

**BEFORE THE DUE PROCESS HEARING PANEL
EMPOWERED BY THE MISSOURI STATE BOARD OF EDUCATION**

XXXXXXXXXXXXXX,)	
)	
Petitioner,)	
v.)	Filed May 26, 2011
)	
BROOKFIELD R-III)	
SCHOOL DISTRICT,)	
)	
Respondent.)	

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, DECISION AND ORDER**

The Hearing Panel, after conducting the due process hearing on August 25, 2011, issues the following Findings of Fact, Conclusions of Law, Decision and Order:

FINDINGS OF FACT

The Parties

1. XXXXXX (“Student”) turned 18 years old on XXXXXX, and, therefore, was no longer a minor when he filed the May 26, 2011 due process complaint that initiated this matter (“the Complaint”). Student was enrolled at Brookfield R-III School District (“Brookfield”) at the time he filed the Complaint as well as at the time of the due process hearing.

2. Brookfield is a Missouri Public School District organized pursuant to the Missouri statutes. Brookfield is located in Linn County, Missouri and educates approximately 1104 students, including 309 in the high school. (2010-2011 Missouri School Directory).

3. Student’s father (“Father”) obtained a durable power of attorney on behalf of Student and represented Student *pro se* during the hearing. (Hearing Panel Exhibit #1). Student’s mother (“Mother”) was also present at the hearing.

4. Hayley Hanson and Andrea Morrow of Husch Blackwell LLP, 4801 Main Street, Suite 1000, Kansas City, Missouri 64112, represented Brookfield during the hearing.

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

Pamela S. Wright	Hearing Chairperson
Dr. Terry Allee	Hearing Panel Member
Dr. Joyce Anderson Downing	Hearing Panel Member

Time Line and Procedural Background

6. On May 26, 2011, with his Parents' assistance, Student filed his third (the two earlier ones will be discussed later) due process complaint in his own capacity as a Student, which is the complaint that initiated this matter and led to the August 25, 2011 due process hearing. (Ex. R-43).¹

7. The May 26, 2011 complaint alleged Brookfield was "still withholding" Student's educational records and proposed the resolution that Brookfield make available all "documentations of investigations and written complaint or written summarize [sic] complaint in writing that accompanies any and all documentations of investigations for validation that has [Student's] name on it." (Ex. R-43) (emphasis in original).

8. Additionally, in the May 26, 2011 complaint, Student incorporated by reference his second due process hearing complaint, alleging his student records were misleading, incomplete, or missing from his educational file. (Ex. R-43).

9. During a June 30, 2011 Pre-Hearing Conference with Chairperson Pamela Wright ("the Chair"), the parties agreed to: (1) waive a resolution meeting; (2) set the due process hearing date for August 25, 2011 and set the timeline on that date; and (3) exchange witness lists and exhibits by August 18, 2011. (Exs. P-CCC, DDD, JJJ). On July 5, 2011, the Chair entered a

¹ References to the exhibits of Student will be cited as "Ex. P-[#]," and references to Brookfield's exhibits will be to "Ex. R-[#]."

Scheduling Order, setting out the parties' discussion at the Pre-Hearing Conference and providing the due process hearing would be limited to the scope of Student's complaint regarding access to his educational records. (Ex. P-JJJ). The Chair also imposed time limits of 3 hours for each party to present direct and cross-examination of witnesses. (Ex. P-JJJ). The Order further stated the hearing would be open to the public but that witnesses would not be allowed to attend the hearing until after completion of their testimony. (Ex. P-JJJ).

10. On August 15, 2011, Brookfield filed its Motion to Quash certain subpoenas requested and/or served on behalf of Student. The Chair held a conference call with Brookfield's attorneys and Father on August 18, 2011. An Order followed in which subpoenas served on Bernie Roberts; Joel Dixon; Stuart Hughes and Ron Dixon were quashed but subpoenas served on J. D. King; David Shaw; Nancy Shoemaker and Dennis Fletcher remained in full force and effect.

11. At the hearing, Student's parents introduced Exhibits A- FFFF into evidence, and all exhibits were admitted, except for OOO and GGG. (Tr.215- 216).² All of Brookfield's Exhibits, numbered 1-68, were admitted into evidence. (Tr. 252- 253).

12. Father presented Student's case first and called, in addition to himself, the following witnesses during his case-in-chief: (1) Mother; (2) Nancy Shoemaker, former case manager for North Central Missouri Mental Health; (3) J.D. King, Area Supervisor for DESE; (4) David Shaw, former high school principal for Brookfield; (5) SL, high school special education teacher for Brookfield; (6) Denise Carlson, Director of Special Services for Brookfield; (7) Dennis Fletcher, 2009 School Board President for Brookfield; and (8) Melinda Wilbeck, middle school principal for Brookfield. Brookfield presented the following witness during its case-in-chief: (1) Dr. Paul Barger, Superintendent for Brookfield.

² The August 25, 2011 due process hearing transcript will be referred to as "Tr.[#]."

13. At the close of the hearing on August 25, 2011, the parties jointly requested extension of the August 25, 2011 to November 14, 2011. (Tr. 263-264). The parties agreed to have their Proposed Findings of Fact and Conclusions of Law filed no later than October 14, 2011. (Tr. 263-264).

14. On August 27, 2011, the Chair issued an Order memorializing the dates referenced in Finding of Fact (“FF”) # 13 above.

15. The Hearing Panel issues its unanimous decision within the November 14, 2011 time line.

The Issues Heard by the Hearing Panel³

16. The following issues were heard by the Hearing Panel:

(a) Does a school district violate IDEA if it does not comply with a parental request for access to educational records of a student who has an IEP?

(b) From May 26, 2009 to May 26, 2011 did Brookfield fail to turn over all educational records for [Student] and therefore, violate IDEA as alleged by [Student] in his Due Process Complaint?

(c) If [Student] prevails on one or more issues above, what are the appropriate remedies?

BACKGROUND FACTS

Student’s Disability

17. In December 2007, Student met eligibility to receive special education services in the area of language impairment. Thereafter, Brookfield implemented an Individualized Education Program (“IEP”) for Student and provided him with a free appropriate public education (“FAPE”) with services designed to meet his special needs. (Ex. R-4).

³ These are the same Issues set out in the earlier referenced Scheduling Order issued by the Chair on July 5, 2011. (Ex.P-JJJ).

Discipline for Bus Incident

18. On or around January 27, 2009, Student violated Brookfield's Code of Student Conduct by engaging in inappropriate conduct on his school bus (the "school bus incident"). (Ex. R-2).

19. As an immediate consequence of the school bus incident, Student was suspended from school for ten days. (Ex. R-2).

20. On February 4, 2009, Brookfield held a manifestation determination hearing to determine whether Student's conduct subject to the disciplinary action was a manifestation of his disability. (Ex. R-4).

21. After thorough review of Student's file, IEP, teacher observations, and relevant information provided by Student's parents, the IEP Team determined that Student's school bus incident was not caused by his disability, did not have a direct and substantial relationship to his disability, and was not the result of any alleged failure to implement his IEP. (Exs. R-4, 18).

22. Student's parents and relevant members of his IEP team signed an agreement, stating Student's behavior subject to the disciplinary action was not a manifestation of his disability. (Ex. R-4). Accordingly, Student's suspension was not overturned. (Ex. R-4).

23. On February 9, 2009, Brookfield held an informal due process hearing for Student regarding a recommendation to extend the term of Student's suspension. (Ex. P-D).

24. During this informal hearing, Brookfield offered Student and his parents a suspension agreement providing Student was permitted to return to school on a probationary period of up to 180 school days and was suspended from riding the school bus for the remainder of the school year. (Ex. P-O). The agreement further offered to assist Student with making alternative arrangements for transportation to school if transportation was an issue. (Ex. P-O).

25. Dr. Barger testified very credibly that after reviewing Student's record showing that he was behind academically, Dr. Barger recognized the importance of Student being in school and therefore, he had proposed the suspension agreement. (Tr. 224-225). The parents, however, declined to sign the suspension agreement and kept Student at home. (Ex. P-O, Tr. 166; 229). While the parents appealed to the Board of Education, Brookfield then provided homebound instruction so that Student could receive services under his IEP. (Ex. P-O, Tr. 166; 229).

26. During an appeal hearing on March 3, 2009, and after listening to Brookfield and Student's parents present their sides of the dispute, the Board of Education voted to support the disciplinary decision outlined in the suspension agreement presented to Student and his parents at the February 9, 2009 informal due process hearing. (Ex. P-L, Ex. R-51). Student returned to school on or about March 22, 2009. (Exs. R-9, 10).

Documentation of the Bus Incident

27. Student's due process complaint alleges his educational records are incomplete, missing, or misleading. (Ex. R-43). The allegations appear to be based on his Parents' belief that the female middle school student who reported the January 27, 2009 school bus incident should have given a written statement or grievance, and such written grievance should have been included in Student's educational file. (Ex. 38, at 128-29, Tr. 142:20-23).

28. According to Brookfield's Student-on-Student harassment policy, the female student who reported the incident was not required to make a written grievance; nor was Brookfield required to obtain a written statement from the girl. (Tr. 145:17-25, 146:1-25, 147:1-13).

29. District Policy AC provides Brookfield's policy regarding Student-on-Student harassment and states:

Student-on-Student Harassment

Building-level administrators are in a unique position to identify and address discrimination and harassment between Students, particularly when behaviors are reported through the normal disciplinary process and not through a grievance. The administrator has the ability to immediately discipline a Student for any behavior that otherwise would lead to disciplinary action in accordance with the district's discipline policy. The administrator will report all incidents of harassment and discrimination to the compliance officer and will direct the parent/guardian and Student to the compliance officer for further assistance. The compliance officer may determine that the incident has been appropriately addressed or recommend additional action. When a grievance is filed, the investigation and complaint process detailed below will be used.

(Ex. R-52, at 267).

30. Under Policy AC, a "grievance" is defined as a "verbal or written report," and the policy does not require a written report be made by a Student alleging discrimination or harassment by another Student. (Ex. R-52, at 265).

31. On January 27, 2009, the two middle school students first reported the school bus incident to Melinda Wilbeck, Brookfield's middle school principal, who then reported the incident to David Shaw, the high school principal, and to Ms. Carlson. (Tr. 194:4-9).⁴ Ms. Wilbeck took notes during the meeting with the girls, prepared a written incident report the next day, and submitted the incident report to Superintendent Dr. Paul Barger. (Tr. 194:4-9).

32. Ms. Wilbeck stated her investigation of Student's school bus incident complied with Brookfield's Policy AC regarding Student-on-Student harassment; she further confirmed she prepared the incident report attached as Brookfield's Exhibit 2 and the one girl involved in the incident did not make a written statement or grievance report. (Ex. 2, at 6, Ex. 52, at 267,

⁴ Note one girl saw the bus incident but when she reported it to the middle school principal, Ms. Wilbeck, she had a friend to accompany her. (Tr. 251). Thus, sometimes in discussing the incident at the hearing, there were references to two girls meeting with Ms. Wilbeck but only one actually witnessed the bus incident.

Tr. 192:13-25, 193:1-25, 194:22-25). Ms. Wilbeck also testified very credibly that she shredded her handwritten notes after preparing the incident report --- very standard practice in these kinds of cases. (Tr. 199).

33. After Ms. Wilbeck conducted the initial investigation, Mr. Shaw went on to handle the investigation and disciplinary action because he was the high school principal at the time, and Student was a high school student. (Tr. 100:3-12, 20-25). After a meeting with Student, where Student admitted to the inappropriate conduct regarding the school bus incident, Mr. Shaw made an incident report dated January 27, 2009, and filled out a law enforcement reporting form required by the Safe School's Act.⁵ (Ex. R-2, at 5, 7-8, Tr. 100:20-25, 102:12-23, 103:7-13). Mr. Shaw also wrote a letter to Student's Parents, dated January 28, 2009, explaining the disciplinary action he was recommending for Student. (Ex. R-2, at 4, Tr. 102:3-7).

34. Ms. Wilbeck's January 27, 2009 Documentation of Investigation report⁶, Mr. Shaw's January 27, 2009 Student Incident report and Safe Schools Act Law Enforcement Reporting Form, Mr. Shaw's January 28, 2009 letter to Student's parents, and Ms. Carlson's Manifestation Determination Report completed on February 4, 2009,⁷ are the only documents included in Student's school records regarding the school bus incident and disciplinary action. (Exs. R-2, R-4). These disciplinary records were included in Student's special education file, but not in his permanent file. (Tr. 231:20-25, 232:1-2, 245:19-25, 246:1, 248:4-6).

⁵ While Brookfield was required to send the report of the bus incident under Safe Schools Act, no action was ever taken by the local juvenile office. (Tr. 241).

⁶ Ms. Wilbeck acknowledged in her testimony that the date in the opening paragraph should be January 27, and not January 26th. (Tr.190). We note the parents attempted to turn a simple typographical error into some sinister act by Ms. Wilbeck. (Tr. 190-191).

⁷ At the one hour manifestation determination hearing on February 4, 2009, the parents did not ask Ms. Carlson to change the summary of the bus incident on page 1 of the report. (Tr. 163-164). The parents did not express concern that the version given by the complaining student had been distorted. (Tr. 164). The parents offered no document for Student's file giving the family's version of what had taken place on the bus. (Tr. 164). The Father admitted at the hearing that he signed the Manifest Determination Report but he claimed that he did not understand it at the time he executed the document. (Tr. 208). Father was not credible on that issue.

Prior Due Process Hearing Requests

35. On April 6, 2009, Student's parents filed their first due process hearing request, seeking for Brookfield to "drop charges" against Student based on the school bus incident, clear his Student records and law enforcement records, and get him back into school. (Ex. R-14). The following action took place in connection with this first due process request:

(a) On April 9, 2009, Brookfield responded to the April 6, 2009 due process complaint in a letter, requesting the due process hearing panel to dismiss the complaint because it failed to present a legitimate issue under the Individuals with Disabilities Education Act ("IDEA"), rendering the hearing panel without jurisdiction to hear the dispute. (Ex. R-18).

(b) On April 16, 2009, the due process hearing panel issued an Order dismissing the complaint because: (1) it lacked short clear statements of facts that entitled the parents to the relief sought; and (2) the proposed remedy was not within the jurisdiction of the panel. (Ex. R-21). The Order allowed the parents until May 18, 2009, to file an amended complaint to cure the deficiencies in the April 6, 2009 complaint. (Ex. R-21).

(c) Student and his parents filed a timely amended complaint, and a Resolution Conference was held on June 16, 2009. (Ex. P-AA).

(d) At the Resolution Conference, Brookfield offered to amend Student's record by including a statement reflecting the parents' views regarding the school bus incident, while the school's original documentation of the investigation would remain in Student's education file. (Ex. P-AA).

(e) Student's parents rejected Brookfield's proposal, stating the only satisfactory solution was for Brookfield to completely remove the documentation regarding the school bus incident from Student's school records. (Ex. P-AA). Stated differently, Student's parents indicated they wanted his records amended to "state events did not occur as reported" regarding the 2009 school bus incident. (Ex. R-23, at 60-61).

36. On April 6, 2011, Student's parents filed a second due process complaint, claiming Student's educational records contained misleading, false, or incomplete information. (Ex. 26). Student's parents' proposed resolution was that Brookfield provide them access to "review all files." (Ex. R-26). The following occurred as part of the second due process request:

(a) On April 19, 2011, Brookfield responded to Student's parents' second due process complaint in a letter, requesting that the due process hearing panel dismiss the complaint because Brookfield released all of Student's records to his parents upon their request, in compliance with the IDEA and FERPA. (Ex. R-34).

(b) At an April 25, 2011 Resolution Conference, Brookfield made available to Student and his parents Student's educational records, including his permanent record, which Student's parents reviewed during the meeting. (Ex. R-38). However, Student's parents remained dissatisfied with the contents of Student's educational records, feeling that a written statement from the female student who reported the school bus incident should have been included in the records. (Exs. R-38, 40).

(c) On May 11, 2011, the Chair issued an Order granting Brookfield's Motion to Dismiss the second due process complaint because: (1) Student had left Brookfield and enrolled in another school district (Cole Camp) at the time his parents made the complaint, and (2) Student turned 18 years of age on March 2, 2011, at which time all rights had transferred to him, making it inappropriate for the parents to file a complaint on his behalf. (Ex. R-41).

Access to Student's Records

Nancy Shoemaker

37. Student and Father called Nancy Shoemaker, a former case manager for North Central Missouri Mental Health Center ("North Central") as a witness. (Tr. 47). Ms. Shoemaker worked with Student and his family starting in May 2009 and continued until she had a stroke in April 2010 when she ceased employment. (Tr. 47; 60).

38. Ms. Shoemaker testified to difficulties getting Student's educational records from Brookfield but she was totally confused regarding dates and what she received from Brookfield. She first testified that she brought a release to the school in May 2009, then January 2009 and finally, said that she met with the principal of Brookfield in January 2010. (Tr. 51; 59; 64). Ms. Shoemaker was also mixed up regarding what she received from Brookfield: she signed a letter dated April 1, 2011 addressed to "Whom It May Concern" in which she described her problems getting Student's records but admitted that she was given access to all records requested; Ms.

Shoemaker testified, however, that she received IEPs but not all the educational records for Student's file. (Ex. P-W) (Tr. 59-60).

39. Ms. Shoemaker also conceded that the Release sent by her employer to Brookfield in June 2009 was not completed in that the section – THE PURPOSE OF THIS RELEASE. (Ex. R-60 at 310). (Tr. 72). A close examination of the Release shows there is no mention of accessing educational records but rather authorizing North Central to access medical records – thus, the concern expressed by Mr. Shaw that Ms. Shoemaker needed to return with a school release signed by the parents. (Tr. 69-70; 104).

J. D. King

40. Student and Father also called J. D. King, an area supervisor for DESE for the last 16 years. (Tr. 73; 91; 95). Prior to working for DESE, he served 12 years as Superintendent as well as 10 years as an elementary school principal, all in the Macon Public Schools. (Tr. 95).

41. Mr. King acknowledged receipt of a letter in January/February 2010 from Father who expressed concerns about getting access to Student's records, especially a "written complaint to the compliance officer." (Tr. 77); (Ex. P-Y at 51).

42. Mr. King testified initially that when Father called in February 2010 to complain about records access at Brookfield, he indicated to the Father that it was a local economic issue meaning the schools have local authority. (Tr. 78). On cross-examination, Mr. King clarified that he meant local issue without the term "economic" in the middle. (Tr. 85; 90-91).

43. Mr. King also stressed that Brookfield would not have received any economic benefit from disciplining Student. (Tr. 86). He also very credibly testified that discipline issues have no bearing as to whether the scores of the state performance tests are counted against a school

district. (Tr. 88). Mr. King also testified that he did not discuss with Father anything relating to funding for Student. (Tr. 89).⁸

44. Mr. King talked with Father on January 22, 2010 and February 11, 2010 regarding getting access to Student's files. (Tr. 90). He also testified that he spoke twice with Dr. Barger who assured him that the parents had been given full access to their son's file. (Tr. 90).

Denise Carlson

45. Denise Carlson is Brookfield's Director of Special Services and serves as the records custodian for all special education student records. (Tr. 155:12-14). Ms. Carlson never denied Student or his parents access to Student's records. (Tr. 142:4-23).

46. Ms. Carlson testified that she prepared a summary listing the dates when Brookfield provided Student's parents access to their son's school files, including two Resolution Meetings:

(a) Ms. Carlson met with Parents at a Resolution Meeting on June 16, 2009 after Father filed the first due process request. Contrary to testimony from both parents, Student's records were made available to the Parents but they declined to review same.

(b) Student's records were made available for the parents' review during a Resolution Meeting on April 25, 2011 after Father had filed his second due process request. Father reviewed the cumulative permanent record, but declined to review the special education files, indicating he had been provided copies earlier and received everything he requested. After viewing the permanent record, Father indicated he felt there should be additional documentation completed by the female student who reported the school bus incident. Ms. Carlson kept trying to tell Father that Brookfield typically did not have students complete and sign a written report.

⁸ Father throughout these proceedings has totally misinterpreted and misconstrued his two telephone calls with Mr. King to support the parents' alleged grand conspiracy by Brookfield to have Student wrongfully removed from school so that Brookfield would derive economic benefit.

Ms. Carlson left the room during this Resolution Meeting to double-check to make sure that she was correct about the school policy.⁹ (Ex. R-42, at 152-53, Tr. 151:10-25, 152:1-11); (Tr. 132-134).

Dr. Barger

47. Superintendent Dr. Barger, as the custodian of all school records at Brookfield, has the responsibility to ensure parents have access to their student's records. (Tr. 232:21-25). Dr. Barger testified very credibly that Student and his parents were given full access to all of the school records that Brookfield had. (Tr. 233:3-14, 235:7-10, 236:15-25, 237:2).

48. He also testified very credibly that the discipline action taken against Student was not placed in Student's permanent file. (Tr. 231-232). Thus, if a community college or employer requested educational records on Student, they would not be given information regarding this bus incident. (Tr. 232).

49. Dr. Barger testified very credibly that the amount of the federal and state funds received by Brookfield is based on enrollment and is not based on performance of the students enrolled. (Tr. 234). A school district actually loses money if a student drops out. (Tr. 234).

CONCLUSIONS OF LAW

The Hearing Panel makes the following Conclusions of Law:

The Parties

1. Because Student turned 18 years old on XXXXX, he was no longer a minor when he filed the May 26, 2011 due process complaint in this action. Student was enrolled as a Student at Brookfield at the time he filed the May 26, 2011 due process complaint. (FF #1)

⁹ Parents were told again by Ms. Carlson (and Dr. Barger) that no written grievance existed and they had seen all their son's files at a Pre-Hearing Conference held on June 30, 2011 in this third due process case.

2. Brookfield, located in Brookfield, Missouri, is a Missouri Public School District organized pursuant to the Missouri Statutes.

Due Process Complaint And Burden Of proof Under The IDEA

3. If parents of a “child with a disability” believe that the educational program provided for their child fails to meet FAPE, they may obtain a state administrative due process hearing. 34 C.F.R. § 300.507; *Thompson v. Board of the Special School District No. 1*, 144 F.3d 574, 578 (8th Cir. 1998); *Fort Zumwalt School District v. Clynes*, 119 F.3d 607, 610 (8th Cir. 1997).

4. Student, with his parents’ assistance, filed the due process complaint that initiated this matter on May 26, 2011. (FF #6). The complaint alleges Brookfield failed to make available to Student a complete copy of his educational records, Brookfield was withholding certain records, and certain of his school records were misleading, incomplete, or missing from his educational file. (FF#7-8).

5. The burden of proof in an administrative hearing arising under the IDEA is properly placed upon the party seeking relief. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005). The standard of proof in this administrative proceeding, as in most civil cases, is proof by a preponderance of evidence. *Tate v. Dept. of Social Servs.*, 18 S.W.3d 3, 8 (Mo. App. E.D. 2000). Therefore, Student has the burden of proof in this case.

Free Appropriate Public Education

6. The purpose of the IDEA and its regulations is: (1) to ensure that all children with disabilities have available to them a FAPE that includes special education and related services to meet their unique needs; (2) to ensure that the rights of children with disabilities and their parents are protected; and (3) to assess and ensure the effectiveness of efforts to educate those children. 34 C.F.R. § 300.1.

7. The IDEA is designed to enable children with disabilities to have access to a free appropriate public education, designed to meet their particular needs. *O'Toole by O'Toole v. Olathe Dist. Schs. Unified School District No. 233*, 144 F.3d 692, 698 (10th Cir. 1998).

Access To Records

8. The IDEA and its regulations, beside conferring the right to a FAPE on a child with a disability, also grants a number of procedural rights, including the right of the parents of a child with a disability to examine all records relating to the child. 20 U.S.C. § 1415(b)(1), 34 C.F.R. § 300.613.

9. Section 300.613 of the Code of Federal Regulations states that any request for inspection and copying of records must be “without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to § 300.507,” which refers to the filing of a due process complaint.

10. A school district’s failure to disclose a child’s full records is a violation of IDEA. *See, e.g. Amanda J. v. Clark County School Dist.*, 267 F.3d 877; 894 (9th Cir. 2001); *C. O. v. Portland Schools*, 406 F. Supp.2d 1157; 1173. (D. Or. 2005).

11. The right of a parent to examine a student’s records, however, does not impose an affirmative duty on a school district to create any documents that do not otherwise exist. *Taylor v. Vermont Education Dept. of Educ.*, 313 F. 3d 768, 787 (2nd Cir. 2002).

12. For reasons explained later in this Decision, we unanimously conclude that the Student and his parents produced no credible evidence that Brookfield failed to comply with the requirements of IDEA and its regulations regarding access to educational records.

Other Issues

13. Because Student and Parents failed to show beyond a preponderance of evidence that Brookfield violated IDEA and its regulations, we decline to address the remedy issue set out in FF#16.

DECISION

Student and his parents have alleged that they have not had access to Student's educational file. Under IDEA and its regulations, they clearly are entitled to access to his file. (Conclusions of Law #8-11). While there is no doubt about the sincerity of their belief in bringing this action, we conclude they have failed to produce **any credible** evidence to support their position.

Student and his parents brought this action primarily premised on trying to receive a written grievance that they contend must be in Student's educational file. (FF#27). The female student who reported the school bus incident provided Brookfield with an oral account of the incident but did not make a written grievance, which is why no such written grievances were included in Student's educational records. (Tr. 133:7-25, 134:1-8, 142:20-23). We think that there was nothing improper about the approach taken by Brookfield in terms of not requiring this middle school student to write out a statement. (FF#29-30). We reach a similar conclusion on the method used by Brookfield in terms of interviewing Student without his parents being present. The parents are wrong to view this school bus incident as akin to a criminal proceeding!

The parents have argued the investigation of the bus incident shows some kind of grand conspiracy by school officials to get Student out of school. (Tr. 212-213). The alleged motive is that Student, a low performing student, is an economic liability to Brookfield. (Tr. 212-213). The problem is that they have provided **no credible evidence** in support of this position.

In an effort to buttress their grand conspiracy argument, Student and parents argue in the Post-Hearing Brief on page 25 that three reports of the school bus incident—Ms. Wilbeck’s Documentation of Investigation; Student Incident Report by Mr. Shaw and Ms. Carlson’s Manifestation Determination Report – collectively represented an evolving story that kept getting worse. The Student and parents, however, totally fail to realize the documents were prepared for **different** purposes. There is absolutely nothing sinister about the documents, individually or collectively!

The alleged economic motive for Student’s discipline also fails for lack of evidence. They called J. D. King to testify regarding a “local economic issue.” Even if we assume this term was in fact used by Mr. King with the Father in their telephone calls, Mr. King very credibly testified that the dispute over access to educational records was a local issue to be worked out between parents and their local school district and it had nothing to do with economics. (FF#42-43). Mr. King emphasized that discipline issues have no connection with funding for a school district. (FF#43). We also found Dr. Barger to be very credible on the issue of funding. (FF#49).

It is not alleged that Brookfield failed to provide Student a FAPE, nor is there any allegation Brookfield failed to provide Student with an IEP and a full range of educational services designed to meet his special needs. Because Brookfield made available to Student and his parents a complete copy of Student’s educational file, Brookfield complied with the IDEA and its regulations requiring a school district to provide parents with access to the Student’s education records. (FF#45-46). Brookfield fully discharged its duties under the IDEA by providing Student’s parents access to the complete copy of Student’s educational file on numerous occasions. (FF#45-46). Dr. Barger further testified that Student and his parents were

given full access to all of the school records that Brookfield had, and such records represented the complete educational file Brookfield maintained on Student. (FF# 47).

CONCLUSION

We unanimously conclude that Student and his parents totally failed to carry their burden of proof in showing that Brookfield violated the IDEA in failing to turn over all of Student's educational records or failed to comply with Student's parents' request to provide access to Student's educational records. Consequently, there is no need to address the issue regarding the appropriate remedies if Student should prevail.

ORDER

Judgment is entered in favor of Brookfield and against Student on the due process complaint filed by Student. Accordingly, Student's due process complaint is dismissed and judgment is entered against Student and in favor of Brookfield.

APPEAL PROCEDURE

PLEASE TAKE NOTICE that these Findings of Fact, Conclusions of Law, Decision and Order constitute the final decision of the Department of Elementary and Secondary Education in this matter and you have a right to request review of this decision. Specifically, you may request review 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....
2. 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 of 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 34 C.F.R. §300.512.

Dated this 2nd day of November, 2011.

s/s Pamela S. Wright
Pamela S. Wright, Chairperson

s/s Terry Allee
Dr. Terry Allee, Member of Hearing Panel

s/s Joyce A. Downing
Dr. Joyce Anderson Downing,
Member of Hearing Panel

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Opinion was mailed via certified mail, return receipt requested to Mr. and Brookfield counsel and by regular US Mail on this _____ day of November, 2011, to:

Petitioner, appearing pro se

Ms. Hayley Hanson
Ms. Andrea J. Morrow
Husch Blackwell LLP
4801 Main Street, Suite 1000
Kansas City, Missouri 64112

Attorneys for Brookfield R-III School District

Dr. Terry Allee
5 Apache Drive
Lake Winnebago, MO 64034

Dr. Joyce Anderson Downing
9300 E. 65th Street
Raytown, MO 64133

Ms. Pam Williams
Director Special Education Compliance
Department of Elementary & Secondary Education
Post Office Box 480
Jefferson City, MO 65102

Pamela S. Wright