

BEFORE THE THREE MEMBER DUE PROCESS PANEL  
EMPOWERED PURSHANT TO § 162.961, RSMo Supp 1997

\_\_\_ and her Guardians, \_\_\_

Petitioners,

v.

SPRINGFIELD R-XII SCHOOL DISTRICT,

Respondent.

FACTS OF THE CASE

\_\_\_ (hereinafter the "Child") was born on \_\_\_. Her Guardians

The Guardians reside within the boundaries of the School District, R-12 (hereinafter "School District") .The Child does not now reside with the Guardians, but has been placed at \_\_\_

which is also within the boundaries of the School District.

On December 15, 1997, the Guardians filed the Request for Due Process. In their Request, the Guardians set forth one issue:

The District failed to provide a free appropriate public education to [the Child], consisting of special education and related services provided Pursuant to an Individualized Education Program (IEP), designed to meet her unique needs in the least restrictive environment, between February, 1995 and May, 1997.

The Guardians requested as a remedy "compensatory education on a one-day-for-one-day basis." The Guardians further stipulated that they were not alleging that the School District violated the Child's or their procedural due process Prior to the December 13, 1997 filing on November 13, 1997, the Guardians filed a request for Resolution Conference covering the issue cited supra and a second issue, ~ Resolution Conference was held on November 26, 1997. By letter dated December 4, 1997, the School District responded to the two issues raised at the Resolution Conference.

Following the filing of the Request for Due Process, the School District requested that the hearing time lines be extended until March 31, 1998. This request was granted by the Hearing Chairperson On February 5, 1998, the Hearing Chairperson scheduled this matter to be heard on March 11, 1998. The matter came forward for hearing on March 11 at the central offices of the

School District. Both parties were provided full opportunity for the presentation of evidence and examination and cross examination of witness presented by the parties. A court reporter was present and a verbatim transcript made of the entire proceedings. Subsequent to the close of the hearing the parties agreed to submit briefs of law and fact to the Panel At the hearing and on the record the parties agreed to extend the time lines for receipt of the Panel's decision until April 30, 1998 The Briefs which were mailed directly to the Panel members were postmarked April 6, 1998

Evidence presented to the Panel Indicated that the child is educationally diagnosed as moderately mentally retarded and has an additional medical diagnosis of intermittent explosive disorder, which is characterized by discrete episodes of failure to resist aggressive impulses that can result in serious assault or property destruction.

At the beginning of School Year 1995-96, the Child was assigned to Glendale high School. Around December, 1995, the Child's education program was transferred to Central High School.

At Glendale and Central, the child's education program was provided to her in a self-contained classroom. According to testimony on behalf of the District the Child's behavior became increasingly more violent. By December 1994, the Child's behavior had become extremely violent and unpredictable. Testimony indicated that during this time Period the child engaged in direct physical assault on teachers, aides and other students including hitting, kicking, spitting and biting. She repeatedly engaged in sexually aggressive conduct including flashing, undressing herself, and grabbing staff members' genitals. She also engaged in verbal aggression toward staff and students. Testimony by School District Personnel indicated that this behavior continued unabated despite the District's attempts to accommodate the Child's disabilities. As a result of this conduct, the Child was suspended from school on February 10, 1995.

On February 6, 1995, the School District requested that the Child's IEP team meet to review the IEP and current services. This meeting occurred on February 9, 1995. During this meeting the IEP teams agreed to the present level of performance and the goals and objectives established for the Child. The School District proposed that the Child's placement be changed to a homebound placement. According to testimony for the District, the IEP team expressed the belief that the Child's behavior constituted a danger to herself and others. Testimony at the hearing indicated that the Guardians refused to agree to the proposed placement and that the "meeting deteriorated" precluding discussion of other placement options. The Guardians were asked by the School District to sign Interagency Release Forms for the supervisor of the Child's

independent living situation, Dr Maria Thomas; Springfield Regional Center; and, Lakeland Regional Hospital. The Guardians refused to sign the releases.

Testimony revealed that on February 10, 1995, the School District requested a Temporary Restraining Order and Preliminary Injunction from the Circuit Court of Greene County, Missouri because of the Child's sustained profound violent behavior. The Court issued a Temporary Restraining Order on February 10, 1995, which was served on the Guardians. The Temporary Restraining Order prohibited the Child "...from attending a public school operated by the School District". on February 16, 1995, the Court conducted a hearing on the question of whether the Temporary Restraining Order should be converted to a Preliminary Injunction. As a result of

that hearing, a Preliminary Injunction was issued by the Court on February 16, 1995. Subsequently, On March, 1995, the Guardians requested that the Court dissolve its injunction. A hearing was held on the motions and on March 24, 1995, and the Courts refused to

dissolve its injunction. Subsequent to the issuance of the injunction in February, 1995, the Child was hospitalized at Heartland Hospital in Nevada, Missouri for severe mental health problems

Following issuance of the Temporary Restraining Order, the School District provided the Guardians with a Notice of Action Form dated February 13, 1995 which offered the Child "homebound special education services pending resolution of the procedural issues associated with her dangerous behaviors". The homebound program provided for five hours per week of education services. The parents took no action to prevent placement from taking effect

At the time the Temporary Restraining order was issued the Child's ISL and its staff was funded by if the Springfield Regional Center ("SRC") of the Division of Mental Retardation and Developmental Disabilities ("MMRD") of the Missouri Department of Mental Health. Funding and staffing were in place only for a portion of the day when the Child was not in school. The action of the school necessitated an increase in coverage by SRC. Upon her release from Heartland Hospital SRC funded a therapeutic day program for the Child at the Developmental Center of the Ozarks located on SRC's Springfield campus.

#### REMEDY REQUESTED BY PETITIONERS

Petitioners are demanding compensatory education for the twenty-six months, February of 1995 through May of 1997, when the Child was without any services from the District.

#### DECISION OF THE PANEL

The extensive testimony and evidence submitted to the Panel by both parties was remarkably consistent. The crux of this dispute appears to revolve around the District's failure to provide what the parents perceive to be appropriate educational services for the Child. However, the Panel notes that at no time during the dispute between the Guardians and the District did the Guardians indicate what they were requesting in terms of appropriate education. When questioned directly by Panel members the response of the Guardians seemed to be that they wanted the Child cared for by the School during school hours because no other care had been arranged for through SRC. Counsel for the Guardians argues correctly that despite this failure to request or provide input on what the Guardians thought would be appropriate education for the Child, the District still had an obligation provide education services for the Child. However, the record is replete with instances of the District trying to obtain information from the Guardians in order to assure that the Child received the appropriate education. The District tried repeatedly to complete a diagnostic evaluation in the Fall and Spring of 1996. These attempts were vigorously resisted by the Guardians. Even when the Guardians provided the necessary releases to the District would then revoke permission without advance notice to the District. This occurred on numerous occasions. By way of example:

Following issuance of the Temporary Restraining order, the District provided the Guardians with a Notice of Action form dated February 13, 1995 which offered the Child "homebound special education services pending resolution of the procedural issues associated with her dangerous behaviors." Thereafter, on February 13, 1995, Phyllis Wolfram, Coordinator of Special Education, confirmed a conversation with \_\_\_ during which \_\_\_ indicated that "she did not want homebound services [because] neither school staff nor community staff could handle (the Child) at this time. Immediately following the issuance of the Temporary Restraining Order, the Guardians notified the School District that they had rescinded all permission for the School District staff to exchange verbal or written information with any Department of Mental Health staff.

On February 20, 1995, George Wilson, Director of Special Education, wrote the Guardians and requested that they provide the School District with signed releases to allow "exchange of information with other individuals and agencies regarding [the Child's] educational (including placement) needs." The letter also requested that the Guardians "reconsider your refusal, for homebound services." No response to the letter was received from the Guardians. \_\_\_ admitted that between February 10, 1995 and October 1995, he did not request the School District to provide the Child with educational services.

On June 9, 1995 George Wilson wrote the Guardians and indicated that the School District "will provide extended school year educational services for [the Child]" if the Guardians wanted them. No response to this letter was received from the Guardians.

On June 23, 1995 the School District requested that the Guardians provide signed Interagency Release forms for Springfield Regional Center, Heartland Hospital, Lakeland Regional Hospital and Dr. Maria Thomas. No Response to this letter was received from the Guardians. The School District renewed its requests for signed releases by letters dated July 1, 1995 and July 3, 1995. No response to these letters was received from the Guardians.

On November 17, 1995, Clara Elliott, School Psychologist, went to the Developmental Center of the Ozarks (DCO) to begin gathering information for the Child's re-evaluation. She was denied access to any information from DCO vendors. On November 20, 1995, Ms. Elliott called Angela Tate at the Springfield Regional Center (hereinafter "Regional Center") to "ascertain [the Child's] current address and the status of her supported living contract." Ms. Tate informed Ms Elliott that she could not share any information with the School District. On November 21, 1995, \_\_\_ modified the Interagency Release Form for DCO eliminating DCO's ability to provide verbal information to the School District.

On November 22, 1995, As Elliott contacted Linda Thornhill at the Child's residence to make arrangements for the routine vision and hearing screening for the Child's re-evaluation. Subsequently, on November 27, 1995, Ms. Elliott was informed by Linda Thornhill that \_\_\_ "would prefer to have the screenings completed by the [the Child's]] doctors. That same day, \_\_\_rejected the School District's plan to have the school nurse conduct the vision and hearing screenings and directed that the screenings would be conducted by the Child's doctors.

On November 28, 1995, Ms Elliott delivered the Notice of Re-evaluation to \_\_\_.

It had been three years since the Child's last evaluation so the re-evaluation was mandated by law.

At that time, \_\_\_ stated that he did not want to go through with the re-evaluation, that the School District personnel would not be allowed to observe or talk with the Child and would not accept the educational placement proposed by the District. Then, on November 30, 1995, \_\_\_ called Ms Elliott and agreed to allow the re-evaluation to proceed.

On December 14, 1995, by agreement, the Child was brought to the School District offices for certain assessments. At that time, Ms. Elliott requested that Linda Thrill bring the ARC records

with her when she returned the next day. On December 15, 1995, Ms. Thornhill failed to bring the requested records and questioned why the records would be necessary.

In a letter to \_\_\_ dated December 15, 1995, Ms. Elliott indicated that the completion of the re-evaluation would await vision and hearing screening that the Guardians wanted to be performed by the Child's Private physicians. On December 20, 1995, Ms. Elliott contacted Mike Powers at ARC to again inquire concerning the records. Mr. Powers indicated that all of the

Child's records were in the possession of \_\_\_. \_\_\_ told Ms. Elliott that he would not provide the records because he felt it was an invasion of the Child's privacy.

On January 11, 1996, Ms. Elliott conducted The social/emotional evaluation on the Child. \_\_\_ did not bring the requested home records. Ms. Elliott also requested that the Guardians provide a release for information from the Child's new psychiatrist. \_\_\_ refused to provide a release for Dr. Maria Mendez's records concerning the Child.

On March 15, 1996, Counsel for the parents informed the District that \_\_\_ agreed that a return to the public school environment was "out of the question" and that he was now requesting that the School District provide a homebound program to the Child at DCO. However, the Guardians continued to refuse to sign the consent for the observation of the Child. It was not until May 9, 1996, that \_\_\_ consented to one hour observation of the Child at DCO, however, the Guardians continued to refuse to allow the District to review any of the Child's records.

On January 31, 1997, an IEP conference was convened. At the meeting, the Guardians asked that the School District conduct an evaluation of the Child's vocational needs and career options. This was the first time the Guardians had made this request. The School District agreed at that time to arrange for the vocational testing from the Vocational Evaluation and Assessment Center. This evaluation eventually led to an IEP conference in April, 1997 resulting in agreement on the District's proposal of homebound instruction for 300 minutes per week. The homebound services for the Child began on May 6, 1997.

Despite the protestations of Counsel for the parents concerning the fact that the 300 minutes per week is conveniently consistent with the five hour limit for which the State will reimburse the District for homebound education there is nothing in the record to demonstrate that the IEP does not meet the educational needs of the Child. The Panel feels it is unfortunate that the parties could not formulate an acceptable IEP earlier in the protracted discussions, but it is difficult to fault the District from either an educational or legal perspective. The District appears to have

engaged in good faith efforts to provide special educational services to the Child following the issuance of the injunction. The evidence and testimony at the hearing clearly demonstrated that the Guardians consistently refused to cooperate with the District to conduct proper assessment for the implementation of appropriate services. Frequently, the Guardians refused to respond to the District's attempts to contact them.

Counsel for the Child argues that when the District was faced with the Guardians' abject refusal to allow the District to provide services for the Child, they had an obligation to initiate legal action against the Guardians. This argument ignores the fact that the Child was \_\_\_ years of age on April 9, 1996 and not obligated to attend school; that she was hospitalized during portions of this period; that the School District knew very little about her exact whereabouts; and there was an ongoing due process proceeding which had at its central core the issue of whether the proposed homebound placement was appropriate. It is the opinion of the Panel that the District's repeated attempts to work through the Guardians rather than resort to further court action to have the Child evaluated for appropriate services offered the best possibility of providing appropriate services to the Child.

Based upon the reasons set forth supra the Panel finds between February, 1995 and May 1997:

the School District made reasonable and timely efforts to develop and provide an appropriate public education to the Child.

the Guardians' refusal to cooperate with School District personnel resulted in delays in arriving at an acceptable IEP which were beyond the District's control.

the School District's actions did not violate the IDEA, its regulations or the State Plan.

#### RIGHT TO APPEAL

RSMo §536.100 provides that any person who has exhausted all administrative remedies provided by law and is aggrieved by a final decision in a contested case, whether such decision is affirmative or negative in form, shall be entitled to judicial review. RSMo §536.100 provides that proceedings for review may be instituted by filing a petition in Circuit Court of proper venue within thirty (30) days after mailing or delivery of the notice of the agency's final decision.

In addition pursuant to the provision of the Individual's with Disabilities Education Act, formerly the Education of the Handicapped Act as amended by P.L. 94-142 found at 20 U.S.C.A. 115(e)(2), any party aggrieved by the findings and decision shall have the right to bring action

in any state court of competent jurisdiction or in a district court or the United States without regard to the amount in controversy.

Signed this 27th day of April, 1998.

Gerard A. Fowler

Gale Borkwoski

Ben Franklin