

APPENDIX

IOWA DEPARTMENT OF EDUCATION

(CITE 19 as D.o.E. App. DEC 329)

IN RE: CASEY M.

Albert City-Truesdale Community School)
 District and Arrowhead)
 Area Education Agency 5)
)
 Appellants)
)
 v.)
)
 Tracy and Nancy M.)
)
 Appellees)
)
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DECISION

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Admin. Doc. SE- 237

The above captioned matter was heard by Administrative Law Judge (ALJ) Carla A. Peterson on May 9, 2001 at the Arrowhead Area Education Agency 5 Administration Building in Storm Lake, Iowa. The hearing was held pursuant to Iowa Code 281 and the Iowa Administrative Rules of Special Education (281—41.117) and the applicable regulations found within the Individuals with Disabilities Act (IDEA).

The Appellants in this matter were the Albert City-Truesdale Community Schools and the Arrowhead Area Education Agency (AEA) 5. The following people attended the hearing on behalf of the Albert City-Truesdale Community School District: Francie Newgard, Principal; Beverly McGriff, Fourth Grade Teacher; Kelly Wolff, Title 1 Teacher; and Theresa Dahlstrom, Elementary Resource Teacher. The following people attended the hearing on behalf of the Arrowhead Area Education Agency 5: Sandy Schmitz, Director of Special Education; Lori Porsche, Regional Special Education Supervisor; and Kris Taphorn, Special Education Consultant. The Appellees in this matter did not attend the proceedings and were not represented. The hearing was an evidentiary hearing open to the public.

This hearing was conducted, with some reluctance, without the presence of Casey's parents. The ALJ ascertained that Tracy M. had signed a receipt (on file at the Iowa Department of Education) from a certified letter informing the parents of the date and time of the hearing. Representatives from the Albert City-Truesdale Community School District also stated that, during the preceding week, they had had informal conversations with the parents regarding the scheduled hearing.

Pursuant to a prehearing conference call, the scope of this hearing was limited to whether the ALJ should rule in favor of allowing the Albert City-Truesdale Community School District and the Arrowhead Area Education Agency 5 proceed with classifying Casey M., a fourth grader attending Albert City-Truesdale Community School District, as an individual entitled to and in need of special education services and provision of Level 1 special education programming.

I. Findings of Fact

The Administrative Law Judge (ALJ) finds that she and the State Board of Education have jurisdiction over the parties and the subject matter involved in this Appeal.

Educational History

Casey M. is a fourth grade student in the Albert City-Truesdale Community School District. Casey has attended school in the Albert City-Truesdale Community School District beginning during his preschool years. Educational records presented as evidence for this hearing indicate that over his years in school, Casey's attendance has been quite regular, his health has been good, and there have been few medical or physical concerns. The one exception to this was an early indication that Casey's hearing may have been a concern; however, Casey's parents arranged for prompt medical treatment, the hearing concern was resolved, and his hearing has been monitored consistently without further indication of problems. Records of Casey's educational progress and school participation presented for this hearing indicate that he has experienced considerable difficulty throughout his school years; the records also provide evidence that school personnel have shared these concerns with Casey's parents regularly, at least since his kindergarten year (1996-1997).

At the end of Casey's kindergarten year, retention was recommended. Educational records presented as evidence for this hearing indicate that listening, working independently, and limited progress in basic academic skills were all areas of concern regarding Casey's educational progress. Casey's parents refused to have Casey retained in kindergarten, and he was enrolled in first grade during the 1997-1998 school year. During first grade, limited progress in reading, math, and written language skills, as well as poor listening, direction following, and independent work skills were all noted to be areas of concern for Casey. This same pattern of limited progress in development of academic skills and classroom work habits continued during the 1998-1999 academic year when Casey was enrolled in second grade. Casey began receiving additional instruction as part of the Albert City-Truesdale Community School District's Title 1 program, and those services have been continued since that time. An individual evaluation of Casey's skills was conducted during spring, 1999. The report of that evaluation states that Casey was performing at the bottom of his second grade class in all areas, was making poor progress in the curriculum, and that poor attention to task and low self-confidence appeared to be contributing to his difficulties with learning. On the basis of this evaluation, special education services were recommended for Casey, but Tracy M. refused to give consent for Casey to receive special education services.

Casey was enrolled in third grade during the 1999-2000 academic year, where his educational records indicate continued slow progress. The Albert City-Truesdale Community

School District initiated a pre-appeal process in the spring of 2000, which resulted in a mediation session that was held during the summer of 2000. At that mediation conference, it was decided that Casey would be enrolled in fourth grade during the 2000-2001 academic year, that diagnostic evaluation would be completed to identify Casey's instructional level in reading, that individual interventions would be designed and implemented to facilitate Casey's educational progress, that Casey's parents and school personnel would exchange information relative to Casey's progress on a regular basis, that Casey's parents would be provided materials that would allow them to provide Casey with additional practice opportunities at home, and that another individual evaluation would be completed in March, 2001.

Casey was enrolled in fourth grade during the 2000-2001 academic year, and Francie Newgard, Principal for Albert City-Truesdale Community School District, testified that the plan developed during the summer, 2000 mediation conference had been implemented fully. Her testimony indicated that diagnostic testing identified Casey's instructional level for reading to be at the early first grade level in the fall of 2000. Ms. Newgard also indicated that Kelly Wolff, the Title 1 teacher, had provided the parents with materials appropriate for Casey's instructional level and that school personnel met with Casey's parents monthly with a few interruptions to scheduled meetings caused by bad weather. By November, 2000, Tracy and Nancy M. indicated frustration with the plans for them to provide Casey with additional home instruction as Casey had begun to resist working on these assignments. Beverly McGriff, fourth grade teacher, testified that despite modifications made for Casey in all subject areas (e.g., proximity control, shortening assignments, limiting distractors on tests), Casey scores at or near the bottom of his class in all subject areas. Beverly McGriff also testified that Casey shows frustration and exhibits inappropriate behaviors (e.g., withdrawing from participation in classroom activities, pounding his fist on his desk) when he is unable to complete assignments. Kelly Wolff, Title 1 teacher, testified that a 45-day, individualized reading intervention for Casey, at his instructional level, had resulted in good progress; thus, the conclusion was made that Casey would benefit from instruction specially designed to meet his needs. A comprehensive evaluation of Casey's skills was completed in March, 2001. Kris Taphorn, Special Education Consultant for AEA 5, summarized that evaluation indicating that Casey's test scores show his performance below grade level (from nine months in social studies to three years in written language) in all subject areas, Casey's grades are primarily in the D and F range, Casey has made slow progress despite implementation of individualized interventions, and analyses of Casey's work indicate that he scores in the lowest tenth percentile of his class. Francie Newgard provided a closing, stating that "...the district wants to provide the best educational opportunity available" for Casey.

Individual Evaluations and Procedural Safeguards

Educational records presented as evidence for this hearing indicate that personnel from the Albert City-Truesdale Community School District and the Arrowhead Area Education Agency 5 have been engaged in ongoing efforts to evaluate Casey's educational skills and needs, as well as efforts to design and implement appropriate educational services for Casey. These records indicate that appropriate parental consent was obtained prior to collection of individualized evaluation information, that evaluation results have been shared (both in written format and verbally) with Casey's parents, and that Tracy and Nancy M. have engaged with educational personnel in planning sessions on Casey's behalf.

The first record of a request for parental consent for a Full and Individual Evaluation that could be considered in subsequent discussions of special education services is dated February 4, 1999. A comprehensive individual evaluation of Casey's skills and needs was conducted during the spring of 1999 while Casey was enrolled in second grade. That evaluation indicated that Casey was (1) scoring in the low average range on assessment of cognitive skills; (2) demonstrating average development of speech and language skills; (3) demonstrating below average skills on academic assessments of reading, math, and written language; (4) making very slow progress in the curriculum despite individualized assistance in the classroom and through Title 1 services; and (5) demonstrating behaviors (e.g., inattention and withdrawal from activities) that were deemed to be interfering with his learning. Results of this evaluation were shared with Casey's father at a meeting on April 14, 1999. At that meeting, professional members of the multidisciplinary team determined that Casey was entitled to and in need of special education services. However, Tracy M. refused to give consent for special education services, and an Individualized Education Program (IEP) was not developed.

Educational records presented as evidence for this hearing and testimony at this hearing indicate that staff members from the Albert City-Truesdale Community School District reviewed Casey's slow educational progress with his parents in the spring of 2000 and again discussed the possibility of having Casey receive special education services, but the parents refused to give permission for any type of special education services. The Albert City-Truesdale Community School District initiated a pre-appeal process in the spring of 2000, which resulted in a mediation session held during the summer of 2000. The written plan resulting from that mediation conference called for several steps to facilitate Casey's progress including diagnostic evaluation of reading skills to ensure that Casey's appropriate instructional level would be known, design of individualized interventions by the Child Study Team for implementation in Casey's 4th grade and Title 1 classrooms, written monthly exchange of information between home and school, providing parents with additional materials for assisting Casey with reading, and an individualized evaluation to determine Casey's progress to be conducted in March, 2001. As stated above, all elements of the mediation agreement reached during summer, 2000, have been implemented, and the individualized evaluation of Casey's skills conducted in March, 2001 was completed pursuant to this agreement. That evaluation indicated that (1) Casey's test scores show his performance below grade level (from nine months in social studies to three years in written language) in all subject areas, (2) Casey's grades are primarily in the D and F range, (3) Casey has made slow progress despite implementation of individualized interventions, and (4) analyses of Casey's classroom work indicate that he scores in the lowest tenth percentile of his class.

Kris Taphorn and Francie Newgard met with Tracy M. to review these evaluation results on March 23, 2001. At that meeting, professional members of the multidisciplinary team recommended that Casey should be determined to be an individual entitled to and in need of special education services in the areas of reading and written language and that Level 1 special education services should be delivered via Casey's participation in resource room programming. Tracy M. signed a statement refusing to give consent for Casey to receive special education services, and an IEP detailing the special education services recommended for Casey has not been developed. Sandy Schmitz, Director of Special Education for Arrowhead Area Education Agency 5, filed a Request for a Due Process Hearing with the Iowa Department of Education on

March 26, 2001. That Request has resulted in the course of events leading up to and including this hearing.

II. Conclusions of Law

The issues to be decided in this matter are whether the Albert City-Truesdale Community School District and the Arrowhead Area Education Agency 5 should be allowed to declare Casey as an individual entitled to special education services and to proceed with delivering Level 1 special education services to Casey without the consent of Casey's parents.

Both the United States Individuals with Disabilities Education Act (IDEA) (C.F.R. 300, 1999) and the Iowa Administrative Rules of Special Education (IARSE) (Section 281, 2000) provide for development of an IEP and subsequent delivery of special education services under circumstances such as those presented here. Both documents establish a number of requirements regarding identification and evaluation of students suspected of meeting criteria for disability determination and need for special education services, as well as for IEP development. However, both documents also carefully outline procedures that must be used to encourage parental participation in all decision making processes, notify parents of intended actions, and ensure that the rights of the child and parents are safeguarded.

Efforts of the Albert City Community School District and the Arrowhead Area Education Agency 5 to involve Tracy and Nancy M. in the process of planning for Casey's educational services represent the first issue relevant to Casey's situation. The IARSE (281—41.102) state that informed parental consent must be obtained before the agency conducts an initial evaluation and before the initial provision of special education . . . to an eligible individual. Parental consent was obtained appropriately prior to the individualized evaluation conducted in spring, 1999, and Tracy and Nancy M. agreed to the individualized evaluation conducted in March, 2001, as part of the mediation agreement reached between themselves and the appellants during summer, 2000. Evidence presented at this hearing verify that parental consent for evaluation was obtained prior to evaluation being conducted.

Assessment procedures utilized to determine Casey's entitlement to special education services represent the second issue relevant to Casey's situation. The IARSE (281—41.49) state that the assessment procedures, tests, and other evaluation materials used in the identification process shall be consistent with the following:

- (1) Tests and other evaluation materials are provided and administered in the individual's native language have been validated for the specific purpose for which they are used, are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests, are technically sound and assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors (281 - 41.49 (1)).
- (2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient (281 - 41.49 (2)).

- (3) Tests and other evaluation materials are selected and administered so as not to be racially or culturally discriminatory (281 – 41.49 (3)).
- (4) The assessment tools and strategies provide relevant information that directly assists persons in determining the educational needs of the individual. A variety of assessment tools and strategies are used to gather relevant functional and developmental information about the individual . . . that may assist in determining whether the individual is an eligible individual and in determining the content of the IEP (281 – 41.49 (4)).
- (5) No single procedure is used as the sole criterion for determining whether the individual is an eligible individual and for determining an appropriate educational program for the individual (281 – 41.49 (5)).

Evidence presented at this hearing demonstrates that appropriate assessment tools and procedures were utilized, assessments were designed to gather information relevant for the decisions to be considered, and information from several sources was considered in making recommendations for Casey's programming needs and his entitlement to special education services.

Determining eligibility and need for special education services is the next issue relevant to Casey's situation. The IARSE (291—41.50) state that . . . the IEP team and other qualified professionals as appropriate shall determine whether the individual is an individual with a disability . . . and whether the educational interventions that the individual requires constitute the provision of special education . . . upon consideration of information from a variety of sources including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social and cultural background, and adaptive behavior, ensuring that the information obtained from all evaluation procedures and sources is documented and carefully considered, and ensuring that the decision considers least restrictive environment (281 – 50.1 (1)). In addition, a copy of the evaluation report and the documentation of determination of eligibility shall be provided to the parent (281 – 50.1 (2)).

Evidence presented at this hearing demonstrates that appropriate procedures were used to carefully consider assessment information and determine Casey's entitlement to special education services. Casey clearly meets criteria for classification as an individual eligible for special education services. Multiple and ongoing efforts to address Casey's educational needs without special education resources have been undertaken and consideration of Casey's slow progress within these arrangements was made in determining Casey's need for special education services.

At this point, the legal requirements regarding Casey's situation become less clear. Again, both the IDEA and the IARSE establish requirements regarding development of an IEP and making educational placement decisions. The IARSE (281—41.50) states that if a determination is made that a child has a disability and needs special education . . . an IEP must be developed for the child (281 – 50.1 (4)), and that in determining the educational placement of an eligible individual, each public agency shall ensure that the placement decision is made by a group of persons, including the parents and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. The placement decision shall be

made in conformity with the least restrictive environment provisions (281 – 50.1 (5)). An IEP for Casey, detailing the educational services and the placement option recommended has not been developed. Thus, it appears that the Albert City-Truesdale Community School District and the Arrowhead Area Education Agency 5 may have been premature in filing a Request for a Due Process Hearing claiming that Casey's parents have refused to provide consent for special education services since no specific services are prescribed as of yet.

The Albert City-Truesdale Community School District and the Arrowhead Area Education Agency 5 should proceed with scheduling a meeting for the purpose of developing an IEP and making a decision regarding Casey's placement. As with all special education matters, Casey's parents should be encouraged to participate in this meeting, as well as in subsequent meetings that may be scheduled to review Casey's educational progress and make decisions regarding his future educational services. The IDEA and IARSE detail procedures to be followed for development of an IEP (IARSE, Division VIII, 281—41.59 through 281—41.81), delivery of special education services (IARSE, Division IX, 281—41.82 through 281—41.98), and parent participation in the process of planning for special education services (IARSE, Division IX, 281—41.102 through 281—41.111). These procedures should be clearly followed as the parties move forward to design and implement special education services for Casey.

III. Decision

Casey M. clearly meets the criteria established for identification as an individual entitled to and in need of special education services. The multidisciplinary team recommendation to classify him as such and presented to Tracy M. at the March 23, 2001 staffing conference is approved and can be used to move forward in the process of providing Casey with special education services. In addition, the Albert City-Truesdale Community School District and the Arrowhead Area Education Agency 5 have used appropriate procedures to involve Nancy and Tracy M. in planning for Casey's educational services, evaluate Casey M.'s educational progress, and determine that he is an individual entitled to and in need of special education services.

The appellants have prevailed on the issue of whether or not they can classify Casey M. as a child entitled to and in need of special education services. While this appears to be the primary issue to be resolved in this case, the Albert City-Truesdale Community School District and the Arrowhead Area Education Agency 5 should proceed with scheduling a meeting to (1) develop an IEP for Casey and (2) make a decision regarding his educational placement. In proceeding as described, the Albert City-Truesdale Community School District and the Arrowhead Area Education Agency 5 should, of course, carefully adhere to all procedural and substantive regulations for carrying out these steps as detailed in the IDEA and the IARSE.

Any party wishing to seek judicial review of this decision may file a petition in an appropriate state or federal district court within the time permitted by law after the issuance of this decision. See Iowa Code Section 17A.19(3) and 281—41.124(2) Iowa Administrative Code, and 20 U.S.C. §1415 (i) and C.F.R. 300.512 for details.

Carla A. Peterson

Carla A. Peterson, Ph.D.
Administrative Law Judge

May 21, 2001
Date