

**STATE OF MISSOURI
DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
THREE-MEMBER HEARING PANEL**

VAN-FAR R-I SCHOOL DISTRICT,

Petitioner,

vs.

, through his parent,

Respondent.)

PERSONALLY IDENTIFIABLE INFORMATION

Student's name:

Parent's name:

Representative: Jack Chaloupek
 Missouri Protection & Advocacy Services
 925 South Country Club Drive
 Jefferson City, MO 65109

Local Education Agency: Van-Far R-I School District
 2200 Hwy. 54 West
 Vandalia, MO 63382-1130

Representative: Teri B. Goldman, Esq.
 Blackwell Sanders Peper Martin
 720 Olive Street, Suite 2400
 St. Louis, MO 63101

Hearing dates: November 30 – December 1, 1999

Hearing officers: Janet Davis Baker, Chairperson
Stephanie Demien
Marilyn Bohnsack

Date of Decision: February 1, 2000

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FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

The above case was instituted by a due process request filed by Petitioner, the Van-Far R-I School District ("School District") on May 3, 1999. The Missouri Department of Elementary and Secondary Education ("DESE"), empowered a three-member hearing panel pursuant to the federal Individuals with Disabilities Education Act ("IDEA") as implemented by Missouri statutes, and appointed Janet Davis Baker, as chair. The parties chose the other two panel members, Marilyn Bohnsack and Stephanie Demien. A decision by the hearing panel was required by June 18, 1999, unless an extension of time was requested by either party. Jack Chaloupek, with Missouri Protection and Advocacy Services, on behalf of , 's parent, requested a

thirty (30) day extension of time for the panel's decision which was granted by the chairperson through July 18, 1999. Subsequently, a request for extension of the panel's decision to October 1, 1999, was made by Teri Goldman, attorney for the School District, which was granted by the chairperson. An additional extension was requested by Ms. Goldman through January 1, 2000, which was granted by the chairperson.

The hearing in this matter was took place on November 30 and December 1, 1999, at the Van-Far R-I School District, located in Vandalia, Missouri. Ms. Goldman appeared on behalf of the School District and appeared on behalf of , pro se, but with Mr. Chaloupek in attendance. The hearing was a closed hearing. The panel heard testimony of the School District's witnesses as well as . Exhibits presented by the School District and marked Respondent ("R") 1-162 were received into evidence by the hearing panel.

Ms. Goldman made another request for an extension of the panel's decision after the hearing, to February 1, 2000, which was granted by the chairperson. This decision has been rendered and mailed within the extended timeframes.

ISSUE PRESENTED

The issue presented to the panel for determination was whether the residential placement proposed at the April 19, 1999, individualized education plan ("IEP") meeting was an appropriate placement for in the least restrictive environment ("LRE"). Because the parent did not consent to the proposed placement, this request for due process followed.[1]

FINDINGS OF FACT

1. was born on . At the time of the hearing, he was years old. He is large for his age, and over 200 pounds. He was first diagnosed with autism, in the moderate to severe range, when he was 3 years of age.

2. first attended school within the School District when he was in kindergarten during the 1995-96 school year, transitioning from early childhood services received at a learning center in Bowling Green, Missouri. He ultimately attended regular kindergarten three half days and one full day per week with a full-time aide in attendance.

3. During the 1996-97 school year, was placed in a regular first grade classroom, with a full-time aide in attendance. received 60 minutes per week of special education itinerant instruction in speech/language therapy and special transportation with the aide. The IEP for this school year contained a behavior management plan. A time-out area was available within the classroom. was eligible for extended school year ("ESY") services. was integrated with his peers in non-academic activities.

4. made progress educationally in first grade. Improvement was shown in sight words and rote math facts; however, comprehension remained weak. 's expressive skills were considered very weak and he did not socialize with the other students.

5. Aggressive incidents were experienced by 's teachers and aide, consisting of mainly biting, hitting and scratching during the first grade. is on medication which at times seems to help with the number of aggressive incidents.

6. For the 1997-98 school year, 's IEP required an increase in special education time to 120 minutes per week and education in the regular classroom for the remainder of the time. continued with the full-time aide and was integrated for non-academic activities. The IEP again contained a behavior management plan, with provision for a time-out room in the classroom.

7. During the second grade school year, 's aggressive incidents increased, including aggressive incidents involving students as well as staff. The behavior included biting, pinching, hitting, head butting, scratching, slapping, yelling and kicking his aide and teachers. 's classroom teachers reported regression in academic skills. In September, 1997, a change in placement was recommended by

the School District for 900 minutes weekly of special education outside the regular classroom, 450 minutes weekly of mainstreamed class activities and 120 minutes weekly of speech/language therapy, which was implemented. requested occupational therapy and augmentative communication evaluations which were scheduled and paid for by the School District.

8. The teachers for received autism training by Project Access as well as through Judevine Outreach Services through the Central Missouri Autism Project.

9. A three year reevaluation of was conducted in February and March, 1998. As a result, the diagnosis of autism was confirmed as continued to meet the criteria.

10. At the diagnostic staffing held in April, 1998, it was reported that had a first grade sight word vocabulary and did not know as many words as did at the end of the last school year. could not understand adding or subtracting. 's reading comprehension was poor although his spelling was at the second grade level. does not interact with peers. 's self-stimulating activities, continued as well as aggressive incidents when is told to do something that does not want to do. 's communicative skills were reported as extremely limited, with echolalic responses.

11. The IEP developed for the 1998-99 school year recommended special education services for 600 minutes per week, 120 minutes of speech/language therapy and 1130 minutes of regular classroom time, with the full-time aide in attendance. was to continue to be mainstreamed in non-academic activities and continued to be eligible for ESY services. The behavioral management plan was part of the IEP, with a time-out area available.

12. At the start of the 1998 school year, 's aggressive incidents increased to the point where one of the aides needed medical attention for her injuries and another aide who was injured asked to be transferred to another student. Teachers reported physical injury as well. was suspended from school beginning August 27, 1998, through September 10, 1998, and the School District scheduled an IEP meeting on September 8, 1998, to discuss different placement options for A manifest determination was made that 's behaviors were the result of the disability

and homebound instruction was proposed for a thirty (30) day period with instruction at the elementary school. The homebound instruction was stated at 300 minutes per week (notice of placement, Ex. R-69); however, according to testimony from Linda Witte, the School District's assistant special education director as well as its autism consultant and speech/language pathologist, actually received twelve (12) hours per week, as well as the 120 minutes weekly of speech and language therapy.

13. After the expiration of thirty (30) days, the School District proposed to continue the homebound placement as continued to exhibit aggressive behavior toward teachers and staff in the homebound placement environment and could not in the opinion of the School District be reintegrated into a more inclusive environment (notice of action, Ex. R-78). agreed to the continued homebound placement (Ex. R-79). At the IEP meeting to discuss the proposed continued placement, behavior management techniques were discussed. was to continue with the homebound placement at the elementary school and be reintegrated with special education peers at hourly intervals after ten consecutive school days without displays of aggression toward teachers and aides.

14. An IEP conference was scheduled on January 28, 1999, at which time requested a more-inclusive placement, which the School District refused, citing the continuing aggressive incidents. Representatives of the Regional Center of the Missouri Department of Mental Health and the Judevine Project attended the IEP meeting. The homebound instruction at the school was continued, as was the 120 minutes of speech/language therapy.

15. The aggressive incidents continued and a IEP meeting was scheduled for the 1999-2000 school year and took place on April 19, 1999. The recommendation made at this meeting was for full-time institutional instruction. The teachers believed from an academic viewpoint that 's math skills showed little improvement and that did not understand the theory involved. It was difficult to assess 's exact reading level but he used a first grade workbook and could comprehend selections on favorite commercial topics. 's expressive language skills remained weak and

says little to anyone unless prompted. does not interact with peers even when the opportunity exists. Behaviorally, aggression was displayed on the days in school, and often there were no identifiable antecedent behaviors. has an extremely low tolerance for frustration. The School District did not believe that the accommodations it used in the regular classroom, resource room and homebound instruction environments with behavior modification plans in effect were successful in eliminating aggressive behaviors. Medication had been ineffective in controlling aggressive incidents.

16. The IEP which was the result of the April 19, 1999, IEP meeting, Ex. R-132, dated May 13, 1999, contained goals and objectives for to be implemented in a residential setting. The notice of action sent by the School District dated April 20, 1999, Ex. R-133, proposed placement in a residential treatment facility operated by Integration Plus in Columbia, Missouri.

17. The School District documented why a residential placement provided a least restrictive environment based upon 's need for 24 hour consistency to deal with behavior issues.

18. disagreed with the proposed placement but did not file a due process request.

19. was suspended from school for 10 days beginning May 7, 1999, through May 20, 1999, due to an aggressive incident of biting, scratching, kicking and throwing his desk.

20. advised that would be home-schooled and that has occurred since May 7, 1999, with written notice of this decision provided to the School District dated May 11, 1999. was not presented to the School District for educational services during the 1999-2000 school year.

21. The School District personnel who worked with received appropriate training in

autism, including both outside and inside training. The training received included both educational methods and behavior management techniques appropriate for autistic students. IEP team participants from the School District included staff trained in autism.

22. The School District established that the aggressive incidents and behavior problems exhibited by have an adverse impact on 's ability to benefit from academic instruction. Moreover, the aggressive incidents and behavior problems had adverse effects on other children who were educated with

23. The School District staff believed that a residential placement with behavior management plan that could be implemented on a 24 hour a day basis would enable more effective participation by in the academic environment which in turn may lead to 's ability to be returned to the regular classroom environment. The staff all hoped that the placement in a residential facility would be temporary, in order to remediate 's behavior so that could be returned to the School District.

24. The School District provided the testimony of staff from Nova Center, which provides a day school for children with disabilities similar to that of in the Kansas City, Missouri, area and also provides residential living opportunities, and from Integration Plus in Columbia, Missouri, which is a residential home for children with disabilities similar to that of whose residents receive educational services through the Columbia public schools.

25. Linda Witte testified that she visited the Nova Center and believe it would be an appropriate placement for She testified that at this time she did not believe that Integration Plus would be an appropriate placement although the notice of action at Exhibit R-133, proposed placement there since that facility required a Department of Mental Health referral which she doubted could be obtained. Ms. Witte stated that at the time of the April 19, 1999, IEP meeting that she believe Integration Plus was an appropriate placement for implementing the terms of the IEP.

CONCLUSIONS OF LAW

1. is a child with a disability within the meaning of the IDEA and is entitled to the protection of federal and state law implementing the IDEA.

2. Under the IDEA, all children with disabilities are entitled to a free appropriate public education in the least restrictive environment appropriate to allow that child to receive educational benefit. Under the Supreme Court test established by Hendrick Hudson Central School District v. Rowley, 458 U.S. 176, 188 (1982), a free appropriate public education consists of educational instruction specifically designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction. FAPE is not required to be the “best” education; however, it must be sufficient to confer some educational benefit. Id.

3. The IDEA requires the “mainstreaming” of disabled children to the maximum extent appropriate. 20 U.S.C. Sec. 1412 (a)(5). However, the Supreme Court in Rowley recognized that “regular classrooms simply would not be a suitable setting for the education of many handicapped children.” 458 U.S. at 181 n.4. The IDEA does not require regular education teachers to devote most or all of their time to a disabled student in order to keep that child in the regular classroom environment nor does it require the regular classroom program to be modified “beyond recognition.” Daniel R.R. v. State Board of Education, 874 F.2d 1036, 1048 (5th Cir. 1989). See also, Hartmann v. Loudoun County Board of Education, 118 F.3d 996 (4th Cir. 1997); cert. denied. (Eleven year old autistic student not appropriate for regular classroom placement since he would require a different curriculum, he would not benefit from instruction in the class, and he would negatively disrupt the education of the other students).

4. The School District had a behavior management plan in place for ; however, even the best efforts of the School District did not result in a long-term improvement of 's behavior which would allow to benefit from the academic instruction in the regular classroom environment, special education resource room environment or homebound instruction in the elementary school environment. 's need for behavior management is intertwined with 's educational needs. An

appropriate residential placement will reinforce at night what is learned during the day. 's social and emotional issues cannot be segregated from the learning process. See Kruelle v. New Castle County School District, 642 F.2d 687 (3d Cir. 1981); County of San Diego v. California Special Education Hearing Office, 93 F.3d 1458 (9th Cir. 1996)

5. cannot receive an educational benefit in the homebound instruction program or any other program that was offered by the School District unless the aggressive behavior can be diminished. 's behavior had an adverse impact on regular and special education peers, as well as presenting a danger to personnel and students. The School District believed and the panel concludes that the best place for diminishing these behaviors is in a residential placement with integrated educational services.

6. In consideration of 's documented aggressive behavior and inability to benefit from educational instruction in any lesser restrictive environments, the least restrictive environment for is in a residential placement, which is proposed to be provided at the expense of the School District, .

DECISION

It is the decision of the hearing panel that the IEP of April 19, 1999, when implemented in a residential setting is designed to provide FAPE for . The hearing panel does not order a placement in any particular residential facility because is currently being home-schooled and if and when returns to the School District, the facilities proposed for placement by the School District may not be available. The panel believes that a placement in a day school such as the one maintained by Nova Center with accompanying residential support would be an appropriate placement for at this time. The panel is unable to determine whether the placement at Integration Plus would be appropriate to implement the IEP because no information was provided about the educational program in the Columbia public schools, which would be responsible for implementing the education component of

the IEP. If it is returned to the School District, it will be necessary for the School District to make an appropriate specific residential placement proposal at that time. It may also be necessary for it to be reevaluated and a new IEP developed depending on the length of time he remains in the home-school environment.

The School District is directed to the provisions of the Missouri State Plan beginning at page 84 which addresses private school placement. When a student is placed with an approved agency as a means of carrying out the requirements of the IDEA, the student must be provided with special education and related services which (a) are in conformity with an IEP; (b) are provided at no cost to the parent; and (c) which are provided in programs that meet the state education standards.

APPEAL RIGHTS

This decision is the final decision of the Missouri Department of Elementary and Secondary Education in this matter. Any person aggrieved by this decision has the right to appeal pursuant to the provisions of the federal IDEA and the state Administrative Procedures Act. Federal law allows appeal within thirty (30) days after the mailing or delivery of this notice to you by filing an appropriate pleading with the U.S. District Court of proper venue. Alternatively, a petition may be filed in the Circuit Court of Cole County, Missouri, or in the county of the plaintiff or one of the plaintiff's residences, also within said thirty (30) day period.

IT IS SO ORDERED this 1st day of February, 2000.

Respectfully submitted by:

JANET DAVIS BAKER

Chairperson

ACCORD:

MARILYN BOHNSACK

Panel member

STEPHANIE DEMIEN

Panel member

Copies of the above and foregoing were mailed, faxed and/or e-mailed on this 1st day of February, 2000, to:

, parent of

Dr. Jimmie Dean, Superintendent

Teri Goldman

Jack Chaloupek

Heidi Atkins Lieberman

[1] through Missouri Protection and Advocacy Services requested that the request for due process filed by the School District be dismissed by the panel for mootness since she intended to home school and was not planning on keeping him in the School District's program in light of the placement recommendation made by the IEP team. The School District filed its opposition to this request. The hearing panel, by order of the chairperson dated August 16, 1999, denied the request of to dismiss the due process request, finding that the issue of placement was not moot since would be entitled to receive FAPE from the School District and without a residential placement, would be entitled to return to his last educational placement within the School District, which the IEP team had recommended changing.