

THREE MEMBER DUE PROCESS HEARING PANEL

EMPOWERED PURSUANT TO 162.961 R.S.Mo.

Hearing Decision

Student's Name:

Parent's Name:

Representative:

Mr. Gene Spitzmiller,
Deputy Managing Attorney,
Missouri Protection & Advocacy Services
P.O. Box 1126
Sikeston, MO 63801

Local Education Agency:

Buchanan County
R-IV School District
702 Main
DeKalb, MO 64440-0048

Representative:

Ms. Teri Goldman
Attorney at Law
Peper, Martin, Jensen, Maichel and
Hetlage, Attorneys at Law,
24th Floor
720 Olive Street
St. Louis, MO 63101-2396

Hearing Dates:

September 4th and 5th, 1997

Date of Report:

October 30, 1997

Hearing Officers:

Patrick O. Boyle,
Sandra Harrison, and
Jerry Wright

Hearing Decision

Issue

Parents disagree with student's placement in the State School for the Severely Handicapped (SSSH) and, request full placement of student with the Local Education Agency (LEA).

Time Line

Parents request was received by the Department of Elementary and Secondary Education (DESE) on May 29, 1997. On June 16, 1997 an attorney representing the LEA requested an extension of time until September 1997 in which to hold a hearing. Panel Chairperson extended the time for decision to October 3, 1997 and, scheduled hearings for September 4th and 5th, 1997 by order dated July 7, 1997. A due process hearing was conducted on September 4th and 5th, 1997 as scheduled. At the conclusion of the hearing, counsel for parents and counsel for LEA requested permission to submit written arguments and proposed findings. The Chair with the consent of both parties extended the time for decision to October 30, 1997 and, gave both parties permission to submit written arguments and proposed findings on or before September 30, 1997. Decision herein is made as of October 30, 1997.

Facts

1. Student was born during ___ and, lives with his parents and two older brothers in a small rural community.
2. Student's LEA is a member of the Platte Valley Educational Cooperative (Coop) which is a consortium of four to six rural school districts who utilize the Coop to provide special education services and resources.
3. LEA has an enrollment of 407 students. 205 students are enrolled in the LEA elementary school for kindergarten through 6th grade. 202 students attend the high school for grades 7 through 12.
4. In the Spring of 1995, the LEA, through the Coop, conducted a comprehensive initial evaluation of student. Ex. R-68. The Diagnostic Summary prepared as a result of that evaluation shows that student is significantly delayed in all development areas and, that he is nonverbal and not toilet trained. The evaluation also indicates that student had only recently begun to

walk. The 1995 evaluation further indicates that student had attained the following developmental levels: cognitive - 6-8 months; receptive language - 8 months; expressive language - 4 months; gross motor - 8-10 months; and fine motors - 7-8 months. As a result of the evaluation, a multidisciplinary team concluded that student met the criteria to be classified as severely multiple handicapped under the IDEA and the Missouri State Plan and to be entitled to special education services. In addition, the team recommended that student continue to receive direct speech-language therapy and physical and occupational therapies with the maximum allowable amount of individual time possible. Further, the team notes that student would require staff who were trained and experienced in working with students with multiple limitations. Finally, the 1995 Diagnostic Summary recommends that student receive services in "a classroom which has a low student to teacher/aide ratio to provide physical assistance for most daily activities including toileting and eating and has a great deal of flexibility in daily routine." Ex. R-68. The Panel finds that student continues to meet the criteria to be classified as severely multiple handicapped and that the recommendations enumerated in the 1995 evaluation remain valid.

5. Student evaluations made during 1997 show no significant difference from the evaluation of 1995. (Ex. R33, R36 and R37).

6. On August 22, 1995 DESE wrote a letter of advisement to the LEA that student is eligible for special education services at SSSH upon referral by the LEA and acceptance by the SSSH. (Ex. R4)

7. Student was referred to the SSSH by his LEA and accepted by the SSSH with his parent's consent on 8/25/95. (Ex. R5)

8. Student's initial Individualized Education Plan (IEP) covered the term from 10/26/95 to 10/25/96 and had goals relating to motor skills, language and communications, self care, skills and behavior. Services of a properly certified teacher, physical education instructor (PE), physical therapist (PT), occupational therapist (OT) and speech therapist (ST) were included and, integration at the LEA kindergarten for one hour per week was proposed. (Ex. R7 and R8)

9. Student made progress under this original IEP at the SSSH. (Ex. R10)

10. IEP's for the following year provide for increased integration time in the LEA regular first grade class and, new goals in the areas of language and communication, functional academics, self care skills, motor skills and vocational skills were set. (Ex. R12, R26, and R42)

11. Increased stimulation at the LEA resulted in aggressive student behaviors consisting of biting, pinching, scratching and hair pulling. Student also disrupted both regular and special education classes by yelling or moaning and, inflicted minor injuries on his aide at the LEA. Similar behaviors do not occur at the SSSH.
12. A staffing conference at the SSSH resulted in reducing student's integration time at the LEA based upon the reduction in teachable moments for the teaching staff due to student's behavior. (Ex. R39 and R42)
13. Student's revised IEP adopted a behavior plan as of April 17, 1997. (Ex. R42 and R48)
14. Student's parents have filed a request received by DESE on May 29, 1997 that student's placement with the SSSH be terminated and, that the student be fully placed at the LEA.
15. Student has made progress towards his IEP goals at SSSH but, it is not clear that any of this progress results from his integration time at the LEA. He does model some behaviors of his non disabled peers and, the integration time at the LEA is beneficial for the student.
16. Student requires training from teachers certified to teach severely handicapped students along with the services of speech therapy, physical therapy, occupational therapy and physical education. Such resources are available at the SSSH but not currently available at the LEA or through the Coop.

Decision

Student at this time should continue to be placed with the SSSH with integration opportunities at the LEA. He presently qualifies for the resources made available by the State of Missouri for severely handicapped students through the SSSH and, he benefits from association with his peers at the LEA. Such placement should not be construed as a permanent placement and, both the SSSH and LEA should work towards having student grow into a regular classroom placement at the LEA. It is recommended that student presently receive services at the LEA in a special education classroom.

Appeal Procedure

Either party has the right to appeal this decision within 30 days to a State Court of competent jurisdiction pursuant to Chapter 536 of the Revised Statutes of Missouri, or to Federal Court.

Panel Members
Supporting Decision
Patrick O. Boyle
Sandra Harrison
Jerry Wright

Panel Members
Opposing Decision

Three Member Due Process Hearing Panel

Empowered pursuant to 162.961 R.S. Mo

Dissenting Hearing Decision

Student's Name

Parents' Name

Representative

Local Education Agency

Gene Spitzmiller

Buchanan County

R-IV School District

702 Main

DeKalb, MO 64440

Representative

Hearing Dates

Date of Report

Panel Member

Ms Teri Goldman

September 4 and 5, 1997

October 27, 1997

Sandra Harrison

ISSUE

Parents disagree with student's placement in the State School for the Severely Handicapped and request placement of student with the Local Education Agency.

FACTS

1. Student lives with his parents and two brothers in a rural community. Student's birthday is ____.
2. At 3 years of age, the student went every day to the United Cerebral Palsy program.

3. In October, 1995, the student attended the Helen M. Davis School in St. Joseph, Missouri.
4. During the summer of 1996, the parents wanted full time placement with the Local Education Agency. The student's IEP provided for integration time in the LEA regular first grade class.
5. The student needs occupational therapy, physical therapy and speech therapy.
6. There was agreement to expedite the evaluation process for the student. Document respondent's exhibit R-50, April 29, 1997. In this document there was agreement for an adaptive toilet for the student.
7. The student's LEA is a member of the Platte Valley Educational Cooperative which is a consortium of four to six rural districts that utilize the Cooperative to provide special education services and resources.
8. The student's LEA has an enrollment of 407 students, K-12.
9. The student's PEP (Respondent's Document R-8) had goals relating to motor skills, language and communication, self care skills and behavior.
10. The student requires training from teachers certified to teach severely handicapped students as well as the services of a speech therapist, physical therapist and occupational therapist.
11. The student has not had direct services from staff trained to teach severely handicapped students in the LEA setting.

Decision and Rationale

The student should be placed at the LEA with services of a speech therapist, physical therapist and an occupational therapist. Effective July 1998 the new section of IDEA indicates considerations in the IEP include whether a student's behavior has impeded his or her learning and that of others and suggests that strategies--including positive behavioral interventions be in place as well as supports needed to address the behavior.

It is recommended that the evaluation suggested in April, 1997, be conducted.

It is further recommended that the student receive services at the LEA in a special education classroom.

Funding changes in the reauthorization suggest that the burden of special education on districts can be reduced by having the state department of education and public agencies share costs. Part B funds can be used for special education and related services provided to a child with a disability in accordance with the IEP even if one or more nondisabled children benefit from those services.

Sandra Harrison, panel member