

**BEFORE THE THREE MEMBER DUE PROCESS  
HEARING PANEL EMPOWERED BY THE MISSOURI  
STATE BOARD OF EDUCATION PURSUANT TO  
SECTION 162.961 RSMo**

**BLAIR OAKS R-II SCHOOL** )  
**DISTRICT,** )  
 )  
**Petitioners,** )  
 )  
**v.** )  
 )  
**, BY AND THROUGH** )  
**HIS PARENTS, A** )  
**,** )  
**Respondent.** )

**DECISION**

**ISSUES**

The issue presented in this case is based on the instigated Due Process, in which the issues are: 1) Whether the District educational evaluation upon the child was appropriate under IDEA mandates, and 2) whether the child's placement as a child not qualifying for IDEA services pursuant to that evaluation is correct. Correlated to these issues and necessarily decided by the decisions we make on these issues, is the question of whether the child qualifies for an Independent Education Evaluation, at District expense. If we find that the Evaluation conducted by the District was legally sufficient under IDEA, and that therefore the placement or determination that the child does not qualify for services under IDEA is correct, the parents would be responsible for paying for the Independent Education Evaluation.

**FINDINGS OF FACT**

1. 1. Student, at all times relevant to this proceeding, has been a resident of the Blair Oaks R-II School district.
2. 2. This Panel has jurisdiction to hear and decide this contested issue under the IDEA and relevant Missouri law.
3. 3. On or about August 25, 2006, District provided parents with its formal notice of action, intending to evaluate student for eligibility under IDEA, based on parents' request therefore.

4. 4. The District evaluated student in the areas of academic achievement, behavioral and social emotional, language, cognitive ability, adaptive behavior, and auditory perception. Dist. Ex. P-27.
5. 5. In addition, the evaluation included background information, review of school records, parent interview and substantial other input, interviews with the teachers, principal and nurse, medical records available at the time, and a summary of the actual evaluation tests' results. Dist. Ex. P-27, TR: 1465
6. 6. The tests used were administered by qualified persons, the standardized tests were recognized as valid and reliable in the field, the standardized results were scored correctly with the exception of one unsubstantial mistake. TR: 439-40, 441-444, 447-448, 451, 455, 463-65.
7. 7. The evaluation conducted tested each area of potential disability under IDEA that the parents had identified as suspect, as well as all other areas of potential disability or eligibility under IDEA. TR: 453; Dist. Ex. P-27 at 191
8. 8. The determination by the District was that student did not meet any of the eligibility criteria under IDEA 2004. Id. at 191; TR: 1448-56
9. 9. We the Panel agree that the evaluation conducted on student in this case was appropriate and legally sufficient under IDEA. TR: 528-29; 530-38; 34CFR 300.304
10. 10. The student apparently has multiple medical diagnoses, which do not in themselves qualify student for services under IDEA. Nor do these diagnoses, or the suggestions of the diagnosing physicians, require any legal response from the District. TR: 480, 514-16
11. 11. Student, although he apparently has physical problems, does not, in the opinion of this Panel, require special education and related services. The record of this hearing is replete with indications, from not only grades, teacher reports and medical records, but also from the extensive education evaluation conducted by District, that this student is performing adequately at school, and is capable of progressing in his education at District if he is allowed to attend. "...If a student is able to learn and perform in the regular classroom taking into account his particular learning style without specially designed instruction, **the fact that his health impairment may have minimal adverse effect does not render him eligible for special education services.**" 2007 U.S. Dist. LEXUS4927 (D. Ha. Jan. 23, 2007)(emphasis supplied)
12. 12. It is also notable and has effected this Panel's judgment, that there appears little or no evidence in the record of anything in the District's evaluation that falls short of the mandates of IDEA. Likewise, there have been no exhibits or credible testimony that student cannot be placed in a regular class environment and progress in his social and educational development. Evaluation results showing a disparity between student's grade level and cognitive development (TR: 214-15; 218; 756; 765; 873-4) may be worrisome, but under the law are not determinative.
13. 13. In regard to the Parent's claim that student is "Other Health Impaired", we find that although student has obtained multiple diagnoses, some of which are included in the litany of conditions which may qualify a student for IDEA support, none of these in this case have been proved to have caused a negative effect upon the student's educational performance. We conclude that the most destructive cause of any educational problems with this student stem from lack of attendance. We understand that Parents' have been told by Dr. Grando not to let student attend regular classroom education, or something to that effect, but believe that the vast weight of the evidence does not agree with this recommendation, including Dr. Connelly. TR: 1379; 1391; 1393; 1413
14. 14. We also do not believe student has been shown to have an emotional disturbance, hearing or language impairment or specific learning disability, as defined under IDEA. Again in this instant case, student has diagnoses that could tend in these directions, but we find no proof that a causal connection, between the specific conditions set out for IDEA coverage and the scholastic or educational progress of this student, exists.

## CONCLUSIONS OF LAW

1. 1. This case arises, and this Panel has jurisdiction to decide this matter under the Individuals with Disabilities Education Act, 20 USC Sections 1400 et seq.; and IDEA's implementing regulations at 34 C.F.R. Part 300; Missouri's special education statutes at Sections 162.670-162.999 RSMo 2004; and the Missouri State special education regulations at 5 C.S.R. Section 70-742.140.
2. 2. Student is now and has been at all times relevant to this cause, a resident of District as defined by Section 167.020.2.1 RSMo.
3. 3. District is a Missouri School District organized pursuant to Section 162.571 et seq. RSMo.
4. 4. The educational evaluation conducted upon student in this instance by the District was appropriate under the IDEA and implementing regulations, statutes and Plans.
5. 5. Pursuant to the educational evaluation conducted by District upon Student mentioned in paragraph 4, above, the placement of student in the regular classroom and denial of services under IDEA to this student, is affirmed. Student is found not to have an educational disability at this time, and should be returned to school in the regular classroom setting.

## DECISION

This three-member panel unanimously concludes that the **District acted appropriately** in its November 2006 educational evaluation of student, as an educational evaluation is defined by IDEA and its implementing regulations, statutes and the Missouri State Plan.

This panel further unanimously concludes that the District multidisciplinary team decision that this student **did not qualify** as a student with a disability under any IDEA category of disability was legally correct, based upon the information then available to the team.

**IT IS SO ORDERED, BY THE THREE MEMBER PANEL CONVENED TO DECIDE THE MATTER ABOVE-STYLED, UNDER RSMo SECTION 162.961, THIS \_\_\_\_ DAY OF DECEMBER, 2007.**

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**David Potashnick, Panel Chairperson**

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**Dr. Patty Smith, Panel Member**

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**Ms. Pamela Walls, Panel Member**

### **APPEAL PROCEDURE**

**PLEASE TAKE NOTICE** that these Findings of Fact, Conclusions of Law, Decision and Order constitute the final and complete Decision of the Department of Elementary and Secondary Education of the State of Missouri in this matter, and you as a party have a right to request review of this decision pursuant to the Missouri Administrative Procedures Act, Sections 536.010 et seq. RSMo. Specifically, Section 536.110 provides in pertinent part as follows:

- “1. Proceedings for review may be instituted by filing a petition in the Circuit Court of the County of proper venue within forty-five days after the mailing or delivery of the notice of the Agency’s final decision...
  
3. 3. The venue of such cases shall, at the option of the plaintiff, be in the Circuit Court of Cole County, or in the County of the plaintiff or one of the plaintiff’s residence...”

**PLEASE TAKE NOTICE** that you also have a right to file a civil action in Federal or State Court pursuant to the IDEA. See 35 C.F.R. section 300.512.