

**THREE MEMBER DUE PROCESS HEARING PANEL**

**EMPOWERED PURSUANT TO 162.961 R.S.Mo.**

**HEARING DECISION**

Student's Name:

Date of Birth:

Parent's Name:

Student's Social  
Security Number:

Representative: Mr. Jason Shaffer, Attorney at Law

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Hearing Dates: September 23rd through 25th, 1998

Date of Report: November 12, 1998

Hearing Panel: Patrick O. Boyle, Chair

Mr. Ben Franklin, and Ms. Audrey Yarbrough

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## **HEARING DECISION**

### **ISSUES**

1. Student, an adult, contests a proposed change of placement for high school graduation as per notice dated 5/7/98, Respondent's Exhibit R-88, and requests continued services under IDEA to age 21.

2. Student contends that a free appropriate public education has not been furnished for the following reasons:

Student was awarded credits which were not earned during her four years of attendance at Local Education Agency's (LEA) secondary schools;

An adequate transition plan has not been adopted or implemented;

Student has been denied the opportunity to fully participate in meetings to develop her Individualized Education Plans (IEP); and

Student was required to hire a peer tutor during a period of homebound instruction from approximately 9/14/94 to 1/18/95.

### **TIME LINE**

Student's request for a due process hearing was received by the Department of Elementary and Secondary Education (DESE) on April 30, 1998. On May 19, 1998 an attorney entered her appearance on behalf of the LEA and, requested an extension of time for decision herein. Chair of the three member panel granted the attorney's request by order dated June 12, 1998 and, extended the time for decision to October 26, 1998. A hearing was held on the dates of September 23 through 25, 1998. Upon the conclusion of the hearing the student's attorney requested permission to submit a written brief to the panel, and requested time until October 16, 1998 for submission of the brief. Attorneys for both parties agreed to extend the time for decision to November 16, 1998 and both parties were given permission to submit written briefs on or before October 16, 1998.

### **FINDINGS OF FACT**

1. Student is an adult born on \_\_\_\_\_ and presently lives with her mother.

2. Student has attended school at the LEA since 1985 and, has received special education services during that time.

3. Student has been medically diagnosed with spinal bifida and congenital strabismus and a high astigmatism in both eyes. She has been educationally diagnosed as physically impaired and/or other health impaired under IDEA. R56, R27, R19 and R5.

4. During the Fall semester of 1994 student was given homebound instruction while she recovered from surgery. R29 to R38.

5. LEA provided an experienced and certified teacher who met with student three times a week after school for six to seven hours per week. This teacher brought assignments from various teachers to students, presented the assignments, answered questions and returned the assignments for grading. Student was given a standard curriculum and, an IEP was implemented during her homebound instruction for the fall semester of 1994.

6. Student's parent retained a peer tutor to help during this period of her homebound instruction.

7. Student's parent did not request a peer tutor at the IEP meeting for homebound instruction during this period nor has she requested reimbursement for the tutor's expense prior to this request for due process.

8. Student's parent did not contest student's IEP during this period of homebound instruction.

9. Student attained the age of \_\_\_ on 11/6/95.

10. An IEP for student dated 1/17/96 does not contain a transition plan. R53.

11. While a transition plan does not appear in the IEP of 1/17/96, the Springfield Regional Center had started work on student's transition to a career prior to this date as shown by the IEP of 9/27/95, R46, and the parent contact log which shows phone calls from the Regional Center on 9/12/95 and 12/18/95, R94.

12. Student's IEP dated 12/3/96 does contain an individual transition plan which states that her daily living skills and social skills are not concerns at this time. Focus should be on occupational guidance and preparation. A goal was set for student to attend the LEA Vocational-Technical School and participate in office occupation classes. R58.

13. During the Fall semester of 1997 student again received homebound instruction while she recovered from a broken leg.

14. Student's IEP for the 1997-98 school year contains a transition plan which called for participation in the business practice class at VoTech and career exploration. The plan states that student's daily living skills and social skills are not concerns. Focus should be on occupational guidance and preparation. R62.

15. An interim IEP was drafted on 10/1/97 to cover student's homebound instruction while recovering from a broken leg. R64.

16. On 10/20/97 student returned to school and a change of placement notice issued. An IEP conference was scheduled for 10/29/97 at 8:00 a.m. in the special education teacher's room at the LEA high school. R65 and dR66.

17. Prior to the IEP meeting of 10/29/97 the student's mother contacted IMPACT for assistance in setting IEP goals for student. IMPACT referred the mother to the Southwest Center for Independent Living (SCIL). She also contacted the Springfield Regional Center for assistance.

18. Representatives from SCIL arrived at the LEA high school on 10/29/97 at approximately 9:00 a.m. and were directed to a conference room. The IEP meeting was completed without their input on 10/29/97.

19. The SCIL representatives did meet with LEA staff after the IEP meeting on 10/29/97 and, they received the IEP developed at student's residence on that day.

20. On 11/12/97 the student requested a formal IEP meeting which would include named representatives from SCIL. R71.

21. In response to student's request an update IEP meeting was scheduled for 11/24/97. R72.

22. An IEP meeting was held with the representatives from SCIL where they presented concerns about student's basic living skills. LEA stated that student's transition plan only needed to address occupational guidance. An IEP was not drafted at this meeting pending receipt of an VEAC Comprehensive Education Report. R77.

23. Sometime before Christmas of 1997 student transferred from LEA high school to the VoTech School where she enrolled in an alternative program for at-risk students. Student did not qualify for an "at risk" program but, the transfer was made at student's and her mother's request.

24. A comprehensive evaluation report, R77, is dated 12/9/97 and, the student's IEP meeting was held on 1/12/98. This meeting included SCIL representatives and outside agencies as shown

on the action/conference summary dated 1/12/98. R81. LEA staff believe that a consensus was reached on all items of the IEP with the exception of identifying the school which was closest to student. LEA contends that the VoTech School is the only school offering the at-risk program requested by student and, the IEP lists the VoTech School as her closest school.

25. The IEP drafted as a result of the 1/12/98 conference has been signed by student and given to her. SCIL representatives were not furnished copies of the IEP as drafted. R82.

26. Student successfully accomplished the goals of her IEP dated 1/12/98 and, earned the required credits to graduate from the LEA high school. R93 and J1, R82, R83, R84, R85.

27. On 5/7/98 the LEA proposed a change of placement to graduation. R96.

28. Student has continued to receive instruction and services at the LEA VoTech School pending the outcome of this due process hearing.

## **DECISION**

Student has received a free appropriate public education and, meets the requirements for graduation and a high school diploma from LEA. Services beyond graduation are not required under IDEA.

Procedural errors were made in documenting a transition plan for student but, the transition services were provided in a timely manner and, student has not been prejudiced by the lack of early documentation of a transition plan in her IEP.

Student's advocates did miss an IEP meeting but, a meeting was rescheduled where they participated fully. An adequate transition plan was drafted and implemented for the student.

Student's parent did employ a peer tutor during homebound instruction in 1994 but, there is no record of a request to the LEA for such a tutor or reimbursement of the expense prior to this request for a due process hearing. LEA's furnishing of an experienced teacher for homebound instruction was adequate in this case.

Respondent has filed a Motion to Dismiss Petitioner's Due Process Request on the grounds that the issues raised are nonjusticiable under the IDEA and were not timely raised.

Student's change of placement to graduation is a justiciable issue under IDEA and, it has been reviewed and approved at this hearing.

In reviewing this change of placement to graduation, the panel has considered the education furnished to the student. Issues examined by the panel are set forth at the beginning of this decision.

Whether or not some of the issues were time barred is a moot question since the panel has denied the relief sought by Petitioner.

### **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.

Dated this 12th day of November, 1998.

Patrick O. Boyle, Chair

Mr. Ben Franklin

Ms. Audrey Yarbrough