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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF WYOMING**

ANNA MARIA WESTON, by her )  
guardian Barbra Weston, )  
et al., )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
WYOMING STATE TRAINING )  
SCHOOL, et al., )  
 )  
Defendants. )

CIVIL ACTION NO. C90-0004

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PETITION FOR JUDICIAL REVIEW

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Sara Kawulok, as a member of the class designated in Anna Maria Weston, by her guardian Barbra Weston, et al. v. WSTS, et al., (hereinafter Weston, et al. v WSTS, et al.) by and through the attorneys appointed to represent the class, and Protection & Advocacy System, Inc. (hereinafter referred to as "P&A") by and through its attorneys, ("Complainants") hereby petition the United States District Court, for the District of Wyoming for judicial review of the Findings of Fact, Conclusions of Law and Decision

entered on September 1, 1992, by the Wyoming Departments of Education and Health following a contested case proceeding before the Administrative Hearing Officer. Sara Kawulok and P&A seek review pursuant to 20 U.S.C. §1415(e) and Rule 12, Wyoming Rules of Appellate Procedure and as provided by the Consent Decree entered by this Court in Weston, et al., v. WSTS, et al.,

In support of its Petition, Sara Kawulok and P&A state as follows:

1. This Court has jurisdiction over this judicial review in that this action is based upon 28 U.S.C. §1415(e)(4)(A). This action is also brought pursuant to this Court's continuing jurisdiction in the matter of Weston, et al., v. WSTS, et al.

2. Administrative remedies have been exhausted. A final decision in the administrative remedy was rendered on September 1, 1992, by Jeffrey Schalow the appointed Administrative Hearing Officer. A true and correct copy of this decision is attached and marked as Exhibit "A" and is incorporated herein by reference.

3. The Compliance Advisory Board (CAB) established by the Consent Decree in Weston, et al., v. WSTS, et al., rendered their final decision on September 22, 1992. A true and correct copy of this decision is attached and marked as Exhibit "B" and is incorporated herein by reference.

4. Venue for this judicial review is in this Court for the following reasons:

a. The final decision entered by the Wyoming Departments of Education and Health requires Sara Kawulok to be placed in a residential educational facility in Thermopolis, Wyoming.

b. Sara Kawulok resides in Fremont County, Wyoming. Sara is a child with a disability within the meaning of 20 U.S.C. §1400 et seq., as amended.

c. Sara Kawulok is a class member whose placement is a matter within the jurisdiction of this Court.

d. Sara's parents, Robert and Debra Kawulok reside in Sheridan County, Wyoming. All other Respondents are entities of the State of Wyoming.

5. Petitioners are entitled to relief on the following grounds:

a. The Departments of Education and Health committed an error of law in not allowing the attorneys for the class designated in Weston, et al., v. WSTS, et al., to intervene and provide representation for Sara Kawulok as a class member in said class until the morning of the hearing held on July 23, 1992.

b. Complainants were not allowed to call witnesses or present evidence on their behalf until the morning of the hearing.

c. Complainants were not allowed a continuance in order to prepare said case.

d. The Departments' determination that Sara Kawulok's transition to a home care setting would be an extremely difficult and health threatening change is not supported by competent, material and substantial evidence in the entire record.

e. The Departments' determination that Sara's health deteriorates during visit to her parents home is not supported by competent, material and substantial evidence in the entire record.

f. The Departments' determination that Sara would suffer emotionally or psychologically from placement in Sheridan is not supported by competent, material and substantial evidence in the entire record.

g. The Departments' determination that placement of Sara in a specialized home care situation would adversely affect her health and welfare is not supported by competent, material and substantial evidence in the entire record.

h. The Departments' conclusion that Sara Kawulok's least restrictive educational and most normalized residential placement is at the Big Horn Basin Children's Center (BHBCC) in Thermopolis, Wyoming is not supported by competent, material and substantial evidence in the entire record.

i. The Administrative Hearing Officer did not have before it evidence presented by competent professional judgment as required to determine the appropriate educational and residential placement.

j. The Departments acted arbitrarily and capriciously and upon unlawful procedure in basing its opinion upon inadequate and unsupportive evidence entered at hearing.

k. The Departments acted arbitrarily and capriciously and upon unlawful procedure in not presenting professional judgment of home care services at hearing as required by this Court's Consent Decree entered in Weston, et al., v. WSTS, et al.,

l. The Departments' determination that Sara Kawulok's transition from the WSTS is not a case or dispute arising under the Consent Decree in Weston, et al., v. WSTS, et al., is arbitrary and capricious and in noncompliance of their obligations ordered by this Court in the Consent Decree entered into in Weston, et al., v. WSTS, et al.

6. The Complainant, Sara Kawulok's substantial rights have been prejudiced by the Departments of Education and Health's findings, inferences, conclusions and decisions which are in excess of the Departments' statutory authority and jurisdiction; are in conflict with the Consent Decree entered in Weston, et al., v. WSTS, et al.,; made upon unlawful procedure; affected by other

errors of law; unsupported by competent, material and substantial evidence in the entire record; and arbitrary and capricious.


Wherefore, Complainants request this Court to review the entire record in this case, to review additional evidence in this matter, and to enter its Order reversing and setting aside the Findings of Fact, Conclusions of Law and Decision, entered by the Departments of Education and Health in this case.

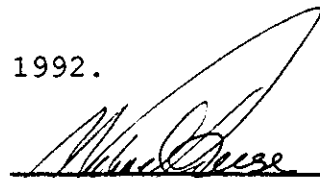
DESIGNATION OF RECORD

Complainants hereby designate the entire record prepared by the Departments of Education and Health, including the transcript and all exhibits of the contested case hearing conducted July 23 & 24, 1992, before the Administrative Hearing Officer.

Counsel for Complainants certifies that they will make satisfactory arrangements for the preparation of a transcript of the proceedings designated above.

DATED this 30 day of September 1992.

  
\_\_\_\_\_  
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\_\_\_\_\_  
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CERTIFICATE OF SERVICE

I, Danny S. Wilde, hereby certify that the above and foregoing Petition For Judicial Review was served by placing a true and correct copy thereof in the U.S. mail, postage prepaid, this 30 day of September 1992, addressed as follows:

Mr. Fred R. Dollison  
Attorney for Sheridan County School District No. 2  
P. O. Box 1058  
Sheridan, WY 82801

Mr. Michael K. Davis  
Attorney for Petitioner  
P. O. Box 6288  
Sheridan, WY 82801

Ms. Shirley Kingston  
State Senior Assistant Attorney General  
123 Capitol Building  
Cheyenne, WY 82002

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State Senior Assistant Attorney General  
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STATE OF WYOMING  
DEPARTMENTS OF EDUCATION AND HEALTH

In Re Sara Kawulok

)  
) Jeffrey A. Schalow  
) Hearing Officer

)  
)  
) Administrative Hearing  
)  
)  
)  
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FINDINGS OF FACT, CONCLUSION OF LAW AND DECISION

THIS MATTER came on for hearing upon the written request of the Petitioners, Robert and Debra Kawulok, directed to the Department of Health and the Department of Education, contesting a determination that their daughter, Sara Kawulok, a resident of the Wyoming State Training School, should be placed in the Sheridan community to be educated in a public school and to live in a specialized home care setting. The hearings before the Department of Health and the Department of Education were consolidated into a single action due to the closely related nature of the issues involved. The hearing was held on July 23 and 24, 1992, in Sheridan, Wyoming. The parties involved were the petitioners, represented by Michael K. Davis; Sara Kawulok, represented by Danny S. Wilde; Sheridan County School District No. 2, represented by Fred R. Dollison; and the State of Wyoming Department of Health, represented by Shirley Kingston. The hearing was conducted by Jeffrey A. Schalow, Hearing Officer. Having heard and considered the evidence and testimony presented at the hearing the Hearing Officer hereby enters the following findings, conclusions, and decision.

FINDINGS OF FACT

1. Sara Kawulok was born on October 14, 1985. She is the child of Robert and Debra Kawulok of Sheridan, Wyoming. The Kawuloks have two other children Eric, 9, and Rachel, 5.
2. Shortly before birth, it was discovered that Sara had a myelomeningocele with resulting hydrocephalus (these terms are defined below). Her mother delivered her at St. Luke's Hospital in Denver, Colorado, Sara was immediately transferred to Denver Children's Hospital, she was given less than a five percent (5%) chance of living and sent home with her parents to die.

EXHIBIT

A



3. A myelomeningocele is a hernial, sac-like protrusion of the spinal cord related to a condition commonly called spina bifida. State simply, Sara lacks a number of the vertebrae of her spine, causing the spinal cord to be unprotected by other than a flap of tissue. At this time, the myelomeningocele is approximately six to eight inches in length, four inches in width and protrudes two to three inches. It is located in the area of Sara's lower thoracic and upper lumbar spine.

4. Virtually all of Sara's physical problems relate to the myelomeningocele.

5. The current medical problems caused by or related to the myelomeningocele are as follows:

- a. Hydrocephalus: Sara Kawulok's head is approximately 78 centimeters in circumference, compared to a normal adult head size of about 52 centimeters. The size of her head is caused by the accumulation of spinal fluid. Her head must be supported at all times. Her neck is incapable of doing so.
- b. Infection: Sara is at serious risk for infection in the form of meningitis. The myelomeningocele oozes spinal fluid intermittently. Meningitis is a potentially life-threatening infection of the spinal cord's meninges.
- c. Paralysis: Sara has no voluntary movement of her lower extremities and no bowel or bladder control. She must wear diapers. It is unlikely that long-term cathertization would be an option for Sara.
- d. Atrophy: Sara's right upper extremity is atrophied and practically useless.
- e. Kidney function: Sara's bladder does not function properly, which causes fluids to accumulate in the kidney causing damage to them. As a result, Sara has chronic kidney disease. It is likely that the kidney disease will ultimately result in her death. Sara is not an appropriate candidate for either dialysis or kidney transplant.
- f. Dislocated joints: Sara's right shoulder and hip are dislocated. They are characterized by crepitus, which may be painful to her.

- g. Vision: Sara has a nystagmus condition, resulting in vision problems.
- h. Seizures: Sara suffers from grand mal seizures which are infrequent, but difficult to control. The "fourth line defense" (powerful) drug, Paraldehyde, has been used on at least one occasion to control a difficult seizure.
- i. Developmental delay: Sara's communication and socialization skills are at the upper limits of the moderate retardation range (IQ 40 - 55) while her daily living and motor skills are at the profound retardation range (IQ below 25). Generally she functions on about the level of a two year old.

6. Sara is totally dependent upon others for her basic needs and is always likely to be so. She cannot, and probably never will be able to, walk, stand, or position herself. She is constantly at risk for damage to the myelomeningocele if not properly positioned or handled. She has limited ability to feed herself. She cannot dress, bathe, or tend to personal hygiene by herself. In short, Sara requires constant and extensive care.

7. Because of Sara's extremely large head size, the large protruding myelomeningocele, and the presence of unstable joints, Sara requires two people to lift and transfer her. Every time she is moved there is the risk of rupturing or damaging her myelomeningocele, of dislocating her joints, and of damaging her neck or spine (with the attendant risk of paralysis). The risks will increase as Sara grows older and larger.

8. It is in Sara's best interest that transfers (i.e. from bed to wheelchair, wheelchair to floor, etc) be minimized.

9. Sara has basically lived in the Health Care Center (a hospital-like setting) at the Wyoming State Training School since the time she was two years old. An abrupt change to a completely deinstitutionalized home care setting would be an extremely difficult and health threatening change for Sara. During visits home to Sheridan (for extended stays of up to three weeks) Sara enjoyed the benefit and care of two registered nurses-- her mother and grandmother. She received excellent care and loving attention.

10. Nonetheless, such extended stays in a home setting were fatiguing and her general health suffered. When she returned to Lander, she was in poor health and required several days to recover. Her seizures are more frequent at home.

11. Sara's health deteriorates when placed in a home setting even with trained and experienced nursing care available.

12. Sara's combination of physical and mental disabilities are apparently unique in Wyoming among school age children. No other client being discharged from the training school and considered for community placement in a home setting has spina bifida.

13. Sara would benefit educationally from placement outside of the training school in a less restrictive environment permitting her greater interaction with less severely disabled and/or normal children; particularly, where she would have the opportunity to interact verbally.

14. Placement of Sara at home with her family at this time is not possible.

15. Sara would suffer emotionally and psychologically by placement in Sheridan, outside her home. She would soon realize she was in her hometown, but not at home. Relationships among Sara's family members would be strained and damaged by such a placement.

16. Given the age of Sara's siblings it is not likely that the tensions, frustrations, and problems created by her placement in Sheridan outside her home would be outweighed by the advantages of closer proximity (such as more frequent and convenient visits). If Sara is capable of realizing she is in Sheridan and not at home, then she will readily pick up on the strain this has created for her family and may blame herself for causing the problem.

17. There is no question that Sara's parents are deeply concerned with her welfare. They have been involved in her life as fully as possible. Their concerns are justified and not self serving.

18. The school district is ready, willing and able to provide an education for Sara. The school district has a dedicated, well educated and experienced staff who seem sincerely interested in welcoming Sara into the system and in meeting the challenge of her education.

19. The school district could adequately meet Sara's health care needs during a limited school day. The school district could provide adequate transportation to and from school.

20. It appears likely that sufficient resources are available in the Sheridan area and that the Department of Health probably could develop specialized home care placements for clients in Sheridan. Though they have not done so for Sara, they are confident they could.

21. Regardless of whether or not a residential placement could be developed in Sheridan for Sara, a placement in a specialized home care facility is not in Sara's best interest at this time. It would adversely affect her health and welfare. It is not appropriate.

22. Placement in a specialized home care situation in another community is not appropriate. Such a placement, regardless of where it occurs, is inappropriate for Sara.

23. Sara's health needs at this time require a more controlled and restricted environment than a specialized home care placement could provide. Her health would be compromised by a home care placement.

24. Sara should be removed from the training school and placed in a less restrictive institutional type setting. She requires a level of health care and protection at this time somewhere between that provided by living in a hospital setting and living in a home setting.

25. The only alternative to remaining at the training school or being placed in Sheridan that was developed at the hearing is placement in a BOCES facility.

26. BOCES facilities are operated by consortiums of Wyoming school districts. There are presently three of them located in the cities of Gillette, Jackson and Thermopolis. Sheridan School District No. 2, Sara's home district, is a participant in the Northeast Wyoming BOCES located in Gillette.

27. BOCES facilities provide both educational and residential care for children whose developmental disabilities and health needs require that they be cared for outside their home community.

28. The petitioner's expressed a preference for the BOCES facility in Thermopolis based upon the availability there of more advanced computer technology. Such technology would be of benefit to Sara.

29. There appears to be nothing prohibiting or unduly complicating the placement of a child in a BOCES facility other than the one supported by the child's home school district.

30. The BOCES facility in Thermopolis is the Big Horn Basin Children's Center (BHBCC).

31. BHBCC is located across the street from the hospital in Thermopolis. There is a day care center serving normal children on campus.

32. Sara would have the opportunity to interact with less severely disabled and normal children at BHBCC. Emergency health care needs could be readily met. Lifting and transferring Sara to attend school and social functions could be minimized.

33. Though she has not been formally evaluated or considered for admission, BHBCC appears to be capable of providing for Sara's health care and educational needs at an appropriate level and they are apparently willing to take her.

34. Sara should be discharged from the Wyoming State Training School in Lander and sent to a BOCES facility, preferably BHBCC if placement there can be arranged.

#### CONCLUSIONS OF LAW

1. The Hearing Officer has jurisdiction in this matter by virtue of the Rules and Regulations of the Departments of Health and Education, the Wyoming Administrative Procedures Act, the Education of the Handicapped Act, and by stipulation of the parties hereto.

2. The proposed rules of the Department of Health governing the procedures to be followed in contested cases are substantially similar to those of the Department of Education. It was appropriate to utilize them as if adopted, there being no objection from any of the parties.

3. Hearings before the Departments of Health and Education were properly joined. There were no objections to the joinder from any of the parties.

4. The standard of proof properly utilized in this matter is proof by a preponderance of the evidence.

5. The Hearing Officer properly took judicial notice of the Consent Decree in Weston V. Wyoming State Training School, C90-0004 (D. Wyo. 1991). However, the Hearing Officer was not appointed a hearing officer under that decree and this matter was not a contested case or dispute arising under that decree.

6. Placement in a public school in Sheridan would not be the most appropriate and least restrictive educational environment for Sara in light of the fact that her health care needs outside of school cannot be adequately provided for in a specialized home care setting that would allow her to attend a public school in Sheridan.

7. Though a specialized home care placement in Sheridan would undoubtedly be a more normalized living arrangement than placement in a BOCES institutional setting, it is not appropriate. The law does not require placement in the very least restrictive environment possible if that environment would have a negative impact on the individual's health and welfare.

8. Placement of Sara in a BOCES facility is the least restrictive educational and most normalized residential placement available and appropriate to meet her particular needs at this time.

9. BHBC in Thermopolis was shown by a preponderance of the evidence to be somewhat better equipped to meet Sara's needs than the Gillette BOCES facility. Placement there should properly be pursued if there are no undue restraints or burdens created by placement outside the district supported facility.

10. Sara's placement should be reviewed and reconsidered regularly. It is desirable that she be placed in Sheridan in a home care setting if and when her needs change and such a placement becomes appropriate for her.

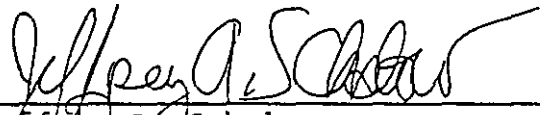
11. The Department of Health was correct in not trying to fully develop a specialized home care placement. Proving the ability to create a placement and establishing the likelihood that a placement could be developed was sufficient and proper given the circumstances of this case.

12. This decision is binding unless appealed. Any party feeling aggrieved by this decision may file an appropriate appeal in a court with proper jurisdiction.

DECISION

Sara should be discharged from the Wyoming State Training School and transferred to a BOCES facility, preferably the Big Horn Basin Children's Center in Thermopolis, Wyoming. Sara is to remain in Lander until her placement in a BOCES facility is properly arranged and developed.

DATED this 1st day of September, 1992.

  
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Jeffrey A. Schalow  
Hearing Officer

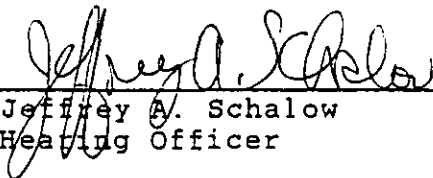




Conclusion No. 8 is amended to read:

Placement of Sara in a BOCES facility is the most normalized residential placement available and appropriate to meet her particular health care needs at this time. As a practical matter it would be appropriate for Sara to be educated at the same facility since placement in the least restrictive educational environment, her home school district, is not possible.

DATED this 23<sup>rd</sup> day of September 1992.

  
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Jeffrey A. Schalow  
Hearing Officer

COMPLIANCE ADVISORY BOARD

ANNA MARIA WESTON, by her	)	
guardian, Barbra Weston,	)	
et al.,	)	
	)	
Plaintiffs,	)	CAB RESPONSE RE:
	)	REQUEST FOR REVIEW
	)	OF SARA KAWULOK
	)	DECISION
vs.	)	
	)	
WYOMING STATE TRAINING	)	CIVIL ACTION NO.  C90-0004
SCHOOL, et al.,	)	
	)	
Defendants.	)	

On September 1, 1992, Hearing Officer Jeffrey A. Schalow entered a Decision regarding the challenged placement of Sara Kawulok. On or about September 14, 1992, Protection and Advocacy System, Inc. requested that CAB review the Hearing Officer's Decision. The state responded on September 17, 1992; the parents of Sara responded on September 21, 1992.

The CAB hereby finds that:

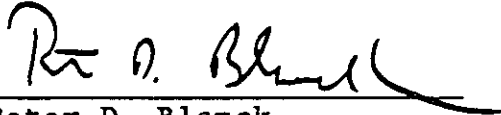
1. Sara Kawulok is a class member pursuant to Weston v. WSTS, Civil Action No. C90-0004, U.S. District Court, District of Wyoming. As a class member Sara Kawulok is entitled to the rights and protections set forth in the Consent Decree in the above-referenced case.

2. In accordance with prior interpretations of the Consent Decree, the proper avenue for review of this matter under Section 8.08(b) of the Consent Decree is through the appeal process available under the Individuals with Disabilities Education Act, 20 U.S.C. § 1415, rather than review by the CAB under Section 8.07 of the Consent Decree. Therefore, this matter is referred back to the

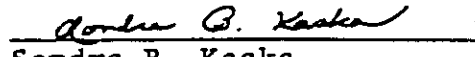
**EXHIBIT**  
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parties for further action in accordance with such determination.

Dated this 22nd day of September, 1992.



Peter D. Blanck



Sondra B. Kaska

COMPLIANCE ADVISORY BOARD

copy to: Shirley Kingston  
Michael Reese  
Danny Wilde  
Michael K. Davis