfer not more than thirty (30) days after that mailing. If the transferor school corporation fails to act on the transfer request within thirty (30) days after the request is received, the transfer is considered approved. The transfer is denied when either school corporation: mails a written denial by certified mail to the requesting parents or student at their last known address. . . ."

Indiana Code 20-26-11-6 regarding transfer tuition states:

"(a) A school corporation may accept a transferring student without approval of the transferor corporation under section 5 of this chapter.

(b) A transfer may be accepted regardless of whether, as a condition of the transfer, the transferee school requires the requesting parents or student to pay transfer tuition in an amount determined under the formula established in section 13 of this chapter for the payment of transfer tuition by a transferor school corporation. However, if the transferee school elects to charge transfer tuition, the transferee school may not offset the amounts described in section 13(b) STEP TWO (B) through section 13(b) STEP TWO (D) of this chapter from the amount charged to the requesting parents or student.

(c) When the transferee school elects to charge tuition to the requesting parents or student, the tuition determined under subsection (b) must be paid by the parents or the student before the end of the school year in installments as determined by the transferee corporation.

(d) Failure to pay a tuition installment that is agreed to by the parents or student and the transferee school corporation is a ground for exclusion from school.

(e) If the transferee school elects not to charge transfer tuition to the parents or student under this section, the transferee school may not charge transfer tuition or fees to the transferor school."

The IDOE issued the following memorandums regarding out-of-state students and clarification of Indiana Code 20-26-11-6:

The IDOE issued administrative guidance to all Indiana school corporation superintendents and principals regarding out-of-state students, in the form of two memorandums, dated September 12, 2011, and June 26, 2014, respectively.

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Both the 2011 and 2014 IDOE memorandums stated in part:

" . . . School corporations may accept students who do not have legal settlement in Indiana under their local policy. However, please note the following:

- Students cannot be counted for ADM
- Students must be charged full unsupported tuition
- Students must be charged tuition, and may not attend without paying tuition"

An additional memorandum from the IDOE to "Superintendents and Principals" dated May 29, 2019, regarding out-of-state students included the following:

"This memorandum is to provide clarification of IC 20-26-11-6 concerning the enrollment of students not having legal settlement in Indiana.

School corporations may accept students who do not have legal settlement in Indiana under their local open enrollment policy. However, please note the following:

- Students cannot be counted for ADM
- Students may be charged full unsupported tuition"

Repayment of State Tuition Support

Per discussion with the current Information Technology (IT) Director (employed with the School Corporation from October 2015 to current), he stated that he was the only one who reviewed the detailed ADM report for state tuition support and the IDOE error reports. He made the changes so that the reports would be accepted by the IDOE and the students included in the ADM report counts. The current Superintendent was also interviewed, and he stated that he did not know that the IT Director was changing the residency information on the ADM report submissions. The IT Director did not contact the IDOE regarding the corrections, nor did he discuss them with the Superintendents or Corporation Treasurer. He stated he had been told by the prior Superintendent to include the Illinois students in the ADM count, so he changed the residency from out-of-state to Newton County.

Per an interview by Indiana State Police of the former Superintendent, he stated that he believed it was the IT Director's job to attach a residency to the students. He did not recall any conversations with either the current or former IT Directors regarding error messages or changing the residencies.

The former Superintendent also stated that he received a memorandum from the School Corporation Attorney advising that the School Corporation could include the Illinois students in the ADM count. He provided a copy of this memorandum to the School Corporation Treasurer. He then instructed the out-of-state students to be counted in the ADM.

Per an interview with the current Superintendent, he stated that the School Corporation Treasurer brought it to his attention that Illinois students were attending, and counted for ADM, but should not be counted. He brought this to the attention of the School Board during a board retreat, so there were not any minutes recorded to memorialize the discussion. He made the decision, with informal board approval, to continue allowing existing Illinois students and their siblings to attend and be counted, but they would not allow new students to attend and be counted for state assistance.

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Two of the School Board members who were also interviewed, stating that the current Superintendent, during his first year as Superintendent, discussed the issues of Illinois students attending and being included on the ADM report. Also, they stated that it was agreed to continue allowing existing Illinois students and their siblings to attend and be counted; however, new Illinois students would not be allowed to attend or be counted for state tuition support.

Indiana Code 20-26-5-4(a) states in part:

"In carrying out the school purposes of a school corporation, the governing body acting on the school corporation's behalf has the following specific powers: . . .

(13) To accept students transferred from other school corporations and to transfer students to other school corporations in accordance with applicable law. . . .

(18) To prepare, make, enforce, amend, or repeal rules, regulations, and procedures:

(A) for the government and management of the schools, property, facilities, and activities of the school corporation, the school corporation's agents, employees, and pupils and for the operation of the governing body; and

(B) that may be designated by an appropriate title such as 'policy handbook', 'bylaws', or 'rules and regulations'. . . ."

Both the current and former Superintendents stated that they did not review any of the detail prior to signing the final ADM reports and submissions, which were just a summary of the counts by grade levels. The School Corporation Treasurer stated that she reviewed the lists of students attending as provided to her from the Schools' principals, but mostly to ensure inclusion of the Special Education Students. All three of these officials, by signing the reports, certified the following without reviews or verifications of any of the details behind the reports: "The undersigned certify that this report is true and accurate in every respect to the best of their knowledge and belief."

Units are required to comply with all grant agreements, rules, regulations, bulletins, directives, letters, letter rulings, court decisions, and filing requirements concerning reports and other procedural matters of federal and state agencies. Units must file accurate reports required by federal and state agencies. Noncompliance may require corrective action. (Accounting and Uniform Compliance Guidelines Manual for Indiana Public School Corporations, Chapter 1)

Funds misappropriated, diverted or unaccounted for through malfeasance, misfeasance, or non-feasance in office of any employee may be the personal obligation of the responsible employee. (Accounting and Uniform Compliance Guidelines Manual for Indiana Public School Corporations, Chapter 1)

We requested the School Corporation reimburse the State of Indiana \$751,907.53 for state support received by the School Corporation for incorrectly reporting students with Illinois addresses as Indiana resident students. (See Summary of Charges, page 18)

SPECIAL INVESTIGATION COSTS

The State of Indiana incurred costs due to the special investigation of the School Corporation.

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Audit costs or other costs incurred because of poor records, nonexistent records or other inadequate bookkeeping practices may be the personal obligation of the responsible official or employee of the governmental unit. (Accounting and Uniform Compliance Guidelines Manual for Indiana Public School Corporations, Chapter 1)

Indiana Code 5-11-1-27(m) states:

"If the attorney general institutes civil proceedings related to this section or under [IC 5-11-5-1](#), the attorney general shall seek, in addition to the recovery of any funds misappropriated, diverted, or unaccounted for, restitution of:

- (1) costs incurred by the state board of accounts; and
- (2) all costs and reasonable attorney's fees incurred by the attorney general;

in connection with the civil proceedings."

INSURANCE

The School Corporation obtained an errors and omissions insurance policy in the amount of \$1,000,000 each year for school years 2014-15 through 2019-20.

OFFICIAL BOARD ACTION

Based upon interviews of School Corporation officials, including two current School Board members, the Superintendent informed the School Board at a board retreat that Illinois students were attending and being counted for ADM. It was at this retreat that it was agreed to continue to allow existing Illinois students and their siblings to attend South Newton Schools and be counted for ADM.

By definitions contained in Indiana Code 5-14-1.5-2, the School Board was receiving information and taking official action on public business, in a private forum.

Indiana Code 5-14-1.5-1 states:

"In enacting this chapter, the general assembly finds and declares that this state and its political subdivisions exist only to aid in the conduct of the business of the people of this state. It is the intent of this chapter that the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed. The purposes of this chapter are remedial, and its provisions are to be liberally construed with the view of carrying out its policy."

Indiana Code 5-14-1.5-2(d) states:

"'Official action' means to:

- (1) receive information;
- (2) deliberate;
- (3) make recommendations;

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- (4) establish policy;
- (5) make decisions; or
- (6) take final action."

Indiana Code 20-26-4-3 states in part:

". . . (d) All meetings of a governing body must be open to the public to the extent required by [IC 5-14-1.5](#). The governing body shall comply with [IC 5-14-1.5](#). . . .

(f) At a meeting of the governing body, a majority of the members constitutes a quorum. Action may not be taken unless a quorum is present. Except where a larger vote is required by statute or rule with respect to any matter, a majority of the members present may adopt a resolution or take any action.

(g) All meetings of the governing body for the conduct of business must be held within the school corporation, except as follows:

- (1) Meetings may be held at the administrative offices of the school corporation if the offices are outside the geographic limits of the school corporation but are within a county where all or a part of the school corporation is located.
- (2) Meetings may be held at a place where the statute or rule according to which a statutory meeting is held permits meeting outside the school corporation, as may occur when the meeting is held jointly with another governing body.

(h) A governing body may hold up to two (2) training sessions each year outside the school corporation. The sessions may be conducted as executive sessions under [IC 5-14-1.5](#)."

INTERNAL CONTROLS

Deficiency in Internal Controls - Segregation of Duties

There were no controls evident, such as oversight, communication, review, or approval processes, to ensure students counted and included on the ADM reports were complete, accurate, and in compliance with Indiana Code and IDOE instructions. The failure to establish these controls allowed for officials to report and claim out-of-state students as residents and eligible for state tuition support. None of the officials interviewed recall ever seeing error reports, instructions for completing the ADM counts, or memorandums addressed to the Superintendents and Corporation Treasurers from the IDOE. The current IT Director stated he corrected the errors noted without any discussions with either school officials or IDOE officials. Furthermore, the Superintendents and Corporation Treasurer certified the ADM reports as being "true and accurate in every respect to the best of their knowledge and belief" without reviewing any supporting documentation.

Indiana State Board of Accounts (SBOA) is required under Indiana Code 5-11-1-27(e) to define the acceptable minimum level of internal control standards. To provide clarifying guidance, the State Examiner compiled the standards contained in the manual, Uniform Internal Control Standards for Indiana Political Subdivisions. All political subdivisions subject to audit by SBOA are expected to adhere to these standards. The standards include adequate control activities. According to this manual:

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"Control activities are the actions and tools established through policies and procedures that help to detect, prevent, or reduce the identified risks that interfere with the achievement of objectives. Detection activities are designed to identify unfavorable events in a timely manner whereas prevention activities are designed to deter the occurrence of an unfavorable event. Examples of these activities include reconciliations, authorizations, approval processes, performance reviews, and verification processes.

An integral part of the control activity component is segregation of duties. . . .

There is an expectation of segregation of duties. If compensating controls are necessary, documentation should exist to identify both the areas where segregation of duties are not feasible or practical and the compensating controls implemented to mitigate the risk. . . ."

SOUTH NEWTON SCHOOL CORPORATION
EXIT CONFERENCE

The contents of this report were discussed on November 18, 2020, with Casey Hall, Superintendent; Marci Hall, Treasurer; Amanda Berenda, School Board President; Ryan Kindig, School Board member; Cathy Zeider, School Board member; Candace Armstrong, School Board member; Anji Strasburger, School Board member; and Sara Blevins, School Attorney.



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Sara R. Blevins
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November 27, 2020

OFFICIAL RESPONSE

Indiana State Board of Accounts
302 West Washington Street, Room E 418
Indianapolis, Indiana 46204-2765
ldavid@sboa.in.gov and officialresponse@sboa.in.gov

Re: South Newton School Corporation's Official Response to Indiana State Board of Accounts Special Investigation Report for the period July 1, 2014 to December 31, 2019

To Whom It May Concern:

As you know, Lewis & Kappes, P.C. represents South Newton School Corporation (the "School") with respect to the Special Investigation referenced above. This letter is submitted on behalf of the School as an official response to the Indiana State Board of Accounts ("SBOA") Special Investigation Report for the period July 1, 2014 to December 31, 2019 (the "SBOA Report").

Relevant Background Information

South Newton School Corporation is a public school corporation with geographic boundaries along the Indiana-Illinois state line. All of the School's buildings are on a single campus located at S 50 E and E 1300 S in Kentland, Indiana. The School is approximately 13 miles from Sheldon, Illinois. Due to the proximity of the School to Sheldon, Illinois and because of the nature of the Illinois school district serving that area of Illinois, there has historically been great interest by Illinois students in attending the School.

The School currently has a total enrollment of approximately 845 students, pre-K through 12th grade.

In 2010, the Indiana General Assembly amended applicable law, including Ind. Code § 20-26-11-6 to permit a school corporation to accept out-of-district transfer students without charging tuition to the transfer student. At some point thereafter, believed to be before the 2012-2013 school year, the School changed its Board policy to allow transfer students tuition-free.

Due to ongoing interest expressed by Illinois students, around the Summer of 2012, then School Superintendent Todd Rudnick requested that the School's legal counsel research whether it was permissible to accept transfer students from Illinois without charging tuition. On August 16, 2012, School attorney D. Michael Wallman¹ from Lewis & Kappes issued a letter to the School opining that based on the relevant statutory language, the School could accept transfer students from Illinois without charging tuition and could include those students in the ADM count.

Based on this advice from counsel, the School believed it was permissible to include students from Illinois in its ADM count and has done so since at least the 2013-2014 school year, although the bulk of Illinois student enrollment has been since the 2014-2015 school year. This did not necessitate a change to Board Policy as the School was already accepting transfer students, tuition-free – rather this was a change in the administration of the enrollment process which did not involve Board level policy.

The ADM count is generated from a report run from the School's student information system. The School's Director of Technology generates a summary report for the Principals to review. The Principals review the summary report and it is then passed on to the Superintendent and Treasurer. The ADM summary report count certification that is signed by the Superintendent and Treasurer does not include any student address or any other information that identifies the residency of the student. Marci Hall, the School's Treasurer, indicated to SBOA investigators during the course of this investigation that she did not know the ADM counts included Illinois students at the time she signed the certifications. When the Director of Technology uploaded the School's information in the state system to report ADM, the data for the Illinois students generated an error code. Because Mr. Rudnick had directed him to include the Illinois students in the ADM count, the Director of Technology changed the county code for the Illinois students to eliminate the error to submit the necessary data to IDOE. Mr. Rudnick was not aware of the error codes; he did not instruct the Director of Technology to change the county codes and was not aware he was doing so.

Mr. Rudnick retired and Casey Hall became the Superintendent in January 2018. Prior to becoming Superintendent, Mr. Hall was the Principal of South Newton Elementary School and, in that capacity, was aware that students from Illinois were enrolled in the School, but not that they were included in the ADM count. When Mr. Hall became Superintendent he became aware of and concerned about the practice of including Illinois students in the ADM count. Mr. Hall discussed this practice with the Board at a public Board retreat in February 2018. Mr. Hall advised the Board that he thought the Illinois students should not be included in the ADM count. The Board was unaware before that time that there may be any concern with including the Illinois students in the ADM count. In order to address the concern, the Board instructed Mr. Hall that no new Illinois students should be allowed to enroll, but currently enrolled Illinois students and siblings would be permitted to stay and would continue to be counted in ADM. The School continued to include Illinois students in the ADM count based on the Board's understanding of the law from the legal advice provided by Mr. Wallman in 2012 with the idea that once all the Illinois students and siblings advanced and graduated or withdrew then it would no longer have any Illinois students

¹ Mr. Wallman is now deceased.

enrolled in the School. The Board opted for this “phase out” approach out of concern for the currently enrolled Illinois students and their families.

Beginning with the 2018-2019 school year, the School stopped accepting new Illinois students for transfer enrollment, except siblings of currently enrolled students. This did not require a change to Board Policy as the transfer policy does not contain specific provisions regarding what students will be accepted for transfer. If a student from Illinois attempts to enroll, that student is simply told enrollment will not be accepted.

Neither Mr. Rudnick nor Mr. Hall was ever aware that codes were manually changed for the Illinois students in order to submit those students as part of the ADM count. Mr. Hall has indicated that had he known that codes were being changed he would have halted the practice of including Illinois students in the ADM count. In fact, when Mr. Hall did become aware that this was occurring, he did direct that the Illinois students no longer be included in the ADM count. The Illinois students have not been included in the ADM count as of the February 2020 ADM count, despite the School’s contention that including those students in the ADM count is permitted by applicable law. The School took this action in order to avoid potential further dispute with SBOA or IDOE regarding the propriety of including these students in the ADM count.

At all relevant times, the School acted on a good faith belief that their conduct was permitted by applicable law. Furthermore, for the reasons stated below, the School did not violate applicable law by including Illinois students in its ADM counts.

Response to Report

The SBOA Report identifies several alleged instances of noncompliance, which are addressed below. The School denies that it violated any applicable law or uniform compliance guidelines.

The SBOA Report contends that, “[f]or the 2014-15 school year the School Corporation should have charged the parents transfer tuition. For the school years 2015-16 through 2019-20 the School Corporation had the option of charging the students’ parents transfer tuition. For all of these school years, the School Corporation officials incorrectly chose to claim state tuition support over charging transfer tuition.” However, this contention is incorrect.

First, Ind. Code § 20-26-11-6 was amended in 2010 to permit school corporations to accept transfer students and not charge transfer tuition. It is, therefore, unclear why SBOA contends that the School should have charged transfer tuition for the 2014-2015 school year.

Second, nothing in the applicable law differentiates how out-of-state transfer students are treated from how in-state transfer students are treated.

Ind. Code § 20-43-4-1 defines an “eligible student” for the purpose of ADM reporting, in relevant part, as a student enrolled in the school corporation as a transfer student under Ind. Code § 20-26-11-6.

Ind. Code § 20-26-11-6 applies to transfer students accepted without approval of the transferor corporation and states, in relevant part, “[a] transfer may be accepted regardless of whether, as a condition of the transfer, the transferre school requires the requesting parents or student to pay transfer tuition.” Nothing in Ind. Code § 20-26-11-6, or anywhere else in the Indiana Code, states that a school corporation may not accept out-of-state transfer students. Accordingly, since no applicable law excludes out-of-state students from the transfer provisions of Ind. Code § 20-26-11-6, an out-of-state transfer student enrolled in the school corporation under that provision is an “eligible student” for the purposes of ADM reported pursuant to Ind. Code § 20-43-4-1.

Ind. Code § 20-43-4-2(a) states that the school corporation’s ADM includes the number of “eligible pupils” enrolled in the school corporation. Ind. Code § 20-43-4-9 states that state tuition support distributions are based on the school corporation’s ADM. (See also, Ind. Code § 20-43-6-3).

Furthermore, Ind. Code § 20-26-11-6.5(c) states that if a school corporation does NOT accept transfer students, then “the school corporation may not enroll and may not report for the purposes of state tuition support a student under this section” other than those students with parents that are employees of the school corporation. This strongly suggests that the converse is true; that a school corporation that DOES accept transfer students it may report those students for the purposes of state tuition. And, again, because nothing in the applicable statutes explicitly excludes out-of-state students from transfer eligibility or otherwise differentiates out-of-state transfer students from in-state transfer students, this would mean that out-of-state transfer students are treated the same as in-state transfer students and may be reported for the purposes of state tuition.

The SBOA Report references Indiana Department of Education (“IDOE”) Memoranda dated September 12, 2011, June 26, 2014, and May 29, 2019. While the School does not have access to these Memoranda, the School presumes that these Memoranda are substantially similar to the August 24, 2020 IDOE Memorandum currently available on the IDOE’s website. The August 2020 Memorandum also states, “School corporations may accept students who do not have legal settlement in Indiana under the local open enrollment policy. However please note the following: Students cannot be counted for ADM [and] Students may be charged full unsupported tuition.” Although the August 2020 Memorandum states that its purpose is “to provide clarification of IC 20-26-11-6 concerning the enrollment of students not having legal settlement in Indiana,” this Memorandum not only does not have any binding or authoritative effect, it is also not supported by the statutory language as cited above. The IDOE cannot change a statute by issuing a “clarification.” Only the Indiana General Assembly may “clarify” the law by amending it.

The SBOA Report concludes that, the school “received state tuition support totaling \$751,907.53 that it was not entitled to due to the inclusion of the Illinois students” in the School’s ADM Reports. However, for the reasons stated above, that position is not supported by applicable law.

It is further important to note that no School employee or Board member acted with any malfeasance, misfeasance, or nonfeasance. The SBOA Report notes that the certification on the ADM Reports, which was signed by the Superintendent and Treasurer, reads, “The undersigned certify that this report is true and accurate in every respect *to the best of their knowledge and*

belief.” (emphasis added). This statement was correct at the time it was certified. At no time was the Superintendent or Treasurer aware of any inaccuracies in the ADM Report. Indeed, as noted herein, there were no inaccuracies. It is further important to note that although the SBOA Report suggests by implication that there may have been some malfeasance, misfeasance, or nonfeasance of one or more School employees, no direct allegation of such is made in the SBOA Report. It is important to note that all School employees and Board members acted in good faith at all times under a reasonable belief that they were acting properly and in accordance with law, as indeed they were under applicable law.

The SBOA Report also identifies a concern regarding the School’s Board of Trustee’s compliance with the Indiana Open Door Law. Specifically, SBOA alleges that the February 2018 Board retreat was a “private forum.” However, that Board retreat was, in fact, a public meeting open to the public and properly noticed. As such, there was no violation of Indiana’s Open Door Law as implied by the SBOA Report.

Finally, the SBOA Report identifies alleged deficiencies in internal controls, specifically segregation of duties, stating “[t]here were no controls evident, such as oversight, communication, review or approval processes, to ensure students counted and included in the ADM reports were complete, accurate and in compliance with Indiana Code and IDOE instructions.” First, for the reasons stated above, the ADM reports were accurate and in compliance with Indiana Code. Second, as noted by the Uniform Internal Control Standards, “no single method of internal control is universally applicable” and “in very small governmental units, . . . segregation may not be practical.” The School is a small school corporation and it was not unreasonable to have the Director of Technology extract data from the student information system to include in the summary ADM report. Both building Principals and central office administrators reviewed the summary ADM report, which is a segregation of duties. Regardless, the School has recently implemented changes to how its ADM reports are created and reviewed which should fully address and resolve this concern identified by SBOA.

We thank you for the opportunity to provide this official response pursuant to Ind. Code § 5-11-5-1(b). We hope this response is fairly considered and any pertinent revisions to the Report are made.

Sincerely,

LEWIS & KAPPES, P.C.

/s/ Sara R. Blevins

Sara R. Blevins

Cc: Casey Hall, Superintendent of South Newton School Corporation
Amanda Berenda, President of the Board of School Trustees of South Newton School Corporation

SOUTH NEWTON SCHOOL CORPORATION
SUMMARY OF CHARGES
(Due to Malfeasance, Misfeasance, or Nonfeasance)

	<u>Charges</u>	<u>Credits</u>	<u>Balance Due</u>
South Newton School Corporation:			
Overpayment of State Support, pages 3 through 8	<u>\$ 751,907.53</u>	<u>\$ -</u>	<u>\$ 751,907.53</u>

This report was forwarded to the Office of the Indiana Attorney General and the local prosecuting attorney.

AFFIDAVIT

STATE OF INDIANA)
Allen)
COUNTY)

I, Stephen R. Poor, Field Examiner, being duly sworn on my oath, state that the foregoing report based on the official records of South Newton School Corporation, Newton County, Indiana, for the period from July 1, 2014 to December 31, 2019, is true and correct to the best of my knowledge and belief.

Stephen R. Poor

Field Examiner

Subscribed and sworn to before me this 6 day of January, 2021

My Commission Expires:

10/14/2025

County of Residence:

Allen

