

**EXPEDITED DUE PROCESS HEARING OFFICER
EMPOWERED PURSUANT TO 162.961.6 R.S.MO.**

HEARING DECISION

Student's Name:

Parent's Name:

Parent's Attorney:

Deborah S. Johnson
9923 State Line Road
Kansas City, MO 64114
Phone: (816) 943-0100

Local Education Agency:

Raytown C-2 School District
Dr. Dale Houck, Superintendent
6608 Raytown Road
Raytown, MO 64133-6265
Phone: (816) 268-7000

Agency Attorney:

Doster, Mickes, James, Ullom, Benson
& Guest LLC by Shellie Guin
4600 Madison, Suite 711
Kansas City, MO 64112
Phone: (816) 531-1888

Date of Request:

Request for an expedited due process
Hearing received by DESE on
October 27, 2006.

Date of Hearing:

Hearing held in the School Board
Conference Room
6608 Raytown Road, Raytown, MO
64133-6265 on November 27, 2006

Date of Decision:

Hearing decision dated this 5th day of
December, 2006 sent by certified mail
to the attorneys for the parties on this
5th day of December, 2006.

Hearing Officer:

Patrick O. Boyle, Missouri Bar #17579
755 Rue St. Francois
Florissant, MO 63031
Phone: (314) 838-4500

Issue

Student's mother requested an expedited due process hearing to challenge the student's suspension and recommendation for expulsion. Subsequent to the disciplinary action here involved, the student's mother requested an evaluation to determine whether the student is entitled to special education and related services due to a disability.

The issue presented is whether the District was deemed to have knowledge that the student is a child with a disability under IDEA before the behavior that lead to the disciplinary action in this instance.

Time Line

The request for an expedited due process hearing was received by the State on October 27, 2006. A hearing was held at the Local Education Agency on November 27, 2006 within 20 school days of receipt of the request and, this decision is rendered on December 5, 2006 within 10 school days of the hearing.

Facts

1. Student was suspended on October 16, 2006 and, has been recommended for expulsion from the School District.
2. Student's mother requested a special education evaluation of the student on October 23, 2006 subsequent to the disciplinary action here involved.
3. Student's mother requested an expedited due process hearing on October 27, 2006 for the purpose of obtaining special education and related services for the student.
4. The School District has begun an expedited special education evaluation of the student at the present time.

5. Student's mother had requested a special education evaluation on the student on November 7, 2005 subsequent to a prior suspension of student from the School District.
6. School District reviewed the student's data and provided proper notice to student's mother on December 5, 2005 that her request for a special education evaluation of the student was denied.

Decision and Rationale

Conclusions of Law

State Regulations Implementing Part B of the Individuals With Disabilities Education Act cover protections for children not yet eligible for special education and related services.

Relevant provisions appear under Section V, Procedural Safeguards/Discipline at Part 9, Disciplinary Actions/Removals/Expedited Hearings.

The regulations state in part as follows:

“Protection for Children Not Yet Eligible for Special Education and Related Services:”

Students who have not been identified as disabled may be subjected to the same disciplinary measures applied to children without disabilities if the district did not have prior knowledge of the disability.

The section further provides:

A school district would not be deemed to have knowledge that the child is a child with a disability, if the school district conducted an evaluation and determined that the child was not a child with a disability, or determined that an evaluation was not necessary and provided proper Notice of Action Refused; or, if the parent of the

child has not allowed an evaluation of the child pursuant to the IDEA or has refused services, or if the child has been evaluated and it was determined that the child was not a child with a disability.

Decision

Student's mother had proper notice of the District's refusal to conduct a special education evaluation of the student more than ten months prior to the behavior which lead to the present discipline. The District is not deemed to have knowledge that the student has a disability which entitles him to special education and related services.

Student's mother has made a second request for a special education evaluation subsequent to the disciplinary action against student and, the District is ordered to promptly complete the expedited special education evaluation of the student which it has started.

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.

So Ordered,

Patrick O. Boyle,
Hearing Officer

Dated: December 5, 2006