

**Three Member Due Process Hearing Panel
Empowered Pursuant to 162.961 R.S.Mo.**

HEARING DECISION

Student's Name:

Parent's Name:

Local Education Agency:

Springfield R-XII School Distirct

Agency Representative:

Mr. Ransom Ellis, III
Attorney at Law
Ellis, Ellis, Hammons & Johnson, P.C.
901 St. Louis Street, Suite 600
Springfield, MO 65806-3718

Hearing Dates:

May 16 and 17, 2006

Date of Report:

June 21, 2006

Hearing Officers:

Patrick O. Boyle, Chairman,
Dr. Terry Allee, and
Ms. Beth Mollenkamp

Time Line:

02/06/06	Request received
02/20/06	Time extended to 04/28/06
03/07/06	Time extended to 06/26/06
05/16 & 5/17/06	Hearing
06/21/06	Decision mailed to parties by certified mail

**Three Member Due Process Hearing Panel
Empowered Pursuant to 162.961 R.S.Mo.**

ISSUE

Student is enrolled by her parent in a private school. Pursuant to Part VIII of the Missouri State Plan at Section 3 the student was evaluated by the LEA and identified as a child with disabilities (34 CFR 300.451).

Parent disagrees with the student's educational diagnosis of Language Impaired and, requests an Independent Educational Evaluation at District expense.

District denied the parent's request for an independent educational evaluation and, filed the Complaint herein pursuant to 34 CFR 300.502(b)(2) seeking a determination that its evaluation is appropriate.

TIME LINE

The LEA request for a due process hearing was received by the Missouri Department of Elementary and Secondary Education (DESE) on December 22, 2005. A written decision was required on or before February 6, 2006.

An LEA Motion to Extend the time for decision was granted by the Chairman on January 20, 2006 and, the time for decision was extended to April 28, 2006.

A second request to extend the time for decision made by the parent with the LEA's consent was granted by the Chairman on March 7, 2006 and, the time for decision was extended to June 26, 2006.

Hearing was held on May 16 and 17, 2006 in Springfield, Missouri and, this decision is rendered within the time as extended by Orders of January 23, 2006 and March 7, 2006.

I. FINDINGS OF FACT

1. “Student” is a parochial school student who attends school at St. Joseph’s Elementary School (“St. Joseph”) in Springfield, Missouri. St. Joseph is operated by the Springfield Catholic Schools. The Student was placed at St. Joseph by her parents.

2. At all times relevant to this due process proceeding, the Student lived with her Mother, who resides within the boundaries of the School District of Springfield, R-12 (“District”). The primary mode of communication of the Student and her Mother is written and spoken English. The Student’s parents are divorced. The Student’s Parenting Plan grants her Mother with the authority to make all final decisions regarding the education of the Student. (Dis. Exh. 66, p. 339)

3. The District was represented by Ransom A. Ellis, III, Ellis, Ellis, Hammons & Johnson, P.C., The Hammons Tower, Suite 600, 901 St. Louis Street, Springfield, MO 65806-2505.

4. The Student was not represented by legal counsel at the hearing.

5. The Hearing Panel for the due process proceeding was:

Mr. Patrick Boyle, Hearing Chairperson
Dr. Terry Allee, Panel Member
Ms. Beth Mollenkamp, Panel Member

6. During all times relevant to this proceeding the following persons were employed by the District and were involved in the evaluation of the Student or were in positions of responsibility with the District:

Dr. Norman Ridder	Superintendent
George Wilson	Director of Special Education
Ben Franklin	Assistant Director of Special Education
Phyllis Wolfram	Special Education Supervisor

Nikki Beichler	Special Education Supervisor
Rebecca Callaway	Process Coordinator
Nancy Stephens	Process Coordinator
Bill Hassler	Process Coordinator
Flo Graham	Process Coordinator

7. During all times relevant to this proceeding the following persons were employed by Springfield Catholic Schools (“Springfield Catholic”) and were involved with the education of the Student and/or with the evaluation of the student:

Marilyn Batson	Principal – St. Joseph Elementary School
Sandra Pinkerton	Special Services Coordinator
Terrie Gordon	Special Services Coordinator Assistant
Greta Green	Kindergarten Classroom Teacher
Stephanie Ford	First Grade Classroom Teacher
Shannon Perryman	Second Grade Classroom Teacher

8. Exhibits were introduced and received into evidence at the hearing. The following documents were admitted and made a part of the record in this case: District Exhibit (“District Exh.”) 1 through 66.

9. The Student has been enrolled in St. Joseph Elementary School since school year 2003-04, when she entered into Kindergarten. (Dist. Exh. 63, p. 257). The Student has never been enrolled as a student in the District.

10. On or around March 11, 2005, during the Student’s First Grade year at St. Joseph, the Student’s Mother requested that Springfield Catholic Schools have the Student evaluated by the District.

11. On a yearly basis, the District meets with all private schools who operate within its boundaries to consult concerning: the child find process; the determination of the proportionate amount of Federal funds available to serve parentally placed private

school children with disabilities; the consultation process among the local educational agency, private school officials and representatives of parents of parentally placed private school children with disabilities; how, where and by whom special education and related services will be provided to such children; and, any disagreement between the public school representatives concerning the provision of such services.

12. The District and Springfield Catholic have a collegial relationship. (Dist. Exh. 61, p. 188, Ins. 13-25; p. 189, ln. 1). When Springfield Catholic Schools receive a request from a student's parents or otherwise identify a student who needs to be evaluated, the Springfield Catholic personnel prepare the initial screening materials and forward that information to the District. Bill Hassler, the District's Process Coordinator, is responsible for overseeing the receipt and preparation of the screening materials once they are received by the District.

13. On March 16, 2005, the District received a Referral Form which had been completed by Sandy Pinkerton. (Dist. Exh. 5). Other documents which were prepared by the District, were received by the District at that same time including: a Student Health Inventory (Dist. Exh. 1); an Authorization to Disclose/Release Information (Dist. Exh. 2); a Parent Input/Contact Form – Screening Information (Dist. Exh. 3); and a Student Information Card (Dist. Exh. 6).

14. Between March 16, 2005 and March 21, 2005, the District collected and reviewed the screening data provided Springfield Catholic. The District determined during its screening review of that data, that the Student needed additional assessment in the areas of Speech/Language, Cognitive/Intellectual and Academics. (Dist. Exh. 7).

15. On March 21, 2005, Bill Hassler wrote the Student's Mother to schedule the evaluation for the Student. (Dist. Exh. 8). Enclosed in this letter was a Notification of Conference, dated March 21, 2005, for a meeting on April 11, 2005 (Dist. Exh. 8, p. 13); a Notice/Consent for Additional Assessment (Dist. Exh. 9, p.14); and, a Description of Areas to be Assessed and Known Tests to be Used (Dist. Exh. 9, pp. 15-16).

16. On April 11, 2005, the Student's Mother signed the Notice/Consent for Additional Assessment (Dist. Exh. 9, p. 14) and thereby provided written consent for the District to perform the evaluation on the Student.

17. Materials provided by the Student's Mother during the screening and evaluation of the Student indicated that the Student's primary language was English. (Dist. Exh. 6, page 8).

18. On April 11, 2005, the Student's Cognitive/Intellectual evaluation was administered by Flo Graham ("Ms. Graham"). Ms Graham administered the Wechsler Intelligence Scale for Children - - Third Edition ("WISC-III") to the Student. During the evaluation, the Student was cooperative; her behavior was appropriate; she attended appropriately to the test and the testing procedures; and gave her best effort. The Student achieved a Verbal IQ score of 89; a Performance IQ score of 107; and , a Full Scale IQ score of 97. (Dist. Exh. 11, p. 20). During the evaluation, Ms. Graham did not observe the Student engaging in behaviors that she knew were typical of children with a medical diagnosis of ADHD. At no time during the evaluation, did the Student indicate to Ms. Graham that she did not understand the questions she was being asked or the materials

she was asked to consider. At no time during or prior to the testing process, did the Student's Mother tell Ms. Graham that the tests that Ms. Graham was scheduled to administer to the Student were inappropriate or that the Student's language problems were a result of the Student's association with the Student's father, who spoke Spanish and broken English.

19. On April 11, 2005, the Student's Academic Achievement evaluation was administered by Rebecca Callaway ("Ms. Callaway"). Ms. Callaway administered the Young Children's Achievement Test ("YCAT") to the Student. During the evaluation, the student was cooperative, her behavior was appropriate; she attended appropriately to the test and the testing procedures; she read fluently on passages she was assigned to read; and, gave her best effort. The results of the YCAT indicated that the Student did not have any weak areas and performed at her grade level. (Dist. Exh. 11, pp. 27-28). During the evaluation, Ms. Callaway did not observe the Student engaging in behaviors that she knew were typical of children with a medical diagnosis of ADHD. At no time during the evaluation, did the Student indicate to Ms. Callaway that she did not understand the questions she was being asked or the materials she was asked to consider. At no time during or prior to the testing process, did the Student's Mother tell Ms. Callaway that the tests that Ms. Callaway was scheduled to administer to the Student were inappropriate or that the Student's language problems were a result of the Student's association with the Student's Father, who spoke Spanish and broken English.

20. On April 11, 2005 and April 23, 2005, the Student's Speech/Language evaluation was administered by Nancy Stephens ("Ms. Stephens"). On April 11, 2006, Ms. Stephens administered the Oral and Written Language Scales ("OWLS") and the WORD-R tests to the Student. Following the completion of these tests, Ms. Stephens concluded that an additional test should be administered to the Student. On April 11, 2005, she spoke with the Student's Mother and recommended that the Student be administered the Clinical Evaluation of Language Fundamentals -4 ("CELF-4")(Form Ages 5-8). The Student's Mother orally agreed to the additional testing. Since the Cognitive/Intellectual and Academic Achievement testing was also scheduled for April 11, Ms. Stephens and the Student's Mother agreed to have the CELF-4 administered on April 23, 2006. On April 23, 2006, the Student's Mother brought the Student to the testing site and Ms. Stephens administered the CELF-4 test.

21. During the evaluation sessions on April 11 and April 23, 2005, Ms. Stephens observed the Student to be cooperative; have appropriate behavior; and give her best effort. Ms. Stephens reported the following results from the three tests:

A. OWLS – The results of the OWLS indicated that the Student had a deficit in the area of Listening Comprehension (Receptive Language). Her overall language standard score of 72 was below the criterion level of 82 based on her ability level (IQ of 97).

B. WORD-R – The results of the WORD-R demonstrated that the Student's expressive language skills were more than two standard deviations below the mean. Based upon the Student's ability level (IQ of 97) and her criterion level (82), she demonstrated expressive semantic skills that were in the deficit range.

C. CELF-4 – The results of the CELF-4 showed that the Student’s overall language skills were more than one standard deviation below the mean. While she demonstrated a relative strength in the area of Receptive Language skills (SS of 90) and a relative weakness in the area of Expressive Language Skills (SS of 77). Deficits were noted in the areas of semantics, syntax and morphology.

Ms. Stephens summarized her evaluation of the Student as follows:

“Results of the OWLS, CELF-4 and WORD-R indicates that (the Student) experiences an overall language deficit when compared to her ability level (IQ of 97 as measured by the WISC-III). (The Student) demonstrates language deficits in the following areas: semantics, morphology and syntax.

Language weaknesses are:

- Recalling information verbatim that has been auditorily presented to her.
- Formulating syntactically and semantically correct sentences.
- Identifying pictures that represented Multiple meaning-words (i.e. match, cap).
- Determining which word “doesn’t belong” in a set of four words and explaining the semantic category of the associated words.
- Providing appropriate antonyms for a specific word.
- Explaining semantic absurdities.
- Defining words and multiple-meaning words.”

22. At no time during or prior to the testing administered to the Student by Ms.

Stephens on April 11 or April 23, 2005, did Ms. Stephens observe the Student engaging in behaviors that she knew were typical of children with a medical diagnosis of ADHD.

At no time during the evaluations, did the Student indicate to Ms. Stephens that she did not understand the questions she was being asked or the materials she was asked to consider. At no time during or prior to the testing processes, did the Student’s Mother tell Ms. Stephens that the tests that Ms. Stephens was scheduled to administer, or had administered, to the Student were inappropriate or that the Student’s language problems were a result of the Student’s association with the Student’s Father, who spoke Spanish and broken English.

23. On May 5, 2005, Bill Hassler sent a Notification of Conference to the Student's Mother, which notified her of a meeting on May 23, 2005 to review the evaluation information and determine whether the Student had a disability as determined by Missouri eligibility criteria. The Notice also informed the Student's Mother that a secondary purpose of the meeting was to prepare an appropriate educational plan for the Student, if needed. (Dist. Exh. 10).

24. On May 23, 2005, the Student's Evaluation Team met to discuss the data developed during the evaluation of the Student. Present at this meeting were: Bill Hassler, Nancy Stephens, Rebecca Callaway, Sandra Pinkerton and the Student's Mother. During the meeting the Evaluation Team discussed the results of the testing, the observations of the personnel at St. Joseph and the observations and concerns of the Student's Mother. The Evaluation Team agreed upon the following Basis of Determination:

“Basis of Determination: Language Impaired

Based upon data collected and reviewed, the eligibility criterion for a diagnosis of Language Impaired has been met in the following areas: semantics, morphology and syntax.

This determination is based on clinical tasks . . . which indicate consistent inappropriate use of language structures.

A severe discrepancy between the level of cognitive ability and language functioning is evidenced by an obtained cognitive score of 97 on the WISC-III and the following standard scores of language functioning, that are at least 1 standard deviation below cognitive ability (criterion in SS of 82, which is criterion for children kindergarten eligible through age 8): SS of 67 on the WORD; and a SS of 79 on the CELF-4.

The above deficit in language functioning adversely affects educational performance as follows:

- Difficulty in recalling information verbatim that has been auditorily presented to her.
- Difficulty formulating syntactically and semantically correct sentences.
- Difficulty with multiple meaning words.
- Difficulty with categorizing words based on semantic relationship.
- Difficulty with antonyms.
- Difficulty with semantic absurdities.

The language disorder is not a result of dialectal differences, second language influence, or a lack of instruction in reading or math.

(Dist. Exh. 11, p. 31). The Student's Mother disagreed with the educational diagnosis reached by the Student's Evaluation team and stated that she wanted the Student to be educationally diagnosed as Other Health Impaired ("OHI") because the health insurance provided by the District was too expensive and she wanted to get Social Security Insurance ("SSI") to pick up the cost of the Student's Health insurance. (Dist. Exh. 14).

25. On May 23, 2005, the following the discussion concerning the Student's educational diagnosis, the Student's Team turned to the preparation of a Service Plan for her. (Dist. Exh. 12). During the discussion concerning the Service Plan, the Student's Mother indicated that she did not care what was in the Service Plan, she only cared about having the Student educationally diagnosed as OHI. The basis of the Student's Service Plan involved the use of a Speech Language Pathologist to provide one-on-one speech/language services to the Student as the Student's proportionate share of services. The Student's Mother agreed to the Service Plan and signed a Notice and Consent for

“Initial Placement”. (Dist. Exh. 13). The Student’s Mother informed Ms. Stephens that Christy Page, a Speech/Language Pathologist employed by the District, had agreed to provide the services specified in the Student’s Service Plan.

26. During July, 2005, the Student’s Mother and Christy Page went to the District’s Special Education Offices and met with Ben Franklin. During that meeting, the Student’s Mother expressed that she continued to disagree with the Student’s education diagnosis of Language Impaired that was reached at the May 23, 2005 meeting. Mr. Franklin urged her to request a meeting with the Student’s Team concerning the issue.

27. On August 18, 2005, Bill Hassler sent a Notification of Conference form to the Student’s Mother setting a meeting for August 30, 2005 to review and revise information regarding the Student as needed. (Dist. Exh. 15).

28. On August 30, 2005, the Student’s Team, including the Student’s Mother met. Present at this meeting were Nikki Bichler, Bill Hassler, Flo Graham, Nancy Stephens, Rebecca Callaway, Sandy Pinkerton and the Student’s Mother. During the meeting, the Student’s Mother indicated that she disagreed with the educational diagnosis of Language Impaired and felt that a diagnosis of OHI based on the Student’s medical diagnosis of ADHD would be more appropriate. At this meeting, for the first time, the Student’s Mother indicated that she felt the Student’s language problems were caused by her father speaking Spanish and broken English to her and not because she was language disordered. The Student’s Mother asked that the Student’s Team consider additional information which she would provide. (Dist. Exh. 18, p. 51).

29. Between August 30, 2005 and September 29, 2005, the Student's Mother provided the following additional information to the District's Evaluation Team: a written statement from the Student's physician that stated the Student had been medically diagnosed as having ADHD; the Student's grade card from school year 2004-05; the Student's assessment scores on the Iowa Test of Basic Skills, which was administered by Springfield Catholic during school year 2004-05; and a behavior checklist prepared by the Student's second grade teacher and provided to the Student's physician. (Dist. Exh. 18, p. 51; Dist. Exh. 19, pp. 53-65).

30. On September 16, 2005, Bill Hassler sent Notification of Conference form to the Student's Mother setting a meeting for September 29, 2005 to review and revise information regarding the Student as needed. (Dist. Exh. 16).

31. On September 29, 2005, the Student's Team, including the Student's Mother met. Present at this meeting were Nikki Beichler, Bill Hassler, Flo Graham, Nancy Stephens, Rebecca Callaway, Sandy Pinkerton, Terrie Gordon, Debbie Stewart (MPACT Representative) and the Student's Mother. During the meeting, the Student's Team discussed the additional information that had been provided by the Student's Mother. The Student's Team determined that the Student's educational diagnosis of Language Impaired was appropriate. The Team adopted the following Basis of Determination:

“Basis of Determination: Language Impaired

The team acknowledges the fact that (the Student's) father does speak Spanish and according to (the Student's) Mother, he also speaks 'broken English', however, it is also a fact that (the Student) has been immersed in an English speaking environment since her birth; has had the opportunity of hearing correct

English spoken through her mother and has participated in academic settings, where English is spoken appropriately. While hearing Spanish and ‘broken English’ are a factor in (the Student’s) environment, it is not considered to be a major factor in diagnosing (the Student) as Language Disordered. (The Student’s) ability level is within the average range and because she has had the opportunity to be in an English speaking environment since birth, the team determined that the language disorder is not the direct result of dialectal differences, second language influence or the lack of instruction in reading or math.

(The Student) also has a medical diagnosis of ADHD and is on the medication, Concerta. Current classroom teacher indicates minimal concerns in the area of attending to tasks; the examiners also noted no concerns with attending to task during the evaluation process. While it is notes that there is a medical diagnosis of ADHD, it was determined that this is not a contributing factor in making an educational disability diagnosis.” (Dist. Exh. 18, p. 52). The Student’s Mother stated that she disagreed with the educational diagnosis and requested that the District conduct additional testing. (Dist. Exh. 17, p. 49)

32. On October 6, 2005, the District issued a Notification of Action to the Student’s Mother which indicated that the District was refusing to conduct a re-evaluation of the Student. (Dist. Exh. 20).

33. The Student’s Mother transmitted a letter to Phyllis Wolfram which was dated November 28, 2005, but was received by Ms. Wolfram on December 13, 2005. (Dist. Exh. 26). In this letter the Student’s Mother requested that the District pay for an Independent Educational Evaluation of the Student.

34. Consistent with the IDEA Regulations, 34 C.F.R. Section 300.502(b)(2), the District elected to file a due process Complaint on December 22, 2005. (Dist. Exh. 27).

35. The Springfield Catholic personnel have not observed the Student to be bi-lingual or to speak more than certain basic words in Spanish. Sandy Pinkerton has not heard the Student speak Spanish to anyone and has not observed the Student’s Mother

speaking to her in Spanish. (Dist. Exh. 61, pp. 187-188). Terri Gordon has not heard the Student speak Spanish to anyone, including her mother. (Dist. Exh. 62, pp. 220-221). Greta Green never heard the Student speak Spanish to anyone. (Dist. Exh. 63, pp. 259-260). Stephanie Ford never spoke to the Student in Spanish and the Student's Mother never told her that the Student's performance in the classroom was in any way effected by the Student hearing Spanish from her father. (Dist. Exh. 64, pp. 286-287). Shannon Perryman observed that the Student was unable to say a sentence in Spanish but could say the Spanish words for a few colors and numbers. (Dist. Exh. 65, pp. 306-307). Prior to the September 29, 2005 meeting, the Student's Mother did not tell the personnel at St. Joseph that she felt the Student's language development was adversely affected by her Father speaking Spanish to her. (Dist. Exh. 62, p. 221, Ins. 14-25; p. 222, Ins. 1-12; Dist. Exh. 65, p. 308).

36. The Springfield Catholic personnel have observed that the Student has language difficulties. Specifically, these educators have noted that the Student has difficulty following oral directions (Dist. Exh. 64, p. 288, Ins. 16-18; Dist. Exh. 65, p. 310, Ins. 7-11); has difficulty recalling information verbatim (Dist. Exh. 62, p. 223, Ins. 2-6; Dist. Exh. 64, p. 288, Ins. 19-24; Dist. Exh. 65, p. 310, Ins. 12-15); has difficulty with comprehension questions in reading (Dist. Exh. 62, p. 223, Ins. 10-15; Dist. Exh. 64, p. 289, Ins. 3-8; Dist. Exh. 65, p. 310, Ins. 16-18); has difficulty with multi-meaning words (Dist. Exh. 62, p. 223, Ins. 16-21; Dist. Exh. 64, p. 289, Ins. 9-11; Dist. Exh. 65, p. 310, Ins. 19-22); has difficulty understanding the semantic relationship between words

(Dist. Exh. 62, p. 223, lns. 16-25; p. 224, ln. 1; Dist. Exh. 64, p. 289, lns 17-22; Dist. Exh. 65, p. 310, lns. 22-25; p. 311, lns. 1-3); has trouble explaining things to the teacher (Dist. Exh. 64, p. 290, lns. 6-8; Dist. Exh. 65, p. 311, lns. 18-20); has trouble with comparison words (Dist. Exh. 65, p. 311, lns. 21-25; p. 312, lns. 1-3); and, has trouble verbally formulating complete sentences (Dist. Exh. 62, p. 334, lns. 6-9; Dist. Exh. 64, p. 290, lns. 3-5).

37. The language normally used by the Student in the home and in the learning environment is English.

38. Terrie Gordon, a certified Speech/Language Pathologist, testified that she observed the Student on a number of occasions and the types of language deficits she observed were consistent with a student who has a language disorder. (Dist. Exh. 62, lns. 10-17).

DECISION AND RATIONALE

The LEA evaluation of the student was appropriate and, no independent educational evaluation at LEA's expense is warranted.

The LEA used procedures comparable to procedures for evaluations used for students with disabilities attending the public school and, determined that this student does have a disability which meets the criteria for special education and related services.

A service plan has been developed for the student. The student, however, has no individual right to special education and related services. Services will be determined in consultation with representatives of the student's private school (34 C.F.R. 300.454) and,

funding for private schools will be calculated under the formula set out in the regulations which will reflect the finding that this student meets the criteria for special education and related services. (34 C.F.R. 300.453)

APPEAL PROCEDURE

Either party has the right to appeal this decision within 45 days to a State Court of competent jurisdiction pursuant to Chapter 536 of the Revised Statutes of Missouri or to a Federal Court.

Panel Members Supporting Decision

Panel Members Opposing Decision

Patrick O. Boyle

Dr. Terry Allee

Ms. Beth Mollenkamp