

BEFORE THE HEARING PANEL

EMPOWERED BY THE

DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION

IN THE MATTER OF:

ST. LOUIS CITY SCHOOL DISTRICT,

Petitioner and

Student/Respondent

DECISION AND ORDER

The Hearing Panel, after conducting the due process hearing in this matter on January 22, 1998, issues the following Decision and Order:

FINDINGS OF FACT

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 December 19, 1997, the Hearing Chairperson sent Parent a letter which provided Parent with information regarding attorneys and parent advocacy groups in the St. Louis area. (Panel Exhibit I) At the hearing on January 22, 1998, Parent stated that he was voluntarily electing to proceed with the hearing without representation of an attorney or parent advocacy group

representative. Student's grandmother was present with his father during the hearing.

4. Counsel for the 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

Harry J. Bahr, Panel Member

6. During all times relevant to this proceeding the following persons were employed by the School District and provided educational services to the Student:

Dr. Cleveland Hammonds, Jr., Superintendent

Louise T. Wilkerson, Executive Director, Special Education

Maureen Rauscher, Special Education Supervisor

Dr. Donald Nabors, Principal, Walnut Park School

Vincent Rhodes, Classroom Teacher

Regina Ware, Classroom Teacher

Karen UmverEhert, Chapter I Teacher

Ben Stewart, School District Psychological Examiner

Esther Nall, School District School Counselor

Eugenia Green, Speech Therapist

Gail A Nicholls, Speech/Language Diagnostician

Kathy B. Thomas, School District IEP Specialist

G. Hudson, School District Social Worker

II. Procedural Background

7. On or about December 2, 1997, School District 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. (Panel Exhibit A) The request for a due process hearing was received by DESE on December 8, 1997 (Panel Exhibit B).

8. On or about December 19, 1997, Ms. Lieberman notified the Hearing Chairperson (Panel Exhibit C) and the Panel Members (Panel Exhibit D) that they had been assigned as the Chairperson and Panel Members for the three-member due process panel in this case.

9. On or about December 19, 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 January 22, 1997.

(Panel Exhibit F)

10. On or about December 19, 1997, the Hearing Chairperson provided the Parent with a copy of the *Procedural Safeguards for Children and Parents* published by DESE. (Panel Exhibit E) The Parent had previously been provided with the *Procedural Safeguards* by the School District on or about July 18, 1997 (District Exhibit 4), October 17, 1997 (District Exhibit 11), November 5, 1997 (District Exhibit 13) and November 26, 1997 (District exhibit 15).

11. On December 22, 1997, the School District, through its Attorney, Margaret Mooney,

requested that the due process hearing be delayed until February 21, 1998. (Panel Exhibit

G) On December 23, 1997, the Hearing Chairperson extended the hearing time lines to February 21, 1998. (Panel Exhibit H)

12. On December 23, 1997, the Hearing Chairperson transmitted a *Notice of Hearing* to the Parent and School District. (Panel Exhibit I) The Notice scheduled the hearing for 9:00 a.m. on January 22, 1998 at Walnut Park School, 5914 Thekla, St. Louis, Missouri.

13. On January 13, 1998, the School District transmitted its exhibits and witness list to the Hearing Panel and the Parent. (Panel Exhibit K) The Parent did not submit a witness list or exchange exhibits.

14. On January 22, 1998, the Due Process proceeding was held with all parties in attendance.

III. The Issue

15. The issue presented by the parties to this proceeding is whether the School District should be allowed to provide the Student with special education services including resource room programs and speech therapy. The parties were in agreement that this was the only issue to be decided by the Hearing Panel.

IV. Background Facts

16. The Student entered the School District in September, 1992 at the Kindergarten level. The Student was retained in the 1st grade due to academic concerns. Between September 4, 1995 and June 1, 1996 the Student received Chapter I Support Services in reading and math.

17. On November 6, 1996, the Vincent Rhodes, the Student's Classroom Teacher and Dr.

Nabors prepared a document titled "*Referral For Alternative Interventions Planning Conference*". (District Exhibit 1) The Referral indicated that the Student's Classroom Teacher felt that the Student's performance in Arithmetic, Reading, Spelling and Written Language were below grade level. As a result of the Referral, on or around November 27, 1996, the School District developed Alternative Intervention Strategies for the Student in Reading, Mathematics and Language. (District Exhibits 1 and 2) On January 29, 1997, the School District conducted a Review Conference concerning the Alternate Interventions which had been developed and implemented for the Student. The Parent was invited to this conference. (District Exhibit 2)

18. During the Review Conference held on January 29, 1997, the School District proposed to conduct an evaluation on the Student to determine the Student's cognitive abilities and academic functioning. (District Exhibit 2) This proposal was made by the School District as a result of the Student's continuing problems in the classroom and the apparent failure of the Alternative Intervention Strategies to remedy the Student's difficulties. The Parent refused to consent to the evaluation. Therefore, on March 25, 1997 the School District provided the Parent with a document titled "*Results of Parental School Conference Regarding Permission to Evaluate/Place*". (District Exhibit 3) This document provided the Parent with notice that the School District intended to proceed with its evaluation of the Student.

19. During the evaluation the School District conducted the following validated tests on the Student:

A. The Wechsler Intelligence Scale for Children, Third Edition (WISC-III) was administered on May 16, 1997;

B. The Bender-Gestalt/Beery (BGVMI) Test of Visual Motor Integration was administered on May 16, 1997;

C. The Vineland Adaptive Behavior Scale-Interview Edition was administered on May 13, 1997;

D. The Stanford Achievement Test (SAT) was administered at the end of the 1995-96 School Year;

E. The Wide Range Achievement Test-3 (WRAT-3) was administered on May 16, 1997;

F. The Written Expression Test (WET) was administered on May 16, 1997;

G. The Test of Reading Comprehension-3 (TORC-3) was administered on May 16, 1997; and,

H. The Expressive Vocabulary Test, Clinical Evaluation of Language Fundamental-3 and the Peabody Picture Vocabulary Test-III were administered on May 21, 1997.

20. The WISC-3 test administered by the School District indicated that the Student's current level of intellectual ability were as follows:

Verbal IQ	76	(5th %tile)
-----------	----	-------------

Performance IQ	69	(2nd %tile)
----------------	----	-------------

Full Scale IQ	70	(2nd %tile)
---------------	----	-------------

(District Exhibit 5)

21. The State Plan for Part B of the Individual With Disabilities Education Act, Appendix A, Page 61, indicates that the "Criterion Level" for the Student is 64.

22. The School District's evaluation further indicated that a significant discrepancy between the Student's ability and achievement in basic reading, reading comprehension and listening comprehension existed. (District Exhibit 5)

23. The Student has displayed observable characteristics which indicate deficits in basic psychological processing in the areas of basic reading skills, reading comprehension and

listening comprehension. These observable characteristics have been observed, assessed and documented by the School District.

24. The Student's significant discrepancy and processing deficits in the areas of basic reading skills, reading comprehension and listening comprehension are not primarily caused by visual or auditory acuity deficits, motor deficits, mental retardation, emotional disturbance, behavior disorder, environmental or economic disadvantage or cultural differences.

25. On or about June 6, 1997, the School District prepared a document titled "*Initial Evaluation*" which contained the results of its evaluation of the Student. (District Exhibit 5)

26. A conference to discuss the results of the evaluation, a proposed Individual Education Program ("IEP") and placement for the Student was scheduled by the School District for July 18, 1997. The Parent did not attend the conference.

27. During the Conference on July 18, 1997, the School District prepared an IEP for the Student. (District Exhibit 6) The program of special education contained in the IEP includes:

A. Placement in a regular education classroom for 1,310 minutes per week;

B. Pull-out special education services for 450 minutes per week; and

C. Pull-out language therapy services for 45 minutes per week.

28. Following development of the IEP, on July 18, 1997, the School District sent a letter to the Parent which contained a Notice - Intent/Consent, a copy of the Procedural Safeguards and a copy of the proposed IEP for the Student and requested that the Parent contact the School District in order that the documents could be discussed. (District Exhibit 4) The Parent did not respond to the letter.

29. On August 14, 1997, the School District sent the Parent a follow-up letter concerning the

proposed IEP for the Student. (District Exhibit 8) The Parent did not respond to the letter.

30. On September 25, 1997, the School District transmitted a document titled "*Results of Parental School Conference Regarding Permission to Evaluate/Place* " to the Parent.

(District Exhibit 10) This document notified the Parent that the School District intended to proceed with the placement of the Student consistent with the proposed placement contained in the IEP prepared by the School District. (District Exhibit 6)

31. On October 17, 1997, the School District transmitted a letter to the Parent. (District Exhibit 11) This letter tentatively schedules a Resolution Conference in this matter for Tuesday, October 28, 1997. On or around October 20, 1997, the Parent requested that the Resolution Conference be rescheduled. Accordingly, on October 20, 1997, the School District transmitted a letter to the Parent which rescheduled the Resolution Conference in this matter for November 4, 1997. (District Exhibit 12) The Parent did not attend the scheduled meeting.

32. On November 5, 1997, the School District transmitted a letter to the Parent (District Exhibit 12) This letter rescheduled the Resolution Conference for November 17, 1997. The Parent did not attend the scheduled meeting.

33. On or about November 17, 1997, the School District prepared a document titled "Resolution Conference " which sets forth the decision of the School District in the Resolution Conference procedure. During the Resolution Conference the School District reviewed the IEP which had been developed by the School District and redetermined that the program of special education and related services set forth in the IEP was appropriate for the Student.

34. The Student's current classroom teacher, Ms. Regina Ware and his Chapter I teacher Karen Umverfhert both testified that the Student would benefit from a program of special education.

V. Conclusions Of Law

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 Disabilities 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 purpose of the IDEA and its regulations is: (1) "to ensure that all children with disabilities have available to them a free appropriate public education that includes special education and related services to meet their unique needs"; (2) "to ensure that the rights of children with disabilities and their parents are protected"; (3) "to assess and ensure the effectiveness of efforts to educate those children." 34 C.F.R. §300.1.
3. The IDEA and Missouri law require that all students with disabilities between the ages of three and twenty-one years have a right to a free appropriate public education ("FAPE").
State Plan, p. 1. Each school district in Missouri is responsible for identifying any student with a disability who falls within the above-defined age groups.
4. The referral of the Student by the School District for evaluation was appropriate in light of the concerns of the Student's classroom teacher. The evaluation of the Student conducted by the School District met the requirements of the IDEA, its regulations, including 34 C.F.R. §300.530 through §300.532 and the State Plan.

5. The conclusion of the School District in its evaluation of the Student, that the Student was Learning Disabled in the areas of basic reading, reading comprehension and listening

comprehension is appropriate in that:

A. The Student displayed observable characteristics which indicate deficits in basic psychological processing in the identified areas; and,

B. The Student failed to achieve due to a psychological process deficit and has a significant discrepancy between achievement and ability in the identified areas; and,

C. The Student's significant discrepancy and processing deficits are not primarily caused by visual or auditory acuity deficits, motor deficits, mental retardation, emotional disturbance/behavior disorder, environmental or economic disadvantage, or cultural difference.

6. The IEP developed for the Student was prepared in compliance with the IDEA, its regulations, including 34 C.F.R. §300.340 through §300.345 and the State Plan.

The contents of the IEP developed for the Student are appropriate and comply with the IDEA, its regulations, including 34 C.F.R. §300.346 and the State Plan. The provisions of the IEP are designed to provide the Student with a free appropriate public education.

VI. Discussion

The Hearing Panel is convinced that the Student's father and grandmother are deeply committed to the proper education of the Student. Student's father stated during the due process hearing that experiences he had in special educational programs in school were not appropriate for him and should not be repeated with his son. Father is also concerned about the deleterious effect that the special education "label" might have on the Student. These are very proper concerns for any parent to have about educational programs offered by a school district to their child.

Accordingly, the Hearing Panel has carefully examined the evaluation procedures and tests administered to the Student by the School District. It is the conclusion of the Hearing Panel that the tests were appropriately administered and reflect the Student's cognitive abilities and achievement. The results of these tests are corroborated by the Student's classroom

performance and by observations of the Student's teachers. The evaluation of the School District clearly indicates that the Student has a learning disability in the areas of basic reading, reading comprehension and listening comprehension. Furthermore, it is the opinion of the Hearing Panel that the Student needs immediate attention or there is a risk he will not successfully complete his current grade level. Because he was retained after his first grade year, a second retention would place him two years behind other students his age.

The program of special education which is proposed by the School District was also carefully reviewed by the Hearing Panel. The Panel finds that the proposed program for the Student will allow him to remain in the regular classroom with his peers and receive pull-out special education services. The pull-out services that the School District proposes to provide will take the Student out of the classroom for about the same amount of time that he currently spends in the pull-out Chapter I programs. The program proposed by the School District is designed to provide the Student with a free appropriate public education and will educate the Student in the least restrictive environment. Because the Student's father raised concerns about the role inappropriate behavior has played in the Student's academic performance, the Panel recommends that the IEP team develop a behavioral assessment for the Student when the team next convenes to review or revise the Student's IEP.

VII. Decision And Order

The Hearing Panel hereby finds that the School District should be allowed to provide the Student with special education services including resource room programs and speech therapy as determined by his IEP team.

VIII. 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 plaintiffs residence...

Ransom A. Ellis, III, Hearing Chairperson

Dated: 2-13-98

Rebecca Stith, Hearing Panel Member

Dated: 2-10-98

Harry Bahr, Hearing Panel Member

Dated: 2-10-98

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

Ms. Rebecca Stith

6609 Clayton Road

Suite One East

St. Louis, MO 63117

Mr. Harry J. Bahr, Area Coordinator

Special School District of St. Louis

County

12110 Clayton Road

Town and Country, MO 63131

Heidi Atkins Lieberman, Legal Counsel

Special Education Legal Services

Department of Elementary and Secondary Education

Post Office Box 480

Jefferson City, MO 65102-0480

by depositing same in the United States mail at Springfield, Missouri, postage prepaid, duly addressed to said parties on this thirteenth day of February, 1998.

Ransom A Ellis, III, Hearing Chairperson