

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

,	)
by his parents,	)
and,	)
	)
Complainants,	)
	)
vs.	)
	)
SPECIAL SCHOOL DISTRICT	)
OF ST. LOUIS COUNTY,	)
	)
Respondent.	)

**DECISION**

This is final decision in a “due process” proceeding under the federal Individuals with Disabilities Education Act (IDEA) and Missouri state law.

**THE PARTIES**

The Student is

His parents are:

The Respondent is:  
The Special School District of St. Louis County  
12110 Clayton Rd.  
St. Louis, MO 63131

**THE ATTORNEYS**

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## **HEARING OFFICERS**

Kenneth M. Chackes	Hearing Chairperson
Trudy Fulmer	Hearing Panel Member selected by parents
Rodney Karns	Hearing Panel Member selected by school district

## **RELEVANT DATES**

Request for due process hearing: April 28, 2000  
Dates of hearing: August 23, 24, 30, and 31, 2000  
Date of Decision: September 8, 2000

Explanation of deviation from 45 day time-line:

The hearing chairperson initially set the hearing for June 7, 2000, in order to meet the 45 day deadline of June 12, 2000, set forth in the IDEA regulations, 34 C.F.R. §300.511(a) (1999), and Missouri law, §162.961.5 RSMo. On May 31, 2000, the SSD moved for an extension, indicating that the parents' attorney was out of town but that the motion was made with the consent and agreement of the parents. In its motion, the SSD requested a "tentative date for hearing" of August 23-24, 2000 and an extension of the date for completion and mailing of the decision to September 8, 2000. The chairperson granted that motion, and on May 31, 2000 set the hearing "tentatively" for August 23-24, 2000, and extended the decision deadline to September 8, 2000.

## **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.

### **STATEMENT OF ISSUES**

1. Did the school districts have sufficient information to suspect the Student had a disability, so that screening and evaluation activities should have been performed?
2. Is the student disabled under the IDEA and the Missouri State Plan?
3. Did the school districts fail to provide the Student with FAPE?
4. Were the parents justified, having received no notice of their rights from the districts, in making their own placements, at Logos, Three Springs, and Hyde School?
5. What are the appropriate current and future services for the Student?
6. Are the parents' and Student's claims barred by the statute of limitations?
7. What are the respective responsibilities of the Webster Groves and the Special School Districts?

### **FINDINGS OF FACT**

1. The Student was born on . At all times material he has resided with his parents within the boundaries of the Webster Groves School District in St. Louis County, Missouri. Living in St. Louis County, the Student is also within the area served by the Special School District of St. Louis County (SSD).
2. From Kindergarten through the beginning of the second semester of eighth grade, the Student attended the schools of the Webster Groves School District. During seventh grade (1996-97) and eighth grade (1997-98) Student attended Hixson Middle School.

3. The Student achieved excellent grades and participated in programs for gifted students through seventh and into eighth grade, receiving almost all A's on his report cards.
4. The Student had some anxiety and adjustment problems during his first few years of school, from Kindergarten through second grade. His physicians prescribed some anti-anxiety medications during second grade, and the Student continued to perform well in school from that time forward. His parents positively described the Student's peer relations during his first six or seven years of school, although he had some anxieties about other children teasing him. The Student had some early symptoms of obsessive compulsive disorder, manifesting in shoulder rolling and chin tics, for which he was teased.
5. During seventh grade at Hixson Middle School, the Student's academics continued to be good, but he had some adjustment problems and received some teasing from other students.
6. In the summer between seventh and eighth grades, while in Europe with his family, the Student had an episode in which he wandered off in a daze and stopped communicating with his parents. His pediatrician, Dr. Paul Simons, described this as "selective mutism." At the same time the Student was very worried and perfectionistic, his tics were re-emerging, and he began to engage in ritualistic behaviors. Dr. Simons diagnosed the Student at that time with an anxiety disorder, most likely obsessive compulsive disorder and tourettes. Dr. Simons explained that anxiety disorder is a broad term, that includes both obsessive compulsive disorder and tourettes syndrome, which are two different manifestations of the same disease.

7. During the fall semester of eighth grade the Student's performance in school dropped dramatically. On his progress report for the first four or five weeks of school, the student received all A's and one pass. By the end of the first quarter, after about two months of school, his grades had dropped slightly, to three A's and four B's. Four or five weeks later, however, by the end of November or early December, 1997, the Student's mid-quarter progress grades in his four core academic subjects had dropped to two C's and two D's. By the end of the second quarter, in mid-January, 1998, his grades in those four courses were a D- and three F's.
8. At home, during his first semester of eighth grade, the Student was engaging in repetitive and ritualistic behaviors including making guttural growling sounds, taking so long showering and getting dressed that he was often late for school, opening and closing the refrigerator door and his bedroom door twenty times, blinking repeatedly before answering questions, The student was unable to continue playing hockey because of his ritualistic behaviors getting dressed before the games and on the ice.
9. The parents spoke to the teachers, school counselor, and nurse about their son's behaviors in informal conversations before and after school, and in three formal meetings during and just after the end of the first semester. The parents and teachers both testified that they discussed concerns about the Student at formal parent-teacher conferences in October 1997, on December 4, 1997, and on January 28, 1998. The parents testified that they informed the teachers in September and October 1997 that the Student had an anxiety disorder and was under the care of physicians, including a psychiatrist. The parents informed the teachers about some, but probably not all, of their son's repetitive

and ritualistic behaviors that occurred outside of school. School records and witnesses confirm that on December 2, 1997, the parents informed the school by telephone that he “was diagnosed with Tourettes syndrome and obsessive-compulsive disorder at St. Louis Childrens Hospital.”

10. The parents learned from the teachers near the beginning of the year that the Student was ritualizing at school, was blinking, bobbing his head and rolling his shoulders, spending long periods of time at his locker, and at times “zoning out” and not responding. Teachers also told the parents that the Student appeared tired and one of them suspected he was on drugs. The science teacher showed the parents a paper on which the Student wrote and rewrote the same answer, writing the same words over and over each other in the same space, so that he did not have time to answer any more questions to complete the assignment. Near the end of the time that the Student attended school, his father testified that he was called to come to school one afternoon because the Student had run away from the detention classroom. When the father arrived the teacher informed him that the student had left the room and was banging on a plexiglass partition; that the teacher thought he was trying to break it, so she brought him back into the room. The teacher told the father that when she brought the Student back into the room she announced to the other students: “This boy is sick.” The teacher said the Student then ran away and she did not know where he was. The Student did not return home until hours later, sometime that evening.
11. The Student’s teachers testified at the hearing that during that first semester of eighth grade he began to fail to turn in assignments in about mid-November, and sporadically

missed assignments from that time forward. He stopped turning in his work entirely after his return to school following the winter break, but he did continue to participate in at least some classes and appeared to understand the material that was being presented.

Teachers testified that they did not observe all of the behaviors that the parents had been observing at home, but did see some repetitive eye blinking and some muteness.

12. The parents presented the school with the information about their son's condition seeking help and advice about his progress and where he might be headed. The parents wanted to keep the Student in public school and met with the teachers to determine what could be done to keep him there. They sought to inform the teachers about their son's problems and develop a plan to make school work for him. The school staff informed the parents that they would try to make accommodations, but there was little they could do. The staff offered the parents no specific plan of accommodation other than to continue to communicate with the parents. The teachers did not suggest such accommodations as moving the Student closer to the teacher, assigning a note taker, allowing a tape recorder. Ultimately, the school nurse suggested to the parents that their son could be provided a tutor to come to their home to teach him in what is referred to as homebound services.

13. Because of their concerns regarding the Student, the teachers on his teaching team, the Amber Team, met and discussed his situation among themselves and with the school counselor. They testified that they accommodated his situation by shortening his assignments in some of his classes and communicating with his parents. The school nurse testified she offered to allow the Student to go to her office if he wanted a private place to engage in ritualistic behaviors. These accommodations could be considered as

alternative intervention strategies, a step in the screening process, but the staff did not describe them in that way.

14. The counselor testified it was her job to work with the parents and the Care Team to determine whether to refer a student to SSD for an evaluation. She was concerned that the Student had a disability that was affecting his education, but never implemented the Care Team or discussed him with the SSD. She testified that based upon the information from the Student's doctor that accompanied his homebound application she believed he had a disability that interfered with his education. If the Student had stayed in school, rather than going to the homebound program, the next step would have been to take his case to the Care Team. When he went to the homebound program and was no longer in her school, the counselor believed she had no further responsibility to determine whether he should be evaluated.
15. Staff members testified that they were aware of other students with obsessive compulsive disorder and/or tourettes syndrome. Some of those students had been diagnosed with educational disabilities and were receiving special education services, while others were not diagnosed and were able to perform adequately at school without such services.
16. The Student continued attending Hixson Middle School until approximately January 20, 1998. On February 6, 1998, his pediatrician, Dr. Simons, wrote and faxed a letter to the school nurse to support an application for homebound services. Dr. Simons indicated he was "writing to request home schooling with a tutor for" the Student. He also stated that the Student "has been diagnosed as having severe Obsessive/Compulsive Disease," and

that “[d]ue to the severity of his illness, I do not foresee [the Student’s] being able to return to school soon.”

17. While he was out of school, in January 1998, the Student began seeing Dr. Monica Frank, a psychologist who specializes in anxiety disorders including obsessive compulsive disorder. At that time he was practically mute and ritualizing for substantial periods of time throughout the day. Dr. Frank provided the Student with cognitive therapy to try to help him manage his anxiety and develop coping skills. Dr. Frank completed a homebound application form and returned it to the SSD, indicating that the Student’s obsessive compulsive disorder causes him “to ritualize with reading and writing activities . . . which greatly lengthen the time to do work; he also is prevented from talking because of rituals.”
18. The father testified that it was his understanding that when the Student was approved for homebound services by SSD, he had been identified as a student with a disability. The school nurse who recommended the homebound services did not explain to the parents that it was a service that could be provided to either disabled or non-disabled students. The nurse testified that when she filled out the homebound application form she had to check one of two boxes, indicating whether the Student was “Non-Handicapped” or “Handicapped: IEP has been revised and notice of change of placement implemented.” She testified that since the Student did not have an IEP, she believed she was required to indicate he was “Non-Handicapped,” although she felt “funny” about it because of his medical condition.

19. The Student received homebound instruction from a tutor employed by the SSD from March 2 until April 24, 1998. After the first two days, the Student was unavailable at home for nearly two weeks because he had been admitted to a psychiatric hospital and then attended a day outpatient treatment program. His homebound work was limited to one subject, math, because his teachers believed that he would not be able to handle all of his work and that if he kept up in math he would be able to return to school without being behind his peers. In the homebound instruction, the Student was unable to write his own answers. He engaged in repetitive behaviors, attempting to write with a pencil, but then erasing what he had written, or he would double write his work. The teacher accommodated him by reducing the amount of work he had to do and by writing the answers for him. By the end of the homebound period, the teacher still did the majority of the writing, but the Student asked to finish a quiz himself. The teacher reported that it took him “quite a long time” to finish the quiz. She also observed his repetitive blinking, finger movements, walking in and out of the kitchen door, and mumbling or growling to himself. The Student did not have difficulty understanding and learning the subject matter, but he would occasionally appear to go “off track” before responding to a question.
20. Before the Student’s homebound instruction ended, his parents determined that he was not ready to return to public school and they inquired of the Hixson School nurse about an extension of the homebound services. She had never heard of such a thing and referred the parents’ request to the SSD. In mid-April 1998, the Student’s psychologist, Dr. Monica Frank, and his pediatrician, Dr. Simons, wrote letters indicating that he was

unable to return to school for the rest of the year. Dr. Simons explained that the Student had not responded to “intensive interventions” and his illness still was not under control.

21. Since they believed their son was unable to return to his public school the parents explored other options. They learned about Logos School, a private day school for students with behavior problems who could not succeed in the regular school environment. They learned that Logos provided small classes and therapeutic support. Dr. Frank testified that she believed Logos could meet the students therapy and educational needs. The father informed the homebound teacher they were going to send their son to Logos.
22. Neither the counselor nor any other staff member of Webster Groves nor any staff member from the SSD ever advised the parents about the rights of a student with a disability, that their son might have an educational disability, about the screening and evaluation process, about the possibility of his right to special education and related services, or about their procedural rights.
23. When the Student began to attend Logos he was accommodated by being allowed to attend only part of each day. At times he would refuse to go to Logos and the school would send what they call a “posse,” consisting of a counselor and two other students, to the Student’s home to attempt to get him to go to school. On one occasion when the posse came for the Student, he barricaded himself in his room and jumped from a third floor window to a lower roof and to the ground, breaking his foot. Another time to avoid going to Logos the Student climbed to the peak of his roof after leaving the telephone off the hook in his locked room so his parents couldn’t use the telephone to call for help.

The Student was again admitted to a psychiatric hospital for short-term treatment. After that hospitalization the Student attended Logos on and off for a period of time, until the Logos counselor in consultation with Dr. Simons, determined that the Student needed a 24-hour residential program in order to be educated.

24. In his therapy with Dr. Frank, the Student initially made some progress, beginning to speak in the spring of 1998, but deteriorated over the summer of 1998. The Student became aggressive and belligerent and on one occasion locked his mother and Dr. Frank in a room in her office. Dr. Frank, along with the physicians who were treating the Student, determined toward the end of 1998 or in early 1999, that he needed a residential educational facility. She testified that in addition to his obsessive compulsive disorder, the Student also had social phobia (another anxiety disorder) and depression.
25. The parents, with the help of the Logos counselor, found Three Springs, a residential school in Tennessee for adolescent males with behavioral difficulties in school and at home. It is accredited as a school and licensed as a mental health facility. The therapeutic component is supervised by a psychiatrist and a licensed psychologist who is the clinical coordinator and acts as a school counselor. Three Springs provides a strong supportive therapeutic component and small classes of only 10-12 students. The therapeutic component at Three Springs provided formal group therapy sessions twice a day, individual therapy as needed, and constant behavior modification through staff and peers. Three Springs also required regular parent participation. The Student did not have a formal IEP at Three Springs because he was not sent there as a student with a disability by his school district, as many of their students are. Three Springs did develop an

individualized program for the Student, however, using the same form on which they develop formal IEPs, including goals and objectives and period reviews. Among the areas for which students receive grades is interpersonal relationships.

26. The Student began attending Three Springs on approximately March 31, 1999. He remained there until he successfully completed and was graduated from the program in June 2000. By the time he completed Three Springs the Student was again succeeding academically, was writing and speaking, and had regained his self esteem.
27. At one of their visits to Three Springs, the parents learned from other parents there that public schools sometimes pay the expenses of students with disabilities at private facilities when necessary for them to receive an appropriate education. The parents had never before heard that information. They were not advised of it by Webster Groves or the SSD.
28. As the Student was nearing completion of his program at Three Springs, his parents along with their medical advisors and the staff at Three Springs considered the next appropriate educational placement for him. Three Springs staff advised that although many of their graduates do return home to their public schools, they did not believe the Student was ready to do that.
29. The Student continues to need a supportive residential environment because of his high vulnerability to situations that could cause the return of his ritualistic and dangerous behaviors. He continues to need an environment where he can receive total support from the staff and other students, continued monitoring of his anxiety and development of coping skills. Each of the schools his parents provided for the Student, Logos, Three

Springs and Hyde, has an organized peer support system that meets the Student's needs for positive reinforcement from other students and leads to appropriate rather than negative behaviors. Because of his obsessive compulsive disorder, which never will be cured, he needs to be in a situation with a controlled environment where stressful situations are minimized and where he will learn coping methods. Living at home and attending the public school, would not meet his educational needs at this time.

30. Following the Student's completion of the Three Springs program, his parents retained an educational consultant to help find a program that meet the needs described above. Among other schools, the consultant recommended and the parents selected the Hyde School in Connecticut. Hyde School is a therapeutic boarding school with small classes, a good academic program and therapeutic support. It provides group therapy for substance abuse and group therapy and counseling for other behavior problems. Hyde School is an appropriate educational environment for the Student at the present time.
31. The Missouri State Plan contains definitions and diagnostic criteria for the various educational disabilities that are covered by the IDEA and Missouri's special education law. While no proper evaluation was ever performed by a multi-disciplinary team, there was evidence presented at the hearing, primarily from Dr. Simons and Dr. Frank, from which we find that the Student fits within the definitions and meets all the criteria set out in the State Plan for both "Behavioral Disorders/Emotionally Disturbed" and "Other Health Impaired." The following two paragraphs describe the definitions, criteria and evidence.

32. The Student could have been diagnosed under the “Behavioral Disorders/Emotionally Disturbed” category because he manifests “difficulties in building or maintaining satisfactory interpersonal relationships with peers.” This was evident as his peer relations were the source of the Student’s anxieties. He also had “a general pervasive mood of unhappiness or depression.” Both Drs. Simons and Frank indicated this both in their clinical notes and testimony. The Student also has “a tendency to develop . . . fears associated with personal or social problems.” Dr. Frank clearly established that criterion. The definition also requires that the student exhibit those behaviors “over an extended period of time, to a marked degree along with difficulties in learning.” The testimony of Drs. Simons and Frank also established those factors. The State Plan’s eligibility criteria indicates, “[i]n most cases, an extended period of time would be a range from two (2) through (9) months.” Here the Student exhibited those behaviors along with his difficulties in learning while he remained at Hixson for over two months from the middle of November 17, 1997, through January 20, 1998. They continued while he was in the homebound program, and under the jurisdiction of both school districts, through April 24, 1998, another three months, or a total of five months. And the symptoms clearly continued through the time the Student attended Logos and at least during his initial period at Three Springs, over another year. Finally, both the definition and eligibility criteria require that the behavioral disturbance not be caused by visual or auditory problems, motor deficits, mental retardation, language or learning disability, or environmental or economic disadvantage or cultural differences. The Student’s symptoms cannot be so explained.

33. To qualify as Other Health Impaired under the State Plan a student must have a “medically diagnosed physical or physiological condition which causes educationally related problems.” The Student’s diagnoses of severe obsessive compulsive disorder and tourettes syndrome are physiological conditions and they certainly affected his education. The Student also meets the State Plan definition in that his conditions required “special adaptations, . . . therapies, and/or instruction,” to deal with his inability to write, speak, and turn in assignments. To be “Health Impaired” the State Plan requires the student’s disability results in “reduced efficiency in school work because of temporary or chronic lack of . . . alertness due to health problems.” Dr. Simons clearly testified the Student’s “efficiency would be a disaster.” Lack of efficiency was also clear from his inability to write and turn in assignments. Both Drs. Simons and Frank, as well as other witnesses, testified to his lack of alertness. In order to be diagnosed with an Other Health Impairment, the State Plan requires the two criteria of “a medically confirmed . . . health impairment, AND an educational problem caused by the . . . health impairment.” The impairment “must interfere with the student’s ability to function in an educational program using traditional instructional materials and techniques.” Here, among other things, the Student was unable to be educated in the regular classroom, he required one-on-one tutoring, and his homebound teacher had to write for him. The State Plan emphasizes that the presence of these two criteria must be determined by “a health evaluation by a licensed physician or licensed psychologist . . . and a comprehensive educational evaluation.” This Student had the required health evaluation, but the schools

never performed the educational evaluation. Dr. Simons and others testified that such an evaluation should have been, at least by the time the Student was being considered for homebound services.

34. To be considered a student with a disability under the law, in addition to meeting one of the disability definitions, a student must, because of that disability, require special education and related services. State Plan at A - 16. SSD suggests the Student does not require special education and related services. That is not correct. A variety of special education services could have been provided, and many were provided for the student in one or more of the private placements arranged by his parents: tutoring, small class size, a class with more than one teacher or teacher and paraprofessional, social skills training for peer relations, access to therapy or counseling for anxiety, strategies to deal with his writing difficulties, behavior intervention plans, and alcohol and drug avoidance strategies.

35. Based upon the testimony of the father, the parents expended the following sums to obtain the educational and support services that the Student received since April 1998:

Logos tuition and fees .....	\$14,500.00
Three Springs tuition and fees.....	\$58,000.00
transportation for parents and other expenses at Three Springs.....	\$20,000.00
Hyde School tuition 5 week summer program .....	\$4,000.00
Hyde School for school year 2000-2001 (paid).....	\$17,000.00

36. An additional \$8,000.00 in tuition, for a total of \$25,000.00, will be required to maintain the student at Hyde School this year. The parents also will incur travel expenses,

including airline fares of \$240.00 per person per trip, for three required parent visits to Hyde School.

### CONCLUSIONS OF LAW

The United States Court of Appeals for the Eighth Circuit, which governs the federal courts in Missouri: “At 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).

- 1. The school districts had sufficient information to suspect the Student had an educational disability, so that screening and evaluation activities should have been performed.**

The Individuals with Disabilities Education Act (IDEA) requires that “[a]ll children with disabilities residing in the State . . . who are in need of special education and related services, are identified, located, and evaluated.” 20 U.S.C. §1412(a)(3)(A) (1997). The Missouri State Plan delineates the specific responsibilities of local school districts in meeting that requirement. State Plan at 12-17 (1995-98; November 1996).<sup>1</sup> The State Plan establishes the minimum standards for location of children with disabilities, the “child find” requirements of publishing and posting notices. *Id.* at 13. The required newspaper notices apparently were published by the SSD. More important to the issues in this case, however, are the “screening” requirements. The State Plan provides:

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<sup>1</sup> This is the most recent state plan approved by the federal government. Despite its dates, it was in effect during all times relevant in this case.

Each local school district shall design and implement a comprehensive, continuous and periodic screening program designed to identify suspected physical, sensory, behavioral/emotional, or other problems which may significantly interfere with a student's capability of achieving educational success. Screening is required in the following areas of functioning: . . . Health/Motor . . . Social/Emotional/Behavioral. *Id.* at 14-15.

The State Plan refers to both periodic screening, which involves formal assessments of performance and development, and continuous screening, which “involves the use of informal observations of an individual student's behaviors to identify possible problems which may interfere with ongoing performance/development as compared to peers.” *Id.* at 15. The continuous screening activities are at issue here.

Appendix F of the State Plan establishes that the “development and implementation” of a screening program “is a matter of joint compliance between the special and component districts.” *Id.* at F - 4. Under that provision, Webster Groves was required “to establish, in consultation with the special school district, appropriate criteria in each area of functioning” and “to designate sufficient staff and resources to gather this screening information.” *Id.* No evidence was presented about the “specific pass/fail criteria” that are required by the State Plan for determining whether a student with health and social/emotional/behavioral problems should be referred for a special education evaluation. *Id.* at 15.

Before a referral is made for special education evaluation, “alternative intervention strategies” generally are to be provided for students experiencing learning difficulties. *Id.* Progress of students should then “be monitored to determine if learning has improved or has

remained unaffected.” *Id.* A referral for evaluation “shall be made when acceptable progress is not evident.” *Id.* Alternative intervention strategies may be waived, however, and the student immediately referred for evaluation, when the “student is suspected of having a significant disability for which special education and related services will be required.” *Id.* at 15-16.

Thus, a student must be referred for a special education evaluation when he has problems in the areas of health and/or social, emotional or behavior, that interfere with learning or performance at school, and either alternative intervention strategies do not result in improved learning or such strategies are waived because the student is suspected of having a significant educational disability.

The SSD provided the panel with a copy of the General Assurance Document for the 23 Component School Districts of St. Louis County, which further explains the responsibilities of conducting screening activities and making referrals for evaluation. That document establishes that when the screening process identifies a concern about a child the component district is to implement alternative intervention strategies. General Assurance Document at 7. The district “may obtain the assistance of the building level team,” called the Care Team in Webster Groves, to “consult with appropriate specialists such as the guidance counselor, . . . [and] school nurse.” *Id.* If the alternative intervention strategies, and other steps, “do not sufficiently address the concern(s) identified,” the school is to “communicate with the parent,” and document the “[s]trategies previously attempted and those recommended . . . in a data gathering packet.” *Id.* at 8. Likewise, if the alternative intervention strategies are waived, that should be explained in the data gathering packet. *Id.* at 9.

While the SSD contends in its proposed conclusions of law that Webster Groves personnel were “engaged in continuous screening” that was not at all clear from the testimony. The Webster Groves staff never got to the point of determining whether the Student’s problems were severe enough to meet criteria to fail screening, they never explained to the parents that they were considering a possible referral for a special education evaluation, and they never created a data gathering packet.

The panel finds that there were several points at which school district personnel should have suspected the student had a disability and initiated formal screening activities leading to a referral of the student for a special education evaluation.

37. After the December 4, 1998 conference with parents, after the school was informed of the diagnosis, the student had been failing to turn in work, and his grades had started to fall.
38. From late January and into February 1998, when the student could no longer attend school and was considered for homebound services. At that point both districts had additional information from his doctor and psychologist indicating the severity of his illness and his inability to attend school, and whatever accommodations or alternative intervention strategies the district was implementing were determined to be insufficient.
39. During homebound instruction when the district determined that the Student was unable to take more than one course, math, the Student was

unable to write independently, engaged in repetitive and “zoning out” behavior, and was hospitalized.

40. When the parents informed the districts that they were going to enroll the Student at Logos.

At each of those points the districts were jointly required to engage in formal screening which would have led to a formal evaluation. The districts were also required at those points to explain the process to parents and build a data packet. General Assurance Plan, p. 9.

At the point of providing homebound services for a student who “has not been identified as disabled previously,” the State Plan requires that a team will develop an IEP. State Plan A-80.

The SSD argues that evaluation would not have been proper while the Student’s medications were being adjusted. The district is referring to the testimony of the Student’s psychologist, Dr. Frank. She did not testify that educational testing or psycho-educational testing could not be conducted, but that “full psychological testing” could not be conducted. Whether the student met the definitions and criteria for “Behavioral Disorders/Emotionally Disturbed” and “Other Health Impaired” could have been conducted even if student could not engage in formal testing. The districts were legally obligated to consider medical and other outside information and had the ability to diagnose based on that information and by observation. The IDEA regulations in effect in 1997 and 1998 required the districts to “[d]raw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior.” 34 C.F.R. §300.533 (prior to 1999). The IDEA itself provides that “no single procedure shall be the sole criterion for

determining an appropriate educational program for a child.” 20 U.S.C. §1412(5)(C). In addition, diagnostic teaching may be used “as an optional evaluation procedure . . . to collect data on a variety of clinical tasks to supplement standardized assessment procedures.” State Plan at 62.

The SSD also argues that the Student’s disability was a transient medical condition for which special education was not necessary. The State Plan requires that the behaviors for a “Behavioral Disorders/Emotionally Disturbed” diagnosis be exhibited over an extended period of time,” a term that the State Plan specifically defines as a period of from two to nine months. Here, the Student’s behaviors that caused his significant learning difficulties started in the fall of 1997. At least two months passed while the student remained in school until he could no longer continue in late January 1998. His behaviors continued to interfere with his education through the end of his homebound instruction, a total of five months. And the behaviors remained in existence without responding to medical treatment until he was well into the program at Three Springs, which he began almost a year later. The “Other Health Impaired” diagnosis doesn’t contain any specific durational requirement, but includes disabilities that result in reduced efficiency in school because of temporary or chronic lack of alertness due to health problems. There must be some limit to the amount of time a school district can wait and see whether medical interventions will reduce or eliminate a learning problem. The State Plan’s definition of two to nine months being an extended period of time provides some guidance. Due to the seriousness of the Student’s disability and the dramatic impact it had on his education, we believe the districts waited too long to begin the formal evaluation process for this Student.

The SSD also suggests the districts acted appropriately by following the doctor's suggestion to provide homebound services. We have found, based on the testimony of the parents, that it was the school nurse who suggested homebound services as a way of dealing with the Student's educational problems. Moreover, the school district's duty to screen and consider a formal evaluation is not excused by a suggestion by parents or their doctor for the particular accommodation of homebound instruction. The IDEA places the duty on the state and the school district to locate, identify and evaluate all children with disabilities. 20 U.S.C. §1412(a)(3)(A) (1997).

The parents, although educated in other fields, were not experts in special education law or procedures. They brought to the school district information about their child's medical problem at the beginning of the 1997-98 school year because they had been advised that his medical problem was likely to have an impact on his school performance. The parents sought appropriate help and services from the staff at school, whom they assumed had the knowledge and expertise to help the Student. While the parents did not specifically request an evaluation or special education and related services, it was not their responsibility to do so. A similar situation occurred in *Robertson County School System v. King*, 99 F.3d 1139, 24 IDELR 1036 (6th Cir. 1996), where the court explained:

"Of course," ALJ Cleveland explained, "a parent who is a neophyte to special education and is unacquainted with IDEA cannot be expected to appear and say 'My child is eligible for special education services under IDEA, and I am here to refer my child for an individual assessment.' A request for assessment is implied when a parent informs a school that a child may have special needs." We agree.

We conclude that the school districts had sufficient information at several points in time from the fall of 1997 onward to trigger their obligation to conduct an educational evaluation of the Student, and their failure to do so was a violation of his rights under the IDEA.

2. The Student is disabled under the IDEA and the Missouri State Plan.

We have described in detail above our conclusion that the Student has an educational disability under the IDEA as defined in the Missouri State Plan. Findings 31-34.

With respect to the issue whether the Student needs special education services because of his disability, the Eighth Circuit's decision in *Yankton Schl. Dist. v. Schramm*, 93 F.3d 1369 (8<sup>th</sup> Cir. 1996), provides significant guidance. The court in *Yankton* indicated, "[t]he heart of the dispute . . . concerns whether Tracy still has a disability within the meaning of IDEA which entitles her to a free appropriate public education." The court concluded she did:

Tracy is a disabled child under IDEA because the orthopedic impairment caused by her cerebral palsy still requires "special education and related services." Id. § 1401(a)(1)(A). Special education is "specially designed instruction. . . to meet the unique needs of a child with a disability," and includes instruction in the classroom, home, and in physical education. Id. § 1401(a)(16). Tracy's unique needs include slowness and fatigue when writing and stiffness and lack of dexterity in her right hand. To meet her needs, Tracy's teachers shortened or modified the length and nature of her writing assignments, provided her with copies of their notes, and taught her how to type using only her left hand and the first finger of her right hand. None of this individualized instruction would have been necessary but for her orthopedic impairment.

The Student in this case also had difficulties with writing, although for vastly different reasons than the student in *Yankton*. The Student here also had severe behavioral problems that required specialized instruction to teach him to understand his disability and to provide him the coping strategies that he needed to deal with his anxieties and reduce his ritualistic and repetitive behaviors. The experts who have worked with the Student before and during his health crisis all

testified that he needed and still needs specialized instruction in small classes, with ongoing behavioral support and therapies.

### **3. The districts failed to provide the Student with FAPE.**

One of the most fundamental requirements of the IDEA is that school districts provide each student with disabilities a free appropriate public education (“FAPE”). The FAPE requirement involves both a procedural and a substantive component. As stated by the United States Supreme Court in the *Rowley* case:

First, has the State complied with the procedures set forth in the Act? And second, is the individualized educational program developed through the Act’s procedures reasonably calculated to enable the child to receive educational benefits?

*Board of Education v. Rowley*, 458 U.S. 176, 206 (1982).

Other cases decided by the Supreme Court establish that the standard is not whether the public school possibly “could” have provided an appropriate education, but whether it actually offered or provided such an education. *School Committee of Burlington v. Department of Education of the Commonwealth of Massachusetts*, 471 U.S. 359 (1985) and *Florence County School District Four v. Carter*, 510 U.S. 7 (1993).

The Supreme Court emphasized the importance of procedural compliance:

It seems to us no exaggeration to say that Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process . . . as it did upon the measurement of the resulting IEP against a substantive standard.

*Rowley*, 458 U.S. at 205-06.

While procedural flaws do not automatically render an IEP legally defective, an IEP can be set aside on procedural grounds if those procedural inadequacies have “seriously hampered the

parents' opportunity to participate in the formulation process." *Independent School District No. 283 v. S.D. by J.D.*, 88 F.3d 556, 562 (8th Cir. 1996).

Here the districts did not ever get to the point of developing and implementing an IEP for the Student. They did not conduct formal screening or refer him for an evaluation, did not provide information to the parents about screening and referral or notice of their procedural rights. They did not evaluate or diagnose the Student, find him eligible, develop an IEP and make a placement decision. Clearly the districts have failed to provide the Student with FAPE.

SSD relies on *Schoenfeld v. Parkway Sch. Dist.*, 138 F.3d 379 (8th Cir. 1998), where the Court of Appeals held that there can be no showing of the denial of FAPE where a school district is not afforded a opportunity to formulate or revise an IEP. The facts are not similar here. The parents in this case gave Webster Groves and SSD the opportunity to evaluate their son from the time they presented his medical information to his teachers, counselor and nurse. Unlike the parents in *Schoenfeld*, these parents applied for homebound services and provided additional medical information at that point and later when they sought extended homebound services. As the court did in *Robertson County School System v. King, supra*, we specifically find that the parents made a general plea for help that included a request for an evaluation and development of an appropriate educational program to meet their son's individual needs. Without knowing their rights, like the mother in the *Schoenfeld* case obviously did as a teacher in the district, no more can be required of these parents.

- 4. The parents were justified, having received no notice of their rights from the districts, in making their own placements, at Logos, Three Springs, and Hyde School.**

Since the parents were not informed of their rights and of school district's responsibility to provide appropriate educational services to students like their son, and since the districts did not provide the Student with FAPE, the parents were justified in seeking out and finding alternative private placements. As in the case of *Robertson County School System v. King*, 99 F.3d 1139, 24 IDELR 1036 (6th Cir. 1996), the parents:

. . . had not been informed . . . of the school system's obligation to make a free public education available. Neither were they informed, as they should have been, of their procedural rights in this regard. If the parents had been properly advised and had chosen to keep [their son at a private school] anyway, the school system would obviously have had no obligation to pay--but the parents were not so advised.

When the school has failed to provide an appropriate education to a child with a disability, reimbursement for the costs incurred by the parents of providing such an education is available under the IDEA. *School Committee of Burlington v. Department of Education*, 471 U.S. 359 (1985). Reimbursement is justified if: (1) the educational program offered by the school district was inappropriate, and (2) the private program obtained by the parents provided an appropriate education, even if the private program has not been formally recognized as meeting the standards of the state. *Florence County School District v. Carter*, 510 U.S. 7 (1993).

There is no doubt that Congress has imposed a significant financial burden on States and school districts that participate in IDEA. Yet public educational authorities who want to avoid reimbursing parents for the private education of a disabled child can do one of two things: give the child a free appropriate public education in a public setting, or place the child in an appropriate private setting of

the State's choice. This is IDEA's mandate, and school officials who conform to it need not worry about reimbursement claims.

Under *Burlington* and subsequent cases, parents are entitled to reimbursement of a wide variety of expenses that are incurred in their efforts to provide an appropriate education for their child with disabilities. *See, e.g., Union School District v. Smith*, 15 F.3d 1519 (9th Cir. 1994) (costs of commuting between home and private placement and costs of lodging for child and parent at the location of private placement); *Babb v. Knox County School System*, 965 F.2d 104 (6th Cir. 1992), *cert. denied*, 113 S. Ct. 380 (psychological counseling services provided as part of residential placement at psychiatric hospital, where hospitalization constituted an appropriate educational placement); *Rapid City School District v. Vahle*, 922 F.2d 476 (8th Cir. 1990) (reimbursement for occupational therapy to address sensory integration problems); *Egg Harbor Township Board of Education v. S.O.*, 19 IDELR 15 (D.N.J. 1992) (transportation and related expenses); *Northeast Central School District v. Sobol*, 572 N.Y.S.2d 752 (1991) (transportation to another public school district).

Following the Supreme Court's decision in *Burlington*, that the IDEA permits reimbursement relief, the Office of Special Education and Rehabilitative Services ruled that hearing officers have the power to order reimbursement. *Van Buiten*, 1978-87 EHLR 211:429A (U.S. Dep't of Educ., Off. of Special Educ. and Rehabilitation Servs. 1987).

We therefore award to the parents the sums they have already expended for the educational services, related fees and travel expenses, in providing an appropriate education for their son at Logos, Three Springs, and Hyde School; those listed in Finding 35, above. If the student remains at the Hyde School for the remainder of this school year, and the parents present

the SSD with evidence of payment of the expenses identified in Finding 36, above, the SSD shall reimburse the parents for those expenses as well.

We do not have the authority to award attorneys' fees under the IDEA, so we decline to do so.

**5. Current and future services.**

As discussed above, the student has an educational disability and at the present time is in need of special education and related services consisting of a residential setting, with small class sizes, specialized therapies and support for his behaviors including a peer support program and parental involvement. We determine that such an environment shall be his current placement. He can receive such services at Hyde School and we have determined that his parents are entitled to be reimbursed for the cost of that school for the current year.

We do not determine in this decision how long he will remain in need of those services. We order the SSD to fulfill its obligation to evaluate the Student to determine his future educational needs. If the parents disagree with and appeal any future determination of the SSD that differs from the decision of this hearing panel, the Student's current placement will remain in the residential program we have described, until the parent's appeal from SSD's determination has been resolved.

The parents also have requested compensatory education services. No evidence was presented in support of that request and we, therefore, deny it.

**6. The parents' and Student's claims are not barred by the statute of limitations.**

The SSD claims that all of the parents' and student's claims are barred by a two-year the statute of limitations, §213.111.1 RSMo., recently adopted by the Eighth Circuit as the most

appropriate statute of limitations in Missouri for special education cases under the IDEA. *Strawn v. Missouri State Board of Educ.*, 210 F.3d 954, 957 (8<sup>th</sup> Cir. 2000). The district's argument is that the last time either school district acted or failed to act with respect to the Student was when he entered Logos School, and that was more than two years before the parents submitted their request for hearing in this case. The parents argue that they instituted this proceeding with previous requests for due process that they dismissed without prejudice and that they submitted within the two year period from the Student's or the parents' last formal contact with the districts.

Without ruling on the parent's argument, we conclude that the parents' request for due process submitted on April 28, 2000 was timely for another reason. Section 213.111.1 provides: "Any action brought in court under this section shall be filed . . . no later than two years after the alleged cause occurred **or its reasonable discovery** by the alleged injured party." (Emphasis added.) A similar rule appears in §516.100 RSMo, a statute that applies generally to other statutes of limitations: "for the purposes of sections 516.100 to 516.370, the cause of action shall not be deemed to accrue when the wrong is done or the technical breach of contract or duty occurs, but when the damage resulting therefrom is sustained and is capable of ascertainment."

That rule is more restrictive than a "discovery" rule:

§516.100 . . . does not establish a rule of discovery for the purposes of determining when a cause of action accrues and the statute of limitations begins to run. Instead, it establishes the "capable of ascertainment" test. . . . If the legislature had intended to prescribe a "discovery" test rather than the "capable of ascertainment" test, it would have expressly so provided.

*Jepson v. Stubbs*, 555 S.W.2d 307, 312-13 (Mo. 1977). In *Anderson v. Griffin, Dysart, Taylor, Penner & Lay, P.C.*, 684 S.W.2d 858 (Mo. App. 1984), the court further explained the difference between a discovery rule and a capable of ascertainment rule:

Missouri courts have often quoted the "capable of ascertainment" language of § 516.100 since its adoption in 1919. It purports to be a middle-of-the-road test in determining the commencement of a statute of limitations, but it has never been precisely defined by the courts. The most restrictive test is the "occurrence rule" or "wrongful act" test which says that the moment the defendant commits the malpractice the statute is triggered. Missouri has rejected this test by statute. **The most broad test is the "discovery" rule which looks to the moment the plaintiff first becomes aware he has been aggrieved.**

684 S.W.2d at 860 (emphasis supplied).

A Missouri statute of limitations will also be construed in favor of the victim, "when there is a layman -- expert relationship involved." *Anderson v. Griffin, Dysart, Taylor, Penner & Lay, P.C.*, 684 S.W.2d at 862. In such cases, where the party with greater expertise fails to disclose information that would have informed the lay person of his or claim: "The problem of a stale claim was the respondents' own fault and they cannot now be heard to complain." 684 S.W.2d at 863.

In this case, the parents were not informed of their rights under the IDEA by the SSD or the Webster Groves School District. They only discovered their rights, for the first time, from other parents at Three Springs, at the earliest in May 1999. They submitted the current request for due process less than a year later, in April 2000. In a similar context, the Court of Appeals for the Sixth Circuit found that the statute of limitations did not start to run until the parents learned that their rights might have been violated. *Robertson County School System v. King*, 99 F.3d 1139, 24 IDELR 1036 (6th Cir. 1996). The court explained that "in Tennessee a cause of

action accrues ‘when an injury occurs, is discovered, or in the exercise of reasonable diligence, should have been discovered,’” and since the school district “had an affirmative legal duty to inform the [parents] of their rights, but it failed to carry out that duty,” the statute of limitations did not start to run until the parents became “aware of their cause of action for reimbursement.”

7. Responsibilities of the Webster Groves School District and the Special School District of St. Louis County

The parents assert that this proceeding is against both the Webster Groves School District and the SSD. As the SSD points out, the parents had made that suggestion prior to the hearing, and the hearing chairperson advised that the parents should present “evidence that the due process rights of [Webster Groves], to notice and hearing, have been accorded.” Order, August 17, 2000 at 4. In the evidence presented at the hearing, the parents have included their requests for due process, some of which, including the request submitted April 28, 2000, do indicate that they are requesting a hearing against both school districts. There also is correspondence between the parents’ attorney and attorneys for Webster Groves. Since the inception of this due process proceeding in April 2000, however, it is clear that the Missouri Department of Elementary and Secondary Education (DESE) and the hearing chairperson have considered the only respondent to be the SSD. DESE’s letters dated April 28, 2000 and May 3, 2000, both of which were sent to the attorney for the parents, clearly indicate that the only respondent is the SSD. The panel concludes, therefore, that the only respondent properly a party to this case is the SSD.

That does not mean, however, that SSD is not responsible for the failure of Webster Groves to perform its duties in connection with screening, identification and referral for evaluation. The relationship between the two districts is explained in Appendix F of the State

Plan and in the General Assurance Document, both of which are referred to above. Development and implementation of screening is a matter of joint compliance by both districts. State Plan at F - 4. In addition, implementation of comprehensive personnel development is a joint responsibility. State Plan at F - 4; General Assurance Document at 25. Most importantly, with respect to the administrative hearing process, Appendix F provides that a “parent may initiate a hearing on matters regarding the identification, evaluation, or education placement of the student or the provision of free and appropriate public education.” State Plan at F - 7. Appendix F then goes on to state: “For the purposes of accessing the administrative hearing process, the special and component district must act jointly.” *Id.* In addition, “both the special and the component district would be bound by any final decision obtained through the administrative hearing process,” and “[i]mplementation of a final decision would be a matter of joint compliance.”

Therefore, the SSD is jointly responsible for the failure of Webster Groves to conduct screening activities and to refer the Student for an evaluation. That is of no consequence, however, because once the Student was referred for homebound instruction and during the period of homebound instruction, SSD was fully informed about his disability and its affect on his education. At that point the SSD was responsible for referring the Student for an evaluation, conducting the evaluation, and informing the parents of their rights.

### **CONCLUSION AND ORDER**

It is therefore Ordered, that the SSD violated the rights of the Student and his parents under the IDEA and the Missouri State Plan as set forth above. The SSD shall reimburse the parents for the expenses they incurred for the educational services, related fees and travel expenses, in providing an appropriate education for their son at Logos, Three Springs, and Hyde

School; those listed in Finding 35, above. If the student remains at the Hyde School for the remainder of this school year, and the parents present the SSD with evidence of payment of the expenses identified in Finding 36, above, the SSD shall reimburse the parents for those expenses as well.

We find that the student has an educational disability and at the present time is in need of special education and related services consisting of a residential setting, with small class sizes, specialized therapies and support for his behaviors including a peer support program and parental involvement. We determine that such an environment shall be his current placement. We order the SSD to fulfill its obligation to evaluate the Student to determine his future educational needs.

The motion to dismiss filed by the SSD and the motions for “directed verdict” made by the parties at the hearing are all denied.

Dated: September 19, 2001

Kenneth M. Chackes  
Chairperson

Trudy Fulmer  
Hearing Officer

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

**Three Member Due Process Hearing Panel  
Empowered pursuant to 162.961 R.S. Mo  
Dissenting Hearing Decision**

**Student's Name**

**Parent's Name**

**Representative**                      **Ramon J. Morganstern**

**Local Education Agency**      **Special School of St. Louis County and  
Webster Groves School District**

**Representative**                      **James Thomeczek**

**Hearing Dates**                      **August 23rd, 24th and August 30th, 31st, 2000**

**Date of Report**                      **September 8, 2000**

**Panel Member**                      **Rodney Karns**

## **ISSUE**

Parents claim that Student is a child with a disability and that the Special School District and the Webster Groves School District failed to identify Student as a child with a disability, failed to evaluate Student and failed to provide a free appropriate public education to Student.

Parents further claim as a result of the above delineated failures on the part of the Special School District and Webster Groves District, the parents are entitled to reimbursements from the Local Education Agencies for the cost which they incurred sending Student to a therapist, sending Student to a private school in St. Louis County, sending Student an out of state private treatment center, and seeking in sending Student to a out of state private treatment center, and seeking in sending Student to a out of state private preparatory school.

Parents also seek prospective relief in the form of tuition for the 2000-01 and 2001-02 school year the same out of state private preparatory school.

Parent have requested reimbursement of reasonable attorney's fee.

## **FACTS**

1. The Student was born on April 10, 1984. At all times material he has resided with his parents within Student resides with his parents within the boundaries of the Webster Groves School District in St. Louis County. Living in St. Louis County, the Student is also within the area served by the Special School District of St. Louis County (SSD).
2. From Kindergarten through the beginning of the second semester of eight grade, the Student attended the Webster Groves School District. During seventh grade (1996-97) and eighth grade (1997-98) Student attended Hixson Middle School.
3. The Student achieved excellent grades and participated in programs for gifted students through seventh and into eighth grade, receiving almost all A's on his report cards. with academic sucess.
4. During the seventh grade at Hixson Middle School, the Student's academics continued to be good, but he had some adjustment problems and received some teasing from other students.

5. Father explained that some time in December, but after the December 4, 1997, meeting, parents did obtain additional information regarding Student's condition, but decided not to inform Hixson teachers until after the Winter break.
6. Student was placed on Clonidine on December 19, 1997. The dosage of Clonidine was increased twice over the next seven days. The Clonidine was prescribed to address the symptoms of Tourette's.
7. Some time later in December and definitely before January 8, 1998, Student was taken off of Zoloft in favor of Luvox, a different class of drug used to treat individuals with OCD.
8. By January 23, 1998, the Luvox had been discontinued, and a regimen of Anafranil, as extremely potent drug used to treat individuals with OCD, began.
9. Parents did not provide Ms. Neumann with any update as had been requested, nor did the Parents inform Webster Groves of any of the changes in medications until after Student had ceased attending Hixson.
10. Parents did inform Ms. Rumer that Student's drug treatment was being changed and adjusted. The informed Ms. Rumer that once the doctors were able to stabilize Student's medical problem, the OCD would be managed, and Student would resume to perform as he had during the first quarter of the 1997-98 school year.
11. Student all but stopped turning in work altogether following his return to school after the Winter break.
12. 12. Student was not turning in assignments, however Student continued to participate in class. Student demonstrated a knowledge and understanding of what was going on in class. When called upon in social studies, Student was able to answer. Student continued to participate in science labs and was the leader of his group. Student was able to acquire knowledge in class and to demonstrate his ability to apply the knowledge acquired.
13. During this time, the Amber Team was meeting on a daily basis. The Team discussed a number of interventions. Whether a given teacher implemented any of the interventions, and which interventions were implemented, was committed to the professional judgment of each teacher.
14. Teachers were aware that Parents were having Student tested and that medical interventions were underway, although the teachers were not aware of the specifics of the treatment. At this time (between December 4, 1997 and January 21, 1998), the

- primary focus was on addressing Student's medical problem and the medical interventions.
15. Student attended Hixson for only eight days following the Winter break. Between the date of Student's first missed assignment, November 17, 1997, and the date that he stopped attending school at Hixson, January 20, 1998, Student attended school only twenty-eight days.
  16. Student's medications continued to be adjusted during January and throughout at least April, 1998. For example, Dr. Simons' notes reflect that by March 10, 1998, Student's pharmaceutical regimen included Klonopin, Prozac and Zypresz. The Anafranil levels in his blood were at a near toxic level.
  17. Dr. Monica Frank, Student's therapist, testified that it would be inappropriate to conduct psycho-educational testing while Student's medications were being adjusted.
  18. Homebound services is an intervention available to both students on IEP's and students who have not been identified as children with disabilities for purposes of the IDEA.
  19. Dr. Paul Simmons testified that homebound teaching was the only appropriate intervention at the time.

### **Decision and Rationale**

The Webster Groves and the Special School District showed that both did conduct Child Find activities as required by State Plan for Part B of the Individuals with Disabilities Education Act.

Evidence presented during the hearing did not show that the Local Education Agencies failed to identify and evaluate a student that was suspected to have a handicapping condition under the provisions under the State Plan for Part B of the Individuals with Disabilities Education Act.

The evidence shown during the hearing did not show that the Education Agencies failed to make a free appropriate public education available to Student.

The above three conclusions consequently do not result in the parents being entitled to reimbursement from the Local Education Agencies for the cost which they incurred sending Student to a therapist, sending Student to a private school in St. Louis County, sending Student to an out of state private treatment center and in sending Student to a out of state private preparatory school.

It is further determined that the above three conclusions consequently do not result in the parents being entitled to prospective relief in the form of tuition for the 2000-01 and the 2001-02 school year to the same out of state private preparatory school.

In addition, the parents requested reimbursement of reasonable attorney's fee due to the three above conclusions is not recommended.

It is recommended that the hearing panel direct the Special School District to conduct a comprehensive multidisciplinary evaluation to determine if the student is disabled under the provisions of the State Plan Part B of the Individuals with Disabilities Education Act.

It is further recommended that if the student is found to be disabled an IEP committee should be convened to determine the most appropriate program and services to be provided to the student.

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Rodney Karns, Panel Member

