

HEARING DECISION

Child's Name:

Date of Birth:

Parent's Name: (Appeared pro se)

Address:

Local School District: Kingston K-14 School District (Appeared by: Peper,
Martin, Jensen, Maichel & Hetlage of St. Louis,
Missouri, Ms. Teri Goldman and Ms. Marty Hereford,
Attorneys at Law)

Address: Route 1, Box 1551

Cadet, MO 63630-2396

Hearing Site: Cruise Elementary School

Dates of Hearing: February 16, 1998

February 17, 1998

February 19, 1998

February 20, 1998

Date of Panel Decision: March 12, 1998

Hearing Panel: David Potashnick, Chief Hearing Officer

Attorney at Law

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DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
THREE MEMBER DUE PROCESS HEARING UNDER IDEA

_ and through his parents:

vs.

Kingston K-14 School District

I. PREAMBLE

1. A Due Process request, which was hand written by the student's mother, __, was received by the Department of Elementary and Secondary Education in Jefferson City, Missouri, on April 18, 1997. This request invoked the Due Process procedures under IDEA setting in motion the impaneling of one panel member chosen by the School, one panel member chosen by the _ and the third panel member being a duly licensed attorney chosen as chairperson of the panel at random by the Department of Elementary and Secondary Education.

Hereinafter, the _ collectively will be identified as Complainants the District collectively will be referred to as Respondent.

After the Due Process request was received by Panel Chairperson David Potashnick, a scheduling letter was mailed to all parties of record setting out the timeline within which the hearing would be held and a decision rendered thereon within forty-five (45) days of April 18, 1997. The parties agreed to or requested in writing several continuances from the Chair which were granted and which resulted in a hearing being scheduled for the 16th and 17th of February 1998, at the location of the Respondent's school district. Shortly after the commencement of the hearing on

February 16, 1998, it became apparent to all parties concerned that more time than two days would be required to hear the evidence the parties respectively wanted to put on the record for this case. It was therefore mutually agreed that the hearing would reconvene Thursday, February 19th and be concluded Friday, February 20th. Both parties rested their cases and the hearing was adjourned at approximately 6:00 p.m. Friday, February 20, 1998. The parties were advised they had seven days within which to brief their side of the issues, if they so desired, and the parties jointly stipulated that the hearing panel would have an extended time period to render its decision so that the decision would be timely if posted on or before March 12, 1998.

EXHIBITS AND WITNESSES

A. Exhibits:

1. Complainant and Respondent jointly agreed to allow into evidence all documents included within Respondent's exhibit/witness list Volumes I and II, Pages 1 through 815 and marked as Exhibits 1 through 205.
2. Complainant's Exhibit No. 1 consisting of a letter dated January 30, 1998, from Respondent to Complainants which was offered into evidence and rejected and for which an offer of proof was made by Complainant.
3. Complainant's Exhibit No. 2 consisting of a letter dated February 11, 1998, from Betty L. Aprey, M.S. to Complainants which letter was offered into evidence and rejected and for which an offer of proof was made by Complainants.
4. Complainant's Exhibit No. 3 consisting of a State of Missouri certificate in professional counseling and State of Missouri Teacher's certificate regarding Betty L. Aprey which were offered into evidence and rejected and for which Complainant made an offer of proof.
5. Complainant's Exhibit No. 4 consisting of a handwritten letter from Respondent faculty Karen Hodges To Whom It May Concern which exhibit was allowed into

evidence by agreement of the parties and which exhibit is attached to this Decision to constitute part of the record of this hearing.

6. Complainant's Exhibit No. 5 was offered into evidence and entered into evidence by agreement of the parties and is attached to this Decision as part of the record of this hearing.

7. Complainant's Exhibit No. 6 consisting of several pages of school records were marked and offered into evidence and were rejected by the panel. Complainant made no offer of proof on Exhibit No. 6.

8. Complainant's Exhibit No. 7 consist of documents that were identified by the witness Sue Maxson as documents turned in by Complainant as school work and graded by her and returned to Complainant. These documents were admitted into evidence and are attached to this Decision and made a formal part of the record of this hearing.

9. Complainant's Exhibit No. 8 consisting of one page of the rejected group Exhibit No. 6 is admitted into evidence being identified by witness Sue Maxson as a progress report authored by her in regards to Complainant. This document is attached to this Decision and made part of the record of this hearing.

10. Complainant's Exhibit No. 9 consisting of a letter from Sports Rehabilitation, Ms. Rochelle Andrews, OTR, was offered into evidence in this case and rejected and an offer of proof thereon was made by Complainant.

B. Witness List:

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

Monday, February 16, 1998:

1. Dr. Robert Falast, Superintendent

2. Sondra Barker, Social Worker

3. Becky Ottinger

4. Donna Detrich, Director, MO-Span

5. Dr. William Beveridge, Representative for Jefferson County COOP

Tuesday, February 17, 1998:

6. Janet Horn, Parent Advocate

7. LuAnn Reese, Parent Advocate

8. Karen Hodges, Respondent Teacher

9. Sharon Lewandowski, former Respondent Elementary Principal/Special Ed Director

Thursday, February 19, 1998

10. Barbara Flesch, Social Worker

11. Regina Pinson, Respondent Teacher

12. Louise Valley, Respondent Teacher

13. Stacey Cannon, Respondent Teacher

14. Mr. Purnell, Physical Restraint/Deescalation Instructor

15. Dr. William Whitehall, Respondent Elementary Principal/Special Ed Director

Friday, February 20, 1998

15. Dr. William Whitehall, Respondent Elementary Principal/Special Ed Director

16. Ilene Joseph, Representative for Child Haven (testimony by phone)

17. Eric Lowder, Parent Advocate

18. Sue Maxson, Respondent Teacher

19. Sharon Head, Respondent Process Coordinator

20. __, Parent of the student

C. Parties Right to Appeal/Review of This Decision:

If either party to the Due Process Hearing does not agree to the hearing panel's decision, either (or both) may appeal the findings and decisions of the panel in either State or Federal Court pursuant to the laws and regulations pertaining to the perfection of an appeal at the specific Site either or both parties shall choose to lodge their appeal. This hearing panel's decision is final unless a party to this hearing appeals in a timely manner, following the legal procedures necessary to perfect such appeal, in whichever appropriate Court that the appeal may be lodged.

III. ISSUES

Pursuant to request of the Chair, Complainants filed, on or about January 16, 1998, a document identifying fourteen (14) issues which they intended to litigate and have the panel decide when the Due Process Hearing was convened. Many of these issues as stated by the Complainants are interrelated or can be legally identified, for IDEA purposes, more specifically than they have been delineated in the original issue statement submitted by Complainants. What follows is a list of the issues as submitted along with the panel's interpretation of the stated issues' relevance to the standards and authority granted to hearing panels under IDEA.

Issue No. 1:

Placement.

A. Diagnosis/Disability

B. Least Restrictive Environment

C. Individual Education Plan Genesis and Adequacy

D. Related Service Required

E. Assistive Technology Required

Issue No. 2:

Failure to Provide Related Services - FAPE Educational Placement and Evaluation.

A. Was Respondent at fault in refusing an individual computer to Complainant for academic use?

B. Was Respondent at fault in failing to provide a one on one aide to the Complainant at the beginning of the 1996 - 1997 school year?

C. Would the provision of more, better or different related services to the Complainant, such as audiology, recreational therapy, occupational therapy, medical services for evaluation purposes, psychological services, and in service training for the teachers interacting with the Complainant have enabled the Complainant to be successful in a less restrictive school environment than that found necessary and appropriate by the School in the times and incidents preceding the filing of this Due Process request?

Issue No. 3:

Untrained Staff - FAPE.

Although mother does not specify what are the contentions she makes in this issue, the panel shall sue sponte make determination as to the training, certification and special education background of the staff of Respondent who had significant contacts with the Complainant in the context of whether Complainant was provided FAPE within his IEP at Respondent's school district.

Issue No. 4:

Failure to Screen and Evaluate - Identification.

Again, Complainants fail to specify the contentions of this issue, so the panel will sua sponte address the issues of the Respondent's duty to identify the child as in need of special education and evaluate the child to determine what the most beneficial parameters of that special education program for this specific child would be.

Issue No. 5:

Complainants ask this panel to decide as to Complainants' claim that Respondent failed to provide Complainants' child with a free and appropriate public education.

The contentions made by Complainants under this issue involve the continued use of out of school suspension as disciplinary/behavior modification strategies by the Respondent. Another contention by Complainants under this issue is that the Respondent would not allow _ to participate with nondisabled peers in recess or academic computer class, which in this panel's views translates legally into a claim that Respondent's child placement was not in the least restrictive environment.

Issue No. 6:

Failure to Include Parents in IEP Conference(s) - Educational Placement or FAPE.

Complainants specifically contend that she was excluded from an IEP meeting dated May 2, 1997, with inadequate attempts by Respondent to accommodate her in scheduling said meeting. She further contends that on December 2, 1997, the Respondent again held an IEP conference without the parents. It was further contended by Complainant that she was excluded from a meeting dated November 24, 1997, but admitted in the same paragraph that she had notified Respondent in writing that she would not be attending that meeting.

Issue No. 7:

It is contended by Complainants that Respondent failed to address recommendations contained in independent evaluations of Complainant student, which would in a legal sense translate to an issue of Educational Placement and/or Evaluation of the Child.

Issue No. 8:

Complainants' contention is that Respondent failed to provide an appropriate IEP and Behavior Management Plan for Complainant Student, which translates into either FAPE or Educational Placement.

Complainant makes no specific contentions as to how this issue was joined or in what ways specifically Respondent was at fault.

Issue No. 9:

Discipline - FAPE Educational Placement,

Complainants list specific contentions that involve suspensions, either in school or out of school, of Complainant Student and instances of a revoking of Complainant Student's privileges regarding Physical Education, Art, Music,

Lunch or Library privileges; or when the Student was removed from regular education classroom and was placed in a Behavioral Disordered Educational setting, all of which cumulatively amount to changes in the educational placement of Complainant Student without the support of or creation of an Individual Education Plan supporting such change.

Issue No. 10:

As Complainants state: The failure of Respondent to maintain adequate records - Evaluation, Educational Placement and/or FAPE.

Complainants contend that Respondent failed to document actions refused which were proposed by Complainants, that diagnostic teaching results were never

disclosed, that agreed modifications discussed at IEP conferences were never put into effect and that Complainant Student's program modifications were not properly documented.

Issue No. 11:

Complainants contend Respondent failed to convene IEP team meetings as agreed - Educational Placement, Evaluation, or FAPE.

The specific contentions of Complainants include an IEP meeting held May 22, 1996, resulted in an agreement to hold an IEP meeting the following school year on August 14, 1996, which was not held. Complainants contend that as a result of failing to convene the IEP meeting agreed to be held August 14, 1996, Complainant Student's educational placement remained in the Self Contained Behavioral Disordered Unit without the one on one aide he had been assigned in order to attempt to facilitate his regular education curriculum.

Issue No. 12:

Complainant alleges Respondent failed to allow participation in nonacademic or extracurricular activities - Educational Placement, FAPE.

Nothing is specifically contended by Complainants to support this contention on Complainants' issue statement.

Issue No. 13: Failure to see need of Assistive Technology -FAPE/Placement.

No specific contentions have been listed by Complainants in regard to this issue.

Issue No. 14:

Complainant contends that compensatory education services ordered by the Department of Elementary and Secondary Education in relation to the parents bringing to the Department of Elementary and Secondary Education's attention

the disciplinary suspensions mentioned in Issue No. 9 were not provided by the Respondent - FAPE.

It is specifically contended that Complainants filed a child complaint which on January 24, 1997, the Department of Elementary and Secondary Education found Respondent out of compliance due to over use of suspension as a disciplinary tool in response to behavioral problems which were found by an IEP conference to be related to Complainant Student's disabilities. The order mandated that the seven days of special education were to be taken during an extended school year in the summer of 1997. During the time which had been scheduled for Respondent to offer this compensatory education student had been admitted at the Hawthorne Psychiatric Hospital for Children. In the following fall of 1997 during which time at least three (3) meetings between Complainant Parents and Respondent were held, no alternative dates for the compensatory education were offered, discussed or requested by Complainants.

IV. FINDINGS OF FACT.

1. Due Process in this case was filed by Complainant's parents on April 18, 1997, effecting a stay put placement of mainstream with full time one on one aid and sixty (60) minutes per week special education Speech Therapy, as well as 100 minutes per week of resource Special Education in academics and social skills.
2. The stay put placement was providing no (or an unreasonably small amount of) educational benefits to Complainant.
3. Complainant's failure to support Respondent's IEPs and Complainants' long term unilateral removals of Complainant from school were significant contributing factors to Complainant's behavioral and academic problems.
4. Respondent's IEPs for Complainant lacked specific objective criteria by which to evaluate the attainment of the various behavioral goals stated therein.

5. Respondent District did not use adequate notice to Complainant's parents or keep sufficient records of attempts to give Complainant's parents notice or to accommodate Complainant's parents for their participation in or attendance at the IEP meeting dated May 2, 1997. State Plan 5V (8.c.) (9.a.) (9.b.) (9.c.) (9.a.a.)
6. Respondent District did consider all of the medical and psychological evaluations of Complainant that were available to it.
7. Respondent District did allow Complainant's parents to participate in IEP meetings and the creation of curriculum and behavior management plans for Complainant pursuant to the State Plan with the exception of the May 2, 1997, IEP meeting.
8. Complainants suffered no prejudice due to not being present at the May 2, 1997, IEP meeting because at the time that IEP meeting was held a stay put order was in effect due to the filing of the Due Process request by Complainant's and the IEP team's conclusions and suggestions which were a result of that meeting were never put into affect regarding Complainant's special education.
9. Respondent District failed to notify Complainant's parents of its actions proposed or actions refused including, but not limited to, requests that Complainant be reevaluated or screened by the Respondent District and a request that assistive technology, i.e. personal computer, be employed with Complainant.
10. Respondent District failed to notify Complainant's parents of their right to do another reevaluation after a reevaluation promulgated by Respondent District were received.
11. Respondent District violated the "stay put" provisions of the State Plan by changing Complainant's educational placement to full time self contained in May of 1997.

12. Both Child Haven and Jefferson County Cooperative Day Placement Center represent a more restrictive environment than placement at Respondent District school district with related services.

13. Child Haven is further from the Complainant's home and from Respondent's school district than the location of the Jefferson County Cooperative Day Placement Center.

14. Respondent's staff was adequately certified and trained for their roles as classroom teachers, special education teachers and one on one aide.

15. Respondent District failed to provide more extensive in service training and/or personnel specifically trained in behavior management as related services to Complainant.

16. Complainant's behavioral and educational problems are found to be a result of or caused by Complainant's disabilities.

17. For purposes of IDEA and the Missouri State Plan implementing this Federal Law, Complainant is disabled and does require special education in the following currently diagnosed areas: Speech Impairment, Behavioral disabilities, Severe Emotional Disturbance, Attention Deficit Disorder/ Hyperactive Disorder, Oppositional Defiant Disorder, Excessive Compulsive Disorder, Depressive Disorder, Anxiety Disorder and/or Other Health Impaired.

18. Respondent District reasonably believed Complainant's in school behavior to present a likelihood of potential injury to Complainant and/or Complainant's fellow students and Respondent's faculty.

19. Complainant started school at Respondent District the 1994 - 1995 school year (first grade) carrying the sole special education diagnosis of speech impairment disability, but during that year Respondent's faculty reported numerous incidents of disciplinary actions and aberrant behavior. During this time Complainant's parents first request for screening/evaluation to the Respondent was made, which request

was denied and which request should have been granted by Respondent at that time.

20. When Complainant started his third grade year at Respondent District his education placement was changed by Respondent District in that Complainant was no longer afforded the related service of a full time one on one aide, which change was not documented in the Respondent's records.

21. Respondent District made no record of an action refused notice on Complainant's parents' request to place Complainant in home bound instruction in October, 1996.

22. Respondent District failed to properly document under Missouri State Plan regulations all modifications to Complainant's curriculum/IEP.

23. Complainant has a high level of intellectual function and the scholastic grading failures he experienced were more attributable to his failure to complete assignments versus intellectual problems.

24. For this Complainant the more appropriate mainstream environment would be for the purpose of academic instruction commensurate with his current intellectual function whereas any confinement, i.e. self containment or resource room hours, should focus on behavioral modification or management, and the teaching of social skills.

V. DECISION/ORDER

A. Educational placement from March 12, 1998 to the end of the scholastic school year May, 1998.

1. Home bound education not less than one (1) hour per day five (5) days a week to be provided by a legally qualified person who is to be hired by Respondent District for this purpose. This panel suggests that Respondent consider Janet Horn for this position. Respondent District shall for this period of home bound instruction provide academic resources for Complainant including, but not limited to, text

books, worksheets, handouts, and other academic supplies. In addition, the home bound instructor, if qualified to do so, will provide no less than one (1) hour per week of family counseling and one (1) hour per week of individual counseling with student. In addition, during this temporary period it will be Respondent's responsibility to reinstitute its involvement in the wrap around group designed to provide twenty-four (24) hour school and community and family services designed to remedy the Complainant's disabilities and it will be Respondent's continuing obligation to provide Speech Therapy to the Complainant at not less than sixty (60) minutes per week. This home bound instruction shall be implemented not more than seven (7) days after Respondent documents the changes ordered in this decision.

2. Least Restrictive Environment.

a. All IEP's and Intervention/Behavioral Management Plans for Complainant attempted by Respondent District to Date have failed to provide significantly successful academic achievement in Complainant.

b. There is in existence no IEP for Complainant evidencing the need to place Complainant in the educational setting of a day school placement.

c. Compensatory education, diagnostic teaching and the multidisciplinary evaluation team analysis leading to possibly extended related services and a modified IEP and Behavior Management Plan for Complainant can all be combined and affected during the Summer of 1998, but could not be so affected as to Complainant during this temporary period between the decision and the end of the academic school year in May, 1998.

d. Complainant's diagnosis as suffering from Tourett's Syndrome shall be defined for purposes of this home bound educational placement as a "temporary" physical condition of Complainant due to the unavailability of an IEP or Behavior Modification Plan for Complainant that can lead to significantly successful school performance by Complainant.

e. The traveling itinerant teacher model employed by the State Plan Appendices at pages A-79, 80 and 81 is appropriate for and to this temporary home bound instruction period and is in accordance with State Plan Section 7 Paragraph #2 of the Initial Least Restrictive Environment Analysis.

f. The needs of the Complainant for the immediate restart of academic and counseling services in regard to this temporary home bound educational placement and Complainant's history of physical aggression towards his peers dictate that this temporary period should be without presence of or interaction with Complainant's non-disabled peers.

g. Under the now existent IEPs and Behavior Management Plans for the Complainant he is/was unable to engage appropriately with other students in academic or social interaction.

3. For the reasons and analysis stated above the panel believes this temporary home bound educational placement is appropriate for Complainant until the full diagnostic and evaluative process can be affected by Respondent in regard to this Complainant during the Summer of 1998, at which time a more permanent IEP, Behavior Management Plan, necessary related services, and other factors affecting this Complainant's educational success can be determined. The Respondent shall be responsible for properly documenting the home bound extended school and evaluation provisions of this order, under the applicable laws and regulations within fourteen (14) days of its receipt of this order.

B. Extended School Year Services Summer 1998 and Comprehensive Reevaluation and Development of New IEP and Behavior Management Strategies.

1. Extended school year services Summer 1998. Not more than fourteen (14) days after the end of the 1997 - 1998 school year Respondent will provide extended school year services in all academic respects and likewise in all non-academic respects to the Complainant.

- a. The teachers or personnel that this panel recommends to participate in the extended school year program for Complainant are Karen Hodges, Ms. Pinson, Ms. Emily, Dr. Whitehall, Ms. Murtons, Mr. Purnell, Ms. Hartrip, Barb Flesch, Sondra Barker, or any other person to whom the parents of the Complainant and Respondent expressly agree.
- b. The one on one aide provision of the stay put IEP for Complainant will be reinstated at the initiation of the Summer 1998 extended school year service only in the event that four or more additional students would be present in the same class and the same teacher at the same time, and then shall remain in effect until and unless modified by the multi-disciplinary evaluation team during the Summer of 1998, and likewise the special education provisions for Speech Therapy for Complainant shall be effected during the extended school year program. Furthermore, the family counseling and individual counseling and the Respondent's involvement in the "wraparound" therapy for the Complainant shall continue as well during the extended school year program.
- c. This extended school year program for Complainant shall continue until not more than two (2) calendar weeks before the first day of the 1998 - 1999 regular school year unless and until the multi-disciplinary evaluation team formally recommends otherwise.
- d. The specific services ordered during this extended school year shall remain constant throughout the Summer of 1998 for Complainant unless and until recommended to be changed by the evaluation team and affected through the specific procedures for change of placement pursuant to IDEA and the State regulations implementing the same.
- e. The extended school year service ordered hereunder shall consist of classes from 1:00 p.m. to 4:00 p.m. each weekday with transport to Kingston K-14 School District to be provided by Complainants and reimbursed by Respondent. Not more than one hour per week nor less than thirty (30) minutes per week of Speech Therapy shall be included in this time at the discretion of the Speech Therapist. The

family and individual counseling provisions of this order are in addition to the fifteen (15) hour/week extended school year herein provided.

2. Comprehensive Reevaluation and Creation of New IEP and Behavior Management Plan for Complainant.

a. As soon as practicable and at the Respondent's expense a full multi-disciplinary evaluation team shall be employed to reevaluate Complainant and to develop new recommendations for the IEP and Behavior Management Plan for Complainant. Dr. George Yard shall head up and organize the efforts of this multi-disciplinary evaluation team.

b. The multi-disciplinary team shall employ diagnostic teaching techniques.

c. The team shall determine what in service training for Respondent's personnel would be beneficial to attempts to mainstream Complainant or place Complainant in the least restrictive educational environment.

d. Determine what (if any) assistive technology should be employed in the education of Complainant.

e. Should determine what (if any) specific educational placement such as resource, self contained, BD placement, Gifted Program, etc. is the most consistent with Complainant's disabilities and needs.

f. Determine whether it is appropriate for Complainant to retain a one on one aid and if so what role the one on one aide should play and what Behavior Management Plan for Complainant should the aide follow.

g. Determine what (if any) family or individual psychological counseling should be continued for Complainant and Complainant's parents.

h. Determine what (if any) recreational or occupational therapy should be employed for Complainant.

i. Determine what (if any) audiology or spoken/recorded textbook devices should be employed for Complainant.

j. In regard to the in service training of Respondent's personnel dealing directly with the Complainant, the following in service training shall be considered for its appropriateness in regard to Complainant: Learning strategies, Deescalation strategies, Behavior Modification or Management strategies, and Tourett's Syndrome strategies or training. The evaluation team may consider additional in service training as it deems appropriate. ~

k. At least one party from the multi-disciplinary evaluation team shall attend an IEP meeting for Complainant before the end of the summer vacation 1998 with a written summary of the multi-disciplinary's findings in regard to this specific order. Such person attending from the multi-disciplinary team shall be capable of and shall item by item explain the findings of the multi-disciplinary team in regard to the guides of this order which findings shall be given appropriate consideration by Respondent in the formation of the new IEP and/or Behavior Management Plan for Complainant.

1. Such additional psychological, physiological or educational evaluation by independent or district evaluators as judged to be necessary by the multi-disciplinary team shall be employed in regards to Complainant during the Summer of 1998.

m. The evaluation team shall conduct or order to be conducted medical and/or pharmaceutical reevaluations of the Complainant in addition to psychological, educational or other reevaluations conducted during the Summer of 1998 upon Complainant.

n. The reevaluation team is hereby granted full and unlimited access to all records available upon the Complainant student through either Respondent or the Complainant including, but not limited to, any institution or professional person, counselor or care provider of any kind so that said reevaluation team can be as fully

informed as possible prior to and during the reevaluation they are conducting during the Summer of 1998.

o. The design of a plan for academic and behavioral achievement for Complainant shall include due consideration of positive reinforcements and interventions and individualized redirection and deescalation strategies.

3. Not less than six (6) months after Respondent's implementation of the IEP and Behavior Management Plan developed for Complainant pursuant to the multi-disciplinary team evaluation in the Summer of 1998 the same multi-disciplinary team, if possible, shall be reconvened to reevaluate and objectively gauge the success of Complainant's new IEP and Behavior Management Plan and academic and social emotional performance/development pursuant to the attempt to leave Complainant in the less restrictive environment of the Respondent's school district. In the event the same evaluation team cannot be assembled at that time, Dr. George Yard shall be employed to provide another qualified team for this follow up at his sole discretion.

a. Pursuant to this re-reevaluation and objective assessment of the success of the plans and strategies then in effect the evaluation team shall make its recommendations and findings regarding the success of the programs employed into a summary of the reevaluation conducted, which summary shall be presented by a member of the multi-disciplinary team able to fully explain such a summary to the Respondent personnel and Complainants, at an IEP meeting scheduled as soon as practicable after the re-reevaluation by the multi-disciplinary team is concluded and a report thereon distributed to Respondent and Complainants.

b. In the event the re-reevaluation team concludes that the strategies employed pursuant to the evaluation during the Summer of 1998 are not meeting with success or have little reasonable likelihood of meeting with success in the future if they continue to be employed, then in that event the team may make a recommendation that Complainant be placed in a more restrictive environment outside of the Respondent School District.

4. The costs of the extended school year and all additional evaluations ordered in this decision shall be born by Respondent and shall be the responsibility of Respondent to document and implement pursuant to this order. However, Respondent shall be relieved of any responsibility for the reevaluation or continued placement within said District for Complainant if and in the event that Complainants refuse to follow any portion or provision of this order as written, or if they again unilaterally withdraw the Complainant from the educational process.

5. The extended school year offered as compensatory education for Complainant shall yield to and fully accommodate all needs and requests of the multi-disciplinary reevaluation team headed up by Dr. George Yard in the team's attempts to fully evaluate and assess Complainant.

VI. Suggestions and Recommendations of the Panel.

A. It is unanimously believed by this panel that a dispute and battle of wills, so to speak, between Respondent District and Complainant's parents have developed in this case to the point that the best interests of Complainant have been ignored by both parties for a period approaching two (2) calendar years. It is strongly suggested by this panel that the parties each lay aside their respective malices and ill will and sincerely try to keep the best interests of Complainant in the forefront of their intentions and actions in regard to the implementation of this decision.

B. It is suggested and recommended that Respondent employ Dr. George Yard as the leader and organizer of the multi-disciplinary evaluation team ordered hereunder for the Summer of 1998. This recommendation is made pursuant to the personal experience of the panel with Dr. Yard and the panel's sincere belief that Dr. Yard is a non-biased extremely efficient professional who would represent Complainant's best chance of an adequate evaluation and training program to allow Complainant to remain in the less restrictive environment of Respondent District.

This Decision in the Due Process request styled _ versus Kingston K-14 School District is so ordered this 12th day of March , 1998, by panel member Mary Keats,

panel member Karen Aslin, and panel Chairperson David Potashnick, Attorney at Law.

Mary Keats

David Potashnick

Karen Aslin