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IOWA DEPARTMENT OF EDUCATION
(Cite as 12 D.o.E. App. Dec. 360)

In re: Ryan U.)	
)	
Burlington Community School District and Great River AEA 16, Appellants)	DECISION
)	
v.)	
)	
Mr. and Mrs. Allen Underwood, Appellees)	Admin. Doc. SE-151

The above entitled matter was heard by Administrative Law Judge, Daniel J. Reschly, on August 23, 1995 at the Administration Center, Great River Area Education Agency 16 in Burlington, Iowa. The hearing was held pursuant to Iowa Code Section 256B.6 (1993), the rules of the Iowa Department of Education I.A.C. 281-41-112 to 281-41-125, and the U. S. Code and regulations of the United States Department of Education implementing the Individuals with Disabilities Education Act 20 U.S.C. Sections 1400-1485; 34 C.F.R. 300 (1993).

The appellants, the Burlington Community School District (BCSD) and the Great River Area Education Agency (GR-AEA), participated in the hearing unaccompanied by legal counsel. The appellees did not attend the hearing. Mr. Warner, BCSD Principal of Grimes and Salter Elementary Schools, served as spokesperson for the appellants. Chip Marquard, GR-AEA Assistant Director of Special Education, represented the area education agency. This proceeding was an evidentiary hearing that was closed to the public.

The hearing was conducted in response to an affidavit of appeal filed by the appellants on April 8, 1995 with the Iowa Department of Education. A conference phone call involving the parties and this administrative law judge was conducted on April 25 to clarify the issues on which disagreements existed. During this conversation, Mrs. Underwood expressed a preference for an independent educational evaluation to be conducted at one of the clinics in the University of Iowa College of Medicine. The AEA and school officials agreed to postpone the hearing to allow time for this evaluation to be completed, and to cooperate with the evaluation by sending school records to whomever Mrs. Underwood specified.

A continuance was granted by this administrative law judge on June 1, 1995, at which time the federal 45 day time limit on resolving due process issues was about to expire. That order included the following provisions:

"The case is continued for 45 days to July 15, 1995. If the University of Iowa evaluation has not been conducted by that date, this administrative law judge will allow the Appellants to establish a hearing date that is timely in terms of resolution of the issues as well as convenient for the parties. If the Appellees refuse to cooperate in

selection of a convenient time for the hearing, a date and time will be determined by this administrative law judge."

Appellees have refused numerous efforts to establish communications since April 25, 1995. Apparently, the independent educational evaluation has not been obtained by the parents. Mailings sent to the parents via certified mail usually have been refused; however, a certified letter informing the appellees of the time, date, and location of this hearing was accepted by the appellees. In addition to mailings, officials in the Bureau of Special Education of the Iowa Department of Education as well as GR-AEA and BCSD personnel have described numerous phone calls to the appellees, some of which were refused, others abruptly discontinued, and still others producing at least brief conversations. There is no doubt that the appellees were aware of the date, time, and location of this hearing. The mailings by the various agencies also included information on low cost or free legal assistance that was available to the appellees. In view of these extensive efforts, it is inconceivable that the appellees were unaware of the time, date, and location of this hearing.

It was with great reluctance that this hearing was conducted without the presence and participation of the appellees. The appellants' legal right to resolution of this dispute in a timely manner as well as the pressing need to resolve the educational classification and placement issues prior to the beginning of the school year compelled resolution of the dispute without further delay.

At the request of the appellants, an initial decision was formulated covering the immediate questions concerning Ryan U.'s educational placement at the beginning of the school year in the BCSD. An initial decision was rendered on August 25 and distributed to the parties via facsimile transmission. The initial decision was amended on August 28 to correct one of the provisions. The amended decision also was sent to the parties.

The appellants sought to resolve the following issues through this hearing:

1. Whether Ryan U. was eligible for classification as educationally disabled according to Iowa Rules of Special Education and Federal Regulations regarding the implementation of the Individuals with Disabilities Education Act.
2. Whether special education services were required in order for Ryan U. to receive an appropriate education.

I. Findings of Fact

The administration law judge finds that he and the Iowa Department of Education have jurisdiction over the parties and the subject matter of this hearing.

This decision is based on the extensive documentary evidence provided by the appellants as well as testimony provided under oath by the following appellants' witnesses:

Ms. Mary Erickson, BCSD Special Education Resource Program Teacher at Grimes Elementary School

Ms. Lynda Breuer, BCSD Special Education Resource Program Teacher at Salter Elementary School

Ms. Donna Butler, GR-AEA Special Education Consultant

Mr. Dale Warner, BCSD Principal of Grimes and Salter Elementary Schools

Mr. Chip Marquard, GR-AEA Assistant Director of Special Education

Ms. Joyce Wauters, BCSD Coordinator of Special Services

As noted previously, the appellees chose not to attend the hearing. No documents or testimony were submitted on their behalf.

Educational History

Ryan U. is an eleven year old student in the BCSD where he is entering the fourth grade in August, 1995. His date of birth is August 8, 1984. Ryan U entered kindergarten in August 1990 at the age of six. He was retained in first grade. His chronological age makes him one of the oldest students in fourth grade.

The first indications of learning problems in the records appeared in Appellants Exhibit 1, where there was a note dated November 2, 1990 from his kindergarten teacher indicating that, "Ryan is possibly a pre-first candidate for the 1991-92 school year." Ms. Schnicker, the kindergarten teacher, indicated that Ryan was substantially below his classmates in such areas as knowing colors and recognizing letters and numbers. Permission was sought in late October, 1990 to evaluate Ryan U. to determine eligibility and need for special education. Mrs. Underwood refused to consent to the evaluation and the school officials attempted to resolve Ryan U.'s learning problems with other interventions. The pattern of refusing consent and use of non-special education interventions continued for the next four years.

In March, 1991 Ryan was evaluated for the pre-first placement along with approximately 80 other kindergarten children in the BCSD. The pre-first placement is an intermediate grade level between kindergarten and first grade. Students placed in pre-first usually require four rather than three years to complete the kindergarten, first, and second grades. According to the testimony of Mr. Warner,

Ryan had the lowest scores of the students being considered for pre-first in March, 1990. In a pattern that was to be repeated, Mrs Underwood initially consented to the pre-first placement, but then rescinded that permission prior to August, 1991.

Ryan U. then entered a regular education first grade in August, 1991. His teacher, Mr. Kristensen, noted in the record that, "Ryan tries very hard. He has shown some improvement." (Appellants' Exhibit 1). Overall, however, Ryan was performing significantly below his classmates in first grade. At the end of the year, he was retained in first grade.

The same pattern of performance continued over the next three years. Ryan U. was repeatedly described as a cooperative child who tried very hard. His school attendance was excellent. Nevertheless, in March, 1993 he was described as not mastering the first grade reading skills at the primer level and as still working on basic number skills such as counting to 100, counting by 5s, and by 10s. In second grade he was described as far below other students in reading, math, and written expression, despite the fact that he was from one to one and one-half years older than his second grade classmates.

In third grade, he received grades of unsatisfactory in reading and math, as well as positive evaluations of his attitude, effort, and cooperativeness. Ryan U.'s performance on the Iowa Tests of Basic Skills indicated overall achievement at or below the 10th percentile using third grade national norms.

Regular Education Interventions

The record contains numerous descriptions of efforts to resolve Ryan U.'s learning problems in regular education. These efforts began in the kindergarten year and continued over the next four years. The efforts included interventions designed by the building level assistance team, suggestions for additional tutoring at home by the parents, Chapter I assistance over several years in reading and math, cooperative learning using peer assistance, and trial placement in the resource teaching program.

The trial placement in the special education resource teaching program along with Chapter I services in reading and math were provided for most of the second grade year. Mrs. Underwood did consent to the trial placement which was carried out without officially classifying Ryan as a student eligible for, and in need of, special education under the provisions of the rule waiver granted to the GR-AEA as part of a Renewed Services Delivery System innovation. Toward the end of the second grade (1993-1994 year), services in the resource teaching program were discontinued because other children who had been evaluated and officially placed exhausted the available time of the special education teacher. By this time it was apparent to the regular education teacher, the Chapter I teacher, and the resource teaching program teacher that Ryan U. needed more assistance than could be

provided in regular education with Chapter I assistance. Moreover, Ryan U. appeared to react positively to the resource teaching program assistance and, although he was far below his classmates, he did make progress in acquiring academic skills (Appellants' Exhibits 1, 2 and 3; Testimony of Ms. Erickson and Mr. Warner).

The now familiar pattern of significantly low achievement in comparison to classmates continued through the third grade in Mr. Wehlre's classroom. Ryan received Chapter I assistance, which was regarded by all the educators as insufficient in relation to his needs (Testimony of Ms. Erickson, Ms. Breuer, and Ms. Butler). Finally, efforts to refer Ryan U. for evaluation of possible special education eligibility were resisted by Mrs. Underwood which, as described later, occurred every year that Ryan U. was in the BCSD.

Referral Requests and Procedural Safeguards

The first record of a BCSD request for parental consent to refer Ryan U. for a preplacement evaluation that would consider his eligibility and need for special education occurred on October 26, 1990, within a few weeks of Ryan U.'s matriculation as a student in BCSD. This request was denied by the parents. Later in that year the parents consented to the pre-first placement, but revoked that consent prior to the beginning of the 1991-1992 school year.

The records and testimony indicate that a request to evaluate Ryan U. was directed to his parents every year. In most years this request was made in conversations at meetings with the Underwoods as well as in a written form. That request was refused every year, often accompanied Mrs. Underwood's claims that Ryan did not have learning problems and that the school officials were out to get the Underwood family (Testimony of Mr. Warner). In all instances the parental denial of consent was honored by the BCSD and GR-AEA officials (Testimony of Ms. Wauters and Mr. Marquard).

On November 8, 1994, Mrs. Underwood met with a the building support services team composed of BCSD and GR-AEA personnel. The subject of the meeting was the increasingly severe learning problems exhibited by Ryan U. and the team's unanimous opinion that he should be evaluated for possible special education eligibility and need. Mrs. Underwood did provide written consent on November 8 regarding the request to conduct a preplacement evaluation; however, she revoked that consent via a note to the school on November 14, 1994.

Building team members requested during the 1992-1993 and 1993-1994 school years that the BCSD Superintendent of Schools file a due process hearing request to resolve the disagreement with the parents over conducting a preplacement evaluation. The first formal action occurred on January 9, 1995 when BCSD Superintendent of Schools Dr. Swanson requested a due process hearing to

determine whether a preplacement evaluation should be conducted to consider Ryan U.'s eligibility and need for special education services. An administrative law judge was appointed and a hearing was scheduled for February 23, 1995. On February 7, 1995 Mrs. Underwood signed the referral form, thereby granting consent for the preplacement evaluation. The February 23 hearing was then canceled.

Preplacement Evaluation and IEP Development

The preplacement evaluation was conducted by a team of professionals from BCSD and GR-AEA in February/March, 1995. The evaluation involved examination of Ryan U.'s capabilities over multiple dimensions of behavior including motor skills, sensory status, achievement in basic areas (reading, math, and written language) speech and language, and adaptive behavior. The evaluation was multifactored, conducted by specialists in several disciplines, and focused on educational needs (see Appellants' Exhibits 2, 3, and 4).

The preplacement evaluation included an educational history that summarized Ryan U.'s performance over the nearly five years he had been in the BCSD. Prior attempts to resolve his learning problems were described along with previous recommendations by school officials to consider special education services.

An extensive evaluation of achievement yielded information that was consistent with his classroom performance. His overall reading level was at the grade level of 1.9, which was equivalent to a relative performance at the first percentile, on a well standardized, individually administered test. Overall math performance was somewhat higher, at grade level of 2.7, which was equivalent to the tenth percentile. Written language and writing skills were similar to the reading level.

An evaluation by a speech and language pathologist concluded that Ryan U. had a language deficit of moderate severity. Assessment of general intellectual functioning yielded scores in the low average to borderline categories of ability. Finally, adaptive behavior deficits in the school context were identified. The evaluation also noted that Ryan U. did not exhibit any behavior problems, that he was cooperative and diligent as a student, and that he had good adaptive skills outside of formal academic situations.

The multidisciplinary team met on March 7, 1995 to consider the results of the evaluation and to make decisions about special education eligibility and need. Mr. and Mrs. Underwood were participants in these deliberations. The team determined that Ryan U. met the criteria for the Iowa special education category of mild mental disability and that he needed special education services due to severe, chronic achievement problems that were not resolved satisfactorily through regular education interventions.

The team developed an individualized educational program (IEP) with general goals and instructional objectives in the areas of reading, math, written expression, language, and classroom adaptive behavior. The team suggested a resource teaching program placement up to two hours per day. The remainder of the day was to be in regular education according to the IEP.

All members of the team agreed to the IEP except for the parents. Dr. Swanson then requested on April 8, 1995 a due process hearing to resolve the issue of whether Ryan U. should be classified as a student with a disability and placed in a special education program. As noted previously, a conference phone call involving the parents and school officials was conducted on April 25. During the phone conference Mrs. Underwood indicated that she was going to obtain an independent educational evaluation at the University of Iowa. Mr. Marquard indicated during the phone conference as well as by letter his willingness to assist with obtaining the independent educational evaluation. That evaluation apparently has not occurred.

During the hearing, several of the witnesses were questioned by this administrative law judge regarding the sufficiency of the resource teaching program in view of Ryan U.'s rather extensive educational needs. According to the testimony of Ms. Erickson, Ms. Breuer, and Ms. Butler, the resource teaching program should be sufficient for Ryan U. to receive an appropriate education for the next two to three years. Although they were reluctant to extrapolate more than three years into the future, all acknowledged that a more intensive special education placement likely will be needed at the middle school or junior high school levels. That decision should, however, await further information on Ryan U.'s progress in the fourth and fifth grades.

Mr. Marquard's testimony as well as documentary evidence indicated that the parents were informed about sources of free or low cost legal assistance. Moreover, the parents were informed of the time, date, and location of the hearing through several means, including certified letter. Despite these efforts, the parents did not appear at the hearing on August 23, 1995.

II. Conclusions of Law

The federal regulations at 34 C.F.R. 300.500 to 300.534 establish a number of requirements regarding identification and evaluation of students suspected of meeting criteria for an educationally related disability. Similar requirements exist in Iowa rules at I.A.C. 281-41.47 through 281-41.50. The legal requirements regarding identification and evaluation of students suspected of needing special education due to an educational disability include the following provisions:

1. Interventions in general education are implemented and evaluated prior to conducting the evaluation (IAC 281-41.48);

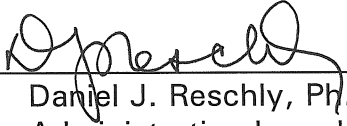
2. A full and individual evaluation by a multidisciplinary team is described as involving an objective definition of the problem, analysis of existing information, identification of the individual's strengths, and collection of information related to the suspected disability including, if appropriate, "... assessment or evaluation of health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, adaptive behavior, and motor abilities. (IAC 282-41-48);
3. The tests and evaluation procedures have been validated for the specific purpose for which they are used, assess areas of specific educational need, and are administered by trained personnel (IAC 281-41.49);
4. Documentation that the interpretation of evaluation results and decisions concerning eligibility and placement are based upon a variety of information and made by a group of persons knowledgeable about the individual and special education eligibility and need (IAC 281-41.50);
5. Decisions are made in conformance with the principle of least restrictive environment (IAC 281-41.50).

The evidence substantiated the implementation of these legal requirements in the identification of Ryan U. as a student who is eligible for, and in need of, special education. The IEP appeared to be closely tied to the evaluation results and the resource teaching program placement option is consistent with the least restrictive environment requirement.

III. Decision

1. Ryan U. clearly meets the criteria for classification as a student with an educational disability. The multidisciplinary team recommendation in the March 7, 1995 staffing to classify Ryan U. as mentally disabled is approved and can be implemented by the BCSD at the beginning of the 1995-1996 school year.
2. The individualized educational program (IEP) and placement recommendation developed at the March 7, 1995 meeting of the multidisciplinary team is approved. The BCSD may provide special education services to Ryan U. in a resource teaching program placement for up to 150 minutes per day in the goal areas specified in the March 7, 1995 IEP.
3. This decision authorizes implementation of the March 7, 1995 IEP. Significant changes in Ryan U.'s IEP such as placement in a more restrictive setting as well as additions or deletions of goal areas can be implemented only after adequate prior notice has been provided to the parents as set forth in IAC 281-41-104. If the parents disagree with the proposed change(s), they may request an impartial

due process hearing.



Daniel J. Reschly, Ph.D.
Administrative Law Judge

8-30-95

Date