

**BEFORE THE HEARING PANEL  
EMPOWERED BY THE  
DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION**

**IN THE MATTER OF:**

,

**Petitioner**

**and**

**LEE'S SUMMIT R-7 SCHOOL DISTRICT,**

**Respondent**

**DECISION AND ORDER**

This matter pends before the Hearing Panel following the due process hearing. The following Decision and Order is issued by the Hearing Panel:

**Cover Sheet Information**

1. ("Student") is the son of ("Parent"). Student was born on . Student's social security number is .
  
2. At all times material to this due process proceeding, Student has resided with Parent in , Missouri, which is located within the boundaries of the Lee's Summit R-7 School District.
  
3. The Parent and Student were represented by:

Dale L. Ingram  
Jolley, Walsh, Hurley, Raisher & Roher, P.C.  
204 W. Linwood Blvd.  
Kansas City, Missouri

4. The Lee's Summit School District was represented by:

James G. Thomeczek  
Thomeczek Law Firm, L.L.C.  
1120 Olivette Executive Parkway  
Suite 210  
St. Louis, Missouri

5. Parent requested due process by letter dated February 1, 1999.

**BEFORE THE HEARING PANEL  
EMPOWERED BY THE  
DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION**

**IN THE MATTER OF :**

,

**Petitioner**

**and**

**LEE'S SUMMIT R-7 SCHOOL DISTRICT,**

**Respondent**

**DECISION AND ORDER**

The Hearing Panel, after conducting the due process hearing in this matter on July 22 and 23, 1999, issues the following Decision and Order:

## **FINDINGS OF FACT**

The Hearing Panel, makes the following Findings of Fact:

### **I. The Parties**

1. The Student, at all times relevant to this due process proceeding, resided with his Parent within the boundaries of the Lee's Summit School District (herein "School District").
2. The School District is a Missouri school district organized pursuant to Missouri statutes.
3. The Student and Parent were represented by Dale L. Ingram, Jolley, Walsh, Hurley, Raisher & Roher, P.C., 204 W. Linwood Blvd., Kansas City, Missouri.
4. The School District was represented by James G. Thomeczek, Thomeczek Law Firm, L.L.C., 1120 Olivette Executive Parkway, Suite 210, St. Louis, Missouri.
5. The three person panel for the due process proceeding is:  
  
Ransom A. Ellis, III - Hearing Chairperson  
  
Fred Davis, Panel Member  
  
George Wilson, Panel Member
6. During all times relevant to this proceeding the following persons were employed by the School District and provided educational services to the Student:  
  
Dr. Tony Stansberry, Superintendent  
  
Dr. Linda Bigby, Director, Special Services

Cindi Barfield, Coordinator of Behavior Disorder Programs

Richelle Rader, Special Education Process Coordinator

Vicki Porter, Assistant Principal

Darren Dennis, Assistant Principal

Gary Kruger, Special Education Classroom Teacher

John Christopher Allen, Focus Room Teacher

Emily Miller, Classroom Teacher

Angela Folken, Classroom Teacher

Terri Coats, Counselor

7. During all times relevant to this proceeding the following persons were employed by the Belton School District #124 ("Belton School District") and provided educational services to the Student:

Sandy Clutter, Director of Special Services

Patricia Clary, Principal--Belton-Ozanam Southland Cooperative

Melanie O'Reilly, Belton-Ozanam Therapist

## **II. Procedural Background**

8. On or about February 1, 1999, the Parent sent a letter to Ms. Heidi Atkins-Lieberman, Legal Counsel for Special Education Services, Missouri Department of Elementary and Secondary Education ("DESE") requesting a due process hearing. (Panel Exh 1) The request for a due process hearing was received by DESE on February 1, 1999 (Panel Exh 2).

9. On or about February 16, 1999, Ms. Lieberman notified the Hearing Chairperson (Panel Exh 3) and the Panel Members (Panel Exh 4) that they had been

assigned as the Chairperson and Panel Members for the three-member due process panel in this case.

10. On or about February 19, 1999, the Hearing Chairperson notified the Parent and School District that a panel had been selected in the case and that the hearing had to be held and a written decision rendered by the panel and mailed to the parties by March 18, 1999. (Panel Exh 6)

11. On or about February 19, 1999, the Hearing Chairperson provided the Parent with a copy of the *Procedural Safeguards for Children and Parents* published by DESE. (Panel Exh 5).[1]

12. On February 24, 1999, the School District, through its Attorney, James Thomeczek, requested that the time lines be delayed until May 3, 1999. (Panel Exh 8) On February 24, 1999, the Hearing Chairperson extended the hearing time lines to May 3, 1999. (Panel Exh 9). The request for a continuance was appropriate.

13. On March 3, 1999, the Hearing Chairperson transmitted a *Notice of Hearing* to the Parent and School District. (Panel Exh 12) The Notice scheduled the hearing for 9:00 a.m. on April 1, 1999, at the Lee's Summit R-7 School District, Lee's Summit, Missouri.

14. On March 26, 1999, the School District, through its Attorney, James Thomeczek, requested that the time lines be delayed until June 30, 1999, as a result of the lack of an adequate location for the hearing. (Panel Exh 13) On March 29, 1999, the Hearing Chairperson extended the hearing time lines to June 30, 1999. (Panel Exh 14). The request for a continuance was appropriate.

15. On April 14, 1999, the Hearing Chairperson transmitted a *Notice of Hearing* to the Parent and School District. (Panel Exh 18) The Notice scheduled the hearing for 9:00 a.m. on June 10, 1999, at the Lee's Summit R-7 School District, Lee's Summit, Missouri.

16. On June 3, 1999, the Parent/Student, through their Attorney, Dale Ingram, requested that the time lines be delayed August 31, 1999. (Panel Exh 19) On June 7, 1999, the Hearing Chairperson extended the hearing time lines through August 31, 1999. (Panel Exh 20). The request for a continuance was appropriate.

17. On June 25, 1999, the Hearing Chairperson transmitted an *Amended Notice of Hearing* to the Parent and School District. (Panel Exh 22) The Notice scheduled the hearing for 9:00 a.m. on July 22, 1999, at the Lee's Summit R-7 School District, Lee's Summit, Missouri.

18. The School District transmitted its exhibits and witness list to the Hearing Panel and the Parent. The Parent did not submit a witness or exhibit list to the Hearing Panel. The parties stipulated to the exhibits to be used in the hearing. No objections were raised to the witnesses called or exhibits presented during the hearing.

19. On July 22 and 23, 1990, the Due Process proceeding was held in the administrative offices of the School District with all parties in attendance. The hearing was closed at the request of the Parent. The record was closed on July 23, 1999.\_

### **III. The Issue**

20. The issue presented by the parties is whether the School District's proposed change in placement for the Student from Lee's Summit North High School to Belton-Ozanam Southland Cooperative (Belton-Ozanam) is an appropriate placement in the least restrictive environment. The parties were in agreement that this was the only issue to be decided by the Hearing Panel. (Tr p 5). \_

### **IV. Background Facts**

21. In 1987 and 1988, the Student was seen by Victoria Little and Patty Schmidt, Family Therapists. (Exh 2, pp 004 - 015). In 1993, the Student was medically diagnosed with having Attention Deficit Hyperactivity Disorder by Dr. Jose

Menendez, an area psychiatrist. (Exh 3, p 018). This information was not known to the School District until the fall semester of School Year 1998-99. (Tr p 45).

22. The Student attended the Blue Springs R-4 School District (herein "Blue Springs District") beginning with School Year 1989-90 (Kindergarten) through School Year 1994-95 (5th Grade). (Exh 9, pp 057 - 071).

23. On December 10, 1993, while the Student was in the 4th Grade, the Blue Springs District conducted a diagnostic staffing after an educational evaluation of the Student. (Exh 4). The Student was evaluated to determine whether the Student had a learning disability. The Blue Springs District determined that the Student did "not exhibit a learning disability at this time." (Exh 4, p 031). The Blue Springs District did not evaluate the Student for a behavioral disorder. (Tr pp. 20-21)

24. In 1994, Dr. Menendez referred the Student to Dr. Alan Domian, a clinical psychologist in Kansas City "for psychotherapeutic intervention after one year of unsuccessful medication trials." (Exh 5, p 46). Dr. Domian medically diagnosed the Student as having a "behavior disorder with underlying anxiety/agitated depression of psychological and possible biological origin." (Exh 5, p 46). This information was not known to the School District until the fall semester of School Year 1998-99.

25. In April, 1994, the Student pulled a knife on another boy outside of school. Dr. Domian recommended to the Parent that the Student be hospitalized. The Parent agreed that hospitalization was appropriate but refused to consent to the in-patient services. Subsequently, the Parent ceased the Student's psychotherapy with Dr. Domian. When Dr. Domian contacted the Parent, she indicated that the Student had "cleaned up his act" under threat of hospitalization. (Exh 6, p 48). This information was not known to the School District until the fall semester of School Year 1998-99.

26. Around August 18, 1995, the Parent and Student moved into the School District. (Exh 7, p 049). During School Year 1995-96 the Student attended 6th grade at Mason Elementary School.

27. Beginning at least in November, 1995, the Student's teacher, Angela Folken, counseled with the Parent concerning the Student's behavior problems, including rude and inappropriate behavior, lost lunch room and recess privileges, calling people names, running, hitting, not following instructions and general disruption of the class. (Exh 58, pp 501 - 502). As a result of these behavior problems, the Student was removed from class. (Exh 58, pp 503 - 504).

28. Beginning on May 15, 1996, the Student received individual psychotherapy from Glenn Collet, a psychologist in Blue Springs, Missouri. (Exh 46, p 448). Mr. Collet characterized the Student as "depressed, socially introverted with feelings of personal inadequacy and worthlessness." (Exh 46, p 448).

29. After the Student entered the 7th Grade at Bernard Campbell Junior High School, School Year 1996-97, he was referred for screening to determine whether he was a student with a disability. (Exh 10, p 072). The screening of the Student was completed in January, 1997. (Exh 10, pp 072 - 091). The screening determined that the Student should be referred for reevaluation. (Tr p 20).

30. Thereafter, on January 7, 1997, the School District notified the Parent that it intended to reevaluate the Student. (Exh 12, pp 093 - 094). The Parent met with Richelle Rader who explained the proposed reevaluation. The Parent signed the consent to reevaluate. (Exh 58, p 505). Thereafter, the School District conducted a reevaluation of the Student. On February 18, 1997, the School District conducted a Diagnostic Staffing. (Exh 14, p 190 - 211). The School District determined that the "evaluation would seem to indicate evidence of a disability...Primarily - Behavior Disorders." (Exh 14, p 209; Tr p. 22).

31. On February 24, 1997, the School District through the Student's IEP team, including the Parent, prepared an Individual Education Plan ("IEP") for the Student. (Exh 15, pp 212 - 225; Exh 58, p 505). Following preparation of the

IEP, the Student's IEP team, including Parent, determined that the Student should receive special education services in the Behavior Disorders Resource Room. (Exh 15, p 226; Exh 58, p 505). The placement included 1375 minutes per week in the Behavior Disorders Resource Room and 700 minutes per week in regular education classes. (Exh 15, p 212). Parent consented to this placement. (Exh 15, p 226; Exh 58, p 505; Tr pp 24 - 25).

32. The Student's conduct during School Year 1997-98, between September 1, 1997 and December 10, 1997, was as follows:

- September 08, 1997--Disrupted class. Did not follow directions. Threw paper across the room.
- September 09, 1997--Student's pants would not stay up. Trips himself. Told to stay. Argued with teacher.
- September 15, 1997--Refused to sit up and keep his head up. Said he was BD and he didn't have to do anything.
- September 19, 1997--Tried to sneak into mixer. Caught outside of gym doors with some other boys.
- September 29, 1997--Unable to follow directions. Disobeyed teacher and laughed about it. Said he couldn't run because he used to be a drug addict.
- October 02, 1997--Did not bring math book to ISS.
- October 21, 1997--Tardy without plan book.
- October 23, 1997--Failed to follow instructions. Disruptive. Tried to get class to side against the teacher. Would not settle down.
- October 24, 1997--Refusal. Disrespect.
- October 29, 1997--Failed to show up for detention.

- October 30, 1997--Refused to complete assignment. Refused to show up for before or after school detention.
- November 10, 1997--Playing with pencil up his nose. Refused to complete assignment. Refused to do his work in ISS.
- November 14, 1997--Refused to clean up. Refused to take proper seat and to complete assigned work.
- November 20, 1997--Refused to follow class guidelines and shower.
- December 01, 1997--Refusal. Left class without permission. Ran from teacher. Repeatedly said "this sucks."
- December 02, 1997--Wrote gang symbols on desk. Work pant leg up with blue shirt hanging out of pocket.
- December 04, 1997--Skipped class. Checked in at school at 8:00, but did not show up for club. Seen helping bulletin board club. Running full speed down the hall. Four teachers yelled at him to stop, but he ignored them. Walked out of lunch room without permission to use the telephone. Argued with teacher.
- December 08, 1997--Threw snow inside the building. Threatened to hit another student when the student told him to sit down. Cursed as he left the room saying, "I don't give a shit."
- December 09, 1997--Could not find plan book.

(Exh 21, pp 238 - 247). During this time period, the Student also had at least eighteen (18) tardies. (Exh 21). Richelle Rader testified that the District was particularly concerned about the Student's repeated refusal to follow adult direction, his disruption of his classes and the fact that he was seen repeatedly by the administration. (Tr pp 28 - 29).

33. While the Student was at Campbell Junior High School, the District tried various intervention strategies in an effort to accommodate the Student's disability. Included in these accommodations were the District's discipline plan, a

Behavior Intervention Strategy System developed by Ozanam School for Boys, conferencing with the student and with the parent, in-school suspension, out-of-school suspension, the Behavior Disorders Classroom Management Plan, before and after school detentions and team meetings to discuss options and strategies. (Tr p 31). None of these intervention strategies was successful. (Tr p 32).

34. On November 17, 1997, Richelle Rader had a telephone conference with the Parent to discuss day treatment placement options for the Student. (Exh 58, p 506).

35. On December 10, 1997, the School District conducted a functional behavioral assessment on the Student and prepared a Behavior Intervention Plan. (Exh 22, pp 248 - 255).

36. On January 6, 1998, the School District provided the Parent with a Notice Of Change In Placement for the Student. (Exh 26, p 274). In the Notice, the School District proposed that the Student's placement change from Behavior Disorders - Resource Room to Behavior Disorders - Day Treatment - Belton-Ozanam Southland Cooperative. The Parent consented to this placement. (District Exh 26, p 274). The District had proposed the placement at Belton-Ozanam even though the Student's grades were acceptable "because his behavior had deteriorated, even though he was in the structured BD classroom....and we were very concerned about his emotional health." (Tr p 36, Ins 11 - 18).

37. Beginning January 7, 1998, the Student was placed at Belton-Ozanam. He remained there through the end of School Year 1997-98.

38. Belton-Ozanam is a cooperative program which draws students from several area school districts, including the Lee's Summit R-7 School District. The educational program at Belton-Ozanam is provided in a separate facility located adjacent to the main Belton School District campus. (Tr p 359). The Belton-Ozanam program is a "day treatment" (Tr p 371), program which offers a therapeutic environment for its students with "therapists" who are assigned directly to the students. The therapists are all Master's level social workers or psychologists who

are trained to deal with the issues brought to them by the students. (Exh 71, pp 10 - 11; Tr pp 365 - 366). Belton-Ozanam also employs a consulting psychiatrist to provide psychiatric evaluations and recommendations concerning the students in the program. (Tr p 369). Students in the program receive individual or group therapy on site to work on issues like anger management, grief and loss and social skills training. (Exh 71, pp 10 - 13). The program uses a "point plan" to assess the student's stability and once stable, to begin integration into a mainstream academic program. (Tr pp 362 - 363; pp 367 - 368). Mainstreaming begins in the age-appropriate Belton School District school building. When the student remains stable, he or she may returned to his/her school district to be reintegrated in that district's regular educational program (Tr pp 371 - 372) and may also participate in sports programs or other extra-curricular activities. (Tr pp 363 - 364; pp 372 - 374). While at Belton-Ozanam, a student has contact with non-disabled peers at lunch and during school assemblies, as well as when the student is mainstreamed into the regular education classes in the Belton School District or the student's home district. (Tr pp 365 - 368). A placement at Belton-Ozanam is not considered to be "terminal," but instead, a placement within a therapeutic environment where the student can stabilize.

39. On February 20, 1998, the Student's IEP team, including the Parent, met to review his IEP. (Exh 28; Exh 58, p 505). During this conference, the Student's IEP team decided to continue his IEP until May 24, 1998, "to see how [the Student] will act in a mainstreamed class." (Exh 29, p 284; Exh 58, p 505; Tr p 39).

40. On March 27, 1998, the Parent requested to meet with Richelle Rader and the School District staff to discuss the Student's placement. During that discussion, the Parent requested that the Student's placement be changed from Belton-Ozanam back to the School District. The School District's staff indicated that it was their recommendation that the Student remain at Belton-Ozanam. The Parent agreed to this recommendation. The Parent and School District further agreed that the Student's IEP team would meet on May 20, 1998, to determine whether the Student's placement would be changed for School Year 1998-99. (Exh 58, pp 507 - 508).

41. During the Student's placement at Belton-Ozanam, Dr. Carla Wakefield, a psychiatrist who works with Belton-Ozanam, conducted a psychiatric evaluation on the Student. Dr. Wakefield's report, dated May 1, 1998 provides the following psychiatric diagnosis of the Student:

Axis I Attention Deficit Disorder

Oppositional Defiant Disorder

Parent-Child Problem

History of Physical Abuse

History of Depression

Axis II R/O Learning Disabilities

Axis III Familial Hypercholesterolemia

Axis IV Severity of Psychosocial Stressors: mild to moderate

Axis V Global Assessment of Functioning Scale: 61

(Exh 30, p 300). Dr. Wakefield also states in her evaluation that the Student was not receiving psychiatric treatment at that time.

42. On May 20, 1998, the Student's IEP team, including the Parent met to discuss revisions to the Student's IEP. The team made changes to the goals and objectives in the IEP, reviewed Dr. Wakefield's report and the Student's progress at Belton-Ozanam. Richelle Rader's notes of this meeting state, in pertinent part, as follows:

"...Started integrating at Yockum Middle School. Has done OK at Yockum, but his behavior has deteriorated at BOSCO. He is back on White Level Integration. Has been in Social Studies and Language Arts. At BOSCO, giddy, impulsive behavior is the primary concern. [Student] feels like he is ready to return to LSN for the fall. Pat Clary's recommendation was for him to continue the placement at BOSCO for fall with a couple of classes at BHS--They are on block schedule--85 minutes apiece. [Student] needs to learn to identify when he

is feeling anxious so he can learn to cope better. We will look at a change at semester time to LSN if he is able to hold things together until semester."

The Parent agreed to the placement proposed by the School District and Pat Clary from Belton-Ozanam. (Exh 32, pp 311 - 319; Exh 58, pp 509 - 510; Tr pp 39 - 40).

43. Following the May 20, 1998, the Parent requested that the IEP team meet again to rediscuss the decisions made during the meeting. Thereafter, on May 28, 1998, the Student's IEP team met. During the meeting the Parent requested that the Student be returned to the School District's North High School rather than Belton-Ozanam. (Exh 58, p 510). Richelle Rader's notes state in pertinent part as follows:

"[Parent] promised to follow through with Dr. Wakefield's recommendation to seek out side assistance and get appropriate medication for if we would allow [the Student] to come to LSN for the fall. Dr. Bigby suggested that [the Parent] call Dr. Wakefield and discuss the report. At LSN [the Student] would need to take the following classes: Social development, BD Math, BD English I, BES, US History. will choose electives. This will be a Change of Placement.

The Parent agreed to this placement. (Exh 58, p 510; Exh 34, p 340; Tr pp 41 - 44).

44. At the beginning of School Year 1998-99 the Student began his 9th Grade year at North High School. The Student's conduct during the first semester of School Year 1998-99, between September 1, 1998 and December 1, 1998, was as follows:

- September 4, 1998--Missed Detention.
- September 14, 1998--Skipped class.
- September 15, 1998--Not working in class. Talking back to teacher. Appeared to refuse to discuss the matter with the Administrator.
- September 16, 1998--Defiance of authority.[2]

- September 21, 1998--Running in the hall. Refused to obey requests to stop running. Disruptive in office.
- September 23, 1998--Threatened to fight a senior student. Walked out of the office without permission. Refused to return to detention. Refusal to follow a staff member. Possession of a beeper. Suspended from school on September 24-25, 1998.
- September 30, 1998--Referred to another student as a "bitch" in a conference with an Administrator.
- October 12, 1998--Use of inappropriate language. Disrespectful to a staff member.
- October 19, 1998--Disruptive in ISS.
- November 2, 1999--Disruptive in Focus Room. The Student continued to get out of his seat, talked to other students after being warned repeatedly to not have any communication with students while they were trying to go through the recovery process. (Tr p 225, Ins 13 - 17).
- November 3, 1998--Disruptive in Focus Room and unable to work. Student stated that he was "hyper". (Tr p 226).
- November 11, 1998--Requested a staff member to buy alcohol for him.
- November 16, 1998--Had a controversy with another student. Made the following statements: (1) "What would happen if a mob of people came in with guns and started unloading them?" (2) "I'm going to bring a knife to school tomorrow." (3) "Do you know how far this pen could go into an eye?" Suspended November 17-18, 1998.
- November 19, 1998--Spoke of having a gang affiliation and stealing voice mail numbers. Made motions like he was using drugs. Spoke of his experiences with a triple beam balance. Drew "crypts" and other gang related symbols. Said he was going to roll "a fat one" after school.
- November 19, 1998--Talked about getting high. Pointed fingers at Mr. Allen like he was shooting a gun. Referred to two students and said: "That's what make me want to take a trash can and bash somebody's head in!" Made

stabbing motions toward Mr. Allen and said "I'll stab you with this and you'll be blue instead of red."

- November 19, 1998--While walking in the hall with a teacher, told the teacher that two students wanted to get him.
- November 20, 1998--While walking with a teacher to the restroom, they passed two students who did not look at them. Student told the teacher that the two students: "Want to kick my ass."
- November 20, 1998--Told Mr. Allen that he was going to "jack your shoes". Told a student that he would "jack [the student] in the jaw with a baseball bat" if the student touched his car.
- November 23, 1998--Told a student "You'd be history if I hit you like that", as he made a hitting motion.
- December 1, 1998--Claimed to have pointed a gun at a friend over the weekend. Later said it was only a BB gun.
- December 15, 1998--Had a verbal confrontation in the hall with another student. Told the teacher that: "I'll beat him till he starts crying. Then I'll pull out a gun and ask if he wants anymore, cause this is what you'll get next time!" The Student then mutilated a paper with his pen by making stabbing motions.

(Exh 60, pp 541 - 547).

45. Gary Kruger testified that during the first semester of School Year 1998-99, between September 1, 1998 and December 1, 1998, the Student exhibited the following conduct in his room or in his presence:

- Inappropriate comments to others. Asked the paraprofessional in the classroom, "Are you on acid?"
- Removed from Focus room on more than one occasion for disrupting the Focus room by rocking the study carrels in an attempt to knock them over.
- Blurting inappropriate drug related comments out during class time.

- Perceives that upper classmen want to get him. Student has made comments to the upperclassmen attempting to draw them into conflict.
- While walking with Student in hallway, another student said "hi" to the teacher. The Student said: "I'm going to bash that kid's head in with a trash can because he's looking at me. I know he's gonna do something to me!"
- Acts erratically in class. Nods head, blinks his eyes and laughs uncontrollably.
- Asked in class out of the blue: "Do you think animals should go to school?"

(Exh 60, p 542; Tr pp 184 - 185).

46. As a result of the Student's conduct between September 1, 1998 and October 7, 1998, (described above), on October 7, 1998 the School District provided the Parent with notice of a meeting of the Student's IEP team for the purpose of performing a functional behavioral assessment and developing a behavior intervention plan. (Exh 37, p 344; Tr pp 46 - 47). On October 8, 1998, the Student's IEP team, including the Parent, met and amended the Student's Functional Behavior Assessment. (Exh 58, p 510; Exh 22, pp 248 - 255; Tr pp 178-179).

47. On October 12 and 13, 1998 Gary Kruger had multiple conferences with the Parent concerning the Student's misbehavior as follows:

- October 12, 1998--Discussion concerning the Student's comment to Mr. Kruger's assistant: "Are you on acid?"
- October 13, 1998--Telephone calls concerning the Student's continuing conflicts with other students.
- October 13, 1998--Telephone call concerning Mr. Kruger's concern about the Student's "loose thinking process," erratic behavior, head nodding, blinking of eyes and uncontrolled laughter.

(Tr pp 179 - 185).

48. On November 5, 1998 Gary Kruger and Darren Dennis had a conference with the Parent concerning the Student's misbehavior. During this conference the parties discussed the Student's conduct including the Student's: (1) loose association in thought process ("Do you think animals should go to school?"); (2) inability to focus attention on work; and, (3) disruption of the focus room. During this meeting the participants also discussed that:

- The Student needed to take the medication which had been prescribed by his physician.
- An alternative temporary placement would be investigated by Mr. Dennis which would be reviewed with the Parent.
- The Parent would meet with Richelle Rader concerning the possibilities for other alternative placements.
- A vocational review would be conducted by the counselor.

(Exh 58, pp 512 - 513; Tr pp 186 - 188).

49. On November 9, 1998, Gary Kruger telephoned the Parent to follow up on the conference held on November 5, 1998. During this conference the Parent indicated that the Student was still refusing to take his medication on school days. Mr. Kruger related an incident that occurred in the classroom when the Student made a comment about "High times." (Exh 58, p 514; Tr pp 188 - 189).

50. On November 12, 1998, Gary Kruger, Richelle Rader and Cindi Barfield met with the Parent and discussed the following:

- A. A request for authorization from the Parent to speak with the Student's physician concerning his medication.
- B. Consideration of a change to a more restrictive structural schedule.
- C. Restrict passing periods and lunch to the Focus room to determine the status of the student.

(Exh 58, p 514).

51. As a result of the Student's continued misconduct from October 7, 1998 through November 16, 1998, (described above), a conference was held on November 17, 1998 to determine the appropriateness of the Student's current placement. The following occurred during this meeting:

A. The Student's IEP, Functional Behavior Assessment and Behavior Intervention Plan were reviewed. (Exh 58, p 517; Exh 40, pp 347 - 351)

B. The parties reviewed the threats of bodily harm made by the Student on November 16, 1998. Richelle Rader's notes state the following with respect to this discussion:

"Behavioral incident of yesterday was reviewed. [The Student] perceived that there were some other students who were ready to engage him in a confrontational situation. [The Student] referred himself to the Focus Room--that teacher talked to him the remainder of the day. [The Student] did intentionally walk into another student in the hallway even with the escort behind him. [The Student] then went to his classroom and was in a highly agitated state of mind. [The Student] was documented as saying: 1) what would happen if you put a pen in someone's eye. 2) what if a group of people came to shoot their guns into the school. 3) I'm going to bring a knife to school tomorrow." [3]

3. The parties discussed placement options including:

(1) A homebound placement pending contractual placement being secured. The Parent did not find this option to be acceptable.

(2) A homebound placement pending an independent psychological evaluation to assess if the Student was a danger to himself or others. The Parent refused this option.

(3) Placement in the Focus room pending an independent psychological evaluation. The Parent considered this option.

(4) File a due process request with the stay put being in the Focus room. The Parent considered this option.

The Parent would not make a decision regarding the Student's Placement and evaluation until she talked with an MPAC advocate. The Student was suspended from school on November 17 and 18, 1998. (Exh 58, pp 515 - 516; Exh 39, p 346). The Parent subsequently agreed to a placement of the Student in the Focus room pending an independent psychological evaluation. (Tr p 55).

52. On November 20, 1998, Richelle Rader, Dr. Linda Bigby and the Parent, met to discuss placement options and the need for a reevaluation of the Student. An Evaluation Plan was reviewed with the Parent. (Exh 42, pp 353 - 357). The Parent consented to the reevaluation of the Student (Exh 43, pp 358 - 359; Exh 58, p 518).

53. On November 24, 1998, Cindi Barfield, Coordinator of Behavior Disorder Programs for the School District, performed a behavioral observation on the Student while he was at the School District. (Exh 71, p 15; Exh 66 pp 564 - 565).[4] During this observation, Ms. Barfield personally observed the following:

A. The Student was "anxious"--Ms. Barfield testified that the Student "was shaking, he was what I would describe as agitated and nervous...He kept looking at the other students, felt that he was being watched...He was muttering under his breath...he was silly, too, laughing and giggling almost the whole time we were walking down the hall." (Exh 71, p 17, Ins 12 - 20). She also testified that while walking down the hall the Student was anxious, "[h]e kept...scanning the other kids, looking at them frequently, kind of putting his head down but looking...he appeared agitated, he appeared nervous...his body was in motion and he was laughing and acting silly." (Exh 71, p 28, Ins 23 - 25; p 29, Ins 1 - 3).

B. The Student was "hyper"--Ms. Barfield testified that the Student exhibited "[l]ots of body movement, shaking of his hands, tapping his pencil on his notebook, behavior such as that." (Exh 71, p 17, Ins 23 - 25).

C. The Student "could not stay focused"--Ms. Barfield testified that while the Student was taking a test, "he was very active physically...he tapped his foot a lot, he tapped the desk with his pencil, he spoke out 16 times in twenty minutes...he was constantly in motion with his body....he kept asking Mr. Allen questions...he wasn't able to work without assistance." (Exh 71, p 23, Ins 7 - 23).

D. The Student was "unable to resist talking"--Ms. Barfield testified that the Student was unable to resist talking to Mr. Allen or the other student in the classroom, "[h]e was asking questions, wanting Mr. Allen to help him with the test...[and] made other comments...some of them were related to the other student and some of them were just silly comments." (Exh 71, p 24, Ins 14 - 19).

E. The Student had an "unusual need for attention"--Ms. Barfield testified that the Student's "need for attention...[was] remarkable for a year old, a constant need for adult attention." (Exh 71, p 26, Ins 17 - 23).

F. The Student made "rude gestures toward others"--Ms Barfield testified that she observed the Student "extend [his] middle finger...and roll his eyes...at students." (Exh 71, p 28, Ins 10 - 21).

G. The Student was "socially immature"--Ms. Barfield testified that the Student "was acting like a much younger student, needed constant attention, was very silly, very age inappropriate...[which] indicated social immaturity." (Exh 71, p 29, Ins 10 - 17). Ms. Barfield further stated that the behaviors she observed "looked like a preschool age child." (Exh 71, p 30, Ins 4 - 5).

H. The Student was "defiant"--Ms. Barfield testified that the Student's defiance "is not a real outward, violent defiance, but the fact that he continues his misbehavior or his negative behavior despite almost constant redirection from adults at times." (Exh 71, p 31, Ins 1 - 5).

Ms. Barfield concluded by stating that it was her opinion, based upon her observation of the Student, review of his educational records, interviews with the

School District's staff and familiarity with the Belton-Ozanam program that the Student should be placed in that program. (Exh 71, p 36 - 37).

54. As a part of the Student's reevaluation, the District requested that Dr. Fred Nolen, a Kansas City clinical psychologist, provide "an independent evaluation and assessment" of the Student. (Tr p 109). Dr. Nolen met with the Student on two occasions, November 23, 1998, and December 4, 1998. (Tr p 108). Dr. Nolen's report, dated December 12, 1998, diagnoses the Student as follows:

Axis I            Post Traumatic Stress Disorder (309.81)  
                     Polysubstance Dependence (304.81)  
                     Oppositional Defiant Disorder (313.81)  
                     Depression, recurrent, moderate (296.32)  
                     Physical Abuse of Child, Victim (995.5)  
                     Rule Out Paranoid Schizophrenia

Axis II            Paranoid Personality Disorder (301.0)

Dr. Nolen stated further in his report:

"It appears that [the Student] is a very emotionally scared and angry young man. I believe that these feelings are related, in part, to the childhood scalding incident... . There may be other events of physical abuse or emotional psychopathology in his childhood that he would need to discuss and explore in treatment. He also has major anger at societal authority figures, his parents and positive socialization activities such as school.

At this point, [the Student] appears [to be] dealing with these feelings by passive-aggressive behaviors at school, drug use and displaying drug and gang related activities. These behaviors and attitudes are typical of severely abused children when they become adolescents.

I recommend continued individual psychotherapy for him to work through his

physical abuse history and his use of illegal substances. I also recommend he continue to participate in family therapy so that discord he reported between him and his mother be effectively resolved. This discord is describe by him as intense and becoming increasingly physical.

I also recommend that he be reassessed for psychotropic medication. I understand he had been on many different psychotropics in the past and is presently refusing to take them. However, he admitted self-medicating with illegal drugs and alcohol. One of these street drugs, methamphetamine, is extremely dangerous, causing major mood swings and paranoia with prolonged use or during the withdrawal phase. His results on the MMPI clinical scales suggest his level of emotional lability is extremely high and is interfering with his functioning at school and in society. His level of central nervous system arousal may be so high that he is experiencing distorted perceptual experiences, including visual hallucinations. These distortions can result from his high emotional arousal, from illegal drug use or from both."

Dr. Nolen further recommended that the Student be provided a therapeutic environment, and not be returned to a mainstream school placement. (Tr p 130, Ins 12 - 14).

55. Dr. Richard Garland, a clinical psychologist who has served as a consulting psychologist with the District for approximately eighteen years. (Tr p 243). During School Year 1998-99, Dr. Garland was an employee and consulting psychologist with the District. (Tr p 243). During his work with the District, Dr. Garland was responsible for the evaluation of students who were being considered for special services and recommendation as to whether such placements would be reasonable. (Tr p 243). Dr. Garland testified that it is his opinion that the Student needs to be in attendance at a school where there is a substantial therapeutic environment. (Tr p 270). Dr. Garland further testified that he does not see how a "substantial therapeutic environment could be provided at a high school which has 1700 students. (Tr pp 270 - 271). Finally, Dr. Garland testified that he had spoken with

Mr. Glenn Collette and Dr. Robert Cooley, two psychologists who had seen and treated the Student. Dr. Garland stated that both psychologists indicated that they felt a therapeutic environment would be important for the Student. (Tr pp 279 - 280).

56. Dr. Robert Cooley, a clinical psychologist who has treated the Student, testified concerning his opinions on the appropriate program for the Student. Dr. Cooley testified that the Student should needed an environment where the school staff would be able to attend to his disability with immediate feedback. (Tr p 308). More specifically, Dr. Cooley testified that the Student:

“...is still going to need somebody to say, '[Student], what is going on, are you getting agitated.' He's going to need some times immediate feedback from somebody. He's going to need to be at least with teachers who are able to recognize that he's got this problem with agitation, that he gets agitated. If he doesn't identify it, if he doesn't recognize what's going on, he gets caught up in it instead, it gets momentum going and then he starts making people mad and creating tension which creates more agitation, he gets caught up in this kind of cycle. He needs somebody who can say, '[Student], you need to sit down and you need to think about what's going on because this isn't helping you at all, you are doing it again.' And I've seen some teachers in mainstream classes in full-sized classrooms who have just always been excellent at that and other teachers who aren't. That's probably more -- too much of an expectation for every high school teacher to be that capable, but I think for the most part, yes. For the most be around regular kids and regular classroom settings as much as possible.”

(Tr p 308, Ins 3 - 25; p 309, Ins 1 - 3; Tr p 329).

Dr. Cooley had previously provided a letter dated January 5, 1999, to the Parent. The Parent did not agree with the letter so she did not provide it to the School District until the hearing in this matter. (Tr pp 323 - 324). In the letter Dr. Cooley states as follows:

“Joe Menendez, M.D. and Allan Domain, Ph.D. conferred about [the Student] in January of 1994 and agreed that [the Student] would benefit from either hospitalization or residential treatment of some kind. [The Student’s] mother refused at that time. Again, Carla Wakefield, M.D. Child Psychiatrist, in her evaluation of 5-1-98, recommended that [the Parent] and [the Student] participate in ongoing structured family therapy with a special emphasis on how to set boundaries and develop limits on behavior. I personally recommended to mother, father and [the Student] that they participate in family therapy with me on a regular basis. However, this has not happened. There are many comments throughout the evaluations, which are many, that [the Parent] is unable to set appropriate boundaries for her son. This is so pervasive that I believe that it has led to [the Student] having difficulty organizing his thinking or in establishing goals for himself. It enables him to continue to behave in a very immature, impulsive and selfish way, and that is why I have recommended that [the Parent] contact both Children’s Mercy Hospital in Kansas City, Missouri and the Menninger Clinic in Topeka, Kansas about the possibility of brief in-patient treatment to be followed by structured living for possibly the remainder of this school year.”[5].

57. On December 18, 1998, the School District provided notice to the Parent of a meeting to discuss the Student’s IEP, Diagnostic Summary and the Student’s placement. (Exh 47, p 449; Exh 48, p 450).

58. On January 4, 1999, the School District’s was held with the Parent in attendance. The School District’s staff shared the findings of the Student’s reevaluation. The parties at the meeting were able to reach agreement regarding the diagnosis--Behavior Disorder--but not as to the severity of the Student’s emotional problems. The meeting lasted approximately three hours and the parties agreed to postpone the discussion of the Student’s IEP and placement. (Exh 49, pp 451 - 473; Exh 58, pp 518 - 519).

59. On January 11, 1999, Richelle Rader and the Parent had a telephone conversation. During this conversation, Ms. Rader again explained to the Parent that the IEP team would be discussing changes in the Student's IEP and the placement of the Student. The Parent indicated that she would not be willing to return the Student to a contractual placement. (Exh 58, pp 517 - 518).

60. On January 8, 1999, the School District gave the Parent notice of a meeting to discuss, review and revise the Student's IEP and placement. (Exh 52, p 478). On January 12, 1999, the Student's IEP team, including the Parent, met. The Student's IEP was reviewed and new goals and objectives were discussed. (Exh 53, pp 479 - 492). Following the revisions to the Student's IEP, the IEP team turned to the issue of the appropriate placement for the Student. Richelle Rader's notes state, in pertinent part, the following:

"Placement was then discussed. School personnel believe Day Treatment is the best option because of the therapeutic component day treatment can provide, as well as a small structural setting. [The Parent] then disagreed with the staff and Dr. Bigby informed her she would be receiving in the mail a copy of the Procedural Safeguards and a Notice of Action. Dr. Garland then spoke regarding the conversations he had with both Mr. Collette and Dr. Cooley. Both conveyed to Dr. Garland that they agreed [the Student] requires boundaries and they could support day treatment if [the] school felt it was necessary." [6]

A determination was made that the Student would remain in the Focus Room until the placement issue was resolved. (Exh 58, pp 519 - 520; Tr pp 56 - 57).

61. On January 15, 1999, Dr. Linda Bigby wrote to the Parent. That letter states in pertinent part:

"The district plans to change the educational placement from the Lee's Summit North High School to an outside contractual agency, the Belton Ozanam Program. This change of placement is based upon the evaluation results shared and discussed at the meeting on Jan. 4, 1999 and the IEP developed at the meeting on January 12, 1999, both of which you were a participant.

...This letter serves to notify you in writing of the district's position to initiate this change of placement. The change of placement will occur as discussed...."

(Exh 54, p 494).

62. On January 19, 1999, the Parent requested that the School District conduct a resolution conference. On January 27, 1999, the resolution conference was held at the Lee's Summit North High School. (Exh 55, p 496; Exh 56, pp 497 - 499). Following the resolution conference, on January 29, 1999, Paul Munsen, Assistant Superintendent for Secondary Education for the School District, wrote the Parent with the decision of the School District. Mr. Munsen's letter states in pertinent part:

"In review of the information presented and in school records, there is a history of behaviors noted. These behaviors are supported in many of the observations of the doctors who are or have been involved with [the Student]. The incident involving threats appears to be the behavior that has surfaced and is significant as it presents a potential safety factor.

Information from Dr. Nolen's report, Dr. Garland's interpretations of his conversations with Dr. Cooley and Mr. Collette as well as comments from other doctors' reports have pointed to a common theme. That theme being that all parties have seen characteristics which indicate that [the Student] has difficulty with oppositional behavior, difficulty setting boundaries and serious behavioral problems which merit a therapeutic environment.

The district desires to provide [the Student] meaningful educational opportunities in the most appropriate and least restrictive environment possible. An environment based on [the Student's] needs which provides a small group, high structured therapeutic environment would appear appropriate and less restrictive than a hospital or residential setting as suggested by Dr. Cooley and Mr. Collette.

Therefore, I am upholding the district's decision to change [the Student's] placement to an outside contractual program that provides a therapeutic component. It is hoped that both the family and the district will be able to work together for the best interest of [the Student's] educational well being."

(Exh 56, pp 498 - 499).

63. On or about February 1, 1999, the Parent sent a letter to Ms. Heidi Atkins-Lieberman, Legal Counsel for Special Education Services, Missouri Department of Elementary and Secondary Education requesting a due process hearing. (Panel Exh 1)The request for a due process hearing was received by DESE on February 1, 1999 (Panel Exh 2).

64. On or around March 17, 1999, the parties were involved in a court proceeding concerning the Student. On March 17, 1999, the court determined that the Student should be returned to his last "mainstream placement" at Lee's Summit North High School. (Tr p 57). The Student remained in this placement through the end of classes for School Year 1998-99. (Tr p 57).

65. During School Year 1998-99, while the Student was at Lee's Summit North High School, the District tried various intervention strategies in an effort to accommodate the Student's disability. Included in these accommodations were the District's discipline plan, a Behavior Intervention Strategy System developed by Ozanam School for Boys, conferencing with the student and with the parent, in-school suspension, out-of-school suspension, the Behavior Disorders Classroom Management Plan, before and after school detentions and team meetings to discuss options and strategies. (Tr p 31). None of these intervention strategies was successful. (Tr p 32).

66. During School Year 1998-99, the Student had the following record of full day absences from school:

**Total Full Day Absences During School Year (123 days)**

**Full Days Missed**

**Absence Percentage**

39/123

31.7%

67. During School Year 1998-99, the Student had the following record of full or partial absences from each class period of each school day:

**Total Full Or Partial Class Periods Missed During School Year (123 days/861 periods)**

**Full or Partial Periods Missed**

**Absence Percentage**

354/861

41.1%

(Exh 64, pp 556 - 558).

67. While little or no evidence was presented to contradict the testimony or notes of School District witnesses Richelle Rader, Gary Kruger, Cindi Barfield and John Christopher Allen, to the extent that there is a question concerning the facts in this case, the Hearing Panel credits their notes which were introduced into evidence and the testimony they gave at the hearing or through deposition, in that their testimony and notes constitute an accurate and complete description of the material events in this matter.

68. Numerous witnesses, including Richelle Rader,[7] Dr. Fred Nolen,[8] Gary Kruger,[9] Dr. Richard Garland,[10] Patricia Clary[11] and Cindi Barfield[12]

testified that it was their opinion that the Student's placement should be at Belton-Ozanam or in a therapeutic environment.

## **V. Conclusions Of Law**

The Hearing Panel makes the following Conclusions of Law:

1 The Individuals with Disabilities Education Act, ("IDEA"), 20 U.S.C. §1400 *et seq.*, the IDEA regulations, 34 C.F.R. Parts 300-301 and the *State Plan for Part B of the Individuals With Disabilities Education Act*, (November, 1996)("State Plan") set forth the rights of students with disabilities and their parents and regulate the responsibilities of educational agencies, such as the School District in providing special education and related services to students with disabilities.

2 **The IDEA requires that a disabled child be provided with access to a "free appropriate public education." *Board of Education of the Hendrick Hudson Central School District, Bd. Of Ed., Westchester County v. Rowley*, 458 U.S. 176, 102 S.Ct 3034, 3049, 73 L.Ed.2d 690 (1982). The term "free appropriate public education" is defined by the applicable regulations as follows:**

**"...the term "free appropriate public education" means special education and related services that--**

**(a) Are provided at public expense, under public supervision and direction, and without charge;**

**(b) Meet the standards of the SEA, including the requirements of this part;**

**(c) Include preschool, elementary school, or secondary school education in the State involved; and,**

**(d) Are provided in conformity with an IEP that meets the requirements of §§300.340--300.350." (34 C.F.R. §300.8).**

3           The purpose of the IDEA and its regulations is: (1) "to ensure that all children with disabilities have available to them a free appropriate public education 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"; (3) "to assess and ensure the effectiveness of efforts to educate those children." 34 C.F.R. §300.1.

4           **If parents believe that the educational program provided for their child fails to meet this standard, they may obtain a state administrative due process hearing. 34 C.F.R. §300.506; *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), *cert. denied* \_\_\_ U.S. \_\_\_, 118 S.Ct. 1840 (1998); *Ojai Unified School District v. Jackson*, 4 F.3d 1467, 1469 (9th Cir. 1993), *cert. denied* 513 U.S. 825, 115 S.Ct. 90 (1994).**

5           **The IDEA is designed to enable children with disabilities to have access to a free appropriate public education which is designed to meet their particular needs. *O'Toole, supra.*, 144 F.3d 692, 698. The IDEA and the State Plan require the School District to provide a child with a disability with a "basic floor of opportunity...which [is] individually designed to provide educational benefit to the handicapped child." *Rowley, supra.*, 102 S.Ct. 3034, 3047. In so doing the IDEA does not require that the school district "either maximize a student's potential or provide the best possible education at public expense," *Rowley, supra.*, 102 S.Ct. 3034, 3049; *O'Toole supra.* 144 F.3d 692, 698; *Heather S., supra.* 125 F.3d 1045, 1054; *Fort Zumwalt, supra.* 119 F.3d 607, 612; *Johnson v. Independent School District No. 4 of Bixby, supra.* 921 F.2d 1022, 1026; *A.W., supra.*, 813 F.2d 158, 163-64; and, *Gregory K. v. Longview School District*, 811 F.2d 1307, 1314 (9th Cir. 1987). Likewise, a school district is not required to provide a program that will, "achieve outstanding results", *E.S., supra.*, 135 F.3d 566, 569; that is "absolutely [the] best", *Tucker, supra.*, 136 F.3d 495, 505; that will provide "superior results," *Fort Zumwalt, supra.* 119 F.3d 607, 613; or,**

that will provide the placement the parents prefer. *E.S., supra.* 135 F.3d 566, 569. See also: *O'Toole supra.* 144 F.3d 692, 708; *Tucker, supra.,* 136 F.3d 495, 505; *Heather S., supra.* 125 F.3d 1045, 1057; *Board of Education of Community Consolidated School District No. 21 v. Illinois State Board of Education,* 938 F. 2d 712, 716-17 (7th Cir. 1991) and, *Lachman, supra.,* 852 F.2d 290, 297. This is true even if the "parents show that a child [will make] better progress in a different program." *O'Toole supra.* 144 F.3d 692, 708 citing *Walczak v. Florida Union Free School District,* 142 F.3d 119, 132 (2nd Cir. 1998).

6 At the Administrative hearing level, the School District has the burden of proving that it has complied with the IDEA. *E.S., supra.* 135 F.3d 566, 569 citing *Clyde K. v. Puyallup School District No. 3,* 35 F.3d 1396, 1398-99 (9th Cir. 1994). Furthermore, in our case, since the School District is requesting to modify an existing educational placement, it has the burden of proving that the proposed placement is appropriate. *Burger v The Murray County School District,* 612 F. Supp. 434 (N.D. Ga 1984).

7 In *Rowley, supra.,* the Supreme Court established a two-step test to be followed by a court when it reviews a state decision regarding the appropriateness of a school district's education program. *Rowley, supra.,* 102 S. Ct. 3034, 3051. The *Rowley* Court described the two-step test as follows:

"First, has the State complied with the procedures set forth in the Act? And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits? If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more." (footnote omitted).

*Rowley, supra.,* 102 S. Ct. 3034, 3051; see also *Tucker v. Calloway County Board of Education,* 136 F.3d 495, 501 (6th Cir. 1998); ***E.S. v. Independent School District No. 196,*** 135 F.3d 566, 569 (8th Cir. 1998); ***Fort Zumwalt School***

***District v. Clynes*, 119 F.3d 607, 611 (8th Cir. 1997); *Independent School District Number 283 v. S. D.*, 88 F.3d 556, 561 (8th Cir. 1996); *A.W. v. Northwest R-1 School District*, 813 F.2d 158, 163 (8th Cir. 1987).**

8 As noted above, the first test in *Rowley, supra*. is whether the School District has complied with the procedures set forth in the IDEA. The issue presented to the Hearing Panel in our case, by stipulation of the parties, does not raise a procedural issue and no claim was made by the Parent at the hearing that the School District failed to comply with the procedures set forth in the IDEA or the State Plan. Rather, the issue stipulated to by the parties raises only the substantive issue of whether the School District has complied with the obligations imposed by the IDEA and the State Plan to provide an IEP and placement for the Student which are reasonably calculated to enable the Student to receive educational benefit.

9 Notwithstanding, the Hearing Panel concludes as a matter of law that in its dealings with the Student and Parent, the School District complied with the procedural requirements set forth in the IDEA and the State Plan and substantially complied with the procedural requirements of the IDEA and State Plan in the following specific instances:

A. The referral of the Student for screening; the preparation of the evaluation plan; the evaluation; and the preparation of the diagnostic summary for the Student during School Year 1996-97.

B. The preparation of the Student's IEP and placement made on or around February 24, 1997.

C. The preparation of a functional behavioral assessment and a Behavior Intervention Plan for the Student on or around December 10, 1997.

D. The Change of placement of the Student from Behavior Disorders - Resource Room to Behavior Disorders - Day Treatment - Belton-Ozanam Southland Cooperative on or around January 6, 1998.

- E. The review of the Student's IEP and decision of the Student's IEP team to continue the IEP until May 24, 1998 which occurred on or around February 20, 1998.
- F. The decision by the Student's IEP team to continue the Student's placement at Belton-Ozanam which occurred on or around March 27, 1998.
- G. The review of the Student's IEP; changes made to the IEP and decision to continue the Student's placement at Belton-Ozanam which occurred on or around May 20, 1998.
- H. The review of the Student's placement and decision to change the Student's placement from Behavior Disorders - Day Treatment - Belton-Ozanam Southland Cooperative to Behavior Disorders - Resource Room at Lee's Summit North High School which occurred on or around May 28, 1998.
- I. The preparation of a functional behavioral assessment and a Behavior Intervention Plan for the Student on or around October 8, 1998.
- J. The meeting to review the Student's IEP, functional behavioral assessment, Behavior Intervention Plan, current placement and placement options which occurred on or around November 17, 1998.
- K. The meeting to review the Student's current placement, placement options; and the need for a reevaluation of the Student which occurred on or around November 20, 1998.
- L. The evaluation plan; the reevaluation of the Student; the meeting to discuss the Student's IEP, Diagnostic Summary and the Student's placement which occurred on or around December 18, 1998.
- M. The meeting to discuss the reevaluation of the Student and complete the Student's Diagnostic Summary which occurred on or around January 4, 1999.

10 The Hearing Panel also concludes that the School District complied with the procedural requirements set forth in the IDEA and the State Plan in the following specific instances which are associated with the School District's decision that the Student's placement should be changed from Behavior Disorders - Resource Room at Lee's Summit North High School to Behavior Disorders - Day Treatment - Belton-Ozanam Southland Cooperative, including:

A. The meeting to discuss, review and revise the Student's IEP and placement; the revisions to the IEP and the proposed change in placement made by the School District which occurred on or about January 12, 1999.

B. The decision by the School District to change the placement of the Student from Behavior Disorders - Resource Room at Lee's Summit North High School to Behavior Disorders - Day Treatment - Belton-Ozanam Southland Cooperative and the Notice of Action provided to the Parent on or around January 15, 1999.

C. The Resolution Conference conducted by the School District on or around January 27, 1999 and subsequent decision of the School District dated January 29, 1999.

11 With respect to the second test in *Rowley, supra*, the question is whether "the individualized educational program developed through the Act's procedures is reasonably calculated to enable the child to receive educational benefits." The Parent did not challenge the appropriateness of the Student's IEP. Thus, this test, in the context of the issue presented to the Hearing Panel, requires the Panel to assess the appropriateness of the School District's decision to change the Student's placement from Behavior Disorders - Resource Room at Lee's Summit North High School to Behavior Disorders - Day Treatment - Belton-Ozanam Southland Cooperative.

12 The appropriateness of the School District's placement decision must be viewed in light of the IDEA regulations and the State Plan. The IDEA regulations, 34 C.F.R. §300.552(a), require that the placement decision be made:

"(1) ...by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

(2) ...in conformity with the LRE provisions of this subpart, including §§300.550 - 300.554."

The State Plan requires that each school district in this State reach a decision on the placement of a child with a disability based upon the "assumption that a student with a disability should be educated with peers who do not have a disability unless the needs of the student...require other arrangements." (State Plan p 55). If "other arrangements" are required, the school district must be able to justify the placement decision by use of the following two-part inquiry:

"1) Whether education in the regular classroom, with the use of supplementary aids and services, can be achieved satisfactorily; if not, then,

2) Whether the student has been integrated to the maximum extent appropriate."

(State Plan, p 55). The State Plan further provides five considerations to be examined when applying the two-part placement inquiry. These considerations are as follows:

"1) The nature and severity of the student's disability (i.e., factors which support a need for alternative instruction which cannot be achieved in the regular class such as extreme distractibility, diverse learning styles, inability to engage appropriately with other students in academic or social interactions);

2) The curriculum and goals of the regular education class (i.e., factors which document a need for specially designed materials, supplies or equipment or significant modifications to the regular curriculum which would have an adverse affect on the educational program for other students in the class);

3) The sufficiency of the district's efforts to accommodate the student with a disability in the regular class (i.e., description of modifications which have been attempted/resources which have been committed and the student centered results which were observed or a description of the modifications considered but rejected and the basis for the rejection);

4) The degree to which the student with a disability will receive educational benefit from regular education (i.e., consideration of the potential positive effects with respect to cognitive, academic, physical, social or other areas of development);

5) The effect the presence of a student with a disability may have on the regular classroom environment and on the education that the other students are receiving (i.e., description of potential harmful effects for the student with a disability or disruptive effects for students without disabilities)."

(State Plan pp 55 - 56).

13. With respect to the State Plan's two-part placement test, the Hearing Panel concludes that education of the Student at Lee's Summit North High School can not be achieved satisfactorily, in that the School District has exhausted reasonable attempts to meet the Student's special needs in that environment and for the following additional reasons:

A. The Nature and Severity of the Student's Disability—The record clearly reveals, and it is not disputed, that the Student is behavior disordered. While the degree of severity of the disability was questioned by the Parent, substantial evidence indicates, and the Hearing Panel finds that the Student's disability is sufficiently severe and pervasive so as to preclude and/or interfere with the education of the Student. This conclusion is supported by the following:

(1) Profound Inability to Successfully Function in the Regular Educational Environment--The Student's disability is characterized by a profound inability to successfully function in a regular educational environment. The record reveals

that the Student has repeatedly engaged in the following types of conduct: threats of bodily harm directed toward students and staff members, refusal to perform work in class, disrespect and talking back to teachers and administrators, refusing to attend detention, defiance of authority, running in the hall, disruption of class, disruption in the office and requests that staff members purchase alcoholic beverages for him.

(2) Extreme Distractability--The Student was observed by the School District staff to be extremely distractable. Cindi Barfield testified that the Student could not stay focused, was very active physically, spoke out in class an inordinate number of times and "was constantly in motion with his body." Gary Kruger and John Allen testified that the Student had a "loose thinking process," erratic behavior, head nodding, blinking of eyes and uncontrolled laughter. The testimony of Cindi Barfield, Gary Kruger and John Allen is specifically credited in this regard.

(3) Inability to Engage Appropriately With Other Students--The Student was observed by the School District staff to have a nearly total inability to appropriately function with other students. The Student's conduct reported by Gary Kruger, Cindi Barfield and John Allen included, but were not limited to: making comments to upperclassmen attempting to draw them into conflict; making inappropriate hand gestures toward other students; telling a teacher that he was "going to bash a kid's head in with a trash can;" suggesting that he was going to stab another student in the eye with a pen; and stating that he intended to bring a knife to school the next day. The testimony of Cindi Barfield, Gary Kruger and John Allen is specifically credited in this regard.

(4) An Alternative Placement is Supported by the Involved Mental Health Professionals--Dr. Richard Garland, Dr. Fred Nolen, Mr. Glenn Collette and Dr. Robert Cooley, the psychologists who have treated or examined the Student, and who have provided an opinion to the School District concerning the appropriate placement for the Student, have suggested a day treatment program with a therapeutic component or an even more restrictive residential/hospitalization placement is appropriate. Dr. Allan Domain, a former treating psychologist has

recommended in the past that the Student be hospitalized. The testimony of Dr. Richard Garland and Dr. Fred Nolen is specifically credited in this regard.

(5) The Student Exhibited A Profound Habit of Absenteeism--During School Year 1998-99, after returning from the Belton-Ozanam placement, the Student was absent for the full day 34.6% of the time and missed all or part of 41.1% of his class periods.

B. The Curriculum and Goals of the Regular Education Class--The record reveals and the Hearing Panel finds that the Student has consistently interfered with the process of education for himself and others. The testimony of Richelle Rader, Gary Kruger, Cindi Barfield and John Allen shows a pattern of behavior which is entirely disruptive of the educational process in the classroom. The testimony of Richelle Rader, Cindi Barfield, Gary Kruger, Dr. Richard Garland and Dr. Fred Nolen clearly indicates that each of them believes the Student should be placed in a day treatment, small classroom, therapeutic environment. Their testimony is specifically credited in this regard.

C. The Sufficiency of the District's Efforts to Accommodate the Student with a Disability in the Regular Class--The record clearly shows and the Hearing Panel finds that the School District has made many appropriate attempts to accommodate the Student in the School District's regular education program since the Student's 7th Grade year. The School District made the following appropriate accommodations for the Student:

(1) The Student's 7th Grade Year (School Year 1996-97)--During the second semester of the Student's 7th Grade year, the School District reevaluated him and determined that he was Behavior Disordered. Following preparation of an IEP, the IEP team determined that the Student should receive special education services in the Behavior Disorders Resource Room 1375 minutes per week and be mainstreamed for 700 minutes per week in regular education classes. The Parent consented to this placement.

(2) The Student's 8th Grade Year (School Year 1997-98)--By the end of the first semester of the Student's 8th Grade year, the Student's misbehavior had

become so profound that on December 10, 1997, the School District conducted a functional behavioral assessment of the Student and prepared a Behavior Intervention Plan for him. Thereafter, due to the Student's continuing misbehavior, on January 6, 1998, the School District provided the Parent with a Notice Of Change In Placement for the Student which proposed that the Student's placement change from Behavior Disorders - Resource Room to Behavior Disorders - Day Treatment - Belton-Ozanam Southland Cooperative. The Parent consented to this placement. The Student remained at Belton-Ozanam through the end of the second semester. At the conclusion of the second semester the Student's IEP team met on May 20, 1998, to discuss revisions to the Student's IEP. The team made changes to the goals and objectives in the IEP, reviewed Dr. Wakefield's report and the Student's progress at Belton-Ozanam. At this meeting the team, including the Parent agreed that the appropriate placement for the Student for the following school year was at Belton-Ozanam. Subsequently, however, on May 28, 1998, the Parent requested that the Student's placement be changed back to Lee's Summit North High School. While this request was directly contrary to the recommendation of Pat Clary, Belton-Ozanam's Principal, the IEP team agreed to make the change.

(3) The Student's 9th Grade Year (School Year 1998-99)--By November of the first semester of the Student's 9th Grade year, the Student's misbehavior had again become so profound that the Student's IEP team again performed a functional behavioral assessment and developed a behavior intervention plan for him. Also during this semester, Gary Kruger, Richelle Rader and Cindi Barfield had multiple conferences with the Parent concerning the Student's misbehavior. On November 17, 1998 the Student's Functional Behavior Assessment and Behavior Intervention Plan were again reviewed by his IEP team and the team discussed other placement options. The team determined that the Student should be assigned to the Focus Room and be "shadowed" by John Allen or other staff. Thereafter, the team agreed that the Student should also be reevaluated. In December, 1998 and January, 1999, the team met to discuss the results of the Student's reevaluation and prepare a Diagnostic Summary, make modifications to the Student's IEP which were consistent with the new

Diagnostic Summary and to determine the appropriate placement for the Student.

D. The Degree to Which the Student with a Disability Will Receive Educational Benefit from Regular Education--The record reveals and the Hearing Panel finds that proposed placement at Belton-Ozanam will provide the Student with educational benefit. One only needs to look to the Student's previous placement at Belton-Ozanam to find proof that a renewed placement there will provide the Student with educational benefit. The opinions of Pat Clary, Cindi Barfield, Gary Kruger, Richelle Rader, Dr. Richard Garland and Dr. Fred Nolen support this conclusion and are specifically credited.

E. The Effect the Presence of a Student with a Disability May Have on the Regular Classroom Environment and on the Education That the Other Students are Receiving--The Hearing Panel has previously found that at this time, the Student can not be accommodated in a regular education classroom. However, the program at Belton-Ozanam is designed to provide the Student with opportunities to integrate with the Student's non-disabled peers and to move back into the regular education classrooms. This aspect of the proposed placement makes it even more attractive and appropriate for the Student. It is further noted that the placement at Belton-Ozanam, a contractual day treatment program, is less restrictive than the hospitalization placement urged by Dr. Cooley, the Student's physician.

### **VII. Decision And Order**

The Hearing Panel hereby finds that the School District's proposed change in placement for the Student from Lee's Summit North High School to Belton-Ozanam Southland Cooperative (Belton-Ozanam) is an appropriate placement in the least restrictive environment.

### **VII. 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.

**PLEASE TAKE NOTICE** that you have a right to request review of this decision pursuant to the Missouri Administrative Procedures Act, Section 536.010 *et seq.* RSMo. Specifically, Section 536.110 RSMo. provides in pertinent part as follows:

"1. Proceedings for review may be instituted by filing a petition in the circuit court of the county of proper venue within thirty days after the mailing or delivery of the notice of the agency's final decision....

3. 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.

\_\_\_\_\_  
Ransom A Ellis, III  
Hearing Chairperson

Dated: \_\_\_\_\_

\_\_\_\_\_  
George Wilson  
Hearing Panel Member

Dated: \_\_\_\_\_

\_\_\_\_\_  
Fred Davis  
Hearing Panel Member

Dated: \_\_\_\_\_

**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing was served upon each party to this action, to-wit:

Dale L. Ingram  
Jolley, Walsh, Hurley, Raisher, & Roher, P.C.  
204 W. Linwood Blvd.  
Kansas City, MO 64111

Mr. Fred R. Davis  
State of Missouri  
Department of Mental Health  
St. Louis Regional Center  
South Office  
59th and Arsenal St. Suite IB  
St. Louis, MO 63139

Heidi Atkins Lieberman, Legal Counsel  
Special Education Legal Services  
Department of Elementary and Secondary Education  
Post Office Box 480  
Jefferson City, MO 65102-0480

James G. Thomeczek  
Thomeczek Law Firm, L.L.C.  
1120 Olivette Executive Parkway  
Suite 210  
St. Louis, MO 63131

Mr. George Wilson  
Coordinator of Special Education  
School District of Springfield, R12 940 N. Jefferson  
Springfield, MO 65802

by depositing same in the United States mail at Springfield, Missouri, postage prepaid, duly addressed to said parties on this \_\_\_\_\_ day of August, 1999.

Ransom A Ellis, III  
Hearing Chairperson

---

[1] The Parent had previously been provided with the *Procedural Safeguards* by the School District. Prior to the hearing, the School District provided the Parent with the *Procedural Safeguards* at least on January 7, 1997 (Exh 58, p 505); February 24, 1997 (Exh 15, p 226); March 3, 1997 (Exh 16, p 227); March 24, 1997 (Exh 16, p 227); March 25, 1997 (Exh 16, p 228); April 2, 1997 (Exh 16, p 229); May 7, 1997 (Exh 18, p 231); May 9, 1997 (Exh 18, p 232); November 10, 1997 (Exh 18, p 234); December 9, 1997 (Exh 20, p 236); November 20, 1998 (Exh 43, p 359); December 18, 1998 (Exh 47, p 449); January 4, 1999 (Exh 48, p 450); January 8, 1999 (Exh 52, p 478); January 15, 1999 (Exh 54, p 494); and, April 9, 1999 (Exh 61, p 548).

[2] Gary Kruger testified that the Student "had been asked in that situation to comply with completing an assignment in the classroom setting and he refused to do that assignment at that time." (Tr p 167, Ins 10 - 13).

[3] Richelle Rader testified that during the meeting there was no dispute over the fact that the Student had stated (1) "What would happen if you put a pen in someone's eye"?; (2) "What if a group of people came to shoot their guns into the school"?; and, (3) "I'm going to bring a knife to school tomorrow"? (Tr p 49, Ins 15 - 25; Tr p 50, Ins 1 - 4).

[4] Exhibit 71, the deposition of Cindi Barfield, was entered into evidence by stipulation of the parties. (Tr p 216).

[5] (Exh 69, pp 4 - 5 of the exhibit). Concerning this letter, Dr. Cooley testified that "[a]t that time I was concerned. I would see [the Student] mostly in regards to whether or not he needed medication. I didn't feel like we were getting work done and I felt like [the Parent] was not participating in the therapy and needed to be and I didn't think that we were making progress and I was being very frustrated at that point that we weren't getting what [the Student] needed. I don't want to be in this hearing feeling like I'm advocating just for these folks. I felt like Lee's Summit High School had some real issues, I felt like they had some real concerns. I felt like some of [the Student's] behavior was really inappropriate for a public school setting. Frankly, I was getting frustrated with my attempts to get them involved with more consistent regular counseling with the family, with family issues and home issues involved and if they couldn't do that, I didn't think some of the boundary issues or limit issues were going to be dealt with and perhaps he shouldn't be allowed to get back into public school until he could do that, until the family could cooperate and I thought maybe that would be one way of putting pressure on them to get more involved and to start showing more results and actually I was a little disappointed that the letter that I wrote, because I felt passionate about it at the time, didn't get sent, because the intent was for this letter to be read and used as part of the evaluation, so I haven't been entirely happy from that side of things."

[6] Richelle Rader testified that the District "felt like [the Student] required a therapeutic environment in order to address the needs that are outlined in the IEP. He is unable to establish and maintain parent/teacher relationships. He is not capable of consistently following school and classroom rules. His discipline records and behavioral documentation indicate that he doesn't function reasonably with established school rules and expectations and that a primary concern was that he had threatened violence." (Tr p 53, Ins 11 - 21).

[7] Richelle Rader testified that the Student should be placed at Belton-Ozanam because he "has an inability to follow school and classroom rules, ...has an extreme disrespect for adult authority, ...disrupts the learning process of

others and he needs to be able to express his feelings appropriately." (Tr p 59, Ins 9 - 13).

[8] Dr. Fred Nolen testified that the Student needed a therapeutic environment because "at the point I interacted with him and tested him, much of the data I had suggested he was very emotionally unstable and the level of instability in my perspective as a clinician, not a psychologist, but a clinician, he was not able to control on his own." (Tr p 148, Ins 4 - 10).

[9] Gary Kruger testified that he felt that the Student should be placed at Belton-Ozanam because "[t]he continuum of services that we offer at Lee's Summit North is educational in nature...and does not have a therapy [intervention] component as part of its continuum of services...[like] Belton-Ozanam has as part of its program." (Tr p 191, Ins 10 - 17; Tr p 194; Tr pp 212 - 214).

[10] Dr. Richard Garland testified that it was his opinion that the Student "should attend a school where there was a significant therapeutic component, where he would have a therapist available to him and the program was designed to meet his educational needs." (Tr p 270, Ins 11 - 15).

[11] Patricia Clary testified that at the end of School Year 1997-98 she and her staff "very much voiced concerns that he was not at all ready, that the controls that [the Student] was using when he was more okay were more external controls than internal controls and we needed more time to teach him about coping skills and when you feel anxiety, when you feel nervous, what are okay ways to express that and let people know so we can help you through those things. We very much pushed the system and at the IEP meeting in May, the IEP team's recommendation was for [the Student] to remain at Belton-Ozanam and on his return next year, even though he was having significant problems in our building, since he was okay in that classroom outside our building, to go ahead and have him take a class at the high school and then allow us time to teach him coping skills to deal with the anxiety that we felt he was having from being in that larger setting."

[12] Cindi Barfield testified that based upon her observation of the Student, review of his educational records, interviews with the School District's staff and familiarity with the Belton-Ozanam program that the Student should be placed in that program. (Exh 71, p 36 - 37).