

## HEARING DECISION

**Student's Name:**

**Parent's Name:**

**Parent's Representative:** Stephen Walker  
Attorney at Law  
23245 Fairmount Blvd.  
Beachwood, Ohio 44122  
Phone: (216) 360-9200

**Local Education Agency:** Appleton City R-II School District  
408 West 4th  
Appleton City, Missouri 64724  
Phone: (816) 476-2161

**Agency Representatives:** Teri B. Goldman, Attorney at Law  
Peper, Martin, Jensen, Maichel and Hetlage  
Twenty-Fourth Floor  
720 Olive Street  
St. Louis, MO 63101-2396  
Phone: (314) 421-3850  
Steven L. Wright  
Attorney at Law  
2716 Forum Blvd., Ste. 3B  
Columbia, MO 65203  
Phone: (573) 445-5226

**Hearing Dates:** December 15 and 16, 1997

**Date of Decision:** January 19, 1998

**Hearing Panel:** Dr. Terry Allee  
Patrick O. Boyle, Chairman  
Ms. Dayna Deck

## ISSUES AND PURPOSE OF THE HEARING

Parent's request for hearing on August 27, 1997 stated that the student had not been evaluated, no IEP prepared and no educational placement made. Her proposed resolution was reimbursement for school fees and attorney's fees. This request was supplemented by a Section 300.507(c) disclosure statement submitted by the parent on November 18, 1997. This statement sets forth in detail allegations that the School District failed to evaluate the student and offer a free and appropriate public education. Reimbursement was sought for the cost of tuition and related costs associated with the student's unilateral placement at St. Joseph's Institute for the Deaf.

School District filed a motion to dismiss the due process hearing on November 24, 1997 and raised two points in support of its motion. The first point alleged that the parent refused to consent to an initial evaluation of the three year old student and, therefore, the District had no obligation to provide special education and related services at this time. Point two is that the Missouri Constitution prohibits the expenditure of public funds for parochial schools.

The hearing panel requested evidence related to the District's motion to dismiss prior to consideration of the case in chief. Whether or not parent knowingly refused to consent to an initial evaluation of her child was the issue considered.

### Time Line Information

Parent's request for a due process hearing was received by the Department of Elementary and Secondary Education on August 27, 1997. A hearing panel was empowered by September 8, 1997 and, the parent's attorney requested an extension of the time line on September 22, 1997.

Parent's request was granted by the Chairman with a hearing set on December 15 and 16 in accordance with dates suggested by parent's attorney. Time for a decision was extended to January 19, 1998 by the Chairman in connection with the setting of hearing dates.

A hearing was held on December 15 and 16, 1997 and, the following documents were submitted:

I. Submitted by Parent.

Exhibit A

II. Submitted by School District.

## Exhibit B

During the course of the hearing witnesses appeared in this order:

Monday, December 15, 1997

Called by School District in support of Motion to Dismiss:

Special Services Director of School District Coop.;

Speech Implementor of School District Coop.

Tuesday, December 16, 1997

Parent;

Early Childhood Special Education Teacher of Coop.

Called by parent in opposition to Motion to Dismiss:

Student's Grandfather;

Superintendent of School District;

Principal and Special Education Director of School District. Both parties were represented by counsel. The bulk of the evidence was submitted jointly with conflict centering on Exhibit R-9, P-22 and P-22A, Notice of Action. Portions of evidence were objected to by parent's attorney but, all evidence was allowed into the record.

The hearing was open to the public and witnesses were sequestered. Student's parents were exempted from the sequesterment rule and the Special Services Director of the Coop. was exempted from the sequestration rule over the objection of parent's attorney.

### Findings of Fact

1. Student was born on \_ and, the District's summary of screening results dated December 3, 1996 (R-2, R-3 and R-7) entitle the student to an evaluation for the purpose of determining eligibility to receive early childhood special education services.
2. If the student is found to be eligible for early childhood special education services, an IEP should be developed to offer a free and appropriate public education.

3. Evidence concerning the parents signing the notice of action (R-9, P-22 and P-22A) is in conflict. It is undisputed, however, that the parent signed a document declining evaluation/placement services.

#### Decision and Rationale

The effect of parent's signing a document declining evaluation/placement services has been to prevent an evaluation of her three year old child for the purpose of determining whether he is eligible for early childhood special education services.

District should contact parent concerning her consent to her son's evaluation and, District should implement Item 6 in the first paragraph of the current Procedural Safeguards for Children and Parents which now requires the District to furnish parent sources to contact for assistance in understanding procedural safeguards.

Respondent District's Motion to dismiss this due process hearing is sustained under Count I of the District's Motion as provided under 536.068 R.S.Mo. (1994).

Respondent's Point II concerning the constitutional prohibition of funding parochial schools need not be addressed as a result of the panel's decision under Point I.

#### 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 a Federal Court.

Panel Members supporting Decision

Dr. Terry Allee

Patrick O. Boyle

Dayna Deck

#### Exhibit A

#### Petitioners' List of Exhibits

J=Joint Exhibit

Q=Have been admitted but questioned

Q-T=Questioned but admitted with testimony

N.O.=Not offered

Petitioner's Exhibit #	Action Taken	Date	Description
P-1	J	2/29/96	History Sheet
P-2	J	April/May 1996	Midwest Ear Cochlear Implant Candidacy Evaluation
P-3	J	7/15-16/96	Midwest Ear Report
P-4	J	7/26/96	Midwest Ear Report
P-5	J	8/9/96	Midwest Ear Report
P-6	J	11/20/96	Midwest Ear Report
P-7	J	12/13/96	Midwest Ear Report
P-8	N.O.	4/3/97	Midwest Ear Summary of Map 2
P-9	J	4/4/97	Midwest Ear Report
P-10	N.O.	4/15/97	Midwest Ear Summary of Map 3
P-11	J	9/6/95	Children's Mercy Hospital Speech and Language Evaluation
P-12	J	10/13/95	Share and Care Report
P-13	J	11/1/95	Share and Care Report
P-14	J	11/1/95	Occupational Therapy Report
P-15	J	11/15/95	Missouri Dept. of Health-Family Information
P-16	J	11/27/95	Children's Mercy Hospital Audiogram
P-17	J	5/4/96	Missouri Dept. of Health-participant record
P-18	J	7/22/96	ECSE letter to school
P-19	J	12/3/96	Summary of screening results
P-20	J	12/16/96	School's Referral for ECSE Evaluation
P-21	J	1/21/97	School's Evaluation Plan
P-22	J	1/21/97	School's Notice of Action

P-22A	J	1/21/97	School's Notice of Action with comments by Emerson
P-23	J	8/13/97	_ letter to school requesting rights and a due process hearing
P-24	J	8/15/97	_ letter to school advising she has counsel
P-25	J	8/18/97	School letter to _ with rights
P-25A	J	1996	Procedural Safeguards for Children and Parents
P-26	J	8/20/97	_ letter to school re: evaluation placement and due process hearing
P-27	J	8/21/97	School letter to _
P-28	J	8/22/97	_ Due Process request forms
P-29	Q	9/18/97	ECSE Director Emerson summary of 1/21/97 meeting
P-30	Q	undated	Pam Craft/Krista Morris summary of 1/21/97 meeting
P-31	Q-T	undated	Krista Morris summary of 1/21/97 meeting
P-32	Q-T	undated	Keith Cooper notes of 1/21/97 meeting
P-33	N.O.	10/7/96	St. Joseph Institute for the Deaf Evaluation goals & objectives
P-34	J	1/15/97	St. Joseph Institute for the Deaf Progress summary
P-35	N.O.	4/10-18/97	St. Joseph Institute for the Deaf annual evaluation
P-36	N.O.	4/16/97	St. Joseph Institute for the Deaf GAIL-P evaluation
P-37	N.O.	4/25/97	St. Joseph Institute for the Deaf Evaluation goals & objectives
P-38	N.O.	6/23/97	St. Joseph Institute for the Deaf Evaluation goals & objectives
P-39	N.O.	6/23/97	St. Joseph Institute for the Deaf Progress Report
P-40	N.O.	8/4/97	Demographic Forms
P-41	N.O.	10/31/97	St. Joseph Institute for the Deaf Progress Summary
P-42	N.O.	12/1/97	Midwest Ear Institute Report
P-43,44, 45	N.O.		Photographs of school trailer where services were to be delivered
P-46	J		Parent's initial response to School District's Motion to Dismiss and request for an extension of time to supplement this response

EXHIBIT B

Respondent's List of Exhibits

J=Joint Exhibit

Q=Have been admitted but questioned

Q-T=Questioned but admitted with testimony

N.O.=Not offered

Respondent's Exhibit #	Action Taken	Date	Description
R-1	J	7/22/96	Correspondence from DESE re: First Steps students and early childhood special education
R-2	J	12/3/96	DIAL-R test results
R-3	J	12/16/96	Referral for ECSE evaluation
R-4	J	1/6/97	Correspondence to _ from Jeanette Emerson re: early childhood special education
R-5	J	1/15/97	St. Joseph Institute for the Deaf Progress Summary
R-6	Q-T	undated	Notes re: meeting to discuss records with Mrs. _
R-7	J	1/21/97	Summary of screening results
R-8	J	1/21/97	Evaluation Plan
R-9	J	1/21/97	Notice of Action Proposed-Initial Evaluation
R-10	J	8/13/97	Correspondence from _ re: request for due process
R-11	J	8/15/97	Correspondence from _ re: parent attorney
R-12	N.O.	8/18/97	Correspondence from K. Cooper to _ re: procedural safeguards and refusal to consent
R-13	J	8/18/97	Correspondence from Dr. V. Freeman to J. Emerson re: status of due process
R-14	J	8/20/97	Correspondence from _ re: evaluation
R-15	N.O.	8/21/97	Correspondence from J. Emerson to _ re: procedure to file due process
R-16	J	8/27/97	Due Process Hearing Request Notice Form

R-17	N.O.	9/2/97	Correspondence from Dr. V. Freeman to DESE re: interest in mediation
R-18	N.O.	9/2/97	Correspondence from Dr. V. Freeman to DESE re: hearing officer selection
R-19	N.O.	9/8/97	Correspondence from DESE re: hearing officer panel members
R-20	N.O.	9/8/97	Correspondence from DESE to P. Boyle re: assignment as chairperson
R-21	N.O.	9/10/97	Correspondence from P. Boyle to _ and Dr. V. Freeman re: hearing date and extension of time
R-22	N.O.	9/12/97	Correspondence from P. Boyle to S. Walker re: extension of time
R-23	J	9/22/97	Correspondence from S. Walker to P. Boyle re: request for extension of time
R-24	N.O.	9/26/97	Correspondence from S. Wright to S. Walker re: refusal of consent to evaluation and notice of hearing
R-25	N.O.	10/2/97	Correspondence from S. Walker to S. Wright re: due process issues
R-26	N.O.	10/7/97	Correspondence from P. Boyle to T. Goldman re: hearing dates
R-27	N.O.	10/7/97	Correspondence from P. Boyle re: hearing dates
R-28	N.O.	10/14/97	Correspondence from Dr. V. Freeman to P. Boyle re: hearing arrangements
R-29	N.O.	10/14/97	Correspondence form S. Walker to P. Boyle re: extension of time
R-30	N.O.	10/16/97	Correspondence from T. Goldman to S. Walker re: hearing dates and statement of issues
R-31	N.O.	10/17/97	Correspondence from T. Goldman to P. Boyle re: presentation of evidence
R-32	N.O.	10/17/97	Correspondence from T. Goldman to P. Boyle re: hearing dates
R-33	N.O.	10/20/97	Correspondence from P. Boyle to S. Walker re: hearing dates
R-34	N.O.	10/20/97	Correspondence from P. Boyle re: hearing dates
R-35	N.O.	10/28/97	Correspondence from T. Goldman to DESE re: panel selection
R-36	N.O.	10/28/97	Correspondence from P. Boyle to S. Walker re: hearing dates
R-37	N.O.	10/29/97	Correspondence from T. Goldman to DESE re: child complaint re: Dayna Deck
R-38	N.O.	10/31/97	Correspondence from T. Goldman to DESE re: child complaint
R-39	J	11/97	Notice re: hearing procedures

R-40	N.O.	11/11/97	Correspondence from T. Goldman to DESE re: child complaint and affidavit
R-41	Q-T	undated	Summary Statement of Jeanette Emerson
R-42	Q-T	undated	Keith Cooper notes re: _ and services
R-43	N.O.	undated	Summary of _ meeting by K. Morris
R-44	N.O.	undated	Summary of Initial Conference for _ by Pamela Craft
R-45	N.O.	undated	Summary of Initial Conference for _ by Pamela Craft and Krista Morris
R-46	J	12/96	Midwest Ear Institute Medical Records
R-47	J	9/95	Children's Mercy Hospital Medical Records
R-48	J	12/95	Share & Care Center for Special Needs Medical records
R-49	J	5/96	Missouri Department of Mental Health Family Intervention Services and Outcome Records
R-50	J	11/97	Respondent's Motion to Dismiss Due Process
R-51	J	11/97	Petitioner's Statement of Issues