

**BEFORE THE HEARING PANEL EMPOWERED BY
THE STATE BOARD OF EDUCATION
PURSUANT TO SECTION 162.961 RSMO.**

IN THE MATTER OF:

and

CHILHOWEE R-IV SCHOOL DISTRICT

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

The hearing panel, after hearing the evidence in this matter on Tuesday, November 30, 1999, makes the following findings of fact and conclusions of law and issues the following decision and order:

FINDINGS OF FACTS

I. PARTIES

1. The Student, at all times relevant to this due process hearing, resided with his mother (Parent") within the boundaries of the Chilhowee R-IV School District ("School District").
2. School District is a Missouri school district organized pursuant to Missouri statutes.
3. The Hearing Panel members in this due process proceeding are:

Pamela S. Wright, Hearing Chairperson
Dr. Harry Bahr, Hearing Panel Member
Ben Franklin, Hearing Panel Member
4. Parent and student appeared without counsel.

5. Counsel for the School District is Charles E. Weedman, Jr. of Crouch, Spangler & Douglas, Law Building, Post Office Box 280, Harrisonville, MO 64701.

6. The parties exchanged exhibits more than five business days in advance of the hearing and the parties stipulated to the admission of the exhibits into evidence.

II. TIME LINE INFORMATION

7. The Department of Elementary and Secondary Education ("DESE") received Parent's letter requesting a due process hearing on October 27, 1999. DESE determined the 45 deadline for holding a hearing and issuance of an opinion to be December 13, 1999. The panel has met this original deadline.

III. THE ISSUE

8. The issue presented by the parties is whether the School District failed to evaluate Student for learning disabilities. (At the beginning of the hearing, Parent also requested that the Hearing Panel review the disciplinary action taken by the School Board of the School District in October 1999 but the Hearing Panel advised Parent that the disciplinary action was beyond the scope of our jurisdiction.

IV. FACTS

9. Student attended a private school for kindergarten. Student attended 1st grade through 6th grade at the Flint Elementary School ("Flint") in the Shawnee Mission School District located in Shawnee Mission, Kansas. Student attended the 7th and 8th grades at Hocker Grove Junior High School ("Hocker") in the same school district.

10. In the middle of 2nd grade, Student was evaluated for special education services in the areas of speech and language. In January 1992, Flint implemented an Individual Education Program ("IEP") for Student who attended speech sessions two times per week, with each session lasting twenty minutes. The initial evaluation indicated that the speech sessions would last one year.

11. In the middle of 6th grade in December 1995, Flint evaluated Student and concluded that he met Kansas eligibility guidelines for learning disabled. No speech/language difficulties were noted. Student found to be of average intelligence on the various IQ tests which were administered. In January 1996, Flint implemented an IEP for Student to receive writing and spelling help for 30 minutes five times per week at the Learning Center of Flint.

12. In the fall of 7th grade, Student began receiving Class within a Class ("CWC") help for English for 45 minutes per day five times per week. This help continued through the 7th and 8th grades (1996-1998) at Hocker.

13. The IEPs at Flint and Hocker showed no problems with the Student's behavior.

14. The IEPs at Flint and Hocker noted no concerns about Student's vision.

15. Student attended 9th grade (from 1998-1999) at Blue Springs South High School ("Blue Springs") in Blue Springs R-IV School District located in Blue Springs, Missouri.

16. Blue Springs performed an interim evaluation in August 1998 and concluded that Student would receive CWC support in English, pending a more thorough evaluation to see if Student met eligibility criteria for learning disabled status in Missouri.

17. Blue Springs performed a very thorough evaluation of Student in October 1998. His general cognitive ability as estimated by WISC-III is average. Student's verbal and performance ability scores were also both average. He demonstrated personal strengths in oral expression and listening comprehension on the WIAT test. Blue Springs noted no behavioral problems with Student, who was found to be eager and cooperative. The IEP notes, however, that Student failed to use his corrective glasses during the testing, to which Parent consented. The IEP further notes that the test results should be interpreted with caution in view of Student's failure to

wear his glasses – which we conclude to mean that the scores might have been higher if the glasses had been worn. Blue Springs concluded in its evaluation that Student did not meet Missouri standards for any type of disability under IDEA. Parent signed and consented to this final report.

18. After the determination that Student was no longer eligible for special education benefits at Blue Springs, Student continued to receive CWC support in English as a regular education student for the remainder of the school year

19. Student, age 15 years of age, enrolled as a high school sophomore with the School District in August 1999.

20. In August and/or early September, Parent advised School District officials that Student had been subject to an IEP at Blue Springs. At that time, Parent also provided some or all of his Blue Springs records. School District officials also requested their own set of records from Blue Springs. Upon review of the records, School District officials discovered that Student had been dismissed from special education services at Blue Springs and therefore they determined Student was ineligible for special education services at School District.

21. Parent and Student received written Progress Reports for classes in mid-September and in early October from the School District. The results were as follows:

Science	C	C
Accounting I	B	D
Algebra I	D	C
World Geograpy	A-	A-
History 9th	D+	C
Language Arts	C	C
Mythology	B	C

The Progress Reports indicated that before and after school tutoring was available. Student did not make use of the tutoring.

22. Neither Alfred Bouthillier (Student's algebra teacher) nor Kim Willcockson (Student's History and Geography teacher) observed a need for special help for the

Student. They saw no problems with Student's written expression or his behavior. Student showed improvement in both classes. Parent did not make a request to either teacher for Student to get evaluated for learning disabilities.

23. On October 1st, Student was removed from the family home by the Juvenile Division of the Johnson County Circuit Court because of alleged threats made about the superintendent and others to fellow students on September 30th. On October 19, 1999, the Court placed Student in the family home subject to supervision of the Juvenile Office. The Supervision Agreement included three months probation and one month of continued electronic monitoring.

24. On or about October 24, 1999, the School Board suspended Student for the balance of the school year because of threats made by Student and the disciplinary action taken by the Juvenile Court.

25. Within a few days of the suspension, Parent orally requested that Student be tested for learning disabilities. In response, the High School Principal Ralph Damon ("Damon") requested Special Services Coordinator Rosemary Brand ("Brand") to make certain that they had all the records from Blue Springs. Brand requested the records. Damon reviewed same and concluded that the records were duplicative of those provided earlier in the school year by Parent and Blue Springs. The records indicated the lack of eligibility for learning disabled status and the resulting dismissal of special education services.

26. Shortly after receiving Parent's request for testing, Damon advised Parent that testing was not necessary based on the Blue Springs evaluation twelve months earlier and based on Student's performance in the classroom at the School District. At that time, she was not given a formal Notice of Action. Parent then filed the current request for a due process hearing.

27. In early November 1999, School District made arrangements for an independent evaluator, Dr. Birdie Gillette, a special education consultant, to review the Student's records to determine if any additional information or testing was needed.

28. On November 12, 1999, School District Superintendent Andy Henley ("Henley") sent a letter to Parent advising her of Dr. Gillette's involvement and asking if Parent and Student would be available to meet with Dr. Gillette on November 15th at the High School. Parent and Student declined to meet with Dr. Gillette because of the pending due process hearing.

29. Dr. Gillette concluded that the Blue Springs testing was current enough to evaluate the Student's present situation.

30. On November 24, 1999, School District issued a Notice of Action advising that Student was not eligible for services based on the Blue Springs testing; the Progress Reports showing satisfactory performance in the classroom and teacher input and observations.

31. Parent presented a letter dated November 25, 1999 from Student's ophthalmologists indicating a mild nystagmus in his eyes. They also stated "... he has been able to demonstrate good visual acuity and good control of it on every visit and surgery is not necessary." We conclude that had this mild condition been known by Parent and School District earlier that it would have had no impact on the Notice of Action issued on November 24, 1999.

CONCLUSIONS OF LAW

The Hearing Panel makes the following Conclusions of Law:

1. This case arises under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S. C. Section 1400 et seq and examines the issue of whether the School District performed an adequate evaluation of Student upon being requested to do so by Parent in late October.

2. Section 300.527 (d) (2) (i)-(iii) of C. F. R. are applicable. These Subparagraphs provide:

(i) If a request for an evaluation of a child is made during the time period in which the child is subject to disciplinary measures under Section 300.520 or 300.521, the evaluation must be conducted in an expedited manner.

(ii) Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or exclusion without educational services.

(iii) If the child is determined to be a child with a disability, taking into account consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with the provisions of this part, including the requirements of Sections 300.520-300.529 and section 612 (a)(1)(A) of the Act.

3. Section 300.532 (f) and (h) of C. F. R. are relevant. They state as follows:

(f) No single procedure is used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child.

(h) In evaluating each child with a disability under Sections 500.351-500.356, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

4. Section 300.533 (a) of C. F. R. is also relevant. This Section provides in part as follows:

(a) *Review of existing evaluation data.* As part of an initial evaluation (if appropriate) and as part of any reevaluation under Part B of the Act, a group that includes the individuals described in Section 300.344, and other qualified professionals, as appropriate, shall:

(1) Review existing evaluation data on the child, including

(i) Evaluations and information provided by the parents of the child;

(ii) Current classroom -based assessments and observations; and

(iii) Observations by teachers and related services providers; and

(2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine:

(i) whether the child has a particular category of disability ...

5. The Parent made a request for evaluation while Student was under suspension within the parameters of the above Section 500.527 (d)(2)(i). The School District relied on the Blue Springs evaluation (which included extensive testing) and current classroom performance to deny learning disabled status to Student. After Parent filed this current request for a due process hearing, School District enlisted the aid of an outside expert to take a look at the situation. This independent expert concluded that the Blue Springs testing was current enough and valid for the decision to do no further testing.

6. In reaching its decision that no additional testing was needed and that Student was not learning disabled, the School District satisfied the requirements of Sections 300.532 and 300.533 of the C. F. R. These Sections do not dictate rigid evaluation methods. The School District has discretion in what criteria to follow in making its determination. The School District properly concluded that the Blue Springs evaluation was still relevant in view of (a) the Student's classroom performance that improved over two grading periods as well as (b) the observations of his teachers. The School District also sought the services of an outside expert.

DECISION

The School District conducted a proper review of the evaluation data and correctly determined that no additional data was needed. School District also correctly concluded that Student does not qualify as learning disabled and was not in need of special education services.

The entire hearing panel joins in this Decision without dissent.

APPEAL PROCEDURE

These Findings of Fact, Conclusions of Law, Decision and Order constitute the final decision of the Department of Elementary Education and Secondary Education in this matter. Any party aggrieved by the Decision of the Hearing Panel may, pursuant to Section 536 of the Missouri Revised Statutes, file an appeal to a state court within 30 days of the date of the decision. An aggrieved party also has the option of pursuing a review of the Decision by the federal courts by filing a petition within 30 days.

Dated the 11th day of December, 1999.