

**HEARING DECISION  
COVER SHEET**

Re: V. BISMARCK R-V SCHOOL DISTRICT

Student: (DOB: )

Parents:

Parents' Counsel:

Thomas E. Kennedy, III  
Attorney at Law  
2745 E. Broadway, Ste. 101  
Alton, IL 62002

School District Counsel:

Teri B. Goldman  
Blackwell, Sanders, Peper, Martin, L.L.P  
720 Olive St., Ste. 2400  
St. Louis, Mo. 63101

Panel Members:

Trudy Fulmer  
Karen Aslin

Panel Chair:

J. Michael Cato  
P.O. Box 668  
Advance, Mo. 63730

Due Process Request Received: May 11, 1998

Due Process Hearing Held: August 19, 1998, March 8, 1999 July 6,7,8,9 & August 25,26,27, 1999

**BEFORE THE DEPARTMENT OF  
ELEMENTARY AND SECONDARY EDUCATION**

**IN THE MATTER OF;**

,

**Petitioner,**

**vs.**

**BISMARCK R-V SCHOOL DISTRICT,**

**Respondent.**

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

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The hearing panel, after hearing the evidence in this matter makes the following findings of fact and conclusions of law and issues the following decision and order:

**FINDINGS OF FACT:**

**I. PARTIES**

1. The Student, at all times relevant to this due process proceeding, resided with his parents within the boundaries of the Bismarck R-V School District (hereinafter "School District").
2. The School District is a reorganized School District organized pursuant to the Revised Statutes of the State of Missouri.
3. The hearing panel members in this due process proceeding are as follows:  
  
J. Michael Cato, Hearing Chairperson  
Dr. Karen Aslin, Hearing Panel Member  
Mrs. Trudy Fulmer, Hearing Panel Member
4. Counsel for the parents: Thomas E. Kennedy, III, Attorney at Law, 2745 E. Broadway, Suite 101, Alton, Illinois 62002.
5. Counsel for the School District: Teri B. Goldman, Blackwell, Sanders, Peper, Martin. L.L.P., 720 Olive Street, Suite 2400. St. Louis, Missouri 63101.
6. Student was first enrolled in the School District as a kindergarten student for the 1994-1995 School Year. Student was promoted to the First Grade for the 1995-1996 School Year.
7. Student was admitted to Hawthorne Psychiatric Hospital by his parents from July 19, 1995 through September 1, 1995.
8. Student was diagnosed by the staff at Hawthorn Psychiatric Hospital with Parent-Child Relational Problem, Major Depression and Attention Deficit Hyperactivity Disorder.
9. Student returned to School District as a First grade student for the 1995-1996 School Year after discharge from Hawthorn Psychiatric Hospital. Based upon the diagnosis received from Hawthorn, an interim IEP and Behavior Management Plan were developed for the Student.

10. Student was admitted to Hawthorne Psychiatric Hospital by his parents from January 11, 1996 through February 28, 1996. Student was diagnosed by the staff at Hawthorn Psychiatric Hospital with Bipolar Disorder, Dysthymic Mood Disorder, Attention Deficit Hyperactivity Disorder, and oppositional Defiant Disorder. Student returned to School District as a First grade student for the remainder of the 1995-1996 School Year after discharge from Hawthorn Psychiatric Hospital. Student was promoted to the Second Grade for the 1996-1997 School Year.
11. Student was enrolled in the School District as a Second Grade student for the 1996-1997 School Year. An IEP and Behavior Management Plan existed and were in effect for the Student for the 1996-1997 School Year. The IEP in effect indicated that the Student carried diagnoses of Bipolar Disorder, Affecting Conduct, Adjustment Disorder, ADHD, Conduct Disorder and Separation Anxiety. Student was promoted to the Third Grade for the 1997-1998 School year.
12. Student was enrolled in the School District as a Third Grade student for the 1997-1998 School Year. The IEP in effect for the Student for the 1997-1998 School Year called for the Student to attend a shortened school day at the School District. Student attended the third grade for 3 days in the 1997-1998 school year.
13. Student was admitted to Hawthorne Psychiatric Hospital by his parents.
14. Student was discharged from Hawthorne Psychiatric Hospital and admitted to the Edgewood Children's Center on October 23, 1997. The placement at the Edgewood Children's Center was authorized by the Missouri Department of Mental Health at the Request of the parents.
15. The School District agreed to fund the educational portion of the Edgewood placement for diagnostic purpose and reimburse parent transportation costs to visit the child. School District failed to develop an IEP for the child during the stay at Edgewood Childrens Center.

16. Upon discharge the staff at Edgewood Childrens Center recommend that the Student be considered for placement in a day treatment program. Specific recommendation included:

- A. Self contained Classroom for behavior disorder with a therapeutic component.
- B. Individual Therapy at least one time per week....
- C. Group therapy.....
- D. Continue monitoring of psychotropic medication....

17. After discharge from Edgewood Childrens Center the child returned to the School District with an IEP developed by the Districts IEP team. The IEP was developed and implemented and provided the student with homebound service beginning on March 9, 1998.

18. The student began experiencing problems and, upon request of the parents, the Home Bound services were terminated on April 23, 1998. Student was not considered for Extended School year Services. No further educational services were provided to the Student by the School District.

19. This Due Process proceeding was initiated on May 11, 1998.

20. An IEP meeting was held on August 5, 1998 to develop an IEP for the Student and determine the students placement for the 1998-1999 school year. Students parents did attend the hearing and were accompanied by an advocate. The IEP team agreed on the appropriate placement as being "Day Treatment". The School District agreed to pay for the "Educational Portion" of a placement at the Edgewood Childrens Center on the provision that the Missouri Department of Mental Health provide funding for rent, utility and transportation costs of the Students parents. The Department of Mental Health failed to provide adequate assurances of funding to the School District.

21. School District issued a "Notice of Action Refused" and rejected the proposed placement of the Student at the Edgewood Children Center. School District

issued a "Notice of Action" and placed the Student at the Jefferson County Cooperative Day Treatment Program.

22. The Student's parents refused the placement at the Jefferson County Coop and instead placed the Student at the Edgewood Children's Center for the 1998-1999 School Year.

23. School District personnel received little, if any training, in any subject matter relating to the Student's diagnosed illnesses.

## **II. ISSUES AND PURPOSE OF THE HEARING**

Parents raised the following issues, by way of a letter from counsel to the hearing panel, dated January 26, 1999:

A. The School District denied the Student a free appropriate public education when it failed to develop an Individual Educational Program which was designed to meet his unique needs, more specifically when it failed to place the student in an appropriate program during the 1996-1997, 1997-1998 and 1998-1999 school years which could provide the services and support needed by the student in order to benefit from his instructional program.

B. The School District denied the student a free appropriate public education when it failed to provide the student with appropriate program and services during the period between his discharge from the Edgewood Children's Center in late February, 1998 and his admission to the Edgewood Children's Center in September, 1998.

C. The parents sought an order from the Three-Member Due Process Panel as follows:

1. Finding that the Student's current place within the day treatment program at the Edgewood Children's Center is appropriate;

2. Requiring the School District to develop an Individual Education Program incorporating the day treatment program at the Edgewood Children's Center

program and maintaining this program and placement for at least one year, or until the student's medical condition significantly changes and/or until the School District develops an appropriate educational program and placement for the Student;

3. Requiring the School District to reimburse the parents for their costs of tuition at the Edgewood program, for their transportation expenses to the Edgewood program from their home in Bismarck and from their apartment in St. Louis County, and for their expenses of rent and utilities for their apartment in St. Louis County commencing April 1, 1999, if these expenses are not authorized to be paid by the Missouri Department of Mental Health

4. Ordering the District to pay the foregoing tuition costs, transportation expenses, rent and utility expenses during that time in the future that the student attends the Edgewood program, and;

5. Requiring the District to provide appropriate compensatory educational services for the student because of the foregoing denial of appropriate services in the past.

Parents raised the following additional issues in their post hearing brief:

6. That the School Districts' IEP team failed to understand the significance and impact of the Students' illness.

7. That the School District failed to provide an IEP for the Student during the Edgewood diagnostic placement.

8. That the Students' IEP which provided for home bound instruction from March 9, 1998 through April 23, 1998 provided the Student with a free and appropriate public education ("FAPE").

9. That the School District failed to provide any educational services for three weeks (the remainder of the academic School Year) following the termination of the homebound services.

10. That the School District failed to consider the Student for Extended School Year services for the summer of 1998.

11. That the School District failed to give the Students' parents proper notice of the August 5, 1998 IEP meeting in that the notice did not indicate that representatives of the Districts' proposed placement would be present at the meeting.

12. That the School District failed to consider the opinion of the Students' psychiatrist at the August 5, 1998 IEP meeting.

13. That the School District never made a "Firm" commitment to a placement decision in violation of IDEA.

14. That the School Districts' proposed placement violates the IDEA's "Closest-to-home" rule.

15. That the School Districts' proposed placement of the Student failed to consider the potentially harmful effect of said placement on the student.

### **III. TIMELINE INFORMATION**

The request for due process was received on May 11, 1998 with the original deadline for the holding of the hearing and mailing of the decision being June 25, 1998. On June 9, 1998 a request was received on behalf of the School District requesting an extension of the hearing timelines. The extension was granted and the timelines for both the hearing and decision were extended up to and including September 1, 1998. By agreement of the parties, this matter was set for hearing on August 19, 1998. On August 19, 1998 the parties appeared briefly on the record and an extension of the hearing and timelines were requested on behalf of the parents to allow for additional time to obtain counsel. The request was granted and the timelines were extended up to and including December 1, 1998. Prior to December 1, 1998 a formal entry of appearance was received on behalf of the counsel for the parents. On November 30, 1998 a conference call was had with

counsel for each party during which the parties jointly requested an extension of the timelines which was granted. The timelines were extended up to, and including, April 5, 1999. On December 28, 1998, by consent of the parties, the matter was set for hearing beginning on March 8, 1999. The parties again briefly appeared on the record and jointly requested a continuance of the timelines as it appeared that a settlement might be possible. The timelines were extended until April 5, 1999. On April 5, 1999 a conference call was had with counsel for each party, and , based upon a joint request, the timelines were extended up to, and including, July 2, 1999. On May 27, 1999, based upon a joint request of the parties, the timelines were again extended up to, and including, August 6, 1999. The matter was set for hearing beginning July 6, 1999. A hearing was held on July 6,7,8 and 9, 1999. It then became obvious that additional time would be required to hear all the necessary evidence. By a joint request of the parties, the matter was set for further hearing on August 25, 26 and 27, 1999. Further, by a joint request, the timelines were extended up to, and including October 1, 1999. On September 10, 1999 the parties file a post hearing brief. The Respondent then filed a motion to dismiss. On September 20, 1999, the panel extended the timelines up to an including October 15, 1999 to allow Petitioner additional time to file a response to a responsive brief.

#### **IV. PANEL MEMBERS**

Original members of the due process panel were: Michael Cato, chairperson, Trudy Fulmer, Panel Member and Betty Chong, Panel Member. On June 2, 1998 panel member Betty Chong withdrew and was replaced by Karen Aslin.

#### **CONCLUSIONS OF LAW**

1. The School District provided the Student with a free and appropriate public education for the 1996-1997 School Year in that an Individual Education Program was developed and implemented for the Student which was designed to meet the unique needs of the student, further that the Student enjoyed the necessary

services and support needed to make academic progress during the 1996-1997 School Year.

2. The Individual Educational Program in place for the Student at the Beginning of the 1997-1998 provided the Student with a free and appropriate public education.

3. That the School District failed to revise the Students IEP to allow for the diagnostic placement at the Edgewood Childrens Center, however , as the child received the services and support of the center, there was no denial of FAPE and therefore any claim for relief based upon this violation is unwarranted.

4. That the Individual Educational Program developed for the Student which provided for home bound instruction from March 9, 1998 through April 23, 1998 provided the Student with a free and appropriate public education ("FAPE") .

5. Further that while the Home Bound Instruction program provided the Student with FAPE, and that the services were terminated at the request of the Students parents, the Student was harmed by the School District failure to provide the Student with any type of education services for the remainder of the academic school year.

6. The Student was harmed by the School Districts' failure to consider the appropriateness of the Extended School program for the Students' benefit.

7. The Student is entitled to compensatory services for the School Districts' failure to provide educational services and failure to consider the Extended School Year program

8. The School District provided proper notice to the Students' parents of the August 5, 1998 IEP meeting. This is evident in that the Parents attended the

meeting with the support of an advocate and further that the meeting lasted for nearly eight hours.

9. That while the IEP team may have failed to incorporate the recommendations of the Students psychiatrist at the August 5, 1998 meeting, no evidence supports the contention that the team failed to consider same.

10. That the IEP developed for the Student for the 1998-1999 is inappropriate in that the proposed placement (i.e. the Jefferson County Coop Day Treatment Program) is an inappropriate placement for the Student. This program fails as an appropriate program in that it would require the Student to travel 50 miles, each way, to and from the program. The program would remove the child from the "Mainstream", that is his "Home" School District. The program has little to no facilities for physical education. This program fails to adequately balance the Students' academic and emotional needs.

11. That the School District did, in fact, make a "Firm" commitment to the Students placement for the 1998-1999 School Year. The School District issued a Notice of Action placing the Student at the Jefferson County Coop program.

12. That the Students placement at the Edgewood Children's Center is an inappropriate placement for the student. This program fails as an appropriate program in that it would require the Student to "Reside" in St. Louis, or nearby, without the support of his father or siblings and travel 20 minutes, each way, to and from the program. The program would remove the child from the "Mainstream", that is his "Home" School District. The program has little to no facilities for physical education. This program fails to adequately balance the Students' academic and emotional needs.

13. That the School District failed to provide adequate training and instruction to the faculty in regards to the Students Illnesses and disabilities.

**DECISION AND ORDER;**

1. The School District provided the Student with a free and appropriate public education for the 1996-1997 School Year.
2. The Individual Educational Program in place for the Student at the Beginning of the 1997-1998 provided the Student with a free and appropriate public education.
3. That the School District failed to revise the Students' IEP to allow for the diagnostic placement at the Edgewood Childrens Center, however , as the child received the services and support of the center, there was no denial of FAPE, and, therefore, any claim for relief based upon this violation is denied.
4. That the Individual Educational program developed for the Student which provided for home bound instruction from March 9, 1998 through April 23, 1998 provided the Student with a free and appropriate public education ("FAPE").
5. That both the proposed placement of the School District, (Jefferson County Coop Program) and the parents proposed placement (Edgewood Childrens Center) are inappropriate.
6. That Petitioners are not entitled to reimbursement for their costs of tuition, Rent, Utilities or Transportation for the Students placement at the Edgewood Treatment Center.
7. That the Student is entitled to the following compensatory services due to the School Districts' failure to provide Educational services for the last three weeks of the 1997-1998 school year and further the School Districts' failure to consider the Student for the Extended School Year program.
8. Not more than thirty (30) days following the date of the decision, the school district shall provide the Student with a "self-contained class-room with a therapeutic Component" on the Grounds of the School District.

9. The self-contained class room shall contain all appropriate physical facilities and equipment to provide the student with an opportunity to progress academically.

10. The School District shall obtain the services of a full time Licensed Professional Counselor, said counselor to specifically have a background in mental health. The License Professional Counselor shall be made a member of the Student IEP team. The LPC shall provide the appropriate staff with training in intervention strategies, modeling and other appropriate skills to facilitate the student educational progress.

11. The School District shall reconvene the Students' IEP team to develop an appropriate Behavior Management Plan in conjunction with the Licensed Professional Counselor.

12. That the School District shall arrange meetings, at least one time per week, between the Students' teachers, parents and Licensed Professional Counselor for the purpose of monitoring the Students therapeutic and academic progress.

13. The School District shall require the Students' teacher to collect and maintain written anecdotal and measurable data, compiled in a useable format, for use by the Students IEP team. Data shall include behavioral/psychological and academic information.

14. That these compensatory services shall continue for a period of time of not less than eight (8) weeks.

15. That upon the completion of the compensatory services as set forth above, the Students IEP team shall reconvene to assess the Student progress and determine an appropriate placement.

16. All other requests for relief are hereby denied, specifically including the Respondents MOTION TO DISMISS.

The Entire hearing panel joins in this decision without dissent.

**APPEAL PROCEDURES:**

Any party aggrieved by the decision of this panel may, pursuant to Chapter 536 of the Missouri Statutes, appeal this decision to a state court or a federal court, within 30 days of the date of the decision.

**FOR THE HEARING PANEL:**

J. Michael Cato, Hearing Chairperson

Mrs. Trudy Fulmer, Panel Member

Dr. Karen Aslin, Panel Member

BY:

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J. Michael Cato, Hearing Chairperson

**CERTIFICATE OF SERVICE**

the undersigned certifies that a copy of the foregoing was served upon each party to this action, TO-WIT;

Thomas E. Kennedy, III

Attorney at Law

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**ATTORNEY FOR PARENTS**

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St. Louis, Mo. 63101

ATTORNEY FOR SCHOOL DISTRICT

by depositing same in the United States Post Office in Advance,  
Missouri, with sufficient postage, on this \_\_\_\_ Day of \_\_\_\_\_,  
19\_\_\_\_.