

**BEFORE THE HEARING PANEL FOR THE MISSOURI DEPARTMENT OF  
ELEMENTARY AND SECONDARY EDUCATION  
IN THE MATTER OF:**

By his parents, )

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v. )

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Poplar Bluff R-I School District )

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AND )

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Poplar Bluff R-I School District )

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v. )

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By his parents )

DECISION OF THE THREE MEMBER HEARING PANEL

I. ISSUES

It appears to this panel that the issues in these consolidated due process requests are narrowly drawn and can be accurately stated as:

1. What is the correct educational placement for the student -?
2. What if any physical therapy, occupational therapy, assistive technology devices, or other special services are appropriate for this student?
3. Whether or not the location of the home bound school services is at the parent's home by way of medical necessity?
4. Whether the student has been provided a free and appropriate public education during his tenure at the Poplar Bluff School District in the least restrictive environment?
5. Whether sufficient training can be provided to school personnel so that the medical and physical safety for the student is ensured should he attend school premises to receive his educational services?
6. Whether to order that Occupational therapy, physical therapy, and assistive technology evaluations be conducted upon the student as soon as possible, in both the home and school setting?
7. How to accommodate the student' s apparent physical inability to attend school full-time at the district location?
8. Whether the parents should be ordered to provide medical records sufficient to conduct evaluations and to allow the student to be evaluated for physical therapy, occupational therapy, assistive technology, and medically necessary accommodations?
9. Whether, when, and to what extent the student should be transitioned from the home educational setting to school?

10. Whether a medical professional with training in the student's special needs, should be a mandatory part of his IEP team, receiving notices of all IEP meetings for the student, to be conducted?

11. Whether or not the district violated the IDEA "stay put" provisions by unilaterally changing the educational setting for the student from home to the district premises.

## II. FINDINGS OF FACT

1. The student has cerebral palsy and has inserted in his body a baclofen pump which delivers medicine directly to his spinal column. TR pp. 80-83, 122-126

2. The two findings of fact in number 1 (above) combine to create a significant amount of physical danger to the student from a fall or from unexpected or incidental contact in the school setting and to reduce his physical stamina. TR pp. 80-83,96, 129,130,710 (L. 1-3),713 (L. 22-25),714 (L. 1-2)

3. The student has been residing and continues to reside in the Poplar Bluff R-I School District since approximately fall 1997 .TR. pp. 9, 10, 182 (L. 13-15),199 (L. 14-18)

4. It is in the best interests of student to be evaluated for physical therapy, occupational therapy, and assistive technology at the soonest possible time. In the event the school and the parents of the student can agree to use the physical therapy evaluation which resulted in the Student receiving private physical therapy at the home currently, then in that event the additional physical therapy evaluation may not be necessary at this time. TR. pp. 139, 140,289 (L. 13-25), 290 (L. 1-22)

5. The parents' revocation of their release to provide medical documentation of the student's condition negatively and directly influenced the school's ability to comprehend the student's physical and educational needs. TR. pp. 272 (L. 7-11), 275 (L. 8-19)

6. The student's physical health and welfare require that his school environment be made more safe by the implementation of instructors and aides who are trained in the workings and frailties of the baclofen pump system as that system applies to the student and of cerebral palsy implications as these symptoms apply to the student. The student has a medical necessity for instructors and aides that are trained in spotting people or preventing or minimizing the effect of falls and should at any time he is transporting from class to class or from one room to another inside the school setting have a one on one aid with him for that purpose. TR. pp. 94 (L.15-20), 136 (L.21-25), 137, 138 (L.1-19), 290 (L.23-25), 291 (L.1-12)

7. We find that the laptop computer is a helpful device in the student's case for delivering educational services, but defer to the opinion(s) of the assistive technology evaluation in place and the independent assistive technology evaluation requested by the parents, as to which application and/or style of this device best suites the student. TR. pp. 104, 105,688 (L. 22-25),689, 690 (L. 1-2), 704

8. A transition period providing for some home schooling and some schooling at the district location should be provided. TR. pp. 710 (L.1-3), 713 (L. 22-25), 714 (L. 1-2), 139 (L. 15-25), 140 (L. 1-20), 304 (L. 10-22)

9. It is found to be in the best interest of the student that the home location education services be phased out, and replaced with a modified attendance policy reflecting student's physical needs. TR. pp. 291 (L. 8-9), 304 (L. 10-22)

10. Pending all evaluations, physical therapy, occupational therapy, and/or keyboarding (which applies reading and math) should be provided to the student by the school. TR. pp. 139 (L. 15-25), 140 (L. 1-20)

11. Extended school year services for this student would benefit the student in making up the school time he has lost since January of 2000. Each ESY day should include twenty to thirty minutes of physical therapy and forty five to sixty minutes of occupational therapy, which occupational therapy may include keyboarding at the discretion of the occupational therapist, but if the occupational therapist does

not include keyboarding in the occupational therapy, then in that event not less than (three) 20-30 minute sessions per

week of academic based keyboarding in math and reading. TR. pp. 104 (L.16-22), 166(L.16-25), 167(L.1-3), 172(L.18-22:1, 299(L.3-7),313(L. 24-25),314 (L. 1-24)

12. We find it to be in the best interest of the student that an amended attendance policy be adopted by the school, which takes into account the fact that the student may not be able to attend school each and every day he is scheduled to do so. The mother is best suited to be 'the final arbiter of the student's ability to attend school any given day and in the event such discretion is exercised so that the student does not attend school, then in that event the school should send homework to the student in an electronic format along with such assistive technology as maybe determined appropriate by any assistive technology evaluations, which homework will be returned with the assistive technology device (if any) along with the disks 5 upon which such work is stored. A modified grading system should be utilized, which would be developed in response to student's individual needs. TR. pp. 291 (L. 8-9), 304 (L. 10-22)

13. Parents filed two complaints against the district in regard to the student prior to this hearing and the school initiated truancy proceedings against the parents prior to this proceeding. TR. pp. 251 (L. 11-25), 252,253 (L. 1-13), 465 (L. 6-22), 472 (L. 2-12)

14. Room 113, the upstairs schoolroom physically viewed by the panel at the school location, is the one better suited to accommodate the student's needs.  
(Administrative Notice)

15. The district did not attempt to use their own medical experts for diagnostic or evaluation purposes as a related service for student. TR. pp. 309, 310 (L. 1-6)

16. A medical professional with a minimum of RN status and specific training in the student's needs should be on duty at the school premises at all times student is attending there. TR. pp. 112, 113

### III. DISCUSSION

Upon hearing the closing summaries of the attorneys for both sides in this dispute the panel members were all left with the distinct impression that the sides wanted basically the same thing. The facts that the student should continue to use the laptop and calculator assistive technology devices, that the special medical needs of the student for the high school setting be addressed, that necessary OT/PT and (independent) assistive technology evaluations need to be conducted, the fact that the medical records necessary to conduct such evaluations need to be provided by the parents, the fact that the student should himself be available for evaluations not only in the home but also at the school setting, the necessary training of school personnel to accommodate the medical and safety needs of the student, the modification of an attendance and grading policy and blending of home location and school location services in order to achieve the goal of eventually providing school setting education to the best of the student's ability with a plan in place to provide a means of accomplishing school work at home if and when the student's health so demands, and the need for a medical professional to be present in the school setting at all times the student is in attendance, all basically seem to be mutually agreed. It appears to us that there is universal agreement as to the need for some ESY education services for the student during the summers, as well. The panel feels that had the smallest amount of positive communication flowed between the parents and the school in this instance the contested hearing could have been avoided. There was fear and suspicion on both sides and apparently at some point that evolved into hostility, The parents filed two Office of Civil Rights complaints against the school and the school initiated truancy proceedings against the parents, and these actions were taken with little or no communication between the parties prior to the "trigger being pulled". There seems to be little argument that the student progressed in his educational endeavors for the whole time he was in attendance at the Poplar Bluff School District with the possible exception of 6th grade reading. We believe that even in that instance some progress was made. The parents alleged a violation of the Free and Appropriate Public Education directives of IDEA but failed to specifically identify the ways in which they believe this rule

was violated by the district. The panel believes that the alleged FAPE violations follow the school's decision not to provide 24 hour per day, 7 day per week laptop computer availability for the student or in the above mentioned discrepancy in beliefs as to his progress in reading his 6th grade year in school. Because the parties have so few disagreements with what would constitute the most beneficial educational package for the student and because through evidence at this hearing the medical needs of the student have been clearly shown, in the opinion of this panel, the decision has not been extremely difficult to make. We hope that the parties will leave their distrust and suspicion behind and communicate as necessary to implement this decision in good faith through mutual and complete communication and a motivating desire to do what is best for .

#### IV. RELIEF

It is hereby ordered, adjudged, and decreed by the three member hearing panel of David Potashnick, Attorney Chairperson, Karen Aslin, panel member chosen by the school district, and Marilyn McClure, the panel member chosen by the parents (with certain exceptions in Ms. McClure's case as fully explained in Exhibit A), that the following relief is just and appropriate and indicated under the issues joined and evidenced adduced by the parties:

1. Ms. Karen Aslin is as of April 10, 2000 allowed to substitute and enter on the record as the panel member for the school, due to the late resignation of original panel member for the school, Dr. Ben Franklin.
2. Marilyn McClure is allowed to substitute as the panel member for the parents due to the unavailability of the parents' original panel member, Nikki Murdick.
3. Sonja Kerr is allowed to enter her appearance on behalf of the parents in this matter as of 8:00 a.m, April 11, 2000 and pursuant to a motion for her to appear pro hac vice, is allowed to so appear and practice before this panel in the State of Missouri, even though she is not duly licensed to practice law in this state.

4. Attorney Melissa Cilley is allowed to enter her appearance and act as co-council for the parents in this matter as of 8 :00 a.m, April 11, 2000.

5. The rule of sequestration of witnesses was requested and granted, and was in place during the pendency of the hearing.

6. The parents by declaration upon the record have allowed and have elected that the hearing remain open to the public at all times.

7. For approximately 2 hours, from 8:00 a.m. to 10:00 a.m., April 10, 2000 the parents (who had not informed the panel or attorney for the school district of any legal representation) were represented by advocate Pam Grindstaff, who is the Missouri Parents Act Regional Coordinator for the Poplar Bluff area. The testimony and actions upon the record during that time period remain a part of the permanent record of this case and will not be amended or challenged by the attorneys for the parties.

8. The school's entire Exhibits, consisting of Volumes I and II, exhibits R 1 through R176 were entered into the record upon the mutual agreement of the parent, by and through her advocate Grindstaff, and the parents' exhibit A is admitted without objection; parents' exhibit B is admitted in its entirety (as to page 2 thereof, over objection); parents' exhibit C is admitted to the record over objection; parents' exhibits D, E, F, and G are admitted to the record without objection; parents' exhibit H is admitted to the record over objection; parents' exhibit I is admitted to the record without objection; parents' exhibit K is admitted to the record without objection; parents' exhibit L page 1 is admitted to the record over objection (page 2 the offer of evidence was withdrawn); parents' exhibit O is admitted in its entirety, (page 1 admitted over hearsay objection, page 2 admitted without objection).

9. It is declared by this panel that the parents and/or school may at any time bring with them to IEP meetings medical personnel of their choosing and that the parties be notified of the date of IEP meetings at least 7 days in advance thereto. It is acknowledged to be the law that the parties shall be provided (upon request) staffing notes from each and every IEP meeting.

10. The school shall provide training in spotting to such parties as will be accompanying any outside the classroom areas necessary for him to travel while attending school at the school premises. Any and all instructors or substitutes for— likewise be trained in spotting and the nurse which will be responsible for the building in which is receiving educational service while at the school premises shall receive training in -specific medical needs, such medical training to include the student's mother, if she elects to attend. The spotting training shall be provided by a qualified person or physical therapist with the advice and consent of Dr. Katherine Doty.

11. There will be conducted as soon as possible, but in any event not later than 45 days after the date of this decision, an initial occupational therapy evaluation by the school, an independent assistive technology evaluation at the parent's request, and an original physical therapy evaluation on the student by the school. The physical therapy and occupational therapy evaluations may be waived in the event the existing evaluations conducted upon the student prior to receiving occupational therapy and physical therapy privately at the home are mutually satisfactory to the school and the parents. Furthermore, the 45-day deadline mentioned herein may be suspended if any necessary evaluations are delayed by circumstances outside of the district's control (such as the failure of the evaluators to return the reports in a timely manner).

12. The student shall be provided Extended School Year educational services during the summer of the year 2000 at the parents' home location, except for physical therapy one time per week at the school premises (which sessions at school shall focus on orientation and mobility training for reintegration into the school setting). The (three) one-half day ESY sessions per week shall continue for not less than 8 weeks during this summer, with all home sessions at the residence limited to periods of time when is present in the home setting. Ms. presence shall be required in the home at any time district personnel are at the- home delivering services to the student from this date forward. The Extended School Year hours shall include physical and occupational therapy. The physical therapy shall consist of 20-30 minute sessions, 2 at home and 1 at school as mentioned above. The occupational

therapy shall consist of three 45-60 minutes sessions per week, with keyboarding utilizing a laptop computer to be emphasized. All sessions of occupational therapy keyboarding shall have an academic focus on math and reading. In the event the occupational therapist delivering services will not include keyboarding as occupational therapy, then in that event not less than three 20-30 minutes sessions of keyboarding a week shall still occur including the same academic based math and reading training, under the consultation or supervision of the occupational therapist. The remaining occupational therapy time shall be filled at the discretion of the occupational therapist. The remainder of ESY time available under this order shall focus on the normal academic curriculum.

13. At the start of the school year for 2000/2001 shall receive educational services to be determined by IEP at the residence 3 times per week for Y2 day and 2 times per week for Y2 day the school setting (subject mother's discretion on whether he is able to attend the school setting on any given day). In the event the student is unable to attend the school setting, then the student shall be provided homework from the school setting in an electronic format and shall be granted use of the laptop 12 computer for completing said homework, which homework will be submitted to the school in an electronic format. The occupational therapy and physical therapy (if any) determined to be appropriate through the various evaluations to be conducted under this order, shall be a portion of the curriculum, with reading, math, and handwriting to be necessary components of the remaining curriculum. The district onsite education services shall be contingent upon trained spotters and medical personnel being present at all times.

14. The attendance policy of the school district shall be modified so that upon student's mother's discretion, the boy shall have excused absences from school on any day he was scheduled to be at the school setting, subject to completion of homework as in the normal excused absence procedures of the school.

15. The school shall have available at the school for use with the electronically formatted schoolwork and homework of the student, a printer compatible with the

laptop utilized by the student, and a calculator for assistance in mathematics at the home or school setting.

16. The school shall be responsible for discussing with all district personnel involved with- evacuation/storm procedures which are specific to needs in case of fire, earthquake, tornado, or other natural catastrophes.

17. It is expected that as of January of 2001 student shall be acclimated to the school so that the student can be reintroduced to the school settings on all days he is physically able to attend for at least 1/2 day, or more if his health allows. The parties shall cooperate towards the goal of 1/2 day in the school setting 5 days per week for-from the return of school after Christmas vacation, January 2001. The parties shall cooperate for use of laptop and electronic transmission of homework and schoolwork during such days as the student is unable to attend school at the school setting and for the remaining schoolwork (if any) in addition to the 1/2 day secessions.

18. The parents are ordered to provide such medical records as are actually required to complete any initial occupational therapy, physical therapy, or assistive technology evaluations requested by the school or any independent evaluations requested by the parents so that such information required by the evaluators is available to both parents and the school for each evaluation conducted. Such information shall not predate the date entered into the Poplar Bluff School District as a student. This limited information release shall continue so long as student attends the Poplar Bluff School District. In addition, if any further medically necessary accommodations are requested by the parents, such requests must be accompanied by a release of medical information as shall be reasonably necessary for the school to verify medical necessity. \*(Majority Opinion)

19. For the remainder of the school year 1999/2000 after the day this decision is posted, the school shall provide home bound academic services in the parents house 3 times per week for 1/2 day with the same provision that must be at the

household as prerequisite such services being delivered there as ordered. For the rest of May, the panel recommends Ms. McIver as student's homebound instructor.

20. This decision represents a basically mutual agreement as to what the student needs and therefore the panel declares that no party has significantly prevailed herein. Therefore, in the opinion of this panel, attorney's fees are not warranted for either side and none are granted. \*(Majority Opinion)

21. It is the declaration of this panel that a free and appropriate public education was given to this student at all times by the school district. \*(Majority Opinion)

22. It is the opinion of this panel that the district did not violate IDEA "stay put" provisions in unilaterally changing the educational setting of the student from the student's home to the district premises. \*(Majority Opinion)

23. In the event a lack of medical information leads to an impasse between the parties in the future, the school shall attempt to employ its own medical experts for diagnostic evaluative purposes, as a related service to the student- \* Marilyn McClure disagrees with these parts of the award and her dissenting opinion on these points is attached hereto and made part hereof by this reference as "Exhibit A".

## V. CONCLUSION

This panel finds it impossible, as usual, to see over the horizon and provide for all contingencies for the education of this student. Therefore, it is incumbent upon the parties to work together in good faith and in a reasonable manner, and to exchange information, ideas, and results of the remedies ordered herein with each other, towards the mutual good of determining what is and is not working. In the event something is not working, then the parties must work together to mutually modify the same to the student's best interest and benefit.

David Potashnick, Panel Chairperson Dated  
Marilyn McClure, Panel Member Dated  
(Subject to dissent at Exhibit A)

Karen Aslin, Panel Member Dated

Exhibit A

Dissent to Majority Opinion Paragraph 18, of Panel Member Marilyn McClure

Nothing in IDEA requires parents to submit their child's private medical records to the school. However, in this case, at one point the parent provided a release for a set of specific medical records to be sent to the school and later revoked such release. It is not clear why the school did not acquire those records during the release period. Recognizing the uniqueness of this child's condition requires specific information for which an IEP team may be unfamiliar and that can only be acquired from the medical arena, it would be expedient for the parent to provide related, current medical records to encourage a timely and accurate program for this student. Otherwise the IEP team should have considered a related service allowed for under IDEA, i.e. medical services for diagnostic or evaluation purpose.

Dissent to Majority Opinion Paragraph 20, of Panel Member Marilyn McClure

Both parties were seeking what each believed was appropriate for this student; however, neither party was able to accomplish this without the services of an attorney, and both parties went to the length of pursuing a due process hearing. There were numerous issues in this case and complex legal matters. In the two and one-half day hearing, both parties made numerous objections and had several discussions over the hearing's procedure as well as the rules of evidence. The parent, prior to the arrival of counsel, was unsure about basic procedure in a due process hearing the admission of exhibits. The parent was also questioning the original source of the school's exhibits, and at one point a comment was made by the parent's "advocate" that "Ms. .cannot keep up". The parent requested that two individuals testify for which subpoenas were requested for a DESE employee and a

juvenile officer. Clearly, attorneys were necessary by both parties to allow both parties to participate in this hearing to achieve "due process". Reimbursement of attorney's fees to the parent is justified.

Dissent to Majority Opinion Paragraph 21, of Panel Member Marilyn McClure

A free, appropriate public education was not provided at all times by the school district due to the "stay put" issue referred to in #22, below.

Dissent to Majority Opinion Paragraph 22, of Panel Member Marilyn McClure

Pending the due process hearing decision, the school district made the decision independent of the IEP team to change the location of where services would be provided to the student. This was a denial of parental participation under IDEA. The new location was to be at the public-school premises. The school district referred to the provision of services at the school building location as a "homebound placement". The phrase "homebound placement" would connote just that, a place or setting where someone is at home or domicile. A public-school building is not a student's home or domicile. A "homebound placement" is not consistent with services being provided at a public school site.

At this new placement on school premises, the school proceeded to offer the same services to the student, which were being provided at the student's home. The school did not consider this a "change in placement" since the services being offered were the same services. However, this too, is a contradiction in terms. Obviously the "place" where the child attends school had changed, even though the services had not. The parent's did not allow for the student to attend at the school-building site knowing that his safety was at risk pending provision of needed services to prevent the student's high risk of injury. This confusing situation led to student reported as truant. It is my opinion that since the location of where services were provided changed, that it was indeed a "change of placement," and, under IDEA, required the decision to have been made by the IEP team.

It is my opinion that the district did violate IDEA "stay put" during the pendency of this due process proceeding.

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Marilyn McClure, Panel  
Member

Date