

THREE MEMBER HEARING PANEL

DEPARTMENT OF ELEMENTARY & SECONDARY EDUCATION

STATE OF MISSOURI

_____ by & through his parents, _____, Petitioner, vs. Valley R-VI School District, Respondent

FINDINGS OF FACT, CONCLUSIONS OF LAW & DECISION

The hearing in this matter was convened on August 27, 1998 and August 28, 1998, by a duly authorized panel composed of Panel Chairperson Ivan L. Schraeder, and Panel Members Marilyn Bohnsack and Dennis Hahn under authority of state and federal law. Petitioner was represented by his mother after counsel was permitted to withdraw with approval by the parents and satisfaction of Panel that withdrawal was acceptable to parents. Respondent was represented by counsel.

Having heard all of the evidence presented and the arguments made by the parties, the Panel makes the following findings of fact, conclusions of law and decision:

FINDINGS OF FACT

- 1.The primary issue to be decided by the Panel is whether Petitioner may have his placement changed to the State School for the Severely Handicapped in Potosi, Missouri, from his current placement in his local school district and whether such placement provides a free appropriate public education in the least restrictive environment.
- 2.Petitioner is a _____ year old male student who resides in Respondent's service territory with his parents.
- 3.Petitioner currently attends Respondent's elementary school in Belgrade, Missouri.
- 4.Petitioner was diagnosed as a disabled student pursuant to the requirements of federal and state law.
- 5.Petitioner is multiply disabled due to cerebral palsy, cortical blindness, severe mental retardation, and severe delays in speech and language and fine and gross motor skills.

6. During school years 1993-94 through 1996-97, Petitioner was served in Respondent's Early Childhood Special Education program located in Arcadia, Missouri, (1993-94) and then in Potosi, Missouri.

7. During school year 1997-98, Petitioner received his special education in his elementary school in Belgrade, Missouri and was educated in regular kindergarten and special education resource classes. The Respondent also assigned a personal aide who accompanied him from the time he was picked up at home for transport to school until he was returned home.

8. Testimony relating to progress notes and observations of school personnel and other witnesses showed that Petitioner received concentrated services from Respondent which were agreeable to Petitioner's parents.

9. All of Petitioner's instructional services were provided in conformity with his respective IEPs which were acceptable to Petitioner's parents.

10. Testimony showed that Petitioner did not make any significant progress in meeting the goals of his IEPs even though all of the methods of teaching him were utilized by Respondent. Testimony showed that there were minor improvements made to Petitioner's sitting ability, reaching and grasping with his left hand, and attention to visual goals utilizing a light box.

11. After completion of the IEP for school year 1998-99, Respondent made a referral to the State School in Potosi, Missouri for placement of Petitioner for the 1998-99 school year. This was the second recommendation made by Respondent, the first being made for the 1997-98 school year. The first recommendation was not followed by Respondent at the request of Petitioner's parents.

12. The parents of Petitioner received all of the required notices related to the safeguards due to Petitioner.

13. Staff of Respondent testified that they had provided all of the services that they could for Petitioner for the 1997-98 school year and that Petitioner had not shown any progress in meeting the objectives and goals of his IEPs, and that they could not expect to see any more progress from their services at the local school.

14. During an average day of his school attendance, Petitioner spends at least three hours of his scheduled school day in the school nurse's office.

15. Staff for Respondent testified that they believed the best placement for Petitioner was in the State School. The parents of Petitioner disagreed with this placement recommendation.

16. Petitioner's parents requested that independent evaluations be completed for Petitioner, which request was not acted on by Respondent.

17. The IEP for the 1998-99 school year was prepared and accepted by the parents for Petitioner and the other members of the IEP team as being appropriate for Petitioner's education.

CONCLUSIONS OF LAW

18. Respondent is required to provide an educational program reasonably calculated to enable Petitioner to receive educational benefit which the Panel concludes cannot be provided to Petitioner in his current placement in the Belgrade, Missouri school.

19. Placement of Petitioner must be in the least restrictive environment and the Panel concludes that such an environment is present at the State School.

20. The Panel concludes that the staff and services available to Petitioner at the State School will more properly serve the needs of Petitioner and provide him with a free appropriate education not available through the best efforts of Respondent in his local elementary school setting.

21. The Panel concludes that the distance to State School in Potosi, Missouri is not a factor in placement because Petitioner had attended his Early Childhood Special Education in Potosi, Missouri.

22. The Panel concludes that the State Plan provides for placement of multiply handicapped students like Petitioner in the State School and that Petitioner can be served at the State School without violating his rights.

23. The Panel concludes that Petitioner's parents were provided with all of the procedural safeguards and notices required by law in serving Petitioner and in recommending his placement.

24. The Panel concludes that Respondent has the responsibility to determine appropriate placement of Petitioner once an IEP has been developed and that Respondent exercised its placement obligations in making the State School recommendation.

DECISION

25. The IEPs for the 1997-98 and 1998-99 school years are appropriate for Petitioner's educational program.

26. Respondent is to assist Petitioner's parents with identification of resources and pay for an independent evaluation of Petitioner if Petitioner's parents still desire the independent evaluation that was requested but not acted upon by Respondent.

27. Respondent's placement of Petitioner is appropriate and may be implemented by Respondent.

28. If an independent evaluation is completed, the results shall be reviewed in conjunction with Petitioner's current IEP, his parent's requests for services and placement, and the strategies that have been successful for Petitioner.

The decision is entered this 4th day of September, 1998 by

Ivan L. Schraeder, Panel Chairperson

Ms. Marilyn Bohnsack, Panel Member

Mr. Dennis Hahn, Panel Member