

BEFORE THE THREE-MEMBER DUE PROCESS HEARING PANEL

In Re: _____ vs. Parkway C-2 School District and Special School District of St. Louis County

COVER SHEET OF PERSONALLY IDENTIFIABLE INFORMATION

The parties to this hearing are:

_____, Student

Date of Birth: _____

Grade Level: _____

Carman Trails Elementary

Parkway School District

Ms. _____, Mother

Petitioners

Parkway C-2 School District

c/o Stephen A. Colombo, Director, Special Services

455 N. Woods Mill Road

Chesterfield, Missouri 63017-3327

Special School District of St. Louis County

c/o Christine D. Montgomery, Director, Legal Services

12110 Clayton Road

St. Louis, Missouri 63131-2516

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Petitioner was not represented by counsel.

ISSUES AND PURPOSE OF THE HEARING

The issues were identified in Respondent's Exhibit 33, Petitioner's letter requesting a due process hearing, as follows:

1. Inclusive placement versus Respondent's placement as suggested in Petitioner's IEP dated 5/15/97;
2. Specific training for the student's educational providers;
3. The use of a hands-on methodology, including positive behavior support;
4. Utilization of a learning profile versus a deficit model;
5. Rotation of teacher assistants eliminated;
6. Training of substitutes;
7. Completion of a functional analysis in a timely fashion;
8. Training staff in the implementation of the Feingold Diet;
9. Items agreed to by IEP team but not included in IEP.

TIME-LINE INFORMATION

The request for hearing was received by the Department of Education on June 6, 1997. The original hearing date was set July 14, 1997 with the opinion of the Hearing Panel to be mailed to the parties not later than July 12, 1997. By letter dated June 23, 1997, Respondent's attorney requested an extension of the timelines to August 14, 1997 for the hearing, with an extension to August 25, 1997 for the decision, and it was so ordered by the Chairperson.

The hearing was held on August 14, 1997, starting at 10:00 a.m. and concluded at approximately 5:15 p.m. that same day.

FINDINGS OF FACT

1. The student is an ____ year old identified with an educational diagnosis of autism. The student attends the Carman Trails Elementary School in the Parkway C-2 School District of St. Louis County. The student also receives special education services from the Special School District of St. Louis County. The student resides at home with mother and siblings.

2. The student was originally diagnosed as autistic by the East Baton Rouge Parish School System in the State of Louisiana where the student's IEP called for the student to receive educational services in a self-contained class, non-departmentalized with regular class which was approved by the student's parents. The student began their educational experience in the Parkway C-2 School District in September, 1995, as a special education kindergarten student where the student was placed in a general education setting with consultative/collaborative, class-within-a-class special education services and itinerant special education services. Since September, 1995, the student has received no less than nine IEPs with the most recent IEP dated 5/15/97 for the proposed period of 5/27/97 through 5/27/98. During the 1995-96 school year the student received 900 minutes per week of general education services and beginning on or about November 7, 1995, the student received 300 minutes per week of consultative/collaborative/class-within-a-class special education services were increased to 150 minutes per week beginning December 12, 1995.

3. In November, 1996, the student's IEP called for 1100 minutes per week of general education services and 750 minutes per week of special education services including 150 minutes of consultative/collaborative/class-within-a-class services and 600 minutes per week of resource services. At the IEP meeting dated 5/15/97, it was recommended by the Respondents that the student placement be changed to include 850 minutes of general education services per week, 150 minutes of consultative/collaborative/class-within-a-class services, and 935 minutes per week of special education services in a self-contained environment.

4. Petitioner (mother) presented her case, pre se. She called only one witness, Karen Tesson, a psychologist with the St. Louis Regional Center. Although given the opportunity to do so, the petitioner did not take the stand in her child's behalf. Respondents called six witnesses, including:

Jennifer Caton-Special Education Teacher

Lisa Thompson-General Education Teacher

Kathy Jackson-Area Coordinator for Special School District Autistic Programs

Irene M. Orlando-Director Special Education, Director of Autism, Special School District

Christine D. Montgomery-Director, Legal Services, Special School District

Stephen A. Colombo-Director, Special Services, Parkway C-2 School District

5.The petitioner's evidence consisted solely of the testimony of Karen Tesson. The petitioner offered no documentary evidence. Ms. Tesson described herself as a behavior specialist with the Missouri Department of Mental Health, St. Louis Regional Center, but her job title is that of psychologist. Ms. Tesson has worked with the student since the fall of 1996, observing the student at school during the 1996-97 school year five or six times with each observation lasting up to two hours. It is not clear how many times Ms. Tesson observed the student in the home environment but she did testify to one lengthy visit in May of 1997. At that time, the student was being kept at home because mother felt that the student was under too much stress. Ms. Tesson confirmed that an autistic person is more comfortable around fewer people when the student is in a stressful situation and should be in a smaller environment. Her testimony had as its central theme the discussion of the utilization of Positive Behavior Support Techniques for an individual with autism. While Ms. Tesson indicated training in this area and attempted to explain it at the hearing, her explanation was fuzzy and did not give the Panel a sense of its appropriateness or proper utilization by the Respondents in the implementation of the student's educational program.

6.Ms. Tesson indicated that she was not a certified teacher but in her observation of the student's school program, she saw good things happening and saw some bad things. Ms. Tesson indicated that certain modifications suggested by her were addressed by the Parkway School District. She indicated that she felt that the proposed IEP, Respondents' Exhibit 1, was appropriate for the student and that she was specifically in agreement with the minutes specified at page 4 thereof, including the provision of 935 minutes per week of self-contained special education services. While the time spent in a resource room appeared to be an issue for Petitioner, the only witness on her behalf agreed with the amount of time in the proposed IEP for self-contained special education services.

7.Ms. Tesson testified that she was originally requested to examine the student in October of 1996 because he was exhibiting a great deal of stress, including jumping from a car, running

from school, hitting self and others. She was not, however, able to connect this behavior as a consequence of any improper program or service offered by the Respondent school districts. She noted that the staff of the school districts were trying to accommodate the student by letting the student have some choices; for example, wearing shorts instead of pants, sandals instead of shoes, and allowing the student to take shoes off in the resource room.

8. Ms. Tesson testified that she saw three different teacher assistants during the fall, about one each month, but she believed that it would have been better the student if the student had just one teacher assistant who would get to know the student better. Finally, although agreeing, generally with the IEP that was created in May of 1997, she felt that the methodology of the IEP was inappropriate and how it would be harmful to the student.

9. Respondent's first witness was Jennifer Caton, the student's resource room teacher during the 1996-97 school year. She also observed the teacher in the general classroom and spoke daily with the classroom teacher. She had received two weeks formal training specifically in autism at Special School District and previously had worked with other students with autism. She described the current interventions implemented during the school year and as described on pages 5 and 7 of Respondents' Exhibit 1 including modeling tasks, providing visual choices, wait time to respond to directions/requests, reading the student's body language, giving the student freedom to move frequently within the environment and others. She identified the IEPs, Respondents' Exhibits 1-9 and described the student's difficulties with being in the general classroom environment on a full-time basis. The student often times indicated a desire to go to the resource room and was permitted to do so.

10. Ms. Caton described the frequency with which the staff communicated with petitioner during the school year and identified Respondents' Exhibit 15, the "Daily Communication Sheet" which was used to communicate with petitioner on a daily basis. These "Daily Communication Sheets" show that the student was given alternative choices and at times was allowed to do what the student wanted, and at other times Ms. Caton selected the choice. The "Daily Communication Sheets" also indicate that the student wanted to go to the resource room on occasions. Ms. Caton testified that the student felt more comfortable in a smaller environment and that he learned more and spoke more in this setting.

11. Ms. Caton testified that she observed behavioral outbursts on the part of the student at least 25 different times which lasted more than 10 minutes, and on seven occasions those outbursts required more than 2 implementors to assist the student. The student also frequently exhibited aggressive behavior towards other children.

12. Ms. Caton also identified Respondents' Exhibit 16, the "Team Meeting Notes." The team included Ms. Caton, the student, classroom teacher, Lisa Thompson, the petitioner, and other staff members. They focused on the student's clothing, food, managing maladaptive behavior, mother's concerns, successes, and targeted behaviors, among others. Although begun on a monthly basis, these team meetings became a weekly affair which shows the effort put into the student's education by the Parkway and Special School Districts.

13. Ms. Caton identified the quarterly program reports which identified those areas where the student was showing improvement and where he was not showing improvement. These reports also go into the student's social behavior, and interventions are suggested for improvement both in social behavior and classroom work. The fourth quarter report indicates "Not in attendance since 4.28.97. Not able to assess."

14. One of the complaints of Petitioner was that a functional analysis had not been performed in a timely fashion. Unfortunately, the school districts were prevented from completing a functional analysis because petitioner took the student out of school on April 28 and did not return the student to school for the balance of the semester. The functional analysis would have been completed had petitioner not taken the student out of school.

15. Lisa Thompson, the student's classroom teacher, testified to the interventions which she used with the student and which were similar to those described by Jennifer Caton. She confirmed that there were occasions when the student wanted to leave the general classroom and go to the resource room. These requests increased as the year went on. She confirmed that the student was improperly clothed on many occasions, and that the improper clothing got to the point where the student was not permitted to go outside during recess because of lack of warm clothing. She testified that Ms. Tesson observed her class twice, once for approximately 30 minutes and another time for just 5 minutes. Both she and Ms. Caton testified that they believed that the IEP which was written in May of 1997 was appropriate for the student. She stated that the student needs more one-on-one attention which could be provided for the student better in a self-contained situation and in a resource room.

16. Kathleen Jackson, Special School District Area Coordinator for Autistic Programs, and a staff/parent trainer and consultant for the autistic program at the Special School District between 1993 and 1995 and a classroom teacher between 1988 and 1993 in the Special School District who was responsible for improving language and academic skills to students with language impairments and autism, testified that she had reviewed the IEPs for the student, the "Daily Communication Sheets", Respondents' Exhibit 15, and the Team Meeting Notes,

Respondents' Exhibit 16. She testified that she has been involved in more than 100 IEPs, most of which related to students with autism and that in her opinion, the IEP dated 5/15/97 was appropriate for the student, including the student's placement. She described the functional analysis which was being implemented with respect to the student but that it had to be suspended after 32 days of observations because the petitioner took the student out of school. She testified that 50 observations were required in order to complete the functional analysis.

17. Irene M. Orlando, whose resume was introduced in evidence as Respondents' Exhibit 26 and who is currently Director of Special Education Programs and Related Services, for the Pattonville, University City, and Maplewood-Richmond Heights School Districts of St. Louis County, as well as autism for the entire St. Louis County area, testified that, in her opinion, the student's IEP drafted on May 15, 1997 was appropriate, based upon the information that she reviewed.

18. Stephen Colombo, Director of Special Services for the Parkway School District, testified. Dr. Colombo has a Master's Degree in school psychology and a Ph.D. from St. Louis University. He chaired the resolution conferences which were held with the petitioner on December 20, 1996 and on July 22, 1997 and co-authored the letter report to her. Based upon the information received by Dr. Colombo, it was his opinion that the student's IEP written on May 15, 1997, is appropriate and that, in his opinion, established a free appropriate public education for the student in the least restrictive environment.

DECISION AND RATIONALE

19. Although given every opportunity, the petitioner did not testify and introduced no documentary evidence on any of the issues raised in her letter, requesting a due process hearing. As stated above, the petitioner's evidence consisted solely of the testimony of Ms. Tesson, Psychologist with the Department of Mental Health, St. Louis Regional Center. Her testimony had, as its central theme, the discussion of the utilization of Positive Behavior Support techniques for the student. However, her explanation did not give the Panel a sense of its appropriateness or proper utilization by the Respondents in the implementation of the student's educational program. Respondents have demonstrated a willingness to include portions of a Positive Behavior Support model with the current model, practices, and training used by them. The Panel concludes that teachers and teacher aides from the 1996-97 school year were appropriately including behavioral support. In addition, an employee of the Special School District is trained in the positive behavioral support model and is available to the teachers.

20. Petitioner's witness testified that she believed that the Respondents should rotate fewer teacher assistants in the student's educational program, but the Panel is not persuaded that the Respondents used an inappropriate number of teacher assistants or rotated too many different teacher assistants during the last school year.

21. As stated above in this opinion, Ms. Tesson, the only witness in behalf of the petitioner, agreed with the suggested placement of the student as stated in the student's IEP. The Panel concludes that Respondents' placement of the student is appropriate and correct.

22. The Respondents have an obligation to deliver a free appropriate public education in the least restrictive environment. This mandate was taken seriously by Respondents and the documentary evidence alone establishes the herculean efforts of Respondents to meet this mandate. The Panel finds and concludes that Respondents indeed met their mandate. With regard to least restrictive environment, Respondents have gone from a less restrictive environment to a more restrictive environment. They have done so with good cause and cautiously. Their actions were appropriate in this area and are documented on the IEPs found at Respondents' Exhibits 1-9. However, notwithstanding the documentation concerning least restrictive environment, the poignant and credible testimony of general education teacher, Lisa Thompson, was vitally important in ascertaining the appropriateness of the resource room requirement for the student. Ms. Thompson testified that many times the student would come to her and take her by the hand and lead her to the resource room for that is where the student was most comfortable.

23. Since the Panel is satisfied that the least restrictive environment mandate has been satisfied by Respondents, we must look at the appropriateness of the program offered for the student. In general terms, this program appears to utilize individuals specifically trained in the disability of autism in its delivery of a program to the student. Not only do the Respondents obey the mandate and the letter of the law to have an educational program delivered by qualified personnel, they scrupulously have sought and, where appropriate, utilized the suggestions of the petitioner and the St. Louis Regional Center.

There is no doubt that the IEP proposed for the student, Respondents' Exhibit 1, is appropriate and offered in the least restrictive environment. Prospectively, if Petitioner cooperates and allows for the implementation of the program envisioned by the district, meaningful educational progress should be possible for the student. However, looking at last year, the Panel is very concerned about the unilateral withdrawal of the student from the school district program on April 28, 1997. During the 1996-97 school year, progress was demonstrated by the quarterly progress reports set forth in Respondents' Exhibits 21, 22, and 23. However, Exhibit 24 points

out that the student's progress for the fourth quarter could not be assessed since the student was not in attendance. In addition to missing a valuable intervention, this extended absence prevented the completion of the functional analysis undertaken by Respondents which would have given Respondents and the Panel important information about the student's learning style. The petitioner is obviously a dedicated and caring mother who has an awesome responsibility in dealing with the day-to-day management of the student's serious disability. The Panel acknowledges her dedication but at the same time reminds her that the Respondents must move deliberately and appropriately in navigating the student's educational experience. An important and necessary component of the Respondents discharging their responsibility is the cooperation of the mother. Certainly, the Panel joins the Respondents in their efforts to ensure the student's regular attendance in the appropriate educational program.

24. The Petitioner addressed many issues in Exhibit 33 which the Panel attempted to clarify at the start of the hearing. No evidence was presented on many of these issues, but to the extent that evidence was presented on many of these issues, but to the extent that evidence was adduced, we find that the issues were unfounded. Respondents provided the student with trained teacher assistants who served the student consistently during the second semester of the 1996-97 school year. These assistants were trained by SSD and were under the supervision of the trained SSD teacher who worked with the student on a daily basis.

Respondents attempted the functional analysis but were unable to complete this because the student stopped attending school. The St. Louis Regional Center has offered to complete a functional analysis but thus far has not attempted to do so. Respondents' functional analysis should be completed in a timely manner when the student returns to school for the 1997-98 school year; however, the Panel understands that Respondents will need some time to transition the student back into the educational environment before the functional analysis can be done.

Respondents' staff have attempted to accommodate the petitioner with her requests using the Feingold Diet. Respondents' staff need to continue to work with the petitioner to help the student be successful with the student's diet. Petitioner needs to continue to provide alternative foods that can be used in the school environment when appropriate.

APPEAL PROCEDURE

PLEASE TAKE NOTICE THAT THE FINDINGS OF FACT, DECISION, AND RATIONALE CONSTITUTE THE FINAL DECISION OF THE DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION IN THIS MATTER.

PLEASE TAKE FURTHER NOTICE that you have a right to request review of this decision pursuant to the Missouri Administrative Procedure Act, Section 536.010 et seq. RSMo., specifically, Section 536.110 RSMo. which provides in pertinent part as follows:

"1.Proceedings for review may be instituted by filing a petition in the Circuit Court of the county of proper venue within 30 days after the mailing or delivery of the notice of the agency's final decision...

3.The venue of such cases shall, at the option of the plaintiff, be in the Circuit Court of Cole County or in the county of the plaintiff or of one of the plaintiff's residence..."

PLEASE TAKE FURTHER NOTICE that, alternatively, your appeal may be taken to the United States District Court for the Eastern District of Missouri in lieu of appeal to the state courts. 20 U.S.C. 1415.

Dated this 21st day of August, 1997.

Charles Dennison, Panel Member

Dr. Paula Steeno, Panel Member

George J. Bude, Chairperson