

BEFORE THE HEARING PANEL

EMPOWERED BY THE
DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION

IN THE MATTER OF

Student Petitioner

and

ST. LOUIS CITY SCHOOL DISTRICT,

Respondent

DECISION AND ORDER

This matter pends before the Chairperson of the Hearing Panel on Respondent's Motion that the due process proceeding be dismissed. The following Decision and Order is issued by the Chairperson of the Hearing Panel:

Cover Sheet Information

1. _ is the son of_ ("Parent"). Student was born on _. The Student's School District student number is _. The Student's social security number _.
2. At all times material to this due Process Proceeding, Student has resided with Parent at _ which is located within the boundaries of the St. Louis City School District.
3. The Parent and Student were not represented by Counsel. The St. Louis City School District was represented by:

Margaret M. Mooney

Lashly & Baer

714 Locust Street

St. Louis, Missouri 63101-1699

4. Parent requested due process by letter dated August 14, 1997, which is attached as Exhibit 1.

5. The following Exhibits are attached to this Decision and Order:

EXHIBIT 1	Letter from the Parent to Heidi Atkins Lieberman dated August 10, 1997
EXHIBIT 2	Letter from Heidi Atkins Lieberman to Ransom Ellis, III dated August 25, 1997
EXHIBIT 3	Letter from Ransom Ellis, III to the parties dated August 26, 1997
EXHIBIT 4	Letter from Ransom Ellis, III to the Parent dated August 26, 1997
EXHIBIT 5	Letter from Louise Wilkerson to Ransom Ellis, III dated August 27, 1997
EXHIBIT 6	Letter from Ransom Ellis, III to the parties dated August 28, 1997
EXHIBIT 7	Notice of Hearing dated September 11, 1997
EXHIBIT 8	Amended Notice of Hearing dated September 19, 1997
EXHIBIT 9	Letter from Parent to Ransom Ellis, III dated September 30, 1997
EXHIBIT 10	Letter from Ransom Ellis, III to the parties dated September 30, 1997
EXHIBIT 11	Letter from Parent to Ransom Ellis, III dated October 22, 1997
EXHIBIT 12	Letter from Ransom Ellis, III to the parties dated October 24, 1997
EXHIBIT 13	Letter from Margaret Mooney to Ransom Ellis, III dated October 24, 1997

Because personally identifiable information is contained in these documents, they are not included with the public portion of this Decision and Order.

BEFORE THE HEARING PANEL

EMPOWERED BY THE

DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION

IN THE MATTER OF

Student/Petitioner

and

ST. LOUIS CITY SCHOOL DISTRICT,

Respondent

DECISION AND ORDER

The Chairperson of the Hearing Panel, after receiving the School District's Motion to Dismiss the Due Process proceeding and after convening a telephone conference of the parties, issues the following Decision and Order:

FINDINGS OF FACT

The Chairperson of the Hearing Panel, makes the following Findings of Fact:

I. The Parties

1. The Student, at all times relevant to this due process proceeding, resided with his Parent within the boundaries of the St. Louis City School District (herein "School District").
2. The School District is a Missouri school district organized pursuant to Missouri statutes.
3. Student and Parent were not represented by Counsel. On or about August 26, 1997, the Parent stated to the Hearing Chairperson that she knew that she had the right to be represented by Counsel of her choice, but had voluntarily elected to not be represented by an attorney during this proceeding.
4. Counsel for St. Louis City School District is:

Margaret M. Mooney

Lashly & Baer

714 Locust Street

St. Louis, Missouri 63101-1699
5. The three person panel for the due process proceeding is:

Ransom A. Ellis, III Hearing Chairperson

Rebecca Stith, Panel Member

Carol D. Larkin, Panel Member

II. Procedural Background

6. On or about August 14, 1997, Parent sent a letter to Ms. Heidi Atkins-Lieberman, Legal Counsel for Special Education Services, Missouri Department of Elementary and Secondary Education ("DESE") requesting a due process hearing.

(EXH 1) The request for a due process hearing was received by DESE on August 14, 1997.

7. On or about August 25, 1997, Ms. Lieberman notified the undersigned that he had been assigned as the Chairperson of the three-member due process panel in this case. (EXH 2)

8. On or about August 26, 1997, the Hearing Chairperson notified the Parent and School District that a panel had been selected in the case and that the hearing had to be held and a written decision rendered by the panel and mailed to the parties by September 29, 1997. (EXH 3)

9. On or about August 26, 1997, the Hearing Chairperson notified the Parent and provided her with a copy of the *Procedural Safeguards for Children and Parents* published by the Department of Elementary and Secondary Education (herein "DESE"). (EXH 4)

10. On August 27, 1997, the School District, through Ms. Louise T. Wilkerson, Executive Director of Special Education, requested that the due process hearing be delayed for fifteen (15) days. (EXH 5) On August 28, 1997, the Hearing

Chairperson extended the hearing time lines to October 14, 1997. (EXH 6)

11. On August 11, 1997, the Hearing Chairperson transmitted a *Notice of Hearing* to the Parent and School District. (EXH 7) The Notice scheduled the hearing for 9:00 a.m. on October 1, 1997, in St. Louis, Missouri.

12. On September 19, 1997, the Hearing Chairperson transmitted a *Amended Notice of Hearing* to the Parent and School District. (EXH 8) The Notice scheduled the hearing for 9:00 a.m. on October 1, 1997, at Gateway Institute of Technology, 5101 McRee, in St. Louis, Missouri.

13. On September 30, 1997, the Parent, requested that the due process hearing be delayed for forty-five (45) days. (EXH 9) On September 30, 1997, the Hearing Chairperson extended the hearing time lines to November 28, 1997. (EXH 10)

14. On October 22, 1997, the Parent, again requested that the due process hearing be delayed for forty-five (45) days. (EXH 11) On October 24, 1997, the Hearing Chairperson extended the hearing time lines to January 30, 1998. (EXH 12)

15. On October 24, 1997, the School District filed a motion with the Hearing Chairperson requesting that the due process hearing be dismissed. (EXH 13)

16. On October 29, 1997, the Hearing Chairperson convened a telephone conference with the parties to discuss the motion filed by the School District. Participants in the telephone conference were the Parent; Margaret Mooney, Counsel for the School District; Louise Wilkerson; and, the Hearing Chairperson.

III. Background Facts

17. On July 25, 1997, the Parent and School District personnel met to prepare an Individual Education Program for the Student and determine the appropriate placement for the Student for School Year 1997-98. Apparently, no agreement was reached during this meeting on the placement issue. The School District indicated that it would be willing to meet further concerning the issue if the Parent would provide additional information about the Student. (EXH 13, subexhibit A).

18. On July 28, 1997, the Parent wrote a letter to the School District's Superintendent in an effort to request a due process hearing. (EXH 13, subexhibit A) This letter states that the reason for the request for due process is that the School District has, on July 26, 1997, sent the Parent "a Notice of Action refusing to give [the Student] services for private contractual."

19. On August 10, 1997, the Parent wrote Heidi Atkins-Lieberman at DESE. (EXH 1) The letter was received by DESE on August 14, 1997. The letter states in pertinent part:

"...I am the parent of [the Student]. *I hope that you have received my letter asking for a due process hearing on the matter of my son receiving his education in private contractual services* again. He has been in this service all of his educational career, he was sent to the public school for his education twice now. It is the opinion of our family that public school is not for our child. He is very frightened by all the violence and cannot do his work under that type of pressure...." [emphasis added]

20. On September 16, 1997, the Parent and School District again met to prepare the Student's IEP and discuss the issue of placement of the Student. Subsequently

the School District presented the Parent with a Notice of Action--Placement form (EXH 13, subexhibit C) which proposes to change the Student's placement from Homebound services to a self-contained classroom in a private school. The exhibit indicates that on October 6, 1997, the Parent signed the Notice of Action, thus giving the School District permission to make the proposed placement.

21. The School District's motion (EXH 13) indicates that the Due Process team concluded that private contractual services were appropriate for the Student.

This fact was further borne out during a telephone conversation with the Parent on September 17, 1997, wherein the Parent indicated that the School District had agreed to a private contractual placement for the Student and she would be withdrawing her request for due process when she had the finalized paperwork in hand.

22. Between September 17, 1997, and October 29, 1997, efforts were made to place the Student in a private contractual arrangement consistent with the decision reached at the IEP conference on September 16, 1997. As of October 29, 1997, these efforts had not been successful.

23. Between September 17, 1997, and October 29, 1997, the Parent and the School District decided to conduct a reevaluation of the Student, including additional testing. As of October 29, 1997, this process was continuing.

24. On October 29, 1997, a telephone conference was conducted to discuss the School District's Motion to Dismiss the Due Process proceeding (EXH 13). During the

telephone conference, the Parent indicated that the reason she filed the request for due process was because the School District had refused to agree to a private placement for the student. The Parent also agreed that the School District has agreed to a private placement and since that had occurred, the issue stated in the request for due process was moot.

CONCLUSIONS OF LAW

The Chairperson of the Hearing Panel makes the following Conclusions of Law:

1. The Individuals with Disabilities Education Act, ("IDEA"), 20 U.S.C. §1400 et

seq., the IDEA regulations, 34 C.F.R. Parts 300-301 and the *State Plan for Part B*

of the Individuals With Education Act, ("State Plan") set forth the rights of students with disabilities and their parents and regulate the responsibilities of educational agencies, such as the School District in providing special education and related services to students with disabilities.

2. The IDEA, Section 1415(b)(7) requires the following:

"(b) *Types of Procedures*--The procedures required by this section shall include--...

(7) Procedures that require the parent of a child with a disability...to provide notice (which shall remain confidential)-

(A) ...

(B) that shall include-

(i) the name of the child, the address of the residence of the child, and the name of the school the child is attending;

(ii) a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem; and

(iii) a proposed resolution of the problem to the extent known and available to the parents at the time."

This provision of the Act became effective on June 4, 1997, when the 1997 IDEA reauthorization was signed into law.

3. Section 300.507(c) of the proposed regulations of the Department of Education, published in the *Federal Register* on October 22, 1997, states as follows with

respect to the requirements of parent notice set forth in the IDEA, 20 U.S.C. §

1415(b)(7):

"(c) *Parent notice to the public agency.*

(1) General. The public agency must have procedures that require the parent of a child with a disability or the attorney representing the child to provide notice (which must remain confidential) to the public agency in a request for a hearing under paragraph (a)(1) of this section.

(2) *Content of parent notice.* The notice required in paragraph (c)(1) of this section must include-

The name of the child;

The address of the residence of the child;

The name of the school the child is attending;

A description of the nature of the problem of the child relating to the proposed initiation or change, including facts relating to the problem; and

(v) A proposed resolution of the problem to the extent known and available to the parents at the time."

While it is recognized that these regulations are not currently in effect at this time, and may well be changed during the notice and comment procedure, they do offer additional insight into the intent of Congress in the Reauthorization of the IDEA.

4. The Parent and the School District agree that the only issue presented by the

Parent in the request for due process was whether the School District should provide the Student with a program of special education through a private contractual arrangement. The Parent and the School District also agree that on or about September 16, 1997, the School District agreed to a proposed placement for the Student in a private contractual arrangement, to which the Parent agreed on October 6, 1997, when she signed the Notice of Action--Placement form.

5. The only issue presented by the Parent--that the School District should provide the Student with a program of special education through a private contractual arrangement--is moot. While the placement of the Student in a private contractual arrangement has not been accomplished, due apparently to the degree of the Student's disability and the unwillingness of any private school to allow the Student to matriculate into its program, the fact remains that the only issue presented by the Parent in her request for due process, is now moot.

Accordingly, the request for due process filed by the Parent on August 14, 1997, is dismissed.

6. A copy of the current *Procedural Safeguards for Children and Parents* is attached as Exhibit 14. The Parent and/or School District have the right to request review of this decision pursuant to the Missouri Administrative Procedures Act, Section 536.010 et seq. RSMo. Specifically, Section 536.110 RSMo. In addition, the Parent is always free to:

a. File a new request for due process dealing with any new issue which has

arisen since the August 14, 1997, request for due process or any other issue concerning the program of special education and related services provided by the School District, which has heretofore not been the subject of a due process proceeding; or,

b. File a Child Complaint with DESE, if the Parent believes that the School District has violated a state or federal regulation implementing IDEA.

DECISION AND ORDER

The Chairperson of the Hearing Panel hereby orders that the only issue presented by the Parent--that the School District should provide the Student with a program of special education through a private contractual arrangement--is moot. Accordingly, the request for due process filed by the Parent on August 14, 1997, is dismissed.

Ranson A. Ellis, III, Hearing Chairperson

Dated: 11/13/97

APPEAL PROCEDURE

PLEASE TAKE NOTICE that these Findings of Fact, Conclusions of Law, Decision and Order constitute the final decision of the Department of Elementary and Secondary Education in this matter.

PLEASE TAKE NOTICE that you have a right to request review of this decision pursuant to the Missouri Administrative Procedures Act, Section 536.010 et seq. RSMo. Specifically, Section 536.110 RSMo. 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 thirty 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..."

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was served upon each party to this action, to-wit:

Ms. Margaret M. Mooney

Lashley & Baer, P.C.

714 Locust Street

St. Louis, MO 63101

Heidi Atkins Lieberman, Legal Counsel

Special Education Legal Services

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by depositing same in the United States mail at Springfield, Missouri, postage prepaid, duly addressed to said parties on this thirteenth day of November, 1997.

Ranson A. Ellis, III

Hearing Chairperson