

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

IN THE MATTER OF:

and

WAYNESVILLE R-IV SCHOOL DISTRICT

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

The Hearing Panel, after hearing the evidence in this matter on Monday, February 7, 2000, makes the following Findings of Fact and Conclusions of Law and issues the following Decision and Order:

FINDINGS OF FACTS

I. PARTIES

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

Pamela S. Wright, Hearing Chairperson

Pamela Grindstaff, Hearing Panel Member

Dr. George Yard, Hearing Panel Member

4. Parent appeared without counsel.

5. Counsel for the School District is James G. Thomeczek , Jr. of the Thomeczek Law Firm, 1120 Olivette Executive Parkway, Suite 210, St. Louis, MO 63132.

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

II. TIME LINE INFORMATION

7. The Department of Elementary and Secondary Education ("DESE") received Parent's letter requesting a due process hearing on December 20, 1999. DESE determined the 45 day deadline for holding a hearing and the issuance of an opinion to be February 3, 2000. The Parent on January 28, 2000 requested an eight day extension of the original deadline to February 11, 2000. The panel has met this new deadline.

III. THE ISSUE

8. The issue presented by the parties is whether the School District appropriately changed the educational placement of Student from 2nd grade to 1st grade.

IV. FACTS

9. Student attended kindergarten at Williams Elementary School ("Williams") located in School District. Student also attended 1st grade at Williams for the 1998-1999 school year. She had a change of teachers in January 1999. Her new teacher, Michelle Kesselring ("Kesselring"), had graduated the previous month from Southwest Missouri State University with a Bachelor's Degree in Elementary Education.

10. Beginning in January 1999, Student began receiving Title I services to help with

her reading . In March 1999, Student was evaluated for special education services in the area of reading. On April 9, 1999, Williams implemented an IEP for Student who received 300 minutes of direct services per week in the Special Education classroom with Maria Seibold ("Seibold"). The initial evaluation indicated that these direct services would last one year and would then be reviewed.

11. In May/June 1999, Kesselring sought input from Williams Principal Richard Wells ("Wells") and Seibold regarding whether Student should be retained in first grade or promoted to second grade. Wells and Seibold supported Kesselring's decision to promote Student in view of: the progress that she had made since January; Student's relatively new IEP and Student's positive attitude towards schoolwork. Kesselring provided Parent with a packet of materials to be used by Parent to help reinforce the first grade skills learned by Student.

12. Kesselring promoted the Student despite the following contrary evidence: Student was performing at the very bottom of the class; she had missed 32 days of school; she had received no foundational skills from her prior first grade teacher; the 2nd grade curriculum is much more demanding than the 1st grade curriculum; the IEP Progress Report completed by Seibold in May 1999 showed that little progress had been made by Student in the 4th quarter on the 12 short term objectives.

13. In the summer of 1999, Parent and Student did not work on the packet of materials provided by Kesselring at the end of 1st grade.

14. Student began 2nd grade on or about August 20, 1999 with Jennifer Crow ("Crow") as her teacher. Crow has taught 2nd grade for 12 years and has been an elementary school teacher for 18 years at Williams. She has Bachelor's and Master's Degrees in Elementary Education with a Minor in Special Education. Before the school year started in August 1999, Crow reviewed the IEP's of the students assigned to her.

15. Crow noticed that Student was frustrated with 2nd level work from the very beginning of the school year. Student received the following extra assistance at the beginning of 2nd grade: Title I teacher came to the classroom on a daily basis; Seibold provided "push in" services of about 30 minutes each day during the first two weeks and then 2 weeks later started taking Student to the Special Education classroom for 300 minutes per week as per the IEP; a Drury College student was present for about 12 days from 8-11 each morning and provided help to Student; and peer tutoring.

16. On October 13, 1999, Parent met with the IEP team: School Counselor Susette Shreve; Wells; Crow; and Seibold. The team recommended that Student be returned to 1st grade based on her inability to perform 2nd grade level work. The IEP team concluded that even with a substantial increase in special education services, Student would not be able to keep up in the 2nd grade. Parent recognized Student's struggles in 2nd grade. There had been at least one prior meeting to discuss the subject. Parent signed consent and Notice of Change in Placement forms. However, we find that Parent executed the forms with the understanding that Wells would direct Student's retention in 1st grade irrespective of Parent's wishes. The retention decision also included an increase of Student's special education services from 300 minutes per week to 450 minutes per week.

17. Student's return to 1st grade has been successful. She is performing confidently and is working at the level expected for a 1st grader.

18. The School District concedes that during Student's time in 2nd grade there were 6 days when Seibold was absent on funeral leave and Student did not receive special education services as required by her IEP on those days. Subsequent to Parent's request for a due process hearing, School District has offered compensatory time in the form of thirteen days of summer school with LD support.

19. The School District concedes in hindsight promoting Student to 2nd grade was a mistake.

CONCLUSIONS OF LAW

The Hearing Panel makes the following Conclusions of Law:

1. Parent has properly requested a review of the change in educational placement of Student from 2nd grade to 1st grade.
2. School District's decision to return Student to 1st grade was appropriate in that Student is now deriving substantial benefit in her current placement.
3. Student is receiving free access to public education in her current placement.
4. Parent's request to place back Student in 2nd grade now is not appropriate in that Student would receive no benefit in that placement.

DECISION

We conclude that the School District's decision to change the educational placement of Student from 2nd grade to 1st grade coupled with an increase in the level of the special education services was correct. We find overwhelming evidence that Student (through no fault of her own or of Parent) was performing at the bottom of the 1st grade class when the School District made the decision to promote her to 2nd grade. When she got to 2nd grade, Student could not handle the work despite extra assistance provided to her. Student is doing well in the 1st grade where she should remain for the balance of the 1999-2000 school year.

The entire hearing panel joins in this Decision without dissent.

APPEAL PROCEDURE

These Findings of Fact, Conclusions of Law, Decision and Order constitute the final

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