

HEARING DECISION

Student's Name:

Parent's Name:

Parent's Representative: Stephen Walker
Attorney at Law
23245 Fairmount Blvd.
Beachwood, Ohio 44122
Phone: (216) 360-9200

Local Education Agency: Appleton City R-II School District
408 West 4th
Appleton City , Missouri 64724
Phone: (816) 476-2161

Agency Representatives: Teri B. Goldman
Blackwell Sanders, Peper Martin
Twenty-Fourth Floor
720 Olive Street
St. Louis, MO 63101-2396
Phone: (314) 345-6447

Hearing Dates: June 28 to July 2, 1999

Date of Decision: July 14, 1999

Hearing Panel: Dr. Terry Allee
Patrick O. Boyle, Chairman
and Rand Hodgson

ISSUES AND PURPOSE OF THE HEARING

Parent's request for hearing on August 27, 1997 stated that the student had not

been evaluated, no IEP prepared and no educational placement made. Her proposed resolution was reimbursement for school fees and attorney's fees. This request was supplemented by a Section 300.507(c) disclosure statement submitted by the parent on November 18, 1997. This statement sets forth in detail allegations that the School District failed to evaluate the student and offer a free and appropriate public education. Reimbursement was sought for the cost of tuition and related costs . associated with the student's unilateral placement at St. Joseph's Institute for the Deaf.

School District filed a motion to dismiss the due process hearing on November 24, 1997 and raised two points in support of its motion. The first point alleged that the parent refused to consent to an initial evaluation of the three year old student and, therefore, the District had no obligation to provide special education and related services at this time. Point two is that the Missouri Constitution prohibits the expenditure of public funds for parochial schools.

The hearing panel requested evidence related to the District's motion to dismiss prior to consideration of the case in chief. Whether or not parent knowingly refused to consent to an initial evaluation of her three year old son was the issue considered.

At the first hearing the panel concluded that the parent had refused to consent to evaluation. This decision of the panel was reversed by the u. S. District Court for the Western District of Missouri by memorandum and order in Case No. 98-0198-CV-S-6 dated January 21, 1999. On remand the panel agreed to hear the question as to whether or not a free appropriate public education had been offered to the student from age three to the present time and, if not, what reasonable reimbursement should be made to the parent for a private placement.

TIME LINE INFORMATION

Exhibit R86 dated March 1, 1999 is the request by parents' attorney for

enforcement of the District Court order by remand to a hearing panel. On March 15, 1999 attorney's for the LEA and the student requested an extension of time for decision suggesting the last week of June 1999 as a time for the hearing. Chairman of the hearing panel extended the time for decision to July 30, 1999 by order dated April 5, 1999. A hearing was held the week of June 28, 1999 to July 2, 1999 and, this decision is rendered on July 14, 1999.

FINDINGS OF FACT

1. Student has been evaluated and is found to be eligible for early childhood special education services.
2. Student was born on
3. Student was not offered a free appropriate public education at age three.
4. An IEP meeting was conducted with the parent on April 27, 1998.
5. Exhibit R79 is the notice of proposed placement which was presented at the IEP meeting on April 27, 1998 and, the parent requested additional time to review the IEP prior to signing the proposed placement.
6. Exhibits P58 and R78 are the IEP which was developed at the meeting of April 27, 1998 and mailed to the parents on May 21, 1998.
7. The IEP dated April 27, 1998 as drafted does not offer a free appropriate public education.
8. Parent has unilaterally placed the student at St. Joseph's Institute for the Deaf, a parochial institution, in Overland Park, Kansas from prior to the student's third birthday until the present time.

DECISION AND RATIONAL

The IEP dated April 27, 1998 did not contain adequate provisions as set forth under Part II Section V(10) of the Missouri State Plan. A free and appropriate public education has not been offered student under the IEP as drafted. Parent is entitled to reasonable compensation for an appropriate private placement.

Parent is seeking reimbursement for tuition and travel incurred with a private unilateral placement in a parochial school.

The Constitution of the State of Missouri as implemented in Section XI of Part II of the Missouri State Plan under Part B of the Individuals with Disabilities Education Act prohibits reimbursement for private placements in parochial schools.

Parents claim for reimbursement is denied.

APPEAL PROCEDURE

Either party has the right to appeal this decision within 30 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

Dr. Terry D. Allee

Patrick O. Boyle

Rand Hodgson