

**DUE PROCESS HEARING PANEL  
MISSOURI STATE BOARD OF EDUCATION  
DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION**

,	)
by her parent,	)
,	)
	)
Complainants,	)
	)
vs.	)
	)
COLUMBIA 93	)
SCHOOL DISTRICT,	)
	)
Respondent.	)

**DECISION**

This is the final decision of the hearing panel in an impartial due process hearing pursuant to the IDEA, 20 U.S.C. §1415(f) (1997), and Missouri law, §162.961.3 RSMo.

**THE PARTIES**

The Student is

Her mother is:

The Respondent is:  
COLUMBIA 93 SCHOOL DISTRICT

The school district was represented by:  
Cathy J. Dean  
Polsinelli Shalton & Welte  
A Professional Corporation  
700 West 47<sup>th</sup> Street, Suite 1000  
Kansas City, MO 64112

## **HEARING OFFICERS**

Kenneth M. Chackes	Hearing Chairperson
Pamela Grindstaff	Hearing Panel Member selected by parents
George Wilson	Hearing Panel Member selected by school district

## **RELEVANT DATES**

Request for due process hearing: October 27, 2000

Dates of hearing: April 24-28, 2001

Date of Decision: September 19, 2001

### **Explanation of deviation from 45 day time-line:**

The Parent submitted a request for a due process hearing which was received by the Missouri Department of Elementary and Secondary Education (DESE) on October 27, 2000. Thus, the deadline for hearing the case and completing and mailing a written decision was December 11, 2000, 45 days from the date DESE received the request. Both parties agreed, orally and in writing, on the need for additional time to complete the hearing and decision. On January 4, 2001, the parent submitted a written request for an extension of the time line to February 20, 2001, and for hearing dates of February 7, 8 and 9, 2001. The school district agreed with those dates. As shown by the Order entered January 23, 2001, the Chairperson granted the parent=s request for an extension to February 20, 2001, for the deadline for completing and mailing the decision, and scheduled the hearing to begin on February 7, 2001.

On January 29, 2001, however, the parties and the Chair learned that the panel member selected by the parent would not be available for the scheduled hearing, due to illness. By agreement of the parties, the hearing was postponed. Based upon subsequent communications the parent requested and the district agreed to schedule the hearing for April 3-6, with the deadline for the decision April 20, 2001. We learned, however, that the panel member selected by the district was unavailable for those hearing dates. Based upon further communications it was determined that both parties and the hearing officers were available for a hearing on April 24-27, and the parties indicated their agreement to those dates. The district also indicated its agreement to extend the time for a decision to April 30, 2001.

The Parent moved at the start of the hearing on April 24, 2001, to extend the deadline for completion and mailing the decision until May 4, 2001. With the school district=s consent, the hearing Chair granted that motion. On May 2, 2001, however, the father of the hearing Chair died and the panel was unable to complete the decision by May 4, 2001. DESE contacted the parties and they agreed to allow the panel until May 18, 2001, to complete and mail the decision. Then on May 16, 2001, the panel informed the parties that one of the panel members had not received a copy of the school district=s post-hearing submission. The parties mutually agreed to a new deadline of May 25, 2001, which was approved by the entire panel.

## **STATEMENT OF ISSUES**

**Was the current reevaluation of the Student completed in compliance with regulatory guidelines?**

**Was the addition of the MR diagnosis by the District necessary in order for the Student to continue to receive services?**

**Did the District appropriately identify the Student=s preferences and interests related to her transition needs?**

**Did the IEPs prepared for the Student since September 1998 contain the required transition provisions?**

**Did the District provide progress reports to the Parent in accordance with IDEA requirements?**

**Did the District fail to include participants required by the IDEA in the Student=s IEP meetings?**

**Did the District provide the Parent with required notices for actions refused?**

**Did the District appropriately implement the transition provisions contained in the Student=s IEPs since September 1998?**

## **FINDINGS OF FACT**

1. The Student was born on . In the Fall of 1987, the Student was diagnosed with Quadruple X Syndrome. Ex. B 48. According to the diagnosis of Dr. Judith Miles of the University of Missouri-Columbia Hospital and Clinics, A[t]his uncommon chromosomal abnormality results in variable phenotypic expression . . . there is typically some degree of mental deficiency, and language delay is typically more severe than cognitive delay.≡ Ex. B 48. Dr. Pasquale Accordo, in an affidavit provided by the Parent, explains that children with this syndrome have two extra X chromosomes, and A[a]s the number of X chromosomes increases, so does the likelihood of physical and mental disorders X such as short stature, motor problems, speech and language disorders, and the possibility of mental retardation.≡ Ex. AM 254.

2. The Parent submitted the request for this due process hearing on October 25, 2000. The issues raised by the Parent generally involve the District=s evaluation of the Student and the provision of transition services. As the applicable statute of limitations is two years, the panel will only briefly summarize the Student=s education leading up to the two-year period at issue, starting on October 25, 1998.

3. During 6<sup>th</sup> grade (the 1995-96 school year) the Student was home schooled and received special education and/or related services from the Columbia Public Schools at Parkade Elementary. For 7<sup>th</sup> and 8<sup>th</sup> grades (1996-97 and 1997-98), she continued to be home schooled and also received services for her disability from Columbia at Oakland Junior High School. In 9<sup>th</sup> grade (1998-99) the Student attended Oakland Junior High on a full-time basis. For 10<sup>th</sup> and 11<sup>th</sup> grades (1999-2000 and 2000-01), she has been enrolled in Columbia=s Rock Bridge High School. Ex. A 1.

4. The District completed a reevaluation of the Student on September 18, 1996 and changed her diagnosis from health impaired to speech language disordered. Ex. D 460.

5. In May 1997, the Parent requested and the District completed a reevaluation of the Student's speech and language abilities. Ex. B 77-86. The reevaluation was completed on May 27, 1997, and the results were added as an addendum to the September 18, 1996 evaluation. Ex. B 80A.

**Spring of 1998 - 8<sup>th</sup> Grade School Year - Age 14-15**

6. In April 1998 the Parent and the District agreed that the District would evaluate the Student to assist in vocational and transitional planning for the Student. Ex. D 487-88. The District indicated this assessment would obtain information the IEP team can utilize in helping [the Student] with career planning. Ex. I 1073. The District also indicated it needed a formal assessment to determine the Student's occupational interests and aptitudes. Ex. D 487, 489. A diagnostic staffing was scheduled for May of 1998. Ex. D 488. On the Student reached the age of 15.<sup>1</sup>

7. The District performed the agreed-upon Vocational Assessment of the Student at its Career Center on May 11, 13 and 20, 1998. Ex. D 489. Eight assessment instruments were used to determine the Student's preferences and interests. Ex. D 489-94. The Student expressed

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<sup>1</sup> The 1997 IDEA Amendment requiring transition planning activities at age 14 went into effect in July 1998, during the summer after the Student's 15<sup>th</sup> birthday and between her 8<sup>th</sup> and 9<sup>th</sup> grade school years. When the District scheduled the vocational assessment it was about to be obligated to include in the Student's IEP, beginning at age 14, and updated annually, a statement of the transition service needs of the child under the applicable components of the child's IEP that focuses on the child's courses of study (such as participation in advanced-placement courses or a vocational education program). 20 U.S.C. §1414(d)(1)(A)(vii)(I). Prior to July 1998, the IDEA's transition requirements applied only to

occupational interests in helping people, providing animal care, working with children or in a library. Ex. D. 490. On a more formal assessment instrument, the Student exhibited the same interests. *Id.* In the ASuggestions section of the assessment, the Career Center identified several of the Student=s weaknesses and ways to address them. Ex. D 493-94. The assessment indicated:

- the Student had Alimited knowledge of occupations, work expectations, training options and job duties, so Ashe should continue to participate in career exploration activities such as Ajob shadowing . . . in a variety of settings.

- for further job exploration, Ashe should continue to perform work-related tasks at school.

- to Abest acquire job skills the Student should be provided:

on-the-job training situations. Such training would need to provide close supervision, such as a job coach to ensure that she is able to accurately and consistently perform the work tasks. A combination of instructional methods (oral, demonstrated, modeled) should be utilized in teaching [the Student] the steps to perform. Prior to involvement in such training, she should participate in career exploration activities, as mentioned above.

- A[t]o prepare her for future job seeking activities the Student should review job seeking skills, such as identifying leads, completing applications, and preparing for and participating in interviews.

The assessment also recommended to continue to address the Student=s communication and social interaction skills, provide instruction in basic math, increase Ahome chore responsibilities, and Aimprove her general work rate and quality of work. Ex. D 493-94.

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students who had reached the age of 16.

8. Since receiving the vocational assessment report, in the Fall of 1998, the Parent has been seeking from the District on-the-job training services for the Student, including and especially the services of a job coach. Testimony of Parent. The Parent testified that when she uses the term Ajob coach≡ she is not using it in any narrow sense but meaning generally a person to provide the Student with assistance in a job experience. *Id.*

9. On May 1, 1998, the Parent requested an IEP meeting. on May 27, 1998. Notice of the IEP conference was sent to the Parent on May 19, 1998, and the conference was held on May 27, 1998. Ex. D 495-519. Ex. D 517.

10. The results of the Career Center Vocational Assessment were not included in the May 27, 1998 IEP. Although the last portion of the vocational assessment was completed on May 20, 1998, the assessment report was not completed until September 1998, and, although the evaluator, Rebecca Allen, was invited, she did not attend the May 27, 1998 IEP meeting. Ex. I 1078; Ex. D 495. The IEP indicated: AThis month, a Vocational Assessment through the Columbia Career Center was completed and the results should be know (sic) soon.≡ Ex. D 501. The IEP does have a page identified as ATransition Present Level of Performance,≡ and a ATransitional Skills≡ section of the Speech-Language present level, but those portions of the IEP do not contain the information obtained in the vocational assessment. Ex. D 499, 501.

11. The Student=s casemanager, Denise Lasley, testified the vocational assessment was received in the Fall 1998 and was never reviewed by the IEP team. Testimony of Denise Lasley. The Parent and Renee Carter, who attended IEP meetings from Boone County Group Homes, also testified that the vocational assessment was never reviewed at an IEP meeting. Testimony of Parent; testimony of Renee Carter.

12. The Student's May 27, 1998 IEP contains a transition goal, that she will develop transitional skills, and three short term objectives in the areas of writing with a computer, serving as an office runner at school, and serving as a student assistant in the Media Center. Ex. D 512. The IEP also contains a goal providing the Student will maintain learned computer skills as demonstrated by successful completion of the EMC Keyboarding lessons. Ex. D 513.

13. Another meeting of the IEP team was held on June 2, 1998, to establish minutes for 98-99 school year, to discuss ESY [extended school year] and transportation for 98-99 school year. Ex. I 1076. There is no indication that transition needs or services were discussed at that meeting.

#### **1998-99 School Year - 9<sup>th</sup> Grade - Age 15-16**

14. On September 2, 1998 the report was prepared of the Vocational Assessment conducted for the Student at the Career Center. Ex. D 489.

15. The District sent the Student's First Quarter Progress Reports on October 30, 1998. Ex. I 1076.

16. Another IEP meeting was conducted on November 17, 1998. Ex. D 641-664. Although the Student's IEP had a keyboarding goal as of May 27, 1998, time for keyboarding instruction was added to the Student's schedule on November 17, to begin on November 18, 1998. Ex. D 495, 642 (compare the cover sheets from the IEP meetings of May 27 and November 17, 1998); Ex. D 660 (the page relating to the keyboarding goal); Testimony of Denise Lasley. No additional information was added or modifications made regarding the Student's transition needs or services at the November 1998 IEP meeting. The present level of performance section of the November 17, 1998 IEP is a copy from the May 27, 1998 IEP. Ex. D 497-502, 644-49. Nothing was added to the

Student=s IEP from the Vocational Assessment that had been conducted in May 1998 and for which the report was completed in September 1998.

17. The District sent the Student=s Second Quarter Progress Report on January 20, 1999. Ex. AM 481-86.

18. During the 1998-99 school year the District worked on providing the Student with exposure to jobs in her expressed areas of interest and trying to provide the services of a job coach. A January 1999 memo indicates the Student=s speech-language specialist was attempting to find a job for the Student at a veterinary clinic, a pet grooming business or a pet store, and was working on finding a job coach. Ex. AM 93. The following month the same teacher indicated she found the Student an apprenticeship opportunity at a grooming business, and asked the Parent about coordinating the services of a job coach. Ex. D 533. The teacher stated in a letter to the Easter Seal Society that Aa job coach is needed≡ for this apprenticeship. Ex. AM 94. The teacher arranged transportation for the Student to take advantage of this opportunity beginning April 13, 1999. Ex. D 534. There is no evidence that a job coach was provided.

19. On March 19, 1999, the District sent the Parent a notice of an IEP meeting, for April 14, 1999, to consider the need for a re-evaluation. Ex. I 1071.

20. In preparation for the Student=s reevaluation, the Student failed her hearing screening and the evaluation was postponed. Ex. AM 131; Testimony of Lasley. The Parent reported that the Student had an ear infection. Testimony of the Parent. In her testimony, the Parent admitted that she did not want the Student evaluated when her hearing was impaired because it would alter the test results.

21. The District sent the Student=s Third Quarter Written Progress Report on April 6, 1999. Ex. AM 487-89, 575.

22. On the Student reached the age of 16 years.

23. The Student=s hearing screening was satisfactory to continue with testing on May 14, 1999. Ex. AM 131. On May 21, the District continued with the Student=s evaluation by conducting an Expressive Vocabulary Test, Oral and Written Language Skills and the Peabody Picture Vocabulary Test. Ex. B 116-22.

24. On May 25, 1999, during the course of the reevaluation, the Parent received a notice of IEP conference to review the Student=s IEP goals and to discuss the Student=s transition from Oakland Junior High School to Rock Bridge High School. Ex. I 1075, 1077; Ex. AM 123. At the May 25, 1999 IEP meeting, although the last full IEP for the Student was developed on May 27, 1998, the Team determined that a new IEP would be developed once the reevaluation, which was currently in progress, was complete. Ex. AM 123.

25. The District sent the Student=s Fourth Quarter Progress Report on June 2, 1999. Ex. AM 495-505.

#### **1999-2000 School Year - 10<sup>th</sup> Grade - Age 16-17**

26. The District=s 1999 summer break was from June 3 to August 25, 1999. Ex. AM 131. Upon returning to school in the Fall, a diagnostic staffing was scheduled for a mutually agreed upon date of September 24, 1999. Ex. AM 131.

27. On August 20, 1999, before school started, the Parent requested an IEP meeting for August 23, 1999. Ex. D 566. At the meeting, the IEP Team discussed the Student=s current schedule and her transition to Rock Bridge High School. Ex. D 572.

28. On August 23, 1999, the Parent acknowledged, in a handwritten note, that the goals and objectives of the current IEP had been extended until October 1, 1999. Ex. D 642.

29. In September of 1999, the District sent the Parent a Notice of Intent to Re-Evaluate the Student to assess career, vocational and transition issues. Ex. I 1079. The testing was begun at the District=s Career Center, but was discontinued at the Student=s and Parent=s request. Ex. D 548; Testimony of Jodi Johnson; Ellen Tutoli, Stipulation.

30. From September 24, 1999, to February 4, 2000, the Parent and the District had multiple diagnostic meetings to discuss the Student=s diagnostic reevaluation. Ex. D 535-37.

31. A diagnostic conclusion was not reached at the September 24, 1999, meeting and the Parent agreed to extend the reevaluation until early October. Ex. AM 131. Testimony of the Parent. The Student=s reevaluation was again discussed at meetings on October 1 and October 4, 1999.

32. On October 4, 1999, a final diagnostic conclusion was reached. The IEP Team determined that a change in diagnosis from Speech/Language Disorder to Mental Retardation and Disorder of Articulation was appropriate. Ex. B 136. On October 4, the Parent was sent a notice of action regarding the proposed change in diagnosis. Ex. AM 297. The Parent disagreed with the District=s change in diagnosis. Ex. B 139.

33. The Parent testified she requested a job coach for her daughter on numerous occasions for which the District did not provide a notice of action refused. As noted above, when the Student was in 9<sup>th</sup> grade, during the Spring of 1999, the Parent and one of the Student=s teachers worked on finding a job coach for an apprenticeship position with an animal groomer, and the teacher indicated Aa job coach is needed.= Ex. AM 93-95. The District=s files indicate other requests for a job coach. According to the notes of Dr. Jodi Johnson, the District=s transition coordinator since August 1999, at the diagnostic meeting on October 4, 1999, the Parent made a Ademand for a job coach,= for a job the Student had at a doctor=s office. Ex. D 535. Dr. Johnson indicates that on October 28, 1999, the Parent Aagain mentioned the job coach.= Ex. D 536. Both times Dr. Johnson=s notes indicate she

informed the Parent about a job coach program at Boone County Group Homes, an organization that among other things provides vocational services to people with disabilities, and from whom the Student had been receiving services that were arranged by her Parent. According to the Parent and Renee Carter, an employee of BCGH, that organization does not provide job coaches. Testimony of Renee Carter. The District provided no written notice explaining why it would not provide a job coach until May 2000, as discussed below.

34. Following the District=s change in diagnosis, the Parent sought to delay the development of a new IEP while she challenged the new diagnosis. The Parent did, however, request that the district reconvene the IEP team to work on transition planning and services. The Parent made that request in a telephone conversation with a teacher on October 28, 1999. Ex. D 567. A meeting was scheduled for November 3, 1999. *Id.*

35. The District requested permission to have the Transition Planning Inventory (TPI) filled out by the Student and her mother in the fall of 1999. Testimony of Dr. Jodi Johnson. The Parent initially refused to allow the assessment until she could read it first. Ex. D 536 (notes of Dr. Johnson).

36. On November 3, 1999 the District reports that the Parent withdrew her request for an IEP meeting, indicating the goals and objectives Aare fine until after due process.≡ Ex. D 567.

37. The District sent the Student=s First Quarter Progress Report on November 4, 1999. Ex. D 567. On November 5, 1999 the Parent contacted the Student=s teacher and requested a further explanation of her progress reports. Ex. D 567. On November 12, 1999 the District met with the Parent, as requested, to review the Student=s goals and objectives and the Student=s progress for the first quarter. Ex. D 567.

38. On November 23, 1999, the District sent a letter home with the Student regarding the Parent=s request for further explanation of the Student=s progress reports. Ex. D 567.

39. On January 20, 2000, an IEP meeting was scheduled for February 4, 2000, to discuss the Student=s diagnostic information and diagnosis. Ex. D 569.

40. The District sent the Student=s Second Quarter Progress Report on January 26, 2000. Ex. D 569.

41. The IEP developed at the February 4, 2000 meeting is the Student=s current IEP. Ex. D 541-71. The IEP contains a two-page transition plan. Ex. D 564-65. Representatives from Boone County Group Homes and Family Support (ABCGH≡) were present, as were the Parent and the Student. When the transition plan was finalized, a handwritten draft was provided to the Parent for her review, according to the testimony of Dr. Jodi Johnson and Dr. Kim Ratcliffe, the District=s special education director. The Parent testified, however, that she was not made aware at the IEP meeting of the contents of the transition plan. The February 16, 2000 Report of Tia Trump, from BCGH, indicates that agency=s knowledge of its role as described in the IEP: AIn conjunction with the school, Life and Work Connections will research and obtain opportunities of the Student to choose in order to gain more work experience and vocational skills.≡ Ex. D 586.

42. The present level of performance section of the February 4, 2000 IEP, which is dated March 10, 2000, contains a paragraph labeled ATransition≡ that indicates the Student had a vocational evaluation in 8<sup>th</sup> grade; that more testing was begun during the current school year but discontinued at the Parent=s request; that Boone County Group Homes was in the process of conducting a vocational assessment; and that the Student=s transition coordinator from BCGH and her mother believe the Student is ready for further training in office management. Ex. D 548. The present level Transition

paragraph also reports on two work activities in which the Student was engaged, mailing birthday cards at BCGH and doing clerical and cleaning work at the doctor=s office where her sister works. *Id.* That section of the IEP does not identify the Student=s preferences and interests. *Id.*

43. The two-page transition plan in the February 4, 2000 IEP contains a section labeled ATRANSITION SERVICE NEEDS≡ which the form indicates is for students beginning at age 14. Ex. D 564. That section indicates the Student Awill participate in a program that wil focus on preparing her for general office work.≡ *Id.* It then identifies courses that will be included in her curriculum, in keyboarding and computer skills and Acourses and/or activities≡ relating to Acommunity and career related exploration. *Id.* It identifies the Student=s APost Secondary Goal≡ as AWork≡ and ASupported Living.≡ *Id.* Finally, that section proposes courses in keyboarding and community block for 11<sup>th</sup> grade and none for 12<sup>th</sup> grade. *Id.*

44. The remainder of the transition plan in the February 4, 2000 IEP is called ANEEDED TRANSITION SERVICES≡ which the form indicates is for students beginning at age 16. Ex. D 564-65. The IEP form states: AIdentified areas of need must be addressed by a goal or benchmark in the IEP designated by (T).≡ Ex. D 564. The IEP then has subsections for four areas of transition service needs. The IEP identifies needs and activities in each of those areas, but the IEP does not address those needs by a goal or benchmark. Ex. D 552-60, 564-65. Judy Burke, one of the Student=s teachers responsible for implementing the IEP during the current school year, testified that the nine goals on the IEP are not transition activities. Ms. Burke also testified that she did not provide progress reports on the transition activities, because it was not required. Testimony of Judy Burke.

45. Under the first area of need, AInstructional,≡ the IEP describes activities for the Student=s APersonal Management:≡

Referral has been made to Boone County Group Homes where [the Student] will participate in the Life & Work Connection Life Skills training program. She will also participate in skill development specific to her current level of ability. She will continue working on the keyboarding computer program. Situational clerical work will be added as appropriate

*Id.* The IEP identifies BCGH as the agency responsible for the above activities, A[t]o provide training and informal evaluation.≡ *Id.* It is not clear from the IEP for which parts of those activities BCGH was responsible, beyond the life skills training program. Testimony of Renee Carter (BCGH).

46. Under the second area of needed transition services, ACommunity Experiences,≡ the IEP indicates the Student has a variety of needs and for activities states:

[The Student] will participate in People First meetings and activities where she will learn more about self-advocacy as well as socializing with other individuals with the need for such activities. She currently participates in bowling in the community and will continue with this activity. She will work on her golf interests in preparation for trying out for the R.B. girls golf team.

Ex. D 565. No outside agencies are identified as responsible for these activities.

47. The third area of need, ADevelopment of Employment and Other Post-Secondary Adult Living Objectives,≡ includes activities for ACareer Planning Options≡ and AEmployment Options.≡ Ex. D 565. The activities are:

[The Student] will continue to work at Boone County Group Homes and Family Support as well as at a local physicians office. Columbia Public Schools will work in conjunction with BCGH to coordinate training and seek opportunities for [the Student] to do volunteer office work as she becomes more proficient and expresses a desire to expand her work.

*Id.* The IEP identifies BCGH as the agency responsible for the above activities, A[t]o provide training and/or evaluation.≡ *Id.*

48. In the fourth area of transition services on the February 2000 IEP, AAcquisition of Daily Life Skills and Functional Vocational Evaluation (if appropriate),≡ the IEP states: A[The

Student] will receive training in independent living skills through the program at Boone County Group Homes and Family Support.≡ Ex. D 565. BCGH is identified as the responsible outside agency.

49. In January 2000, the Life & Work Connection Life Skills training program at BCGH prepared an AInitial Work Plan≡ for the Student. Ex. AM 159-61. This was identified as a transition service in the Student=s February 4, 2000 IEP. The Work Plan includes an AAssessment of Abilities, needs and Preferences,≡ indicating the Student=s Agreat interest in doing office work,≡ and her Awish[] to obtain a career in≡ that field. Ex. AM 159. BCGH documented its evaluation of the Student=s progress in the months following January 2000. Ex. AM 162-178. Dr. Johnson testified that until the hearing, she had not seen the Initial Work Plan or the continuing evaluations by BCGH. Testimony of Dr. Johnson.

50. Consistent with this portion of her IEP, the Student took post-secondary training class from Sharon Palmer in the 1999-2000 school year. The class was designed to help students explore career paths. The students learned various things such as cover letters, resumes. They also went through the driver=s manual so that students could take the driver=s examination. They went to Jefferson City for career days. They had various speakers come into the class to talk about occupations. Palmer taught them to balance checkbooks and other basic activities that they need to know in order to transition from school to the adult world. Testimony of Sharon Palmer.

51. As agreed in the IEP, the Student participated in the Life & Work Connection Life Skills training program at Boone County Group Homes. Testimony of Renee Carter. The Student worked on birthday cards at Boone County Group Homes in the spring of 2000. Testimony of Renee Carter. In the summer of 2000, the Student worked on University mailings at Boone County Group Homes. Testimony of Renee Carter. The Student=s sister reported that the Student enjoyed working on the mailings. Testimony of the Student=s sister, . The Student is now working on postcard

projects at Boone County Group Homes. *Id.* the Student=s sister reported that the Student was able to learn that job after approximately ten minutes of instruction. *Id.*

During the 1999-2000 school year the Student also did some clerical work, including filing and copying, in Dr. James Garb=s office. Ex. D 592. The Student worked in that office for approximately nine months, twice a month for one and one-half hours. Testimony of (Student=s sister). She was trained by and worked under the supervision of her sister. *Id.*

52. The Student took Keyboarding as part of her special education curriculum. Testimony of Sharon Palmer. An individual keyboarding program was provided for the Student starting October 27, 1999. Ex. AM 101.

53. The Parent suggested the APeople First Meetings.≡ Testimony of Dr. Jodi Johnson.

54. During the 1999-2000 school year, the Student=s Adaptive Physical Education class added a section on golf in order to allow the Student to explore her interests in golf. Testimony of Brenda Peterson.

55. In March 2000, the District located a volunteer clerical job for the Student at Dr. Chippendale=s office. The location was excellent because it was close to Boone County Group Homes and Family Support. Tia Trump from Boone County Group Homes went with the Student to help the Student get oriented to the job. Testimony of Dr. Johnson and Renee Carter. the Student did not like the job, but it was a good experience in Renee Carter=s view, because the Student learned that she did not like that type of work. Testimony of Renee Carter.

56 The Student has continued to receive training in independent living from Boone County Group Homes as well as her Community Skills class. Testimony of Renee Carter; Testimony of Sharon Palmer.

57 The District sent the Student=s Third Quarter Progress Report on March 24, 2000. Ex. D 569.

58 In April of 2000, a vocational assessment of the Student=s interests and preferences was performed by Boone County Group Homes and Family Support. Ex. D 584-90.

59 On May 17, 2000, the District sent a notice of IEP conference to the Parent scheduling a meeting for May 19<sup>th</sup> to review the Student=s transition plan and share information from Boone County Group Homes. Ex. D 581. Invited to that meeting were Dr. Kim Ratcliffe, Director of Special Education; Dr. Jodi Johnson, Transition Coordinator; Ms. Tia Trump from Boone County Group Homes (or another representative from Boone County Group Homes); Shelly Morris from Vocational Rehabilitation; Brenda Peterson, Speech and Language Pathologist and Case Manager for the Student during that school year; the Student and the Parent. *Id.*

60 At the meeting on May 19, 2000, the Parent requested a summer job for the Student with a job coach, and questioned whether the Student=s golf interest had been properly addressed. Ex. D 596-98 (Dr. Johnson=s revised notes); Ex. AM 208-10 (Dr. Johnson=s original notes). In Dr. Johnson=s original notes of that meeting, with respect to the Parent=s request that the school provide a job coach, Dr. Johnson stated: AI didn=t go into it again because it had been covered so many times before and **I had already advised her that we did not use job coaches** but did other job training activities as the student was ready to do them.≡ Ex. AM 208 (emphasis added).

61 Both Dr. Johnson and Ms. Peterson provided the Parent with a notice of action as a result of that meeting. Dr. Johnson stated as the reasons for rejecting the summer job with a job coach, that the IEP team did not believe those services were Anecessary in order to maintain present level of job skills.≡ Ex. D 599-601. Dr. Johnson explained at the hearing that it is her understanding that the

District provides extended school year (ESY) services to prevent regression and recoupment problems in meeting IEP goals, and under that policy it was not necessary to provide a job with a job coach. Testimony of Dr. Johnson. She testified that the job and job coach were rejected because they were not necessary to prevent regression. *Id.* Ms. Peterson stated the job and job coach services were refused because they were not available, and not provided by Columbia Public Schools for any student to have a job experience over the summer. Ex. D 583. Ms. Peterson agreed that ESY is for students with concerns regarding regression and recoupment, and that the Student did not meet that criterion. Testimony of Brenda Peterson. It is difficult to understand how the District could determine that the student would not experience significant regression in job skills since that was not an area the District was monitoring under an IEP goal.

62 In addition, Ms. Peterson reported that the driver's education information the Parent requested was taught during the Student's English class that year. *Id.* By a separate letter, Ms. Peterson reported that a special unit in golf was added to the adaptive PE class for the Student's benefit, and that the golf team tryouts would be August 7, 2000. Ex. D 582.

63 At the same May 19, 2000, meeting, teachers offered to draft additional goals and objectives to address the Parent's concerns. The Parent wanted to put off drafting goals and objectives because she was more interested in obtaining a definite plan for getting work experience for her daughter. Ex. D 597; Ex. AM 209-10. We also note that the District had only a half hour for this meeting. Ex. AM 208. That fact was included in Dr. Johnson's original notes, but omitted from the revised version. *Id.*; Ex. 596.

64 The District acknowledged at the May 19, 2000 IEP meeting, just five months after the development of the February 4, 2000 IEP, that it could not develop transition goals and

objectives because it had not identified the student=s interests and preferences. Ex. D 597; Ex. AM 209-10.

65 Also at the May 19, 2000, meeting, Dr. Johnson again requested the Parent=s permission to perform a transition planning inventory with the Student. The Parent objected to Dr. Johnson performing the inventory, but agreed that the Student=s case manager could perform the inventory in the Fall of 2000. Ex. D 597-598.

66 Dr. Ratcliffe encouraged the Parent to have the Student participate in Junior Golf offered by Columbia Parks and Recreation. Testimony of Dr. Ratcliffe.

67 The District sent the Student=s Fourth Quarter Progress Report on May 30, 2000. Ex. D 571.

68 During the Summer of 2000, the Student worked on mailings at Boone County Group Homes. Testimony of Renee Carter.

### **2000-01 School Year - 11<sup>th</sup> Grade - Age 17-18**

69 During the 2000B2001 school year, the Student took a Keyboarding and Community Skills Block with Ms. Palmer. Testimony of Sharon Palmer. Community Skills Block is a course that focuses on community and career related exploration. *Id.* In conjunction with Community Skills Block, the Student was given the opportunity to work with animals at the Humane Society, to explore a data entry position at the Department of Conservation, to engage in volunteer work within the community at Woodhaven, to apply for a position working with children at Lenoir Community Center and to practice job interviewing skills. *Id.*

70 The Student, at the time of the hearing, was still participating in bowling twice a week. Testimony of the Parent. The Parent also acknowledged that the Student took part in the

People First meeting and activities at Boone County Group Homes. In the Fall of 2000, the Rock Bridge High School girls= golf coach allowed the Student to practice with the girls= golf team. Testimony of the Parent. During her Community Skills Block class, the Student was required to invite a person with whom she would not usually eat lunch to a pizza party. Testimony of Sharon Palmer. The class prepared for this event by practicing appropriate table conversation. Testimony of Sharon Palmer.

71 As agreed at the May 19, 2000, meeting, a Transition Planning Inventory of the Student was performed in the fall of 2000. Ex. D 602-15. A Transition Planning Inventory Profile and Further Assessment Recommendations Form was also completed at this time. Ex. D 616-617. Dr. Johnson developed a two-page summary of the Transition Planning Inventory and concluded that the Student had transition service needs in all nine areas: employment, further education/training, daily living, leisure activities, community participation, health, self-determination, communication, and interpersonal relationships. Ex. D 619-20 (dated October 13, 2000); testimony of Dr. Johnson. The school also gathered in-depth information about the Student=s interests and preferences through the use of informal transition questionnaires. Ex. D 621-625 (questionnaire results); p. 626-627 (Burke=s report of the 10/16/00 meeting). Dr. Johnson also prepared an extensive list of goals that could be considered by the Student=s IEP team to address her transition needs. Ex. D 628-31.

72 Although recognized as areas of transition need in October 2000, no further specific employment has been identified for the Student and no further specific training has been identified. Testimony of Dr. Johnson.

73 The Student=s Community Skills Block teacher, Sharon Palmer, also spoke with the Student regarding the Student=s work preferences and favorite jobs. Ex. F 775. The Student had

expressed an interest in working with animals, working with children and data entry. Testimony of Sharon Palmer.

74 In October 2000, the Student=s IEP Team had two meetings. The Parent had requested a meeting to discuss transition issues, particularly employment for the Student. The Parent requested that a representative of Vocational Rehabilitation, ACT, Boone County Group Homes and Family Support, and Sharon Palmer, the Rock Bridge specialist for the work study program and the community skills teacher, be present. Ex. D 626. Dr. Jodi Johnson, the Transition Coordinator, was also invited. *Id.*

75 At the October 16, 2000, meeting, the results of the transition planning inventory were provided, along with the informal interview Awhat kind of job will I prefer?≡ and Athis is how I see myself.≡ Ex. D 626; Ex. D 621-625 (Information From In-Depth Informal Transition Questionnaires). Based on the TPI, the Student had missing skills that needed to be worked on at school so that she could be successful in a job setting. Ex. D 627. Those skills could be accomplished through academic classes, and the community skills and work study program. *Id.* The District attempted to discuss transition goals to be added to the Student=s IEP and provided the Parent with the list of goals for consideration, written by Dr. Johnson. Ex. D 626, 628-31. The Parent stated that those goals should have been addressed Aa long time ago.≡ Ex. D 626. The Parent, however, continued to seek the services of a job coach and was of the opinion that the only way the Student could obtain those skills was by working in a paid position and being taught to work in that job by Ray Handy from ACT. *Id.*

76 Ray Handy, Director of ACT Supported Employment Program, testified that he worked with Vocational Rehabilitation by completing community-based assessments and interest

inventories. He explained that they typically do their job assessment the second semester of the senior year. ACT also helps in mock interviews and filling out job applications. Ex. D 627. At the hearing, Mr. Handy also testified that the vocational assessments performed by the District are more in depth than those performed at ACT. Testimony of Ray Handy.

77 The Parent requested that the ACT community based assessment be done immediately rather than waiting until the second semester of the Student=s senior year. She further suggested that the school should pay a third, Vocational Rehabilitation should pay a third, and ACT should pay a third. Ex. D 627. Burke indicated that she would speak to her supervisor and to the director of special education about the Parent=s request. The participants agreed to continue the meeting until October 25. Ex. D 627. The District is now paying for an independent community-based assessment as an independent educational evaluation. Testimony of Handy; Ex. AM 870, 892-93, 896-97, 899-900, 901, 908, 909, 910 (approved March 20, 2001).

78 Burke checked with her Building Supervisor and the Director of Special Education for the District and was advised that if the IEP Team determined that a job coach or other action was necessary for the Student, the school district would pay for it. Testimony of Judy Burke and Kim Ratcliffe.

79 The District sent the Student=s First Quarter Progress Report on October 18, 2000. Ex. AM 877-890.

80 On October 25, 2000, the IEP meeting was continued. Present were Susan Malson, District Secondary Process Coordinator; Dr. Jodi Johnson, District Transition Coordinator; Judy Burke, Case Manager; Sharon Palmer, Work Experience Coordinator and Special Education Teacher; Jim Shulmer, Area Supervisor, Vocational Rehabilitation; Shelly Morris, Vocational

Rehabilitation; Ray Handy, ACT; and Renee Carter, Boone County Group Homes and Family Support. The Parent sought supported employment services to be provided by ACT and COOP services from Sharon Palmer to assist the Student in finding employment. Ex. AM 602; Testimony of Shelley Morse, DVR.

81 During the meeting, the District=s participants attempted to explain that the Student needed certain skills before she could participate in a supported employment situation or with a job coach. Ex. D 633.

82 During the meeting, the Parent served her written request for a Due Process Hearing.

83 On October 25, 2000, the Parent formally requested due process. Ex. D 635.

84 In a letter dated October 30, 2000, Judy Burke provided the District=s notice of action regarding the Parent=s October 25<sup>th</sup> requests for a job and a job coach. Ex. E 691-92. Ms. Burke explained that she understood that those services would not be provided by VR and ACT because those agencies become involved only during a student=s senior year. *Id.* Ms. Burke also stated the District would not provide those services because the Student Ais not yet ready for paid employment, even with the assistance of a job coach≡ because she is still exploring her interests and still developing employability skills and the District would continue to provide services to help her do those things. *Id.*

85 In a letter to Judy Burke dated November 4, 2000, the Parent requested that the District reconvene the IEP team that had met in October to discuss a schedule change and so that the transition planning process could be continued. Ex. AM 16. The District has not conducted another IEP meeting to continue the transition planning process since the Parent made that request. Ex. AM 17 (Burke letter to Parent 12/1/00), AM 18-19 (parent letter to Burke 12/7/00), AM 20-23 (Burke

letter to Parent 12/18/00); Testimony of Dr. Johnson. Instead, the District proposed to rewrite a complete IEP for the Student. Ex. AM 23 (Burke letter 12/18/00 setting January 10, 2001 meeting Ato start the process of the annual review and revision of [the Student=s] IEP.≡) The Parent did not agree to an annual IEP review but continued to seek an IEP meeting to address only the transition issues that were raised in the IEP meetings in October 2000. Ex. AM 24-25).

86 Dr. Johnson testified that several steps are critical for adequate transition planning. Testimony of Dr. Johnson. She stated that following an assessment it is critical to try to identify necessary knowledge, skills, needs, services and supports for the Student. *Id.* She explained that when a Student has extensive needs, it is important to prioritize the most critical goals. *Id.* Dr. Johnson stated that was never done for the Student. *Id.* Dr. Johnson also stated it is important to include a time line for the goals and activities identified in the transition section of an IEP, and admitted the February 4, 2000 IEP does not contain such time lines. *Id.*; Ex. D 564-65.

87 Judy Burke, one of the Student=s teachers responsible for implementing the IEP during the current school year, testified that the current IEP, dated February 4, 2000, does not contain goals and objectives for transition services, but that the District is working on them now. Testimony of Judy Burke.

88 Shelley Morse, from the Division of Vocational Rehabilitation (DVR), testified that she believed several more specific transition goals should be added to the Student=s IEP, in the areas of employment, daily living and community participation. She testified that some goals were very important and that she and Judy Burke discussed some proposed goals had identified similar ones for the Student. Ms. Morse testified that these goals were identified in meetings starting in October 2000 and were not yet included in the Student=s IEP. Testimony of Shelley Morse.

89 On November 9, 2000, a Notice of IEP Conference was sent to the Parent for the November 10, 2000, IEP meeting. Ex. E 695-96. The November 10, 2000, IEP addressed changes to the Student=s schedule. Ex. E 697-99. A Notice of Action was sent from the District to reflect the schedule changes on November 10, 2000. Ex. E 700-01.

90 The Parent received the Student=s Mid-Second Quarter Progress Report on December 1, 2000. Ex. AM 17.

91 On December 7, 2000, the Parent requested an IEP meeting. Burke called the Parent to understand what she wanted to discuss. Burke agreed that she and the Building Principal would meet with her to go over the seven issues in her letter.

92 On December 15, 2000, the Parent met with Burke, Dr. Brotzmann, the building principal, and others. Ex. I 707. The District did not consider this an IEP meeting. Ex. AM 607; Testimony of Shelley Morse, DVR. The conference summary for that meeting states:

AWent through seven things listed in letter; again told her [the Parent] that CPS [the District] would not provide job coach at this time as the team doesn=t feel that the Student is ready for that step B that there are other prerequisite skills that the Student needs to master before she is ready. It was also stated we feel that we are working on the appropriate things in Community Block.≡ Ex. E 707.

93 Shelley Morse, from DVR, testified that if the December 15, 2000 meeting had been an IEP meeting, she believed that she, the Parent, the Student and Renee Carter were prepared to discuss adding transition goals to the Student=s IEP. Testimony of Morse.

94 At the December 15, 2000 conference, an IEP meeting was set for January 10, 2001. Ex. E 707.

95 The Parent cancelled the IEP scheduled for January 10, 2001. The Parent told Judy Burke that she wanted to postpone the Student=s IEP until after Due Process. Ex. E 720.

96 Burke did not believe postponing the IEP any longer would be in the Student=s best interest. Id. She scheduled an IEP meeting for February 8, 2001, one of the dates originally set for the Due Process hearing. Ex. E 720.

97 The District sent the Student=s Second Quarter Progress Report on January 11, 2001. Ex. AM 877-890.

98 The Parent cancelled the February 8, 2001 meeting. Ex. E 672. On February 19, 2001, the District provided the Parent with eight possible dates for an IEP meeting. The Parent responded on February 20, 2001, that March 8, 2001, was an acceptable date. Ex. E 673. On March 5, 2001, the Parent cancelled the March 8, 2001 meeting. Ex. E 673. On March 6, 2001, the District and the Parent discussed four possible dates for the IEP meeting. Ex. E 673.

99 The IEP meeting was rescheduled for March 22, 2001. Ex. E 674. A Notice of the IEP Conference was sent to the Parent on March 12, 2001. Ex. E 750-51. On March 16, 2001, the Parent called to report that the March 22, 2001, date was no longer convenient. Ex. E 674. the Parent was advised that the meeting would go forward as scheduled. The IEP meeting was conducted on March 22, 2001, and the Parent attended. Ex. E 674.

100 The IEP Team agreed to meet again on April 5, 2001. Ex. E 674. A notice of the April 5, 2001 IEP meeting was sent on March 26, 2001. Ex. AM 922-24.

101 The representatives of the various agencies and the Student=s teachers testified they have seen improvement in the Student. The Student=s teachers testified that they believed that her IEPs were designed to provide her educational benefit and she has received benefit.

## **CONCLUSIONS OF LAW**

102 According to the United States Court of Appeals for the Eighth Circuit, which governs the federal courts in Missouri: AAt the administrative level, the District clearly had the burden of proving that it had complied with the IDEA.≡ *E.S. v. Independent Sch. Dist. No. 196*, 135 F.3d 566, 569 (8<sup>th</sup> Cir. 1998).

## **ISSUES RELATED TO THE STUDENT=S EVALUATION AND DIAGNOSIS**

### ***Was the current reevaluation of The Student completed in compliance with regulatory guidelines?***

103 The Missouri State Plan requires that the evaluation process be completed within 45 calendar days following parental consent or notice, but allows for delays for Ajust cause≡ when documented in the student=s record. State Plan 63. School breaks for summer are specifically listed as an example of a just cause for delay. *Id.*

104 Even if the last 3-year evaluation was Sept. 16, 1996, the one in question was completed by October 4, 1999. The 45-day time period also might have been exceeded slightly. There were good reasons, however, for the District to take a little longer to complete this evaluation. For example, the Student had hearing problems that delayed the start of testing. The testing was done just before the end of the 1998-99 school year and completed shortly after start of the 1999-2000 school year, after a summer break. The panel concludes no harm was done by the slight deviations from the statutory time-lines and finds no violation on this issue.

105 The Parent also raised the issue during the hearing whether the independent evaluation she sought from ACT was provided in a timely manner. The Panel concludes it would be unfair to the District to allow the Parent to raise that issue for the first time at the hearing. Even if it were an issue, the Panel does not believe the District would be in violation for the time it took to approve the evaluation as its cost was in excess of the District=s standard cost for such evaluations.

***Was the addition of the MR diagnosis by the District necessary in order for The Student to continue to receive services?***

106 Dr. Tanner-Jones testified that the team determined and she agreed that the Student met the criteria for an MR diagnosis. She also testified that she believed it was her professional responsibility to make that diagnosis in order to be fully descriptive of the Student=s disabilities.

107 The Parent=s argument is based in part on the high adaptive behavior scores the Student received on assessments that were based on the Parent=s own observations and knowledge. The District=s witnesses testified that those assessments are valid indications of how the Student performs in the home environment and in the community with her Parent, but that the District is obligated to look at adaptive behavior in different environments and with different people.

108 The District used instruments to measure the Student=s cognitive abilities that are not dependent on her language abilities, such as the Test of Non-Verbal Intelligence (Toni), the Leiter and, at the Parent=s request, the Stanford-Binet.

109 The District=s witness testified that while it was proper and respectful of the Student to not label her as MR when she was age five, the guidelines and considerations are different at age 17. Dr. Tanner-Jones testified that the Student=s cognitive deficits are global and she and the team were unable to rule out MR as the cause of the Student=s language deficits.

110 The Parent also complained that the IEP refers to the MR diagnosis as Asecondary/concomitant≡ instead of just Asecondary,≡ as determined was appropriate by the Superintendent as a result of the Resolution Conference. The Panel does not believe that the IEP is inconsistent with the determination of the Superintendent but interprets the IEP to mean that the MR diagnosis is secondary **or** concomitant.

111 The Parent complains that scores from Social Skills Rating System are not reported in the diagnostic report (2/4/00 report Ex. B 159, 169). The standard scores from the Social Skills Questionnaire range from 76 to 96, and the teachers and Parent ratings resulted in similar scores. Ex. AM 293-96, 334-35. Dr. Tanner-Jones admitted these social scores and the Student=s academic competence are important parts of cognitive ability that should be considered for an MR diagnosis. The Student=s high academic competence ratings (4 out of 5), however, are only in relation to the other students in the Student=s class, all of whom had some type of disability. Ex. AM 335. When rated in terms of grade-level expectations, the Student=s academic skills are in the lower range (2 out of 5). Ex. AM 335.

112 As part of the Parent=s challenge to the District=s MR diagnosis she provided the District with the affidavit of a developmental pediatrician, Dr. Pasquale Accardo, who described the proper way to evaluate a child with Quadruple X Syndrome. Ex. H 1053. Although the District did not have that affidavit prior to its evaluation, the District=s psychologist testified that the District conducted the evaluation as Dr. Accardo suggested it should have done.

113 The IDEA contains extensive provisions regarding the procedures for evaluations, reevaluations, and determinations of eligibility, but says nothing about whether only one or more than one diagnosis is appropriate or required. 20 U.S.C. 1414(a)-(c). The federal IDEA regulations also do not contain any general guidelines about multiple diagnoses, 34 C.F.R. 300.530-300.536. The regulations do include, however, a diagnostic category for Amultiple disabilities, which is defined to mean Aconcomitant impairments (such as mental retardation-blindness, mental retardation-orthopedic impairment, etc.), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the

impairments.≡ 34 C.F.R. 300.7(a)(7). That regulation would seem to allow for the possibility of an evaluation resulting in more than one diagnosis, when one is considered primary and the other secondary. The Missouri State Plan indicates that more than one diagnosis is permissible, particularly as in this case, when the diagnosis is based in part on a diagnosis by another professional such as a physician. The State Plan states that AStudents who present significant learning problems by virtue of the condition may demonstrate eligibility for special education **under one or more of the disabilities** identified above.≡ State Plan A-16 (emphasis added).

114 The Parent concedes that the Student is borderline mentally retarded. She does not contend that the Student does not meet the eligibility criteria for mental retardation in the Missouri State Plan. While it might not be necessary to give a child like the Student two diagnostic labels, we do not believe that practice is prohibited by the IDEA or Missouri law or was a violation of the Student=s rights in this case.

## **ISSUES RELATED TO TRANSITION SERVICES**

115 Since 1990, the IDEA has required school districts to address and serve the needs of students with disabilities as they prepare for and make the transition from public school to adulthood. As amended in 1997, and effective starting in July 1998, the IDEA includes requirements for transition services in the section of the law pertaining to individualized education programs (IEPs). The statutory and regulatory provisions relevant to the issues in this case are set out below.

116 The IDEA contains specific requirements for the contents of IEPs:

20 U.S.C. 1414(d) Individualized education programs

(1) Definitions

As used in this chapter:

(A) Individualized education program

The term "individualized education program" or "IEP" means a written statement for each child with a disability . . . that includes -

- (i) a statement of the child's present levels of educational performance  
 . . . .
- (ii) a statement of measurable annual goals, including benchmarks or short-term objectives, related to - . . .
  - (II) meeting each of the child's . . . educational needs that result from the child's disability;
  - (iii) a statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child - . . . .

Within that same subsection of the statute, section 1414(d)(1)(A), the IDEA specifies the transition components that must be included in IEPs:

- (vii) (I) beginning at age 14, and updated annually, a statement of the transition service needs of the child under the applicable components of the child's IEP that focuses on the child's courses of study (such as participation in advanced-placement courses or a vocational education program);
  - (II) beginning at age 16 (or younger, if determined appropriate by the IEP Team), a statement of needed transition services for the child, including, when appropriate, a statement of the interagency responsibilities or any needed linkages.

The IDEA also contains a definition of the term Atransition services.≡

20 U.S.C. 1401. Definitions.

(30) Transition services

The term "transition services" means a coordinated set of activities for a student with a disability that -

(A) is designed within an outcome-oriented process, which promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(B) is based upon the individual student's needs, taking into account the student's preferences and interests; and

(C) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

117 The IDEA regulations pertaining to the transition service requirements of the 1997

IDEA amendments took effect on May 11, 1999. Some of the activities at issue in this case preceded that date and others, including the development of the February 2000 IEP, came after those

regulations were in effect. For the most part, the regulations include basically the same provisions as the statute. 34 C.F.R. 300.29 (definition of Atransition services≡); 34 C.F.R. 300.347 (IEP requirements). The regulations provide, in the definition of transition services, that they can be specialized instruction and related services: ATransition services for students with disabilities may be special education, if provided as specially designed instruction, or related services, if required to assist a student with a disability to benefit from special education.≡ 34 C.F.R. 300.29(b).

***Did the District appropriately identify the Student=s preferences and interests related to her transition needs?***

118 The Parent complains that the District failed to appropriately identify the Student=s preferences and interests as required by the IDEA. The District did conduct a vocational evaluation of the student in its Career Center in 1998, but the evidence shows that the information from that evaluation has never been reviewed at an IEP meeting. Consequently it has not been incorporated into the present levels of educational performance section or any other section of the Student=s IEPs and used as the basis for determining the appropriate services, goals and objectives for the Student. As noted above, the IDEA requires that IEPs contain Aa statement of the child's present levels of educational performance.≡ 20 U.S.C. 1414(d)(1)(A)(i). Before a district can determine what transition services are appropriate it is required to identify Athe individual student's needs, taking into account the student's preferences and interests.≡ 20 U.S.C. 1401(30)(B). In addition to the IDEA statutory and regulatory provisions, the Missouri Department of Elementary and Secondary Education, the State Education Agency charged with the responsibility to ensure compliance with the IDEA, published in December 1999 a set of guidelines called AFundamentals of Transition.≡ Ex. C 367-433. The District has included these guidelines in a manual compiled by Dr. Jodi Johnson, the

District's transition coordinator since August 1999. A Transition Resource Materials - Columbia Public Schools. Ex. C 197. DESE's guidelines indicate that the assessment information should be included in the student's present level of educational performance in the IEP. Ex. C 393 (Fundamentals at 27). The Panel agrees that the Student's transition needs, preferences and interests must be documented in the Student's IEP.

119 The District did identify the Student's preferences and interests in the vocational evaluation it conducted in 1998, but that information was never reviewed in an IEP meeting and never incorporated into an IEP. By the time the February 4, 2000 IEP was developed, the District had not completed another assessment of the preferences and interests. The present levels section of that IEP does not contain a statement of preferences and interests. The transition section indicates that the Student will participate in a program that will focus on preparing her for general office work. Ex. D 564. It identifies the Student's Post Secondary Goal as Work and Supported Living. *Id.* None of that is a sufficient statement of preferences and interests to comply with the IDEA's requirement. It is not sufficient information upon which transition activities, goals and objectives can properly be based. 20 U.S.C. 1401(30)(B). The District acknowledged in May 2000, just five months after the development of the February 4, 2000 IEP, that it could not develop transition goals and objectives because it had not identified the student's interests and preferences. Yet no further progress has been made in developing new transition services since that time. The District has put a lot of effort into attempting to identify the Student's preferences and interests, including using the Transition Planning Inventory, but as of the time of the hearing it has not included the results of those activities in an IEP.

120 Thus, the Panel concludes that the District violated the IDEA by failing to identify appropriately the Student=s preferences and interests for transition. As DESE=s Fundamentals of Transition explains, A[v]ocational assessment information is essential to assist students and educators to make informed decisions about vocational goals and objectives and planning to achieve those goals.≡ Ex. C 393 (Fundamentals at 27). A formal assessment of preferences and interests may not be required for every student with a disability, but when such an assessment is appropriate and has been conducted it should be reviewed in an IEP meeting and the results reflected in an IEP. In addition, even when no formal assessment is necessary or none has been conducted, the District must identify the Student=s preferences and interests, at least by informal interview, and record them in an IEP. The District=s failure to record the Student=s preferences and interests in the February 4, 2000 IEP was a violation of the IDEA.

***Did the IEPs prepared for the Student since September 1998 contain the required transition provisions?***

121 In addition to the issue of the proper identification of the Student=s preferences and interests, the Parent makes several complaints regarding the transition components of the Student=s IEPs.

122 The Parent complains that the District generally failed to develop Aa coordinated set of activities for a student, designed within an outcome-oriented process, that promotes movement from school to post-school activities,≡ as required by the IDEA. 20 U.S.C. 1401(30). The Parent stated she was satisfied with the transition activities that occurred while the Student was in junior high school, through the 1998-99 school year when the Student was in 9<sup>th</sup> grade. The Parent was dissatisfied with

the transition provisions of the IEP dated February 4, 2000 and with the District's failure to revise the transition provisions of that IEP.

123 As a procedural matter, the Parent claims the transition services pages of the February 4, 2000 IEP were not developed in an IEP meeting but by the district after the IEP meeting was concluded. The district witnesses testified that those pages were discussed and a draft was shown to the Parent during the meeting. Based upon that testimony and all the other testimony that the Student's existing transition activities were discussed at the meeting, the Panel finds that the District developed that portion of the IEP in an IEP meeting.

124 The Parent's most specific complaint, both procedural and substantive, is that she repeatedly requested on-the-job training including providing close supervision, such as a job coach, as recommended in the evaluation conducted by the Columbia Career Center in 1998 while the Student was in 8<sup>th</sup> grade. Ex. D 493-94. The Parent complains that the District failed to provide such services and failed to provide notices in compliance with the IDEA explaining why it would not provide those services.

125 The Parent did make numerous requests that the District provide the Student a job and a job coach. During the second semester of the Student's 9<sup>th</sup> grade year, from January to April 1999, the District, or at least one staff member, appeared to agree that a job coach is needed, and made an attempt to provide one. Ex. AM 94. The following semester, in October 1999, Dr. Jodi Johnson, the District's transition coordinator, documented the Parent's demands for a job coach. Ex. D 535-36. There is no documentation, however, of the District's reasons for not providing a job coach at that time; no written notice to the Parent and no explanation in other documentation. Later, in a meeting that occurred toward the end of the Student's 10<sup>th</sup> grade year, on May 19, 2000, the Parent

sought the services of a job coach for the summer of 2000. In two different memoranda prepared by Dr. Johnson to document what occurred in that meeting, she provided different statements about how the District responded to the Parent=s request. In the first memorandum Dr. Johnson stated that she did not even explain to the Parent the District=s reasons for denying a job coach at that meeting because the topic had been discussed Aso many times before≡ and Dr. Johnson A had already advised [the parent] that we did not use job coaches.≡ Ex. AM 208. That memorandum shows a blanket policy of not providing an entire category of services regardless of the needs of an individual student. That is clearly illegal under the IDEA.<sup>2</sup> The Panel concludes from that memorandum and listening to the testimony of the witnesses at the hearing that the District=s staff members denied the job coach service because it was not a service that the District provided to students. In later meetings, in October 2000, the District=s witnesses testified that the District was willing to consider the Student=s individual need for a job coach and that they did not believe the Student was ready for such services. The Panel finds that prior to October 2000, the services of a job coach were not

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<sup>2</sup> The Minority Decision suggests that the majority ignored Dr. Johnson=s second memorandum. The majority notes that in Dr. Johnson=s revised memorandum the sentence indicating the District Adid not use job coaches≡ was deleted and instead Dr. Johnson inserted a statement indicating that the District responded to the Parent=s request with an explanation as to how job coaches are used and implying that a job coach would not have been appropriate for the Student at that time. Ex. D 596. The Panel majority concludes from those memoranda and listening to the testimony of the witnesses at the hearing that the second memorandum was prepared, or at least revised, in order to remove that illegal statement.

provided to this Student for reasons that violate the IDEA, in accordance with the District's application of a blanket policy.

126 The District's explanations for denying the services of a job coach over the summer of 2000, both in its notices of action refused and the testimony of District witnesses, indicate that the District followed a policy of providing services to students with disabilities over the summer only when the District concludes that the Student would experience significant regression in an area covered by an IEP goal. In addition, the District indicated it denied the services over the summer because the services were not available.≡ Those are both improper reasons. *Yaris v Special School District*, 558 F. Supp. 545 (E.D. Mo. 1983), *aff'd*, 728 F.2d 1055 (8<sup>th</sup> Cir. 1984). The Missouri DESE publishes a set of Recommendations for Extended School Year Policies which indicates that ESY [extended school year] be addressed in Individualized Education Programs (IEPs) by the IEP team, in the same manner as are all other programming needs.≡ The guidelines also state that a district's policies should not limit eligibility to consideration of only one factor: i.e. documented regression/recoupment.≡ Although the district witnesses did not mention documented regression as a requirement, the District witnesses testified they understood the District to have a policy that limits eligibility for summer programming to only one factor, regression and recoupment problems. Several other factors that DESE suggests should have been considered in determining whether the service of a job coach was appropriate over the summer could have led to a positive decision, such as: The areas of learning crucial to the child's attainment of self- sufficiency and independence; . . . Child's progress; . . . [and] Child's vocational needs.≡ DESE's Fundamentals of Transition indicates that providing work experiences over the summer can be an appropriate way to meet the student's

needs. Ex. C 416 (Fundamentals at 49). Thus, there are two ways that the District violated the IDEA when it refused to provide the services of a job coach for the Student over the summer of 2000. The District denied the service in part because it did not fit within its overly limited criterion for extended school year services and in part because it was not a service that the District ordinarily provided to its students.

127 In October 2000 the Parent specifically requested that the District obtain the services of a job coach from an outside agency the Parent found, ACT. The District should have completed the transition planning process that fall, but as of the time of the hearing, has not done so. The Parent requested in a letter dated November 4, 2000, that the District conduct an IEP meeting to complete the transition planning process. The District has not done that. A meeting the District conducted in December 2000 should have been an IEP meeting but was not, so no transition activities or goals and objectives were added at that time. Then, starting in January 2001, the District began to attempt to schedule IEP meetings to conduct an annual IEP review and revision, although the Parent said she wanted the rest of IEP to stay as it was while she was in due process.

128 Another deficiency in the District=s IEP of February 4, 2000 is the failure to identify specific transition goals for the Student and to establish objectives or benchmarks in measurable terms so that the Student=s progress could be monitored. The Parent complained about the District=s failure to address earlier the needs identified and the goals proposed during the TPI process in the Spring and Fall of 2000. The Panel concludes that although the District identified transition activities and services in the February 2000 IEP, it violated the IDEA by not establishing specific goals and objectives or benchmarks for any of those activities and services. Several

considerations lead the Panel to conclude that specific goals and objectives or benchmarks were necessary.

129 The language of the IDEA and its regulations, when read as a whole, indicate that transition services must be described in an IEP like other special education and related services and tied to clearly defined goals and measurable objectives. The IDEA requires that IEPs include measurable annual goals, including benchmarks or short-term objectives, related to . . . meeting each of the child's . . . educational needs.≡ 20 U.S.C. §1414(d)(1)(A)(ii). In the same subsection, the statute adds that the IEP must include a statement of the special education . . . services . . . to be provided to the child.≡ 20 U.S.C. §1414(d)(1)(A)(iii). Also in the same subsection the IDEA adds that beginning at age 16" the IEP must include a statement of needed transition services.≡ 20 U.S.C. §1414(d)(1)(A)(vii). It is clear that the terms special education services≡ and transition services≡ are not mutually exclusive. The IDEA regulations expressly state that transition services . . . may be special education, if provided as specially designed instruction.≡ 34 C.F.R. 300.29(b). Congress stated that transition services are to be designed within an outcome-oriented process.≡ 20 U.S.C. 1401(30)(A). It seems clear, therefore, that Congress and the U.S. Department of Education intended that when transition services are specially designed instruction for the student the IEP must contain measurable goals and benchmarks or objectives to address those services so the Student's progress toward the desired outcome can be measured. Here the Student's February 2000 IEP contains services in the area of instructional≡ and indicates the Student will participate in a life skills training program, receive personal management skill development, and keyboarding instruction, with situational clerical work as appropriate. Ex. D 564. The Student was to be taught self-advocacy skills and socialization. Ex. D 565. The IEP indicates she would receive training in

career planning, employment options, and independent living skills. *Id.* Those are all specially designed instructional activities for which the IEP should have contained goals and objectives.

130 Judicial interpretation of the transition service requirements also support that conclusion. In *Yankton Sch. Dist. v. Schramm*, 23 IDELR 42 (D. S.D. 1995), *aff=d as modified*, 93 F.3d 1369 (8<sup>th</sup> Cir. 1996), both the district and appellate courts held that the school district was obligated to continue to provide transition services for a student with physical disabilities. In holding that the transition services in the district=s previous IEP were inadequate, the district court ordered the school district Ato convene a transition planning meeting≡ and develop a new IEP for the student. The court specifically ordered: AThe IEP and transition plan must include specific goals and objectives as required by IDEA statutes and regulations.≡ *See also East Penn School Dist. v. Scott B.*, 29 IDELR 1058 (E.D. Pa. 1999).

131 In addition to the IDEA statutory and regulatory provisions, the guidelines published by the Missouri Department of Elementary and Secondary Education, called AFundamentals of Transition,≡ also address the need for goals and objectives. DESE=s guidelines indicate the districts may not just list services and activities, but must establish measurable goals and objectives for transition. For example DESE states: AThe context for developing IEP goals and objectives shifts from the focus of the school curriculum to development of strategies for functioning in the community after leaving the school setting.≡ Ex. C 379 (Fundamentals of Transition at 13). DESE=s Fundamentals of Transition also refers to Avocational goals and objectives≡ where it describes the importance of vocational assessment information. Ex. C 393 (Fundamentals at 27). The District=s own policies and practices also demonstrate that specific goals and objectives should be developed to accompany transition activities and services. The transition section of the District=s

IEP form states: AIdentified areas of need must be addressed by a goal or benchmark in the IEP designated by (T).≡ Ex. D 564. No such goals and benchmarks are included in the Student=s February 2000 IEP.

132 The activities of the District since the February 2000 IEP indicate that it recognizes the need to identify specific goals and objectives with timelines and that it has been working on them. *See e.g.*, Ex. D 628-31. The Panel recognizes that the Parent has contributed to the District=s delay in revising the Student=s IEP to include transition goals and objectives. The Parent bears no responsibility, however, for the failure to include goals and objectives in the February 2000 IEP. Following February 2000 the Parent wanted the District to provide a job and a job coach and at times told the district that developing new goals and objectives could wait. That occurred at the May 19, 2000 IEP meeting, but the District had only one half hour for the meeting, so it is understandable that the Parent would attempt to obtain the service she thought her daughter needed rather than work on developing written goals and objectives. Following the meetings in October 2000 the Parent has consistently told the District she wanted to reconvene the IEP team to work on the transition planning, but the District has instead insisted on reviewing and rewriting the entire IEP.

133 Based on all the evidence, including the specific needs of the Student, and our interpretation of the law, the Panel concludes that the District violated the IDEA by denying the services of a job coach for improper reasons and by not including goals and objectives or benchmarks to go along with the transition service needs it identified for the Student in the February 2000 IEP. Thus, from the time the February 4, 2000 IEP was developed, until now, the District has not had an IEP in effect that contained the required transition provisions.

***Did the District provide progress reports to the parent in accordance with IDEA requirements?***

134 The Panel finds no violation on this issue. The District provided timely reports and additional information as requested by the Parent to make the reports more understandable.

***Did the District fail to include participants required by the IDEA in the Student=s IEP meetings?***

135 The Panel finds no violation on this issue. The District has demonstrated that all required participants were included in the Student=s IEP meetings. The fact that the Parent was the one who invited representatives of outside agencies does not mean the District violated the Act by failing to invite them as well.

***Did the District provide the parent with required notices for actions refused?***

136. The Panel need not determine a separate violation on this issue. The Parent complains she was not provided notices for actions refused for the many times she asked for a job coach, until May 2000. The Panel has determined, as discussed above, that the District denied the job coach for improper reasons and at times failed to document those reasons.

137. When the Student began high school, the Parent requested that the Student attend the Career Center. She stated the district provided a letter of denial, but not a proper notice. Ex. AM 245. That letter substantially complies with the notice requirements of the IDEA, even though it is not in the usual form provided by school districts.

***Did the District appropriately implement the transition provisions contained in The Student=s IEPs since September 1998?***

138. The Parent complains that the keyboarding goal of the Student=s May 27, 1998 IEP was not implemented until November 18, 1998. Ex. AM 458, 505. She also complains that

keyboarding was not provided during the 1999-2000 school year until October 26, 1999. Ex. AM 100-101. The Panel finds no violation. The District substantially followed the IEPs. The Student was provided the transition services identified on the IEPs, either by the District or the outside agencies.

### **CONCLUSION AND ORDER**

139. Based on the findings of fact and conclusions of law, we make the following order on the issues for which we have found a violation of the IDEA.

140. The Panel has found that the transition provisions of the last IEP developed by the District for the Student were deficient for not identifying preferences and interests. The Panel orders the District to complete a new IEP for the Student as soon as practicable, and no later than by the start of the 2001-02 school year, which identifies the Student=s preferences and interests in accordance with this decision.

141. The Panel also has found that the District refused the Parent=s numerous requests for on-the-job training, such as the services of a job coach, for reasons that violate the IDEA, and the District has not had the required transition provisions in an IEP for the Student from the time the February 4, 2000 IEP was completed until now, a period of nearly 16 months. The panel does not want to intrude into the IEP process any more than necessary. The Parent has requested two years of specific services, one year of transition services with ACT and one year with the Columbia Area Career Center. The Panel cannot determine that those precise services are necessary for the Student but knows that the District has obtained an evaluation of the Student from ACT at the Parent=s request and that the parties have been conducting meetings to develop a new IEP for the Student.

142. The Panel orders that the new IEP, which, as stated above, must be completed as soon as practicable and no later than before the beginning of the next school year, must consider the

transition services and activities identified by the ACT evaluation, and that the District shall continue to provide transition services to the Student for a minimum of sixteen months from the date of this decision, including at least one summer (at least eight weeks) to make up for the denial of services for the summer of 2000. For the transition services and activities that are specially designed instruction, the IEP must contain measurable goals and objectives or benchmarks as required in 20 U.S.C. 1414(d)(1)(A) and 34 C.F.R. 300.347. In addition, unless the ACT evaluation specifically determines that on-the-job training with the services of a job coach will not be appropriate for the Student, the District shall provide the Student such on-the-job training with a job coach for a period of at least six months before she completes her public education with the District. The District may satisfy that requirement by contracting with an outside agency, such as ACT, to provide on-the-job training with a job coach for a period of six months. The District may leave the selection of the particular job for which the coach will be provided to the outside agency if it does contract with such an agency. If the District and the Student select the particular job for the job coach and determine the number of hours of services that are appropriate, and cannot agree, those decisions shall be made by a majority of one representative of the District, the Student, and one representative of an outside agency mutually agreed upon by the District and the Student. If the District and the Student are unable to agree on that outside agency representative, they shall request that the Missouri Division of Vocational Rehabilitation select that representative. If the IEP team determines that additional skills are necessary before the Student receives that on-the-job training, the District must ensure that the Student receives the services necessary to teach her those skills before it provides the on-the-job training.

Dated: May 25, 2001

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Kenneth M. Chackes  
Chairperson

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Hearing Officer Pamela Grindstaff

A separate decision will be completed by Hearing Officer George Wilson.

Copies of this Decision will be sent by email and mailed to the parties on this date, by certified mail, return receipt requested.

DUE PROCESS HEARING PANEL Minority Decision

, by her parent, , Complainants

vs.

Columbia 93 School District, Respondent

The majority opinion in this case is held by Kenneth Chackes, Panel Chair, and Pamela Grindstaff, Panel Member. This minority opinion is held by George Wilson, Panel Member.

Based upon the facts presented into evidence, the testimony rendered during the hearing, and applicable law, I must respectfully disagree with the majority conclusions related to the following issues:

- 1.) Paragraph 118: The majority concludes, based upon Denise Lasley's testimony, that the results of a vocational evaluation "has never been reviewed at an IEP meeting." Her testimony (Trans. Pgs. 836-837) was that she could not recollect whether it had been reviewed.

The majority further concluded that "the Student's transition needs, preferences and interests must be documented in the Student's IEP." In reaching this conclusion, the majority relies in part upon guidelines titled "Fundamentals of Transition" and "Transition Resource Materials- Columbia Public Schools". It is clearly inappropriate to rely upon non-regulatory documents as a basis for a due process hearing decision. The majority also relies in part upon the IDEA statute to justify its conclusion. However, the majority errs when it elects to ignore the federal regulations and state documents which directly relate to the issue i.e., 300.29 requires only that transition services take "into account the student's preferences and interests"; 300.344 (b) (2) requires a public agency to "take other steps to ensure that the student's preferences and interests are considered" only when the student does not attend the IEP meeting; 300.347 contains no requirement for such documentation. In accordance with the federal statute and implementing regulations, the Missouri Plan contains no requirement for such documentation, nor does the currently "proposed" State Plan for IDEA 97. However, the State's Compliance Monitoring Standards provide us with a clear understanding of the State's interpretation of the federal regulation. Both the current standards and the proposed standards clearly specify that the standard is met when the student attends the IEP meeting or, if the student is not in attendance, that a district have on file information related to the student's transition interests and preferences.

In this case, both standards are met since the Student participated in both IEP meetings, 5/27/98 (D-641) and 2/4/00 (D541), and the record is replete with interviews, inventories, and other documentation related to the issue.

Based upon clear federal regulations and state standards, I disagree with the majority ruling that "the student's transition needs, preferences and interests must be documented in the student's IEP."

- 2.) Paragraph 119-120: The majority decision that "The District's failure to record the Student's preferences and interests in the February 4, 2000 IEP was a violation of the IDEA" can not be correct because, as explained above, the IDEA does not require such documentation in an IEP. 300.347 and other regulations specify exactly what must be contained in a student's IEP and no such requirement is mentioned in the statute, in the regulations, or in the Missouri State Plan. In fact, as stated above, the Missouri Compliance Monitoring Standards further specify that no such documentation is required.
- 3.) Paragraph 125: This majority argument cites Ex. D 535-536 as evidence that the parent had demanded a job coach and then observes that the District failed to provide the parent with a written notice. However, the citation was clearly taken out of context without consideration of the rest of that documented conversation which includes Ms. 's later statement that she "wasn't sure anything should be done at this time." When reviewed in its entirety, the evidence does not support that the notice requirements of the IDEA would have been triggered by this conversation.

Additionally, during Ms. 's questioning of a witness (Trans. Pg. 1164) Ms. makes it clear that she is well aware of the IEP process and that she would have requested a notice of action for a requested service that was not provided. There is no evidence that she ever requested a notice, which was not subsequently

provided, and there are additional notices in evidence for which no request is evident. The parent received at least three notices related to her request for a job coach, including a 5/23/2000 notice from Brenda Peterson (Ex. D583), a 5/30/2000 notice from Dr. Johnson (Ex. D599-601), and a 10/30/2000 notice from Judy Burke (Ex. E691-692).

Also, the majority relies on one of two memoranda prepared by Dr. Johnson that describes the May 19, 2000 meeting. More specifically, the majority relies on one phrase in one sentence of that document which reads "...we did not use job coaches..." to conclude that the Columbia Public School had a blanket policy against the provision of job coaches. In so doing, the majority not only inappropriately takes one phrase out of context, but also elects to ignore the other memorandum of the same meeting, also prepared by Dr. Johnson (Ex. D596-598), which clarifies the District's policy on the provision of job coaches. Even though this evidence was uncontroverted, the majority elected to ignore it.

For these reasons, I do not agree with the majority decision that the District violated the IDEA by having a blanket policy against a particular service. The "evidence" is simply not available to support such a conclusion.

- 4.) Paragraph 126: In this paragraph, the majority concludes that the District violated the IDEA because it refused to provide the Student with a job coach during the summer of 2000. It bases this conclusion on a determination that the District failed to comply with extended school year consideration requirements and because the service requested by the parent was not available. My first objection to this conclusion is that the Student's eligibility for extended school year services is not at issue in this case, and it is inappropriate for the Panel to raise and rule on an issue after the hearing has concluded. The respondent did not have an opportunity to present evidence on this issue. Secondly, the incidental testimony that did relate to the question demonstrated compliance with the policy guidance document cited by the majority i.e., that a primary consideration regarding the Student's eligibility for extended school year services was a prediction of her regression/recoupment rate (Trans. Pgs. 1171-1172). Significantly, Ms. herself on pg. 1157 of the transcript objected, on the basis of relevance, to a question related to extended school year services during the summer of 2000 stating, "I don't know that extended school year was requested." It is difficult to understand why the majority elected to make this an issue in this case.

Understanding, however (as both the parent and District did), that the Student was not eligible for special education services during the summer, then the testimony on pgs. 1157-1159 makes clear that the District's response to Ms. 's request for summer services was based upon the availability of regular-not special education- services. For this reason, these actions are not governed by the IDEA.

- 5.) Paragraphs 128-132: In these paragraphs, the majority attempts to justify its conclusion that the IDEA requires that transition goals and short-term objectives or benchmarks be written into IEP's. Section 300.347 (b) clearly states what is required regarding transition documentation in IEP's and it clearly segregates those requirements from those in 300.347 (a). The regulations also contain a lengthy explanation in Appendix A, question #11, "What must an IEP team do to meet the requirements that the IEP include 'a statement of ... transition service needs' beginning at age 14 (Sec. 300.347 (b) (1) (i), 'and a statement of needed transition services' no later than age 16 (Sec 300.347 (b) (2))?" Nothing in this section remotely supports the majority interpretation. Neither does the Missouri State Plan anywhere support this interpretation. Further the majority interpretation is specifically controverted by the Missouri Compliance Monitoring Standards which clearly specify that Districts may meet the required standard by either writing transition goals/objectives OR writing statements of the activities in an IEP.

The District in this case, clearly complied with the applicable federal and state standards. I strongly disagree that the respondent can be found out of compliance with a new and more burdensome interpretation of the law invented by this Panel.

- 6.) Paragraphs 139-142: Because I find the District to have complied with the procedural requirements applicable to the issues in this case and because I find the IEP's in question to have been reasonably calculated to enable the Student to receive educational benefit and because I find the evidence to show the Student has demonstrated actual significant benefit from the special educational services provided to her, I

disagree with the remedies ordered by the majority.

It is the minority opinion in this case that the majority has both exceeded and abused its authority, primarily by misinterpreting applicable law.

For all of the above reasons, I must dissent to the majority opinion expressed in the above numbered paragraphs.

Respectfully Submitted,

George Wilson  
Hearing Officer  
May 25, 2001