

SPECIAL EDUCATION DUE PROCESS HEARING

v. Water Valley Public School District

Representing the parent: C. [REDACTED], Esq.
Starkville, Mississippi

Representing the Water Valley Public School District: James A.
Keith, Esq. - Adams & Reese, Jackson, MS

Individuals in full attendance:

[REDACTED], Esq.	Attorney - P
R. Butch Stevens	Parent - P
James Keith, Esq.	Special Educations Director - D
Ann Box	Attorney - D
Liz Potts	Legal assistant - D
S. John Obringer	Protection & Advocacy - P
	Hearing Officer

Scheduled Witnesses for the District:

R. Butch Stevens	Director of Special Education
Sammy Higdon	Superintendent
Patty Black	Director of Special Education, Oxford Sch.
Lisa Ditter	Special Education Teacher
Cheryl Harris	Special Education Teacher
[REDACTED]	Parent
Hope Shaw, R.N.	Nurse

Scheduled Witnesses for the Parent/Student:

R. Butch Stevens	Director of Special Education
Heather Card	Speech/Lang Pathologist
Lisa Ditter	Special Education Teacher
Cheryl Harris	Special Education Teacher
Liz Potts	Education Advocate
Tayna McNally	D.H.S. Case Worker
Hope Shaw, R.N.	Nurse
Angie Via	Speech/Lang Pathologist

Evidence: Please refer to District (D) Exhibits;
Parent (P) Exhibits (enclosed under separate cover).

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OSE Technical Asst.

Background

_____ is a _____ old student who resides within the Water Valley Public School District. She has a long documented history of cerebral palsy (mixed type), a _____, a _____ disorder, a severe speech/language disorder, and a significant intellectual disability. _____ lives with her _____ parents in the Water Valley area. _____ is currently attending an elementary special education class for two hours per day in the Water Valley School District.

The Issue

The _____ family is requesting that the Water Valley School District provide a longer, or possibly full day class (depending on _____'s stamina) in her current school setting. Requested in-school related services include: physical therapy, speech/language therapy, and occupational therapy (with emphasis on swallowing and eating skills). Mrs. _____ feels that this would provide an education in her child's least restrictive environment (LRE).

Summary of testimony

Both parties agree that _____ is in need of a specialized curriculum with appropriate related services. The school district has proposed that _____ be educated in the Scott Center, a special school operated by a neighboring district, the Oxford School District, for students with multiple disabilities. The Scott Center is located approximately twenty miles from Water Valley, Mississippi. Numerous witnesses for both parties gave rather lengthy testimony as to the appropriateness of the placement for a student with multiple disabilities. Also, numerous reports, records, and documents pertaining to _____'s medical, vision, and psychoeducational history were brought forward. Please refer to the District (D) and Parent (P) list of witnesses. The hearing was conducted in an orderly fashion on April 27, 28, and May 12, 2006.

Much of the initial testimony concerned the services provided by the previous school district that _____ attended before moving to Water Valley, Mississippi. There was disputed testimony over the procedures and appropriateness of the student's current IEP. Mrs. _____ contends that it was altered to reflect only two hours of class per school day after she signed the document. Members of the school's IEP team disputed this claim. During testimony much time was devoted to the fact that _____ was not admitted to school on the first day, presumably due to incomplete inoculation records and that the designated bus did not pick her up at the agreed upon time and place. Additional testimony revealed disagreement between the parent and the district on the number of times _____ was absent during the school year. Also, much time was spent in discussing the ordering of a changing table (for fresh diapers) and the

lateness at which point it was installed. Lengthy testimony was presented on the necessity of stimulating the vegas nerve with a specialized wand when a seizure was in its initial phase. According to testimony, the stimulating of the vegas nerve may well terminate the seizure. All of the above are valid points, but have little bearing on the central issues of this case, student placement.

Both attorney's agreed that closing arguments would be mailed to the hearing officer. Counsel for the parents requested two extensions for the written closing arguments. Because the attorney for the district had no objections, both extensions were granted. The closing arguments were received by the hearing officer on the day of the extended deadline.

Discussion

The education of a student with multiple disabilities is one of the more complex issue in the field of special education. Unlike students with a single disability, the learning process becomes intertwined with the need for numerous related services. In fact, the related services may be as important, if not more important, than the academic curriculum. Rural districts with small school enrollments face a significant challenge to provide an appropriate education, with related services for these students.

The following case law gives insight into this case.

Monroe County Community School District Corporation
(504 IDELR 247).

In this case the hearing officer ruled the district did not a significant school population base to develop its own program and the student should be placed in a state school. On appeal, the decision was affirmed by the local hearing officer, stating "population base criterion does not violate Federal law since every type of program and service cannot be made available in all localities.

Tuscaloosa County Board of Education
(36 IDELR 195)

This case is centered around a student with multiple disabilities including active seizures. The district transferred the student from an elementary school to the Sprayberry Developmental Center. The hearing officer concluded that placement at a developmental center, although more restrictive, would offer the student FAPE in the least restrictive environment. The hearing officer also noted that he would receive significantly more support from the numerous aids and would be with children on his developmental level.

Lake Mills Area School District
(508 IDELR 171)

This case developed around the right of a disabled child to have his IEP implemented in a home-district program vs. an out-of-district placement. The hearing officer found no evidence that a student's behavioral, social, and learning needs required placement in a local setting. "Reg. 300.551 does not prohibit cooperative programs from being included in the continuum of alternative placements. Neither Federal nor state law requires creations of programs in district when appropriate programs are available in neighboring districts through cooperative agreements."

Emmie Brown, ET AL., Plaintiffs v. District of Columbia Board of Education, ET AL., Defendants
(551 IDELR 101)

This case involved five visually and hearing impaired students who were receiving instruction in a special class within a "regular" school building. The school district proposed that the students be transferred to a "special education" school building where they could receive specialized services, not provided at a "regular" school." The Judge - Administrative Officer held for the district stating "change in location of class to provide additional supportive services and facilities, but not otherwise changing instruction, is not a change in educational placement." The decision was affirmed on appeal by Chief Judge William B. Bryant.

Board of Education of the Franklin Lakes School District v. Mr. & Mrs. R.B.
(505 IDELR 266)

This case centered around the district's right to transfer a hearing impaired student to a neighboring district. The parents sought extensive services in the local elementary school, although a hearing impaired program was available in a neighboring district. The administrative law judge held that the specialized program in the neighboring district was appropriate.

Montrose County School District v. Murray
(22 IDELR 558)

The case involved a twelve year old student with multiple disabilities as the result of cerebral palsy. The parents in this case wanted their son to be educated in the local neighborhood school versus a school ten miles away, which offered specific programming for students with profound needs. The Tenth District of the U.S. Court of appeals ruled in favor of the district saying, "The neighborhood placement was only one of a number of relevant

factors to be considered in placing a student with a disability, and at most created a preference in favor of the neighborhood school." The court went on to state that the above issue (neighborhood school) is relevant, but not the only factor to be considered in placing a child with a disability.

From the above cases, case law suggests the following:

All students with disabilities are entitled to FAPE

Least Restrictive Environment (LRE) does not mandate that all students with disabilities attend any one type class or school

Every type of program and related service cannot reasonably be made available in every school in every district

Decisions for placement may take into account student population base criterion

Cooperative program with interagency agreements are a suitable method for educating students with disabilities

Local or neighborhood schools are only one factor in determining placement of students with disabilities

The Decision

The Water Valley Public School district has satisfied the hearing officer that the district has offered to provide with a free appropriate public education (FAPE) through a reasonably calculated program by way of an IEP. After touring the Scott Center in Oxford, Mississippi, the hearing officer agrees with the district that this is the most appropriate setting for this particular student and does not violate her right to LRE.

The hearing officer rules in favor of the Water Valley Public School District.

Further Rationale for Decision

The hearing officer is empathic to the parents who wish to educate their child in their local school district. However, case law as cited above and the following mitigating circumstances prevent this placement:

_____ is a medically fragile student and will better be served in a school environment equipped to handle her unique educational and medical needs, (ex. complex seizures).

Water Valley School District does not have a sufficient number (population based criteria) of students with multiple disabilities to warrant the financing of a teacher unit from The Mississippi Department of Education, therefore, an interagency agreement with a neighboring district is appropriate

Other students with severe and/or multiple disabilities from the Water Valley School District are attending the Scott Center under an interagency agreement which is sanctioned by Federal law and approved by State Education Law (see § 37-7-301 (dd)).

Right to Appeal:

Either party may make an appeal of this hearing officer's decision to the appropriate court within forty-five (45) days of receipt of the written decision of the hearing officer. If no appeal is made, the decision is binding on both parties.

Signed this 19th day of June, 2006

S. J. Obringer

S. J. Obringer, Ed.D
IDEA HEARING OFFICER
STATE OF MISSISSIPPI

NOTE: This decision was somewhat delayed due to the two extensions granted for closing arguments.