

5. Counsel for School District is Mr. Ransom A. Ellis, III, of the law firm of Ellis & Ellis, P.C., 901 St. Louis Street, Ste. 600, Springfield, Mo. 65806.

II. ISSUES AND PURPOSE OF THE HEARING

Parents objected to the Individual Education Program formulated by the Springfield School District, R-12, on behalf of _____, (Joint Exhibit 25). Parents further object to information within students Diagnostic Summary (Joint Exhibit 20). On December 14, 1996 parents requested a resolution conference (Joint Exhibit 29). Resolution Conference held on December 20, 1996. School district issued Final Decision to parents regarding to Resolution conference (Joint Exhibit 37). Parents requested due process on January 16, 1997 (Joint Exhibit 42). This hearing ensued.

Original due process panel members were; Michael Cato, Chairperson, Christine D. Montgomery, Panel Member and Walt Pankow, Panel Member. On or before February 7, 1997 panel member Christine Montgomery withdrew and school district appointed Ben Franklin to take her place. (Joint Exhibit 53). On or about August 5, 1997 panel member Walt Pankow withdrew and parents appointed Larry Kelly to take his place.

Parents raised the following issues;

1. Is the School Districts proposed IEP reasonably calculated to provide student with a free, appropriate, public, education? Does the Schools District's proposed IEP fail to address Students' unique needs?

2. Does the Parents proposed IEP provide Student with a free, appropriate, public education? Does the Parents' proposed IEP meet the Students' unique needs.

3. Should School District reimburse parents the amount spent since the date of Students' eligibility, to provide the student with the IEP parents have proposed? Should School District pay amount(s) in the future to provide Student with the IEP proposed by the Parents?

4. Should School District and/or Missouri Department of Elementary and Secondary Education pay the costs, including parents counsel reasonable attorney fees, in this matter? Should School District and/or Missouri Department of Elementary and Secondary Education pay to Student for compensatory damages for denial of her rights?

III. TIME LINE INFORMATION

February 18, 1997, School District requested an extension of time to hold the hearing and issue the decision (Joint Exhibit 57). March 1, 1997 chairperson grants request for extension and extends time for holding the hearing and mailing decision up to and including June 1, 1997 (Joint Exhibit 58). Matter set for hearing on May 5, 1997 (Joint Exhibit 60). April 30, 1997, Parents request an extension of time to hold hearing and mailing the decision until August 1, 1997. May 1, 1997, School district requested the hearing chairperson limit deposition which the parents counsel proposed to take; further School district requested an order precluding the parties from adding further witnesses or exhibits to lists previously submitted. Hearing Chairperson sustains motion to limit depositions and preclude further witnesses or exhibits. May 13, 1997 parties file a Joint Request for Extension of the hearing time line requesting the time for holding the hearing and the time for mailing the decision be extended to and until September 15, 1997. Hearing Chairperson grants joint request for extension of hearing time line extending the time for holding the hearing and mailing the decision up to and including September 15, 1997. Matter set for hearing on August 11, 12 and 13 1997 in the Kraft Administrative Center, Springfield, Missouri. Hearing held as scheduled.

IV. FACTS

1. In October 1994, when Student was approximately _____ months old, parents enrolled her in the "First Steps" program operated by the Springfield Regional Center. Student was evaluated by Springfield Regional Center, revealing developmental delays. Student began receiving Physical Therapy, Occupational Therapy and Speech/Language Therapy from the First Steps Program in late 1994.

2. Student was enrolled in a home based program devised by the "Institute for the Achievement of Human Potential" in September, 1995. Prior to enrollment in the Institute, child was evaluated by the institute (Joint Exhibit 10) said evaluation ("Functional Diagnosis") was presented to School District for use in evaluation of Student.

3. In October, 1996 Parents contact School District with a request for School District to pay the costs of the Students home based program. School District referred Parents to "Parents as Teachers" program to have child evaluated.

4. Student was evaluated by School District personnel. School district completed an Evaluation Plan for Student. Students Mother consented to initial evaluation of Student and provided School District with several documents (Joint exhibits 7,8,9,10, 11, 12, 15, 23 and 24) for use in the assessment of Student. School district conducted Students assessment on November 19, 1996. School District completes "Diagnostic Summary" for Student (Joint Exhibit 20).

5. December 10, 1996 parents attended the scheduled IEP conference. IEP proposes a "Reverse Mainstream" classroom. Parents apparently sign IEP formulated, but voice objections to placement and leave IEP conference.

6. Parents object to the placement of Student in a "Reverse Mainstream Classroom" and propose instead the home based program devised by the "Institutes for Achievement of Human Potential".

7. On December 14, 1996 parents requested a resolution conference (Joint Exhibit 29). Resolution Conference held on December 20, 1996. School district issued Final Decision to parents regarding Resolution conference (Joint Exhibit 37). Parents requested due process on January 16, 1997 (Joint Exhibit 42). This hearing ensued.

8. Parents Counsel, on the record, during this due Process Hearing, waived on behalf of the parents any "procedural violations" which might exist in this matter. Parents presented no testimony of procedural violations.

V. CONCLUSIONS OF LAW

The Hearing Panel, after hearing the evidence in this matter makes the following Conclusions of Law:

1. The Student is a child with a disability, as that term is defined in the Individuals with Disabilities Education Act ("IDEA") regulations, 34 C.F.R. 300.7. Student also meets the criteria in the State Plan for Part B of the Individuals with Disabilities Education Act ("State Plan") for the receipt of special education and related services.

2. School district is an urban school district organized pursuant to Section 162.461 RSMo.

3. Parents Counsel, on the record, during this due Process Hearing, waived on behalf of the parents any "procedural violations" which might exist in this matter. Parents presented no evidence or testimony concerning any procedural violations. School District presented testimony and documents supporting their position that no procedural violations occurred. This panel concludes that no procedural violations occurred in this matter.

4. School Districts' evaluation of the Student was appropriate for the Student and met the requirements of the IDEA, state plan and applicable state and Federal regulations.

5. School Districts Diagnostic Summary of Student of Student was appropriate and meets the requirements of the IDEA, state plan and applicable state and Federal regulations.

6. Students' IEP held on December 10, 1996 meets the requirements of the IDEA, state plan and applicable state and Federal regulations.

7. School Districts proposed IEP (Joint Exhibit 25) is appropriate for the Student and meets procedural and substantive requirements of the IDEA, state plan, and Federal regulations, specifically C.F.R. 300.346.

8. Educational placement recommended by the School District is appropriate for Student and meets procedural and substantive requirements of the IDEA, state plan, and Federal regulations.

It is the burden of the School District to prove that the proposed IEP provides the student with a Free Appropriate Public Education and that the IEP is appropriate. (See: *Carlisle Area School v. Scott*, 62 F 3rd 520, 533). Several witness presented on behalf of the School District testified that the School Districts proposed special education program and serviced were, calculated to provided Student with a Free, Appropriate, Public Education and therefore are appropriate for the Student. Parents presented little or no evidence as to appropriateness of the School Districts IEP, other than their own subjective testimony. Parents apparently object to the concept of "Reverse Mainstream" classroom, without presenting the panel with a viable alternative. Likewise, parents object to the use of "Traditional" physical therapy in favor of the more "Cutting Edge" techniques employed. A parents own subjective objections to the techniques or methods used is, in this panels view, insufficient evidence to rebutt the School Districts' evidence.

9. There is insufficient evidence as to whether the "Institutes for the Achievement of Human Potential" evaluated, assessed or formulated the parents proposed IEP in conformance with the requirements of the IDEA, state plan, and Federal regulations to find such compliance.

This panel rejects the Parents contention that the Burden to bring forward the evidence on the appropriateness of the Institute for the Achievement of the Human Potentials' IEP was placed on the School District when the School District was offered access to the Institutes achieves.

10. There is no evidence that the placement recommended by the Institutes for the Achievement of Human Potential complied with the IDEA, state plan and federal regulations.

11. This panel has no authority to award damages to the Parents. *Heidemann v. Rother*, 1996, W.L. 272, 273 (8th Circuit, May 23, 1996).

12. The federal district courts have exclusive jurisdiction over action for attorney fees under the IDEA. *Curtis K. V. Sioux City Community School district, et. Al*, 895 F.Supp. 1197, 1211-12 (N.D. Iowa 1995). Accordingly, this hearing panel has no authority to award reasonable attorney fees, even if they were appropriate. Student and her parents are not "Prevailing Parties" pursuant to 42 USC § 1988 or any other state or federal statute allowing attorney fees.

VI. DECISION AND ORDER

The hearing Panel makes the following Decision and Order in this case;

1. Parents Issue 1: The IEP, special education and related services, proposed by the School District for the Student is found to be appropriate; said proposed IEP is further found to be "Reasonably Calculated" to provide Student with a free, appropriate public education. The IEP proposed by the School District does address Students unique needs.

2. Parents Issue 2: The IEP, special education and related services, proposed by the Institutes for the Achievement of Human Potential for the Student is found to be inappropriate in that said IEP has not been "Reasonably Calculated" to provide Student with a Free, Appropriate Public Education.

3. Parents Issue 3: Since the IEP, special education and related services, proposed by the School District for the Student is found to be appropriate; said proposed IEP is further found to be "Reasonably Calculated" to provide Student with a free, appropriate public education, School District shall **NOT** be ordered or other obligated to reimburse parents for any amounts spend by the parents to provide Student with the IEP proposed by the parents. Likewise School District shall bear no obligation for further amounts expended by the parents to provide Student with the IEP proposed by the parent. Any participation by the Student in the program formulated by the Institutes for the Achievement of Human potential shall be at the sole cost of Parents.

4. Parents Issue 4: This panel has no authority to grant or award damages or Attorney fees in this matter. This panel is precluded, as a matter of law, from taking any action on these matters as more fully set forth above.

The Entire hearing panel joins in this decision without dissent.

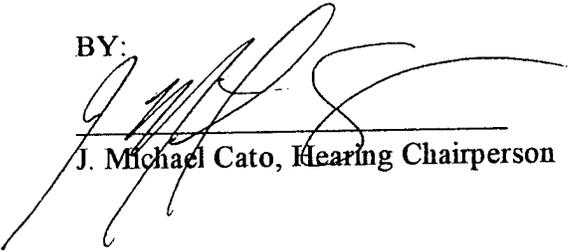
VII. APPEAL PROCEDURES:

Any party aggrieved by the decision of this panel may, pursuant to Chapter 536 of the Missouri Statues, appeal this decision to a state court or a federal court, within 30 days of the date of the decision.

FOR THE HEARING PANEL:

J. Michael Cato, Hearing Chairperson
Mr. Ben Franklin, Panel Member
Mr. Larry Kelly, Panel Member

BY:



J. Michael Cato, Hearing Chairperson

CERTIFICATE OF SERVICE

the undersigned certifies that a copy of the foregoing was served upon each party to this action, TO-WIT;

Eugene E. Andereck
Andereck, Evans, Milne, Peace & Milne, L.L.C.
P.O. Box 4929
Springfield, Mo. 65808
ATTORNEY FOR PARENTS

Ransom A. Ellis, III
Ellis & Ellis, P.C.
901 E. St. Louis Street
Suite 600
Springfield, Mo. 65806
ATTORNEY FOR SCHOOL DISTRICT

by depositing same in the United States Post Office in Advance, Missouri, with sufficient postage,
on this 12 Day of September, 19 97.

