

## **Three Member Due Process Panel**

### **Pursuant to RSMo. 162.961**

#### **Hearing Decision**

Student's Name:

Parent's Name:

Representative:

Mr. Ovid Neal

Rt. 4, Box 122B

Moberly, MO 65270

Local Education Agency:

Moberly School District

926 Kwix Road

Moberly, MO 65270

Representative:

Ms. Teri Goldman, Peper, Martin, Jensen, Maichel and Hetlage, Attorneys at Law

24th floor, 720 Olive St.

St. Louis, MO 63101-2396

Hearing Date:

July 14, 1997

Date of Report:

July 21, 1997

Hearing Officers:

Carolyn K. Carr

Marc G. Montgomery

Patrick O. Boyle, Chair

#### **Issue and Purpose of Hearing**

In this hearing the parent is seeking a declaration that the student's Individual Education Plan (IEP) of April 21, 1997 is inappropriate for failure to include transportation as a related student service.

#### **Time Line Information**

Parent first requested transportation by letter dated February 14, 1997 addressed to the LEA (R-55). Parent's request was denied by letter from the LEA dated February 14, 1997 (R-56). This

exchange of correspondence was included in parent's request for a due process hearing dated February 26, 1997 and received by the SEA on March 10, 1997 (R-31).

LEA's representative requested an extension of time past the statutory deadline by letter dated March 31, 1997 (R-37). Based upon the representative's request the statutory deadline was extended by the Chairperson to July 31, 1997 and, the hearing was held on July 14, 1997 (R-38).

A motion to dismiss parent's due process request was filed by the LEA on May 14, 1997 (R-49). On July 14, 1997 the Chairperson denied the motion since parent's request for transportation as a related service raises an issue subject to review by a due process hearing.

### **Findings of Fact**

The following findings of fact are based upon the sworn testimony of witnesses received March 14, 1997 and, the Respondent's exhibits admitted into evidence with the consent of Petitioner.

### **RESPONDENT'S EXHIBIT LIST**

EXHIBIT LIST NO.	PAGE(S)	DATE	DESCRIPTION
R-1	1	9/95	Special Services Department Screening Information
R-2	2	9/29/95	E.P.S.F. Diagnostic Student Profile
R-3	3	9/18/95	Permission to Obtain Student Medical Information
R-4	4	9/29/95	Early Prevention of School Failure Input
R-5	5	11/1/95	Correspondence to parent from principal re: school difficulty
R-6	6-16	11/27/95	Referral
R-7	17-19	1/3/96	Screening
R-8	20-22	1/9/96	Summary of Screening results
R-9	23-24	1/96	Evaluation Plan
R-10	25	1/22/96	Correspondence to parent from principal re: school difficulty
R-11	26	1/25/96	Notice of Action and Consent for Initial Evaluation
R-12	27-30	1/13/96	Cognitive Evaluation
R-13	31	2/2/96	Authorization to Obtain Student Information

R-14	32	2/2/96	Individual Assessment Summary Report
R-15	33-34	2/12/96	Individual Assessment Summary Report
R-16	25	3/20/96	Correspondence to parent from principal re: school difficulty
R-17	36-40	4/5/96	Diagnostic Summary
R-18	41	4/6/96	Notice of Action - Initial Placement
R-19	42-50	4/9/96	IEP
R-10	51-52	5/6/96	Notes re: P.E. accident
R-20A	52A	5/9/96	Pre-Test/Post-Test Summary
R-21	53	5/15/96	Correspondence to parent from principal re: IEP
R-22	54	10/22/96	Notice of Action - Intent to Evaluate
R-23	55	12/2/96	Release of Information
R-24	56	2/10/97	Correspondence to parent from principal re: school difficulty
R-25	57	3/1/97	Note from Doctor re: ADHD
R-26	58	3/11/97	Note from principal re: ADHD
R-27	59-61	4/2/97	Release of Information re: Charter evaluation and Charter evaluation
R-28	62-70	4/21/97	IEP
R-29	71-72	4/24/97	Note from principal re: IEP conference
R-30	73-86		Permanent Record
R-31	87	2/26/97	Correspondence from parent to DESE re: due process request
R-32	88-91	3/12/97	Correspondence from DESE re: due process request
R-33	92	3/14/97	Correspondence to DESE from LEA representative re: panel selection
R-34	93	3/20/97	Letter from parent's representative to DESE re: panel selection
R-35	94	3/25/97	Correspondence to Doctor from parent re: files
R-36	95	3/27/97	Correspondence from Doctor to parent review of records
R-37	96-97	3/31/97	Correspondence to Chairperson from LEA representative re: extension of time
R-38	98	4/10/97	Correspondence to LEA representative Chairperson re: continuance
R-39	99	4/17/97	Correspondence from parents representative to Doctor re: records
R-40	100-101	4/18/97	Correspondence from Doctor to parent's representative re:

			transportation policy
R-41	102	4/22/97	Correspondence from LEA representative to parent's representative re: issues
R-42	103-105	4/23/97	Correspondence from parent's representative to Doctor re: transportation
R-43	106-108	4/26/97	Correspondence from parent's representative to LEA representative re: issues
R-44	109-110	4/28/97	Correspondence from parent's representative to LEA representative re: issues
R-45	111	4/28/97	Correspondence from parent's representative to Chairperson re: issues
R-46	112	4/29/97	Correspondence from LEA representative to parent's representative re: contact
R-47	113-114	5/5/97	Correspondence from Chairperson to Panel
R-48	115	5/5/97	Correspondence from Chairperson to parent's representative re: hearing
R-49	116-151	5/14/97	Motion to Dismiss
R-50	152	5/15/97	Correspondence from school secretary to parent re: file
R-51	153-172	5/16/97	Correspondence from parent's representative to LEA representative Re: issues
R-52	173-180	5/17/97	Correspondence from parent's representative to LEA representative re: due process
R-53	181	5/19/97	Correspondence from Chair person to parent's representative re: Motion to dismiss
R-54	182-186	6/8/97	Correspondence to LEA representative from parent's representative re: due process
R-55	187	2/14/97	Parent's letter to LEA requesting transportation for student
R-56	188	2/14/97	LEA letter to parent denying transportation for student
R-57	189	4/29/97	Letter from LEA occupational therapist to student's doctor
R-58	190-191	1/20/97	Student's occupational therapy evaluation

### **Statement of Facts**

1. Student is parent's son.
2. Student's date of birth is \_\_.
3. Student was enrolled in the LEA's kindergarten during August of 1995.

4. During March of 1996 the LEA conducted an evaluation of the student with parent's consent to determine if student was eligible for special education services. (R-11, R-12, R-14, R-15)
5. During April of 1996 a multidisciplinary team concluded that student met the eligibility criteria to be classified as other health impaired under the IDEA because his medical diagnosis of attention deficit hyperactivity disorder interfered with his ability to function in an educational program using traditional instructional materials or techniques. A team including parent prepared an Individualized Education Plan (IEP) for student that provided 300 minutes per week of resource special education instruction. (R-17, R-18, Ri9)
6. During February of 1997 parent requested that the LEA provide transportation for student. (R-55)
7. Student does not live more than one mile from school. All students living more than one mile from school are provided transportation by the LEA.
8. The LEA refused to provide transportation to student since he does not live within the area for which transportation is provided. (R-56)
9. Parent requested a due process review of the LEA's failure to provide student a free and appropriate public education by letter received by the SEA on March 10, 1997. (R-31)
10. During April of 1997 a team including parent prepared a revised IEP for student that provides 600 minutes per week of resource special education instruction with specific academic goals. In addition the IEP provides 60 minutes per week of occupational therapy. No related services are provided under the plan. (R-62)
11. Parent believes that student's behavior makes it unsafe for student to walk to school.
12. Student's psychiatrist submitted similar notes for student and student's sibling stating that both patients suffer from attention deficit hyperactivity disorder which makes them impulsive. Thus, they are more accident prone and, transportation to school would provide safety. (R-25)
13. The IEP team attempted to contact student's psychiatrist concerning the student's IEP but, there was no response from the psychiatrist. (R-57)
14. Parent is not requesting transportation for student's sibling covered by the note from student's psychiatrist.

15. Student's current IEP has no goals relating to school behavior.

16. Student has been retained in first grade for academic purposes.

17. Student's classroom teacher has taken student's class of approximately 18 on five to six separate field trips in the neighborhood under the supervision of the teacher and one aide. Student behaved in an acceptable manner on these walking field trips.

### **Decision**

Exclusion of transportation as a related service from student's current IEP is appropriate.

### **Rationale**

A parent's concern about the safety of a student and, the opinion of the student's psychiatrist both carry great weight in establishing an IEP.

The IEP team was aware of the parent's request for transportation and, the note from the student's psychiatrist.

Team members state that student's observed behavior is acceptable and, student's classroom teacher had no unusual problems with student during walking field trips with the class.

Student's psychiatrist was contacted but failed to respond to the IEP team.

Student's risk from walking to school is the same as the risk of other young children not within the transportation limits of the District.

### **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**

Carolyn K. Carr

Marc G. Montgomery

Patrick O. Boyle, Chair