

BEFORE THE THREE MEMBER DUE PROCESS HEARING PANEL

CONVENED PURSUANT TO RSMo. 162.961

_____, by and through his parents, _____, Petitioners, and Moniteau County C-1 School District, Respondent.

COVER SHEET OF PERSONALLY IDENTIFIABLE INFORMATION

The parties to this hearing are:

Student:

Grade Level:

School: Trinity Lutheran School
Jefferson City, Missouri

Parents:

School District: Moniteau County C-1 School District
c/o Ralph Spurrier, Superintendent of Schools
200 School Street
Jamestown, Missouri 65046-9725

School District Counsel: Teri B. Goldman, Attorney for Moniteau County C-1 School District
Blackwell Sanders Peper Martin
720 Olive Street, 24th floor
St. Louis, Missouri 63101

The Panel has carefully reviewed Respondent's Second Motion to Dismiss Due Process Request, its Supplemental Memorandum, and the 1997 Amendments to the IDEA, particularly 20 U.S.C. 1412(a)(10)(A)(i)(I) and 1412(a)(10)(C) (i). After careful analysis, the Panel concludes that the Petitioners are not entitled to a due process hearing in order to challenge implementation of the student's IEP by the Respondent. Accordingly, respondent's Second Motion to Dismiss Due Process Request is granted and petitioner's complaint is dismissed.

Petitioners filed their Request for a Due Process Hearing with the Missouri Department of Elementary and Secondary Education on or about December 7, 1998. Their request indicates

that the student was enrolled in the Trinity Lutheran School, a parochial school in Jefferson City, Missouri, where he currently attends school. Their request states as follows:

"Our complaints concern the failure of the Moniteau C-1 School District to comply with the student's documented Individual Education Plan over the last two years as required by Public Law 105-17, Individuals with Disabilities Education Act."

As stated, respondent's Motion to Dismiss raises the issue of whether a child enrolled in a private school without the consent of or referral by the public school district is entitled to a due process hearing to redress complaints that the respondent school district allegedly failed to comply with an Individual Education Program?

Respondent points out that the 1997 Amendments to IDEA contain the following pertinent provisions:

"To the extent consistent with the number and location of children with disabilities in the State who are enrolled by their parents in private elementary and secondary schools, provision is made for the participation of those children in the program assisted or carried out under this part by providing for such children special education and related services in accordance with the following requirements...

(i) Amounts expended for the provision of those services by a local educational agency shall be equal to a proportionate amount of Federal funds made available under this part."

20 U.S.C. 1412(10)(A)(i)(I) (emphasis added). Significantly, that section merely provides for the "participation" of privately enrolled school children in special education and related services. There is no requirement for a "free appropriate public education" or the development of an Individualized Education Program.

Moreover, the Eighth Circuit Court of Appeals in the case of Foley v. Special School District of St. Louis County construed the 1997 Amendments to IDEA so that petitioner herein would have no individual right to any specific special education or related services.

In addition, the Panel in interpreting the 1997 Amendments, gives weight to the Department of Education Federal Regulations which were issued on March 12, 1999 and which take effect on May 11, 1999. The pertinent regulations provide, as follows:

Section 300.455 Services Provided.

(a)(2) Private school children with disabilities may receive a different amount of services than children with disabilities in public schools.

(3) No private school child with a disability is entitled to any service or to any amount of a service the child would receive if enrolled in a public school. Section 300.457 Complaints.

(a) Due process inapplicable. The procedures in 300.504-300.515 do not apply to complaints that an LEA has failed to meet the requirements of 300.452-300.462, including the provision of services indicated on the child's services plan.

(b) Due process applicable. The procedure in 300.504-300.515 do apply to complaints that an LEA has failed to meet the requirements of 300.451, including the requirements of 300.530-300.543.

The reference in subparagraph (b) above concerning the applicability of due process relates to the child find requirements of the IDEA and provisions relating to evaluation of eligibility, neither of which is relevant to disposition of petitioner's request for a hearing.

Consequently, the Due Process Hearing Panel concludes that petitioners are not entitled to the due process hearing requested and as stated above, the petitioner's request for a hearing is dismissed.

Dated this 31st day of March, 1999.

Charles Rendlen, III, Panel Member

George Wilson, Panel Member

George J. Bude, Panel Chairperson

Copies of the foregoing mailed to:

Parents

Teri B. Goldman, Esq.

Mr. Charles Rendlen III, Panel Member

Mr. George Wilson, Panel Member