

**HEARING DECISION**

Student's Name

Parents' Names

Representative Ms. LuAnn Reese  
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Bismarck, MO 63624

Local Education Agency St. Louis Special School District (SSD)  
12110 Clayton Road  
Town & Country, MO 63131

Representative Mr. James G. Thomeczek, LLC  
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Suite 210  
St. Louis, MO 63132

Hearing Dates September 16, 1996; March 16, 1998; April 16 & 17, 1998, June 1,2,3,4,5, 1998

Date of Report August 31, 1998

Hearing Officers Ms. Audrey Yarbrough  
Dr. George Yard  
Mr. Jerry Wright, Chair

Representative Mr. David Potashnick  
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P.O. Box 459  
Sikeston, MO 63801-0459

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**ISSUES AND PURPOSE OF THE HEARINGS**

\* A declaration of the denial of a Free Appropriate Public Education (FAPE) for the school years: 1994-95; 1995-96; 1996-97; 1997-98.

\* A declaration of the failure to provide an education in the least restrictive environment (LRE) for the school years: 1994-95; 1995-96; 1996-97; 1997-98

\* A declaration of the failure to provide an appropriate individual education plan (IEP) for the school years: 1994-95; 1995-96; 1996-97; 1997-98.

\* A declaration of the failure to provide appropriate teacher training for the school years: 1994-95; 1995-96; 1996-97; 1997-98.

\* A declaration of the failure to notify parents and take appropriate steps to make a change of placement in the IEP for the 1994-95 school year.

The following documents were submitted as evidence.

I. Submitted by the Petitioner

Exhibit A

II Submitted by the Respondent

Exhibit B

During the course of the hearing witnesses appeared in this order:

Monday. September 16. 1996

No witnesses were called

Monday. March 16 1998

No witnesses were called

Thursday. April 16. 1998

1 Ms. Katie Sanders, student's teacher for 1997-98 school year, Petitioner

2 Ms. Jodi Woessner, Case Manager for St Louis Regional Center for the Mentally Retarded/Developmentally Disabled, Petitioner

Friday. March. 17. 1998

1 Ms. Katie Sanders, student's teacher for 1997-98 school year, SSD, Petitioner

2 Ms. Julie Roscoe, Family Support Person, Judavine, Petitioner

3 Ms. Pat Slama, Occupational Therapist (OT), SSD, Petitioner

4 Ms. Donna Lauman, OT, SSD, Petitioner

Monday. June 1. 1998

1. Dr. Jill England, Inclusion Consultant, Petitioner

2. Ms. Judi Bender, Consultant to Parkway, SSD, Petitioner

Tuesday, June 2, 1998

1. Ms. Pennie Anderson, student's teacher 1994-96, SSD, Petitioner
2. Dr. Larry Lowrance, School Psychologist, Petitioner
3. Ms. Sue Bartelt, student's teacher 1996-97, SSD, Petitioner

Wednesday, June 3, 1998

1. Ms. Amy Nausser, SpeechLanguage Pathologist, SSD, Petitioner
2. Ms. Beth Stedman-Krath, Assistant Principal Neuwhoener, SSD, Petitioner
3. Ms. Trudy Fullmer, Counselor, Petitioner
4. Dr. Steve Colombo, Director Special Education, Parkway, Petitioner

Thursday, June 4, 1998

1. Ms. Gayle Klipsch, student's teacher 9/1/97 - 10/15/97, SSD, Petitioner
2. Ms. Marilee Ingoldsby, Neuwhoener Principal, SSD, Petitioner
3. Ms. Jennifer Tuttle, teacher, SSD, Petitioner
4. Mr. Howard Strom, Principal, Big Rapids, Michigan High School, by telephone,  
Petitioner
5. Ms. Kathy Lalk, Technology Specialist, SSD, Petitioner
6. Dr. Corrine Harmon, Superintendent, SSD, Petitioner
7. Dr. Elisabe~&~nder, Parkway Assistant Principal, SSD, Petitioner
8. student's father, Petitioner

Friday June 5, 1998

1. \_\_\_ student's mother, Petitioner

2. Ms. Sue Bartelt, student's teacher 1996-97, SSD, Respondent
3. Dr. Steve Colombo, Director Special Education, Parkway, Respondent
4. Ms. Christine Montgomery, Director Special Education Services, SSD, Respondent
5. Ms. Beth Stedman-Kraft, Assistant Principal Neuwhoener, SSD, Respondent
6. Ms. Katie Sanders, student's teacher 1997-98, SSD, Respondent

SSD was represented by legal counsel. The parents were represented by a lay advocate. Not all evidence was accepted into the record (see exhibits A and B).

The hearing was conducted substantially outside the guidelines (see exhibit C for record of continuances from May 8, 1996 to March 16, 1998). Continuances were requested and documented. The preponderance of the continuances were requested by the petitioner or jointly. Both parties requested, and were granted, three (3) weeks after the receipt of the transcripts to submit their findings of fact and conclusion of law (see exhibit D for letter from petitioner regarding the receipt of the transcripts. The respondent's reply is labeled Exhibit E). The panel requested two (2) weeks for the issuance decision. On August 13, 1998 the panel's chair requested an extra week until August 31, 1998 to issue the decision.

The hearing was opened to the public and witnesses were not sequestered. The first two days of the hearing (September 16, 1996 and March 16, 1998) were primarily discussions of the withdrawal of two (2) different attorneys for the petitioner.

Since the hearing was requested both the original chair of the panel and panel's representative withdrew from the hearing. The primary reasons were possible conflicts of interest. The petitioner challenged the impartiality of Dr. Yard. Subsequently, DESE ruled that Dr. Yard met the standard for impartiality. The respondent's attorney conducted an inquiry on record of the impartiality of Ms. Yarbrough and Mr. Wright, the chair.

A major objection regarding the suitability of a lay counsel representing the petition. the objection was noted for the record and the hearing proceeded. There were a number of instances where the petitioner communicated directly with the chair by e-mail without notifying the respondent or his own representative. The chair refused all direct communication with the petitioner after April 17, 1998.

## ISSUE I

Denial of a free appropriate public education (FAPE) for the 1994-95 school year.

#### FINDINGS OF FACT

An IEP for the student was developed on 3/23/94 and reviewed on 4/16/94. The student's mother and attorney were in attendance. (R-8)

2. The student didn't attend school from 4/22/94 until 10/3/94. (R-10)

3. The IEP was reviewed on 10/10/94. Both parents attended this review. (R-10)

#### DECISION

A FAPE was provided to the student for the 1994-95 school year.

#### RATIONALE

The evidence is clear that an IEP was developed specific to the student. The IEP was reviewed as necessary. The parent/s attended the IEP meetings and were represented by legal counsel. The petitioner submitted no evidence specific to this student for this time period which contradicts the respondent's evidence.

#### ISSUE II

The student's education was not provided in the LRE for the 1994-95 school year.

#### FINDINGS OF FACT

1. The student's placement at Neuwoehner for the 1994-95 school year was based on a court order until this due process hearing could be convened.

The student's IEP goals and objectives were written without regard to placement.

(Anderson)

3. The student bit, kicked, and hit other students and staff members. (staff)

4. Student was placed in a classroom with 4 other students, who would be removed if behaviors were out of control. (staff) Student was in a class with 3 or 4 trained staff members. (staff)

## DECISION

The student was educated in the LRE for the 1994-95 school year.

## RATIONALE

The student's placement at Neuwoehner was upheld and directed by the court system until this panel could rule on the matter.

## ISSUE III

Failure to provide an appropriate IEP for the 1994-95 school year.

## FINDINGS OF FACT

1. See findings of fact for issue I. 2. Student made progress.

## DECISION

An appropriate IEP for the 1994-95 school year.

## RATIONALE

The plan was developed and reviewed twice. The parents, their attorney, and a variety of professionals including parent advocates attended the various meetings and impacted the final IEP. All parties testified that the student's behavior improved and progress was made on all objectives with some being completed. The student experienced educational gain as a result of the IEP.

## ISSUE IV

Failure to notify parents and take appropriate steps to make a change of placement for the 1994-95 school year.

## FINDINGS OF FACT

1. Court placement.

## DECISION

Parents were notified of the change of placement.

## RATIONALE

The court decision was a lengthy process and the parents were involved at each step of the process. The parents could not have been affected by the lack of notification of change of placement from the school.

## ISSUE V

Failure to provide appropriate teacher training for the 1994-95 school year.

## FINDINGS OF FACT

1. Ms. Anderson had 27 years of experience in both special education and regular education. (Anderson)
2. Ms. Anderson holds certification in regular education (K-8), behavior disorders (BD K12), learning disabilities (LD K-12), mental retardation (MR K-12), and has a masters degree plus 30 hours. (Anderson)
3. Ms. Anderson has received training in crisis prevention intervention (CPI). (Anderson)
4. Ms. Anderson has taken a variety of behavior management classes. (Anderson)

## DECISION

Appropriate teacher training was provided for the 1994-95 school year.

## RATIONALE

The key word is appropriate. The teacher appears to have appropriate training and experience for her teaching assignment and the children assigned to her classroom. She had support from a knowledgeable assistant principal and other colleagues.

## ISSUE VI

Denial of FAPE for the 1995-96 school year.

## FINDINGS OF FACT

1. An IEP dated 10/10/95 was developed for the student. (R-16)

2. Both parents attended the EP meeting. (R-16)
3. Advocates for the parents attended the EP meeting. (R-16)
4. The IEP was reviewed on 11/26/96. (R-27)
5. Both parents attended the EP review. (R-27)
6. Advocates for the parents attended the IEP review. (R-27)
7. A transition plan was developed. (R-27)
8. Progress had been made on all objectives. Six objectives had been completed. (R-27)
9. Thirteen objectives were added to the EP. (R-27)
10. Social stories were implemented 2 1/2 years before Dr. England's recommendation. (Kraft)
11. Parents' views, parent advocates' views and opinions were voiced at the IEP meeting and at the EP review. (staff)

#### DECISION

FAPE was provided for the 1995-96 school year.

See rationale for issue VI.

#### RATIONALE

There was an IEP that was in place that was reviewed. It had been developed with input from the SSD multidisciplinary team, the parents, and the parents' advocates. There was evidence that the student was making progress on the IEP's objectives.

#### ISSUE VII

Failure to provide education in the LRE for the 1995-96 school year.

#### FINDINGS OF FACT

1. The IEP team discussed placement at Parkway 3127195. (Stedman-Kraft)

2. Parkway could have provided for all goals and objectives except the environment.

(Stedman-Kraft)

Student continues to hit, bite, and spit and therefore represents a clear and present danger to herself, other students and staff around her. (R-27, staff)

#### DECISION

Education was provided in the LRE for the 1995-96 school year.

#### RATIONALE

While the student's behaviors had improved she continues to hit, bite and spit and on occasion would injure both staff and other students. While the frequency of behaviors decreased, there was no decrease in the intensity of the behaviors. Behaviors could often be predicted but not prevented. Neuwoeher provided the best environment to contain these dangerous behaviors when they occurred.

#### ISSUE VIII

Failure to provide an appropriate PEP for the 1995-96 school year.

#### FINDINGS OF FACT

1. See findings of fact: 1 - 11 for issue number VI.

#### DECISION

The IEP for the 1995-96 school year was appropriate.

#### RATIONALE

#### ISSUE IX

Failure to provide appropriate teacher training for the 1995-96 school year.

#### FINDINGS OF FACT

1. Ms. Anderson, the student's teacher for the 1994 96 school year, was also the teacher for

the 1995-96 school year.

2. See findings of fact 1-4 for issue number V.

### DECISION

Appropriate teacher training was provided for the 1995-96 school year.

### RATIONALE

See rationale for issue number V.

### ISSUE X

Denial of FAPE for the 1996-97 school year.

### FINDINGS OF FACT

1. See findings of fact 4-9 for issue number VI.

2. An IEP was developed on 11/22/97. (R-41)

3. Both parents attended the EP meeting. (Rail)

4. The parents had friends and advocates in attendance. (R-41)

5. Five objectives were met, progress was made on a number of other objectives. (R-41)

6. A transition plan was completed. (R-41)

7. A multi-disciplinary team attended. (R-41)

8. It required four (4) meetings totaling approximately fourteen (14) hours to complete 1/22/97 IEP. The impasse was over placement. (Bartelt)

9. See findings of fact for issue VIII.

### DECISION

FAPE was provided for the 1996-97 school year.

### RATIONALE

The student was making progress on the goals and objectives in the IEP. The impasse over the IEP was regarding placement not goals, objectives, or related services. The parents, their friends, and advocates helped develop the IEP goals and objectives.

#### ISSUE XI

Failure to provide education in the LRE for the 1996-97 school year.

#### FINDINGS OF FACT

1. Student would slap or hit to avoid doing tasks. (Bartelt)
2. Class size was reduced from 9 to 6 and brought about a positive change in behavior for the student. (Bartelt)
3. The student threw a bowling ball at a student standing 5 or 6 feet away. (Bartelt)
4. During Special Olympics the student hit and kicked others plus taking property of other students. (Bartelt)
5. Student needed the small, protective environment provided at Neuwoehner school. (Bartelt)

#### DECISION

Education was provided in the LRE for the 1996-97 school year.

#### RATIONALE

The student still has behaviors which would prevent her from being placed satisfactorily in her home high school. A placement in a small sheltered environment rather than in a 1,500 student high school continues to be the LRE appropriate for this student.

#### ISSUE XII

Failure to provide an appropriate IEP for the 1996-97 school year.

#### FINDINGS OF FACT

1. See findings of fact 1-8 for issue number X.

### DECISION

An appropriate IEP was provided for the 1996-97 school year.

### RATIONALE

The IEP was developed by the multidisciplinary team, the parents, and the parents' advocates. The IEP enabled the student to make educational progress.

### ISSUE XIII

Failure to provide appropriate teacher training for the 1996-97 school year.

### **FINDINGS OF FACT**

1. Ms. Bartelt held a bachelors degree and a masters degree. (Bartelt)
2. Ms. Bartelt is a teacher with 13 years experience in SSD. (Bartelt)
3. Ms. Bartelt holds certifications in elementary education, BD, LD, and MR.

### DECISION

Appropriate teacher training for the 1996-97 school year.

### RATIONALE

Ms. Bartelt had appropriate certifications and degrees. She had significant experience working with similar types of students and had access to a variety of trained professionals.

### ISSUE XIV

Denial of FAPE for the 1997-98 school year.

### **FINDINGS OF FACT**

1. See findings of fact 2-9 for issue number X.
2. SSD had developed a proposed IEP on 1/21/98. (P-II, 10)

3. The proposed IEP included a transition plan. (P-II, 10)
4. The proposed IEP contained significant information from Dr. England. (P-II, 10)
5. The proposed IEP carried a trial placement proposal. (P-II, 10)
6. The proposed IEP provided goals and objectives. (P-~1, 10)
7. The proposed IEP documents student progress. (P-1I, 10)

### DECISION

FAPE was provided for the 1997-98 school year.

### RATIONALE

IEPs were developed with appropriate goals and objectives. Both IEPs documented that the student was making progress on goals and objectives.

### ISSUE XV

Failure to provide LRE for the 1997-98 school year.

### FINDINGS OF FACT

1. Other students still had to be cleared from classroom to protect them from the student's behaviors. (Sanders)

2. The student was in a class of 5 students, a teacher, and 2 teacher aides. (Sanders)

The student is not ready to move to Central Parkway High School. (Sanders)

4. Goal was to return the student to Parkway School District. (Sanders)

5. The student continues aggressive behaviors (kicking, hitting, spitting, etc.). (Sanders)

6. The student struck Ms. Sanders forcefully in the face with her visit during an outing to the zoo on the last day of the hearing. (Sanders)

### DECISIONS

LRE was provided for the 1997-98 school year.

#### RATIONALE

The aggressive behaviors have been reduced but the intensity of the behaviors has not. The student continues to benefit from a small, controlled environment that can be manipulated to protect other students and staff members. Neuwoehner is capable of providing this more protective environment while Parkway is not.

#### ISSUE XVI

Failure to provide an appropriate IEP for the 1997-98 school year.

#### FINDINGS OF FACT

1. See findings of fact 1-7 for issue number XIV.

#### DECISION

An appropriate IEP was provided for the 1997-98 school year.

#### RATIONALE

The IEP in effect January 1998 was developed with the input from the multidisciplinary team, the parents and their advocates and documented progress that the student was making. SSD was required to have an EP and therefore developed a proposed EP in January 1998. The proposed EP documented student progress on goals and objectives. It also utilized ideas submitted by the parents' consultants.

#### ISSUE XVII

Failure to provide appropriate teacher training for the 1997-98 school year.

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#### FINDINGS OF FACT

1. Ms. Sanders holds bachelors and masters degrees. (Sanders) 2.

2. Ms. Sanders is certified in MR and holds provisional certifications in LD, BD, and counseling. (Sanders)

3. Ms. Sanders has extensive experience working with students with disabilities. (Sanders)

4. Ms. Sanders implemented techniques submitted by the parents' consultants. (Sanders)

### DECISION

Appropriate teacher training was provided for the 1997-98 school year.

### RATIONALE

Ms. Sanders was a knowledgeable, experienced teacher who implemented suggestions from others. She seemed to demonstrate a genuine affection for the student.

### APPEAL PROCESS

This hearing was requested prior to August 26, 1996 and therefore can be appealed to a state level review. Either the petitioner or the respondent has the right to appeal any or all parts of this decision. In order to do so, a written request must be filed with the Missouri School Board, Commissioner of Education, P. O. Box 480, Jefferson City, Missouri 65102, within thirty (30) days of the receipt of this decision. Further guidelines and directions may be obtained from Heidi Atkins Lieberman, Legal Counsel, Special Education Legal Services, Department of Elementary and Secondary Education, P. O. Box 480, Jefferson City, Missouri 65102. Director Lieberman may be contacted at (753) 751-3502.

Panel members supporting the decision

Audrey Yarbrough

George Yard, 9-1-98

Jerry Wright, 9-1-98