

BEFORE THE THREE MEMBER DUE PROCESS HEARING PANEL

IN RE:

vs.

ST. LOUIS CITY SCHOOL DISTRICT

**COVER SHEET**

PETITIONER

Student's Name:  
DOB:  
Grade Level:

Parent's Name:  
Address:

Representative: Lawrence J. Altman  
Address: 14500 South Outer Forty Road  
Chesterfield, MO 63017

RESPONDENT

Local Education Agency: St. Louis Public School District  
(LEA) c/o Louise Wilkerson  
Address: St. Louis Public Schools  
Division of Special Education  
5017 Washington  
St. Louis, MO 63108

Representative: Margaret M. Mooney  
Address: Lashly & Baer, P.C.  
714 Locust Street  
St. Louis, MO 63101-1699

## PANEL

Hearing Dates: March 12 and 13 , 2001

Date of Report: April 7, 2001

Panel Members: Ms. Jeanie Adams  
Ms. Christine Montgomery  
Mr. Stephen A. Martin, Chair

### **ISSUES AND PURPOSE OF HEARING**

In this hearing, the parents seek a declaration that the Respondent:

- (a) Failed to provide Petitioner with a F.A.P.E. because the Respondent did not devise a viable individualized education plan; and
- (b) Suggested placement of Petitioner which would have violated Petitioner's right to be placed within the least restrictive environment and would have precluded Petitioner's inclusion with his peers, except during the lunch period and during recess.

### **TIME LINE INFORMATION**

Parent's request for a due process (through legal counsel, Lawrence Altman) was received by the Department of Elementary and Secondary Education on December 11, 2000. By fax dated December 22, 2000, the St. Louis Public Schools (through Louise Wilkerson) requested a continuance. By telephone conference with the chair, Lawrence Altman did not oppose the continuance. After contacting all the parties, or their legal representative, the hearing was set on March 12, 2001. The time for the decision was set as April 9, 2001. Both sides signed a waiver and acknowledgment confirming these dates.

A hearing was held on March 12 and 13, 2001 and:

- (a) parents exercised the right to be accompanied and advised by counsel;
- (b) parents elected to open the hearing to the public;
- (c) parents elected to have the student briefly present at the hearing.

During the course of the hearing, the following documents were submitted:

**PETITIONER'S EXHIBIT LIST**

EXHIBIT LIST NO.	ACTION TAKEN	PAGE(S)	DATE	DESCRIPTION
Petitioner's Exhibit 1	Offered, but not admitted	13	1/03/00	Judevine Center Assessment Report

The following documents were submitted and admitted:

**JOINT EXHIBIT LIST**

Ex.	Date	Description
1	Apr. 29, 1998	Standard Certificate of Live Birth on
2	Jan. 21, 1999	Parents as Teachers Developmental Screening Summary Form
3	Aug. 3, 1999	St. John's Mercy Speech and Language Evaluation
4	Aug. 10, 1999	First Steps Intake Interview Summary
5	Aug. 26, 1999	Early Childhood Special Education Referral; att. First Steps Individualized Family Service Plan re Initiation and Transition Plan
6	Sept. 10, 1999	Easter Seals/Parent-Child Early Intervention Program Developmental Therapy Evaluation
7	Sept. 14, 1999	Occupational Therapy Evaluation
8	Sept. 24, 1999	Ltr from Ms. Mary Ann Daggs to Ms. Dawn Wright re receipt of referral packet
9	Nov. 16, 1999	Handwritten notes re St. Louis Public Schools (the "District") meeting with Ms. Wright
10	Dec. 14, 1999	District request for consent and release of previous medical records and evaluations; att. Medical records and evaluations
11	Jan 27, 2000	Judevine Center Training Child Summary Report
12	Jan. 3, 2000	Judevine Center Assessment Report
13	Jan. 4, 2000	District Summary of Screening
14	Jan. 4, 2000	Ltr from Ms. Kathleen Hesse to Mrs.
15	Jan. 4, 2000	District Notice of Action — Initial Evaluation/Reevaluation
16	Jan. 10, 2000	Ltr from Ms. Janice Lloyd to Mr. and Mrs. re SLPS evaluation referral
17	Feb. 1, 2000	District Social History
18	Feb. 1, 2000	Vineland Adaptive Behavior Scales
19	Feb. 1, 2000	Ltr from Ms. Dionne Smith to Mr. and Mrs.
20	Feb. 17, 2000	Occupational Therapy Evaluation/District Portage Report

21	Feb. 17, 2000	Bayley Scales of Infant Development: Mental Scales Record Form
22	Mar. 6, 2000	Report of Psychological — Educational Assessment
23	Mar. 6, 2000	District proposed IEP
24	Mar. 22, 2000	District Notice of Action — Placement
25	Mar. 22, 2000	Mrs. 's Concerns for 's March 22, 2000 meeting
26	Mar. 24, 2000	District Documentation Form
27	Apr. 10, 2000	Ltr from Ms. Jo Ann Hunt to Mrs. re provision of services
28	Apr. 14, 2000	Ltr from Mrs. to Ms. Hunt re reconvening of IEP meeting
29	Apr. 14, 2000	Diagnostician Productivity Sheet
30	Apr. 14, 2000	Tracking Form for Special Education Placement
31	May 12, 2000	Ltr from Mr. and Mrs. to Ms. Judith Schowalter re reconvening of IEP
32	May 25, 2000 (SLPS receipt)	Judevine Center Occupational Therapy Sensory Integration Assessment
33	Sept. 12, 2000	Ltr from Les Blake and Jeanne Marshall, Judevine employees, to Mr. Lawrence Altman
34	Sept. 19, 2000	Occupational Therapy Evaluation
35		Notice of Oct. 24, 2000 IEP meeting
36	1998-2000	Ltrs from Dr. Bradley Davitt; Dr. Dennis Altman; Dr. James Baker to Dr. Beth Sugarbaker re
37		Procedural Safeguards
38		Teresa Strothkamp's Teaching Certificate
39		Jeanne Marshall's resume

During the course of the hearing the following witnesses appeared:

CALLED BY	WITNESS NAME
Respondent	Mary Ann Daggs Supervisor of Early Childhood Special Education St. Louis Public Schools 5017 Washington Avenue St. Louis, MO 63108
Respondent	JoAnn Hunt Placement Specialist St. Louis Public Schools 5017 Washington Avenue St. Louis, MO 63108
Respondent	Dionne Smith Psychological Examiner/ School Psychologist St. Louis Public Schools 5017 Washington Avenue St. Louis, MO 63108
Respondent	Elfriede Olney Occupational Therapist St. Louis Public Schools 5017 Washington Avenue St. Louis, MO 63108
Respondent	Judith Schowalter Special Education/ Regular Education Teacher St. Louis Public Schools 5017 Washington Avenue St. Louis, MO 63108
Respondent	Deborah Mason Speech/Language Pathologist St. Louis Public Schools 5017 Washington Avenue St. Louis, MO 63108

Petitioner	Jeanne Marshall Deputy Director, Training Services Judevine Center for Autism 9455 Rott Road St. Louis, MO 63127
Petitioner	
Petitioner	Teresa Strothkamp 's Provider of Services Belle Center 1265 Hanley Industrial Court St. Louis, MO 63144
Petitioner	Michelle Villa Teacher at Union School 3548 Watson St. Louis, MO 63139

At the conclusion of the hearing, the parties agreed to submit written briefs to be postmarked no later than March 29, 2001.

### **FINDINGS OF FACT**

1. There is no dispute that the parties had three meetings.

#### **PRIOR TO FIRST MEETING**

2. was born on in to a -year-old single mother. adopted at about months of age. Jt. Ex. 1; Jt. Ex. 6.
3. lives in the , State of with his parents and a sister, , who attended Union preschool. Jt. Ex. 7; TR II107.
4. When was adopted, he was significantly delayed. He could not hold his head up. 's developmental milestones were below age expectancy. Jt. Ex. 2; Jt. Ex. 3; Jt. Ex. 4; Jt. Ex. 22.
5. received early interventions in speech/language, occupational therapy, and developmental therapies. received Parents as Teachers services. Further alternative intervention strategies were waived. Jt. Ex. 2. Jt. Ex. 22.
6. St. John's Mercy Hospital evaluated in the area of speech and language on August 3, 1999. The results indicated a one-year to fourteen-month delay in receptive and expressive language skills. Oral motor weakness was also identified. 's overall

attention to structured tasks was limited. Mrs. noted concern about 's short attention span, his increased activity level, and destructive behavior. Jt. Ex. 3.

7. was a First Steps' Client. First Steps is a program administered by the Missouri Department of Mental Health. In the First Steps' intake interview summary on August 10, 1999, was described as "very happy, very stubborn, energetic." was in the process of toilet training, he was not taking off any of his own clothes, and he was still placing inedible objects in his mouth. He was described as very active and was constantly moving. did not like to have his hand held and could go down the stairs crawling. He did not kick a ball, but he could stand independently, hold a railing or wall, climb into an adult chair and sit down, and throw the ball in the right direction. It was also noted that liked to do a lot of banging and was not interested in scribbling. He had inconsistent eye contact and resisted control. Crowds and noise bothered him. It was noted that he could get aggressive and would hit a person to get his or her attention. did not respond to a single request and was difficult to teach new things. Although he understood the word "no," he frequently did not respond. Jt. Ex. 4.
8. The First Steps' summary concluded that there was a fifty-percent delay in 's social, cognitive, and language skills. It referred to a First Steps' case coordinator and recommended neurology review; speech and language therapy; and speech instruction. It was recommended that Mrs. get a neurological evaluation for . A First Steps' Individualized Family Service Plan was developed for in August 1999. It stated that 's development needs were as follows: to continue to work on developmental skills appropriate to his age; to learn to communicate his needs by speech, gesture, or sign to his care giver; to learn to better adjust to changes in his environment; and to learn to take off at least some of his own clothing. In addition, 's mother wanted/needed to learn how to better work with . Mrs. 's main concern at this time was 's speech and cognitive issues. Jt. Ex. 4; Jt. Ex. 5.
9. The parents decided to have the referral made to the District. At the time of the transition referral, the parents were considering moving to the county or sending to a private school. They concluded that they would have the referral changed at a later date if they decided to move to the county. Ms. Mary Ann Daggs attended the transition meeting in November 1999 with the First Steps' Coordinator and Mrs. at the house. Ms. Daggs described to Mrs. the early childhood special education services that the District provides. She also discussed the evaluation process, the timelines, and gave Mrs. a copy of the procedural safeguards. Jt. Ex. 5; TR II151-152.
10. On September 10, 1999, a Parent-Child Early Intervention Program Developmental Therapy Evaluation was performed by Easter Seals. was 30 months. Jt. Ex. 6.
11. The Easter Seals' evaluation results showed: 's cognitive skills were at the developmental age of 15 months; his social skills were at the developmental age of 15 months; and his self-help skills were at the developmental age of 24 months. It

stated that displays anxiety over separation from his parent; that will throw a few tantrums a day and displays distractible behavior; that he does not interact with other peers and will play by himself or throw things at others. The Easter Seals' evaluation recommended that receive individual developmental therapy one hour a week in his home and that attend some type of inclusive daycare center to work on his social skills. Jt. Ex. 6.

12. received an Occupational Therapy Evaluation on September 14, 1999, which reported: A typical behavior for was repetitive banging; has thrown himself backward hard enough to break his mother's nose and two front teeth; has difficulty self-calming; and cannot wait for something he sees that he wants without falling apart; and demonstrates significant fine motor delays, sensory and regulatory problems, and self-care delays. It was recommended that he receive occupational therapy for one hour a week to address these issues. Jt. Ex. 7.
13. and his mother attended a three-week intensive Parent Training Program at the Judevine Center for Autism from January 3, 2000 to January 21, 2000. 's father and his sister attended some workshops and/or exchange sessions. Jt. Ex. 11.
14. was seen on February 17, 2000 at the Office of Early Childhood Special Education ("ECSE") for the St. Louis Public Schools for assessment of his level of functioning in the area of fine motor development. He was 2 years and 11 months old. A summary of the ECSE evaluation states that , with a reported medical diagnosis of childhood autism, has significant delays in the area of fine motor development; his fine motor age equivalent is 1 year 6 months; his hand use, eye-hand coordination, and manual dexterity show significant delay; his high activity level, poor task focus for non-preferred activities, and distractibility are factors contributing to his delayed fine motor skills. Jt. Ex. 18; Jt. Ex. 20; Jt. Ex. 21; Jt. Ex. 22.
15. was assessed on February 17, 2000 at the ECSE in the cognitive, and speech and language areas. The following observations were made: 's behavior indicated his disinterest in a task by throwing, avoiding eye contact, or leaving the test table. Throughout the assessment frequently threw objects whenever he had the opportunity. He was observed to spin, bang, and place objects in his mouth. 's communicative intent was limited and his overall language skills were delayed for a child of his age. Jt. Ex. 18; Jt. Ex. 20; Jt. Ex. 21; Jt. Ex. 22.
16. Testimony showed that at the time of the February assessment, was not toilet trained, it was reported that he threw tantrums, he had a high activity level, he did not stay in his seat very much, he threw things, and he drooled. At the time of the February 17, 2000 assessment, the District was not told that was on any medication for his behavior. Jt. Ex. 22; TR II 84.
17. On March 6, 2000, the District held a diagnostic staffing for . Each page of the diagnostic report was reviewed with Mrs. . Mrs. , Tern Adzick, and Ginny Bass, two representatives from Easter Seals and First Steps that Mrs. brought with her,

participated in the diagnostic staffing and contributed to writing out the strengths and concerns in the diagnostic report. Mrs. , Ms. Adzick, and Ms Bass signed that they agreed with the diagnostic summary conclusion. Mrs. had the opportunity to write a statement stating why she disagreed with any conclusion. Jt. Ex. 22; TR II 87; TR II 7-8.

18. The issue of 's diagnosis of autism was discussed at the diagnostic staffing. TR II 88.
19. The March 6, 2000 diagnostic conclusion states that 's cognitive functioning and abilities fall below the mean and he had a developmental age of 16 months; that his adaptive behavior was below the mean, with a low level of adaptive behavior that was commensurate with cognition. His preacademic skills were as follows: Cognitive Sections: 100% of 0-1 year skills, 50% 1-2 year skills, and 13% 2-3 year skills. 's voice, fluency, and articulation were not areas of concern secondary to his limited verbalizations. Overall language skills were commensurate with his cognitive level but language weaknesses were present. Such language weaknesses include functional expressive language and echolalia. Jt. Ex. 22.
20. At the diagnostic staffing it was determined that met the criteria for early childhood education Jt. Ex. 22. and that he was a disabled student who qualified for services under federal law.
21. The St. Louis City Public School system is obligated, under 20 U.S.C. Chapter 33, 22. Section 1412, to provide a free appropriate public education to students with disabilities between the ages of three and twenty-one who are residents of the City of St. Louis, State of Missouri.

#### FIRST MEETING (03/06/00)

23. Immediately after the diagnostic staffing, an IEP meeting was held on the same day, March 6, 2000. Mrs. , Ms. Bass, and Ms. Adzick attended and participated in the meeting. At the time of the March 6, 2000 IEP, was enrolled in a Mommy's Day Out day care program one or two mornings a week. Jt. Ex. 23; TR II 98-99; TR II 101.
24. On March 6, 2000, Respondent prepared an IEP for . Jt. Ex. 23.
25. The March 6, 2000 IEP was not finalized because Mrs. wanted to share the information with her husband and discuss with him the information that the District was proposing. She also wanted to visit a classroom. The IEP developed at the March 6, 2000 meeting was a proposed IEP, it was not a completed document. The placements discussed at the March 6, 2000 IEP were Peabody School and Lafayette. Respondent testified these options were offered because they were in small settings and had strong teachers. These programs were offered at integrated settings and there were opportunities to interact with regular education preschool

students. Some opportunities to be involved with regular education students included the following: pre academics, gross motor, school assembly, field trips, breakfast, and lunch. TR II155; TR II 91; TR II161; TR II103; TR II15.

26. In determining placement, many factors are considered by Respondent including the following: makeup of the class; how close the site is to the child's home; the number of children; if the children have behavior disorders to ensure that all students in each class do not have the same disabilities so that there are good role models. TR II17.
27. That, under the IEP, was to be enrolled in a self-contained classroom and receive 615 minutes of special education instruction each week.
28. That, under the IEP, was allowed to interact with non-disabled peers only during his lunch and recess periods.
29. That, under the IEP, was to receive sixty minutes of speech therapy each week.
30. That, under the IEP, was to receive forty-five minutes of occupational therapy each week.
31. That, in the IEP, the Respondent set forth fifteen goals for .
32. The IEP was developed with the hope that would meet all of the goals within one year. TR II183.
33. The District ECSE classrooms have a maximum of 10 students and some have as few as 6. The placement offered for at Peabody was a class with 6 students, a certified special education teacher and an aide. Regular education classrooms have between 15-20 students with one teacher. TR II 192.
34. Mrs. did not visit any of the District programs or even go into any school building. She testified that her "time is very limited to get to do something like that." TR II01.
35. 16. That, on March 6, 2000, 's parents did not sign or accept the placement of the IEP.
36. That, the only items left unanswered on the IEP were the date of implementation of the IEP, the location of the school that was to attend, transportation for to and from school, and the names of 's teachers.

#### SECOND MEETING (03/22/00)

37. A second meeting was held on March 22, 2000 at the request of Mrs. . The District thought Mrs. wanted to discuss placement options for , but when she arrived it was clear that she wanted to revise the goals and objectives of the proposed IEP. Mrs.

brought Ms. Bass and Ms. Adzick, therefore Ms. Daggs called in the rest of the members of the IEP Team for a meeting. TR II155.

38. Mrs. presented a typed, four-page list of concerns for 's placement and education that she wanted to be addressed in the IEP to Ms. Daggs and the District's special education professionals. Each item was discussed with the IEP team. Jt. Ex. 25; TR II 155-1 56.
39. The degree of concern and variety of special education issues presented in Mrs. 's list of issues gave District employees further input and it supported 's need for all fifteen proposed IEP goals and supported the conclusion that the most appropriate place for him would be in an ECSE classroom in an integrated setting. TR II161.
40. At the March 22, 2000 meeting, various goals were discussed and changed for . The Respondent added "Based on the goals and objectives that are outlined in his current IEP, Early Childhood Setting Services would not be sufficient enough to address his individual needs." Placement is the last phase of the IEP process. There was some disagreement about placement. TR II157-158.
41. It was the consensus of the IEP team that based on the profile that presented in February 2000, a more structured setting than the District's regular education preschool classroom was needed. Jt. Ex. 23; Jt. Ex. 24.
42. At the March 22, 2000 meeting, the various ways services were provided by the District were discussed with Mrs. in detail. Opportunities for services, push in and pull out therapists and after school programs were discussed. TR II157-158.
43. The District could not implement the proposed IEP at Mommy's Day Out because did not attend enough minutes for the IEP to be implemented. had so many goals that the provision of services at Mommy's Day Out would not be appropriate. Three possible placements were discussed at this meeting: Peabody, Lafayette, and Gallaudet. TR II 159.
44. The District's proposed services consisted of a program for 4 mornings a week with 6-10 children and a trained certified special education teacher along with an aide. The supplemental providers such as occupational therapists and speech therapists would provide services within the classroom and were District approved trained professionals. The programs offered at Peabody and Lafayette were at integrated settings with access to regular education students.
45. At the end of the March 22, 2000 meeting, after considering the times and locations of the programs offered by the District, Mrs. expressly stated that she did not want to start services for until the Fall of 2000. She did not want to pull out of Mommy's Day Out because it would be disruptive to . TR II162; Jt. Ex. 24.

46. The District documented this by preparing a Notice of Action on March 22, 2000 regarding starting services in the Fall of 2000. It states "It is the consensus of the I.E.P. committee that meets the criteria for Early Childhood Special Education due to delays in cognition, speech/language skills, Adaptive Behavior and Motor Skills. Placement in a group ECSE in an integrated setting would provide the best opportunity to meet the needs of the child. Placement in an Early Childhood Setting would not be restrictive enough to meet the needs of the child as they are written in the current I.E.P. Jt. Ex. 24.

#### BETWEEN SECOND AND THIRD MEETING

47. After the March 22, 2000 meeting the IEP was not finalized because Mrs. did not sign consent for the District to provide services to . Jt. Ex. 26; TR II1107.

48. Mrs. neither stated at the March 6, 2000, nor the March 22, 2000 meeting that she wanted in a regular education program. If she had, it would have been documented in the IEP. JT. Ex. 23; TR II159.

49. On April 14, 2000, after the March 22, 2000 meeting, Mrs. was given a copy of 's file, including the proposed IEP. TR II163.

50. Based on the evaluations performed by First Steps and Easter Seals and the District's own evaluations, the District's educational experts believed that a self-contained classroom in a regular education setting would offer the most appropriate education in March 2000. The District's educational professionals determined that 's IEP could not be implemented on an itinerant basis because had too many goals and required too many minutes of direct specialized instruction. Jt. Ex. 24.

51. Several subsequent meetings were scheduled and canceled. A meeting was scheduled for April 15, 2000. The parents canceled the meeting. A meeting was scheduled for May 15. The parents canceled the meeting. TR II107- 108; Jt. Ex. 31.

52. The District did not hear from the parents after May 15, 2000. Many parents have their child evaluated and never consent to services being provided and the District thought that the parents may have moved outside of the District. TR II162-163.

53. It is not mandatory for preschool children to participate in special education classes and a school cannot force a student to receive services from the district before age 7. Mo. Rev. Stat. § 167.031 (2000); TR II164.

54. Ms. Daggs received a call in early October 2000 from Mrs. to set up a meeting with the District. Ms. Daggs and Mrs. agreed to meet on October 24, 2000. TR II164-165.

55. On May 12, 2000, Mrs. delivered a written document to the Respondent requesting a reconvening of the IEP, and also containing her objections to the IEP, including

her disagreement regarding placement of in a self-contained education setting. Jt. Ex. 31.

56. Respondent never responded to the letter of May 12, 2000. Tr. 180-181, Tr.

57. That, in September of 2000, was enrolled as a student in the Union

58. Preschool.

59. Union Preschool is located within the City of St. Louis.

60. That, has been a student at Union Preschool in a regular classroom and obtaining his education with non-disabled peers since September of 2000.

61. Respondent provides educational services to children who attend Union Preschool, and has done so for years. Tr. II 171, Tr.

62. That, does not disrupt the education of his non-disabled peers.

63. That, has met or exceeded each of the fifteen goals of his IEP.

64. That some of 's fifteen IEP goals were the same goals that would be used in a regular pre-school program. Tr. II 180.

65. Respondent did not believe the placement of in a regular preschool setting was appropriate. Tr. II 131.

66. Respondent did not consider putting an aide in a regular classroom setting to assist . Tr. II 130-132.

### THIRD MEETING (10/24/00)

67. On October 24, 2000, at the request of 's parents an IEP meeting was held with Respondent. Jt. Ex. 35.

68. At the October 24, 2000 meeting, the parents were accompanied by their lawyer, Mr. Altman. They requested that the District provide a full-time aide for at Union preschool. They also requested that occupational therapy and speech therapy be provided at Union preschool. Basically, the parents wanted the entire IEP implemented at Union preschool. They did not request payment for Union preschool tuition or physical therapy. TR II166.

69. During the meeting of October 24, 2000, 's mother presented to Respondent a letter from employees of the Judevine Center. (Jt. Ex. 33).

70. The letter from Judevine explained the need for to be educated within a regular classroom environment.
71. The letter from Judevine disagreed with the Respondent's WP placement of in a self-contained classroom.
72. At the October 24, 2000 meeting, the District was unable to meet and review the IEP or discuss 's present level of performance. The District was not given an opportunity to reevaluate . The District was not provided with any information at the October 24, 2000 meeting about whether had met some or all of the goals in the proposed March 2000 IEP. Therefore, the District believed the March 2000 IEP was still appropriate to 's needs. TR II168; TR II187.
73. The District was never given any opportunity to implement the proposed March 2000 IEP or to work with in order to witness any changes in his functioning levels or educational needs. TR II168; TR II183.
74. A tentative meeting was scheduled for November 9, 2000. Mr. Altman stated that if the parents' demands were not met, the meeting would not be necessary and the parents would institute due process proceedings. TR II 167.
75. The District's education professionals determined that it could not implement the March 2000 proposed IEP at Union preschool because was only there two mornings a week. Once an IEP is developed for an ECSE child and the parent accepts services from the District, the District is obligated to ensure implementation of the entire IEP at no cost to the parents. TR II168-169.
76. Ms. Mary Ann Daggs wrote a letter informing Mr. Altman that the proposed March 2000 IEP could not be implemented at Union preschool because had significant goals to meet and there was not sufficient time to meet them at the two mornings a week that he attended Union preschool. TR II 169.
77. has attended Union preschool two mornings a week, since the Fall of 2000. was admitted to Union preschool on a trial basis. The Director testified they were concerned about 's "special needs." No other student has been admitted to Union preschool on a trial basis. TR II73; TR I 213.
78. Union preschool does not have any certified preschool special education teachers on staff. Union preschool does not have any certified occupational therapists on staff. Union preschool does not have any certified speech pathologists on staff.
79. The Director of Union preschool did not review 's IEP until two weeks before the March 2001 due process hearing. TR II75.

80. In November 2000, Union preschool requested that the parents provide an aide for in the classroom. The teacher was “feeling frustrated” with this class and therefore an aide was needed. TR II79; TR II87.
81. No other classroom at Union preschool has an aide, even though they serve three or four other autistic children. is the only child in his class with special needs. TR I 205.
82. Union preschool does not develop IEPs for its students. It is not required under state law to implement IEPs or ensure that the goals set forth in them are met. TR. I 209
83. Union preschool is not on the state’s approved list of private special education providers.
84. ’s classroom at Union preschool, after November 2000, has nine students with one regular education teacher and one aide (for ). The District’s regular education classrooms have one teacher with 15-20 students. The District’s ECSE classrooms have six to ten students with one certified special education teacher and one aide.
85. Union preschool was not an appropriate placement for at the time his IEP was developed by the IEP Team that included his parent and two experts who accompanied the parent.
86. None of ’s providers at Union preschool or his contract providers had a copy of the IEP to implement. There is no evidence that they were implementing the IEP. TR II75.
87. ’s proposed IEP was developed to provide him with a free appropriate education. Although the District provides some itinerant services to students at Union preschool, these are provided on a much more limited basis than the services identified in ’s proposed IEP or the services that the parents have provided to . TR II183-184.
88. The parents provided with occupational, physical, and speech/language therapy outside of the Union preschool setting. TR I 92.
89. The parents never requested the District to reimburse them for the tuition to Union preschool. The parents did not request that the District provide physical therapy. Physical therapy was never identified as an issue in the IEP meetings. TR I 92; TR II07; Jt. Ex. 23.
90. The parents, through their lawyer, have itemized expenditures for various services for . The District does not agree that these expenditures were necessary. The District does not agree that the hourly rates paid were reasonable because its contracted costs for Occupational, Physical and Speech Therapy are \$45.00 per hour.

91. The Due Process hearing was held on March 12-13, 2001. The parents presented the following witnesses: Michele Villa, Theresa Strothkamp, and Jeanne Marshall. None of the parents' witnesses are certified in preschool special education.
92. The District presented the following witnesses; Mary Ann Daggs, Jo Ann Hunt, Dionne Smith, Elfriede Olney, Judith Schowalter, and Deborah Mason.
93. The Panel finds Judith Schowalter, Elfriede Olney, Dionne Smith, Jo Ann Hung, Mary Ann Daggs, and Deborah Mason each to be a qualified special education professional, having the education and certifications that each testified to at the due process hearing licensed by the State of Missouri. TR II 5-8; TR II 41-44; TR II 59-60; TR II 81-83; TR II150; TR II51-152.

AFTER THE THIRD MEETING:

94. On November 3, 2000, the IEP was not modified or changed (Tr. II, 176, 177.
95. The family incurred the entire expense for 's education.

**DECISION AND RATIONALE**

The provision of education to special education students such as the Plaintiff is governed by the reauthorized Individuals with Disabilities Education Act (the "IDEA"), 20 U.S.C. §1401 et seq., and the regulations promulgated pursuant to the IDEA, 34 C.F.R. Parts 300 and 303. The IDEA was enacted "to ensure that all children with disabilities have available to them a free appropriate public education." Jasa v. Millard Pub. Sch. Dist., 206 F.3d 813, 815 (8th Cir. 2000); 20 U.S.C. § 1400(d)(1)(A)(2000). A specialized course of instruction must be developed for each disabled student, taking into account that child's capabilities. 20 U.S.C. § 1414(d)(1)(A)(2000). The services that a school district will provide to a child are to be summarized in a written statement called an individualized education program or IEP. Id.

A school district complies with the IDEA and provides a free appropriate public education (“FAPE”) when it (1) appropriately classifies a student’s educational disability, (2) develops an IEP that provides educational benefit, (3) places the student appropriately based on IEP requirements, (4) affords suitable opportunities for inclusion, and (5) follows procedures that allow the student (when appropriate) and parent to participate in the IEP process. Warner v. Independent Sch. Dist. No. 625, 134 F.3d 1333, 1336-37 (8th Cir. 1998). The District has done each of these things with respect to

PRIOR TO THIRD MEETING (10/24/00)

1. The IEP initiated at March 6, 2000 meeting and revised March 22, 2000.
  - a.) appropriately classified as qualified for special education services ;
  - b.) provided an educational benefit;
  - c.) prepared a placement based on IEP requirements;
  - d.) afforded opportunities for participation with non-disabled peers;
  - e.) allowed the parents to participate in the IEP process.
2. At that point in time, the school decided to provide with F.A.P.E. and the placement did not violate ’s right to be placed within the least restricted environment.

THE THIRD MEETING (10/24/00)

3. After the Parents’ requested an IEP, the School District sent out NOTICE-  
INDIVIDUAL EDUCATION PROGRAM MEETING Jt. Ex. 35
- 3.) At that time, the School District was made aware that
  - a) was enrolled in the Union Preschool Program,
  - b) was participating in a preschool program with nondisabled peers,

- c) Judevine recommended the least restrictive classroom environment for ,
- d) There was an Occupational Therapy Evaluation,

While these may not warrant a different IEP, the School District failed to consider these factors.

- 5) The School District did not follow the proper procedures to offer a FAPE because it:
  - a) Failed to consider the new factors to determine if the existing IEP offered FAPE in the least restrictive environment.
  - b) Failed to determine whether additional evaluation was needed.
  - c) to update 's present levels of performance.
- 6) If the School District believed it was under an ultimatum from the parents, such an ultimatum does not release the School District from its obligation to confirm the March IEP did provide with a FAPE or to generate a new IEP
- 7) Upon Parents' documentation to the School District, the Parents are awarded the following expenses from the date of the request for a due process hearing (December 11, 2000) until the effective date of a new IEP:
  - a) \$35.00 per session for Speech Therapy for up to two sessions per week.
  - b) \$70.00 per hour for Occupational Therapy for up to forty five minutes per week.
  - c) \$25.00 per session for a Teacher's Aide for up to two sessions per week.
  - d) \$55.00 per week Tuition
- 8) The IEP team should be reconvened to determine a free and appropriate public education in the least restrictive environment for .

### **PARTIAL DISSENT by MONTGOMERY**

I dissent as to paragraph 8 of the DECISION AND RATIONALE

The panel concludes that the IEP which was developed March 3, 2000, provided with a free, appropriate public education (FAPE) in the least restrictive environment. The IEP was designed to address 's special education needs for a period of one year.

The School District never had the opportunity to implement the proposed program which could have been revised at any time during the year to address

any change in 's educational needs. As of October, 2000, when the parents requested a new IEP, the panel was not presented with any definitive evidence that the IEP no longer met the requirements of FAPE at that time.

It is the opinion of this panel member that the School District did have a procedural obligation to definitely conclude the IEP process initiated on October 24, 2000. Was the IEP which was developed and revised in March 2000 still appropriate in October? The School District needed to confirm or change the present levels of 's performance either through the documents presented or a new evaluation. While the School District believed that it was given an ultimatum and therefore felt hamstrung in completing the IEP process, the School District could have finalized the IEP process with or without the cooperation of the parents. Some acknowledgement could have been made that the March 2000 IEP continued to be the recommendation only if 's performance continued to warrant the same proposal.

Because any error on the part of the School District is of a procedural nature rather than a denial of FAPE, the remedy provided by the panel majority is excessive. The School District's proposed remedy for any reimbursement ordered by this panel is reasonable. And, any award should not be construed as giving the Petitioner prevailing party status because the issues of FAPE and LRE were upheld in favor of the School District by the panel.

#### **PARTIAL DISSENT by ADAMS**

I dissent as to paragraphs 1(c) and 2 of the DECISION AND RATIONALE

The March 6<sup>th</sup> IEP was not a FAPE because the School District did not consider LRE with supplemental aids and services (a regular classroom with a classroom aid). IDEA presumes that the first placement option considered for each disabled student by the team, which must include the parent, is in the school the child would attend if not disabled, with supplementary aids and services to facilitate such placement.

The Parents and Judevine were the only ones considering such placement. 's behaviors were not unlike typical three year old behaviors. I do not believe his behaviors warranted self contained placement.

#### **APPEAL PROCEDURE**



**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing was served by U.S. Mail, postage prepaid this \_\_\_\_ day of April, 2001, upon DESE and the parties and panel members to this action, to wit:

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\_\_\_\_\_  
Stephen A. Martin