

**THREE MEMBER DUE PROCESS HEARING PANEL
EMPOWERED PURSUANT TO 162.961 R.S.MO.**

Hearing Decision

Student's Name:

Parents' Name:

Parents' Attorney:

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Hearing Dates:

May 11 and 12, 2000 at the
Board of Education Office
4650 McMasters Avenue, Hannibal, MO 63401

Date of Decision: June 15, 2000

Three Member Due Process

Panel: Dr. Nikki Murdick

Dr. Kim Ratcliffe, and

Patrick O. Boyle, Chair

**Three Member Due Process Hearing Panel
Empowered Pursuant to 162.961 R.S.Mo.
Hearing Decision**

Issue

The panel agreed to decide whether the student has been provided a free appropriate public education (FAPE) under the Individualized Education Program (IEP) of May 17, 1999 and, whether the Local Education Agency (LEA) may properly terminate special education and related services pursuant to a diagnostic staffing conference held on April 25, 2000.

Time Line

Parents' request for a due process hearing was received by the Department of Elementary and Secondary Education (DESE) on July 14, 1999. On July 23, 1999 the attorneys for the LEA requested an extension of time for decision herein from August 30, 1999 to permit a hearing during the month of October. By order of August 27, 1999 the time for decision was extended to November 15, 1999 with the consent of parents' attorney. An unsuccessful mediation attempt was made and, the parents filed a second request for a due process hearing on September 1,

1999. This second request was consolidated with the first request upon motion of the LEA's attorneys dated October 4, 1999 granted on October 5, 1999. An Order of October 19, 1999 extended the time for decision to February 15, 2000 by consent of the parties. The LEA attorneys filed a Motion for Clarification of Issues on November 12, 1999 and, an Order of November 16, 1999 required the parents to consolidate their two requests into a restated request for due process. On December 17, 1999 the parents were ordered to comply with the requirement of a restatement of request on or before December 27, 1999. The parents filed a restatement dated December 21, 1999 and, parents' attorney filed a different restatement dated December 20, 1999. On December 30, 1999 the LEA's attorneys filed a Motion to Dismiss certain of parents' claims since they did not relate to the identification, evaluation, or educational placement of the student, or to the provision of FAPE by the LEA. Parents' attorney filed a reply on March 30, 2000 withdrawing some issues from the restated request for due process. An Order of February 2, 2000 extended the time for decision to April 7, 2000 at the request of the LEA's attorneys dated January 21, 2000. All parties consented to hearing dates of May 11 and 12, 2000 and, the time for decision was extended to June 15, 2000 under an Order dated February 28, 2000. Student attained the age of 18 on April 19, 2000 and, the LEA's attorneys filed a Motion to Dismiss on April 20, 2000 based upon the parents' lack of standing. Student wrote to DESE on April 25, 2000 requesting that student's parents continue to represent student and, that the scheduled hearing consider the IEP meeting held on April 25, 2000 which recommends the termination of all special education services to the student. At the hearing on May 11, 2000 the panel agreed to consider whether FAPE had been provided to student and whether special education services could be terminated at this time.

Facts

1. Student attained the age of 18 on and, has adopted the request for due process filed on his behalf by his parents.

2. At the time of hearing the student was completing his third year of high school at the LEA.
3. Student has been diagnosed as having a language disorder: syntax and semantics. Ex. R139
4. Student has attended the LEA since kindergarten and has received speech and language therapy from kindergarten through middle school at the LEA. Ex. R139
5. Student continues to receive special education services in a modified regular education placement pursuant to his IEP. Ex. R139
6. Parents were given notice on May 3, 1999 of an IEP meeting set for May 17, 1999. Ex. R65
7. The IEP which gave rise to the initial request for due process was developed at the meeting of May 17, 1999 with parents present and provides 20 minutes per week of modified regular instruction. Ex. R67
8. On July 22, 1999 a notice of conference set for August 23, 1999 to consider needed transition services and review and revise the educational program was sent to the parents. Ex. R89
9. A proposed IEP was developed at the conference held August 23, 1999 with the parents' participation and provided 45 minutes per week of regular education modified. Ex. R91
10. Parents submitted proposed objectives for the August 23, 1999 IEP meeting (Ex. R90) which were rejected in part as unnecessary to provide FAPE. Ex. R94
11. Parents' second request for due process arose out of the rejection of their proposed objectives for the August 23, 1999 IEP meeting. Ex. R95
12. Parents' second request was consolidated with parents' first request for a due process hearing. Ex. R102

13. Parents' requests for due process were consolidated into a restatement for due process filed in December 1999. Ex R118 and R119

14. Some issues raised in the restatement request were challenged by the LEA's Motion to Dismiss as not related to the identification, evaluation or educational placement of the student, or to the provision of FAPE by the LEA. Ex. R121

15. Objectionable requests in the parents' restatement were deleted in their attorney's reply of March 30, 2000. Ex. R137

16. On April 17, 2000 student and his parents were notified of a conference to be held on April 25, 2000 to review and revise, if appropriate, the student's educational program and/or placement. Ex. R138

17. The diagnostic staffing summary of April 25, 2000 re-evaluated the student and determined that the student is no longer in need of special education and related services. Ex. R139

18. Parents by letter of April 25, 2000 to LEA disagreed with the conclusion reached by the diagnostic staffing conference and requested that the matter be received in the pending due process proceeding. Ex R140

19. LEA by letter to parents agreed to review the results of the April 25, 2000 conference in the pending hearing. Ex R141

20. Student attained the age of 18 on April 18, 2000 and by letter appointed his parents and their attorney as his representatives. (Petitioner's exhibits Pages 1 and 2)

21. Regular classroom teachers gave credible testimony that the student does not require modifications to succeed in a regular classroom.

22. Student has achieved better than average grades in high school to the present time.

23. Student is progressing from grade to grade in the regular education curriculum.

24. Credible witnesses testified that student has appropriate interaction with peers and teachers and, student has no behavioral concerns which interfere with his progression through school.

25. Credible witnesses testified that student is highly motivated and conscientious and contributes to class in a positive way.

26. Students MAP scores are within the average range when compared to his peers on nationally normed reference scores. (Petitioner's Exhibits pages 123-130)

27. Students transition needs are the same as those of his peers and can be accomplished without special education and or related services. Ex. R139 and R91

Decision

Student has shown remarkable achievement beyond what would be expected for his level of ability and, has been provided FAPE by the LEA during the period in question which covers his third year of high school.

The LEA appropriately seeks to place the student in regular classes without special education and/or related services for his fourth year of high school. Student has shown the drive and ability to succeed. Student does have a disability but, he does not require special education services in order to master his studies and progress in a regular classroom setting. The LEA seeks to empower rather than to enable the student at this point in his education.

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 Federal Court.

Panel Members Panel Members

Supporting Decision Opposing Decision

Dated: June 15, 2000