

**BEFORE THE HEARING PANEL  
EMPOWERED BY THE  
DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION**

**IN THE MATTER OF:** )  
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**JEFFERSON CITY PUBLIC SCHOOLS,** )  
 **School District** )  
v )  
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, )  
 **Student** )  
 )  
**-and-** )  
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, )  
 **Student** )  
 )  
v )  
 )  
**JEFFERSON CITY PUBLIC SCHOOLS,** )  
 **School District** )  
 )

**COVER SHEET INFORMATION**

1. (“Student”) is the son of and (“Parents”). Student was born on . Student’s Social Security Number is.
  
2. At all times material to this due process proceeding, Student resided with Parents in Jefferson City, Missouri, which is located within the boundaries of the Jefferson City Public School District.
  
3. The Parents and Student were represented at the hearing by:  
  
Thomas E. Kennedy, III and Deborah Greider  
Law Offices of Thomas E. Kennedy, III, L.C.  
2745 E. Broadway, Suite 101  
Alton, IL. 62002
  
4. The Jefferson City Public School District was represented by:

Teri B. Goldman  
36 Four Seasons Center #136  
Chesterfield, Missouri 63017

5. School District requested due process by letter to the Department of Elementary and Secondary Education (“DESE”) dated June 12, 2001 which was received by DESE on June 12, 2001.

6. Parents requested due process by letter to DESE dated September 20, 2001 which was received by DESE on September 21, 2001.

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**JEFFERSON CITY PUBLIC SCHOOLS,** )  
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**FINDING OF FACT, CONCLUSIONS OF LAW,**  
**DECISION AND ORDER**

The Hearing Panel, after conducting the due process hearing in this matter on November 27 through 30, 2001, March 6 through 8, 2002 and March 11 and 12, 2002 issues the following Findings of Fact, Conclusions of Law, Decision and Order:

**I. FINDINGS OF FACT**

The Hearing Panel makes the following Findings of Fact:

**A. The Parties**

1. (“Student”) is a minor child who has resided with his Parents within the boundaries of the Jefferson City Public School District (“School District”) at all times relevant to this due process proceeding.
2. The School District is a Missouri school district organized pursuant to Missouri statutes.
3. The Student and Parents were represented at the hearing by Thomas E. Kennedy, III and Deborah S. Greider, Law Offices of Thomas E. Kennedy, III, L.C., 2745 E. Broadway, Suite 101, Alton, IL. 62002. Prior to the hearing the Parents were provided with *The Procedural*

*Safeguards for Children and Parents.* Parents are both literate and use English as their primary language.

4. The School District was represented by Teri B. Goldman, 36 Four Seasons Center #136, Chesterfield, Missouri 63017

5. The Hearing Panel for the due process proceeding was:

Ransom A Ellis, III, Hearing Chairperson  
Dr. Gale B. Rice, Panel Member  
Dr. Kim Ratcliffe, Panel Member

6. During all times relevant to this proceeding the following persons were employed by the School District and provided educational services to the Student:

Dr. Bert Kimble	Superintendent
Dr. Arthur Allen	Director of Special Education
Sheila Logan	Principal, South Elementary School
Belinda Couty	Principal, South Elementary School
Dale Lumpa	Principal
Sarah Wilding	ECIP Psychological Examiner
Beth Lowder	ECIP Teacher
Beth Hoerschgen	ECIP Teacher
Jan Griffin	School Psychological Examiner
Jeannette (Horne) Lloyd	Deaf Educator
Nancy Nickelson	Deaf Educator
Judith Kollmeyer	Classroom Teacher
Jeanne Jarrell Sill	Classroom Teacher
Tina Johnson	Speech Language Pathologist
Tori (Thiel) Sisson	Speech Language Pathologist

7. During all times relevant to this proceeding the following persons were employed by Central Institute for the Deaf (“CID”) and provided educational services to the Student:

Victoria Kozak	Principal
Laura McCann	Coordinating Teacher – Middle School Department
Becky Ritter	Classroom Teacher
Marcia Tasch	Classroom Teacher
Victoria Martin	Speech/Language Pathologist
Pat Wasserman	Counselor

## **B. Procedural Background**

8. On or about June 12, 2001 the School District, through its Counsel, sent a letter to DESE requesting a due process hearing. (HP Exh 1) The request for the due process hearing was received by DESE on June 12, 2001. On or about June 12, 2001 Ms. Pam Williams, Director for

Special Education Compliance at DESE notified the School District (HP Exh 2) that its request for due process had been received.

9. On or about June 21, 2001 Ms. Williams notified the Hearing Chairperson (HP Exh 3) and the Hearing Panel Members (HP Exh 4) that they had been selected to serve on the hearing panel for the School District's request for due process.

10. On or about June 25, 2001 the Hearing Chairperson provided the Parents with a copy of the *Procedural Safeguards for Parents and Children* (HP Exh 5). The Hearing Chairperson also notified the Parents and School District that the due process hearing had to be held and a written decision rendered by July 27, 2001. (HP Exh 4).

11. On or about July 2, 2001 Counsel for the School District requested that the time lines for the decision be extended. (HP Exh 8). On July 12, 2001, the Hearing Chairperson extended the time lines in this case to and until December 16, 2001. (HP Exh 12).

12. On or about July 6, 2001 Thomas E. Kennedy, III entered an appearance on behalf of the Student and his Parents. (HP Exh 10).

13. On July 12, 2001 the Hearing Chairperson issued a Notice of Hearing setting this matter for hearing on October 8 through 12, 2001 (first setting) or November 13 through 16, 2001 (second setting). (HP Exh 12).

14. On July 17, 2001 the Hearing Chairperson issued a First Amended Notice of Hearing which corrected a mistake on the original notice and indicated that the second hearing setting would be November 27 through 30, 2001. (HP Exh 14).

15. On or about September 20, 2001 the Parents sent a letter to DESE requesting a due process hearing. (HP Exh 16) The request for the due process hearing was received by DESE on September 21, 2001. (HP Exh 17).

16. On or about September 26, 2001 the Parents, through Counsel, requested that the hearing be continued from the first setting in October, 2001. (HP Exh 18). On September 28, 2001, the Hearing Chairperson conducted a telephone conference with Counsel. The Hearing Chairperson granted the Parents' request for a continuance and notified Counsel that the hearing would be rescheduled for the second setting in November, 2001. (HP Exh 20).

17. On or about October 2, 2001 Ms. Pam Williams, Director for Special Education Compliance at DESE notified Mr. Stephen A. Martin that he had been selected as the Hearing Chairperson on the Parents' request for due process (HP Exh 21) and notified the Hearing Panel Members (HP Exh 22) that they had been selected to serve on the hearing panel for the Parents' request for due process.

18. On October 10, 2001 Counsel for Parents filed a Motion to Consolidate with Mr. Martin and Mr. Ellis. The Motion requests that the two requests for due process be consolidated for hearing. (HP Exh 24).

19. On November 7, 2001 Mr. Martin and Mr. Ellis issued an Order consolidating the two requests for due process into one hearing to be conducted by Mr. Ellis. (HP Exh 28). On November 13, 2001 the Hearing Chairperson issued a Second Amended Notice Of Hearing which set the due process hearing for November 27 through 30, 2001. (HP Exh 30).
20. On November 27, 2001 the hearing in this matter commenced in Jefferson City, Missouri with all parties and Panel Members present. During the initial hearing period, the hearing was conducted on November 27, 28, 29 and 30, 2001. The parties agreed on the record that the hearing would resume on March 6 through 8 and March 11 through 13, 2002 and that the time lines for issuance of the hearing decision could be extended through May 1, 2002. Accordingly, on November 30, 2001 the hearing was continued until March 6, 2002.
21. On December 11, 2001 Ms. Goldman provided the Hearing Chairperson with a written confirmation of the agreement of all Counsel that the time lines be extended through May 1, 2002. (HP Exh 41). On December 12, 2001 the Hearing Chairperson extended the hearing time lines through May 1, 2002. (HP Exh 42).
22. On December 12, 2001 the Hearing Chairperson issued a Third Amended Notice Of Hearing which set the resumed due process hearing for March 6 through 8 and March 11 through 13, 2002. (HP Exh 43).
23. On March 1, 2002 the Parents filed a Motion for Summary Judgment with the Hearing Panel (HP Exh 46). Subsequently, the Hearing Panel determined that it would decide the Motion for Summary Judgment with the remainder of the case.
24. On March 6, 2002 the resumed hearing in this matter commenced in Jefferson City, Missouri with all parties and Panel Members present. During the resumed period, the hearing was conducted on March 6, 7 and 8 and on March 11 and 12, 2002. The resumed hearing concluded and the record was closed on March 12, 2002.
25. On March 26, 2002 Ms. Greider provided the Hearing Chairperson with a written confirmation of the agreement of all Counsel that the time lines be extended through May 30, 2002. On March 27, 2002 the Hearing Chairperson extended the hearing time lines through May 30, 2002.
26. On May 1, 2002 the Parents filed a Motion to Supplement Record with the Hearing Chairperson seeking to “clarify” the financial arrangements between the Central Institute for the Deaf and the Parents. The following two exhibits were submitted with the Motion by the Parents:
- “Exhibit A” A letter from the CID Scholarship Committee to the Parents dated April 2, 2002; and
- “Exhibit B” An executed Tuition Payment Agreement dated April 4, 2002.

These Exhibits, but not the Motion itself will be admitted into the record.

27. Exhibits were introduced and received into evidence at the hearing. The following documents were admitted and made a part of the record in this case:

Hearing Panel Exhibits (“HP Exh”) – 1 through 47.

Parents’ Exhibits (“P Exh”) – 1 through 11; 13; 15 through 25; 27 (pp. 365 - 383); 29; 31, 32; 34; 36 (pp. 524- 529); 37; 40 (pp. 634, 636 and 651); 42, 43; 45 (695-716); 46 (pp. 171-121); 47, 48; 49 (p.752); 50 (pp.757- 758; 765-768; 767A); 52, 53; 54 (pp. 136A-143A); 55; 56 (pp.154A-173A) 57; 60 - 62; and Exhibits A and B.

School District Exhibits (“SD Exh”)<sup>1</sup> – 1 through 72.

28. The parties were given an opportunity to provide the Hearing Panel with a brief or written statement of position following the hearing. Post-Hearing Briefs were received from Counsel for both parties.

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<sup>1</sup> The School District’s Exhibits are physically marked as “Petitioner’s” Exhibits or “P-1” etc. For the sake of clarity, the School District’s Exhibits shall be referred to in these Findings as “SD Exh”.

### **C. The Issues And Relief Requested**

29. The parties agreed that the following issues could be presented to the Hearing Panel:

A. School District's Issues:

(1) Whether the School District's April 5, 2001 re-evaluation of the Student was appropriate?

(2) Whether the School District is required to pay for an independent evaluation of the Student as requested by the Parents on or around May 16, 2001?

B. Parents' Issues:

(1) Whether the Student's May 16, 2001 IEP was reasonably calculated to provide the Student with a free, appropriate public education?

(2) Whether the Parents were justified when they unilaterally placed the Student at the Central Institute for the Deaf beginning in August or September, 2001?

(3) Whether the School District should reimburse the Parents for the tuition, fees, expenses and transportation costs associated with the Student's placement at the Central Institute for the Deaf beginning in August or September, 2001?

(HP Exh 39; Tr Vol 1, pp. 5-7).

### **D. Background Facts**

30. At the age of year, the Student was diagnosed with a progressive, bilateral sensorineural hearing impairment. (SD Exh 1, p. 1; Tr Vol 3, p. 14). At approximately of age, the Student was enrolled in St. Joseph Institute for the Deaf ("St. Joseph Institute") in St. Louis, Missouri and in the Special Learning Center in Jefferson City, Missouri. (Tr Vol 4, p. 118).

31. During school year 1994-95, the Student was evaluated by the School District in its Early Childhood Intervention Program. (SD Exh 1, p. 1). At the time of the evaluation, the Student was years, months of age and was enrolled in the Preschool Classroom at the Special Learning Center in Jefferson City for three days per week (P Exh 54, p. 143A) and was also enrolled in the Nursery Program at St. Joseph Institute for two days per week. (SD Exh 1, p. 8; P Exh 54, p. 143A).

32. St. Joseph Institute is an independent, private, day and residential school which offers auditory-oral educational services for the deaf. St. Joseph Institute is located in St. Louis, Missouri.

33. On June 20, 1995 a Diagnostic Staffing Summary was prepared. (SD Exh 1, p. 1). The Diagnostic Staffing Summary indicates that the Student was evaluated in the areas of Vision, Hearing, Health/Motor, Cognitive/Adaptive Behavior, Social/Emotional/Behavioral, Academic and Speech/Language. (SD Exh 1, pp. 1-12). The Student was determined to be eligible for early childhood intervention services in the area of “speech/language as evidenced by significant delays in articulation and language due to a progressive hearing loss.” (SD Exh 1, p. 11).

34. In August, 1995 the Parents elected to enroll the Student at St. Joseph Institute. The Student remained at St. Joseph Institute in its residential program for the entirety of school year 1995-96. (P Exh 54, p. 143A). No Individual Education Plan (“IEP”) was prepared for the Student by the School District for school year 1995-96.

35. On March 19, 1996 the Student’s left ear was implanted with a Clarion multichannel cochlear implant at St. Louis Children’s Hospital. (SD Exh 9, p. 73). This was the first implant the Student received. When the Student received his cochlear implant, he was admitted into a research project on cochlear implants which is conducted by DeVault Otologic Research Laboratory at Indiana University (“IU Project”). Periodic evaluations of the Student by the IU Project were made available to the School District by the Parents. (SD Exh 20, pp. 174-189; SD Exh 30, pp. 320-341; SD Exh 35, pp. 448-451). The Student was still participating in the IU Project at the time of the hearing in this matter.

36. In May and June, 1996 the Student was reevaluated by the School District. At that time, the Student was years, months of age. (SD Exh 4, p. 29). During the reevaluation process, the Student was evaluated in the areas of Vision, Hearing, Health/Motor, Cognitive/Adaptive Behavior, Social/Emotional/Behavioral, Academic and Speech/Language. (SD Exh 4, pp. 29-42). The School District again accepted the evaluation of the Student’s hearing condition which had been performed by St. Joseph Institute (SD Exh 4, p. 30) and which indicated that the Student had been diagnosed as having a “progressive bilateral sensorineural hearing loss.” The following tests were administered to the Student during the evaluation process:

A. Vineland Adaptive Behavior Scales: Interview Edition – Survey Form – the Vineland was administered on June 13, 1996 by Sarah Wilding. On this test the Student achieved a standard score of ninety-five (95) which is within normal limits. The Student’s Mother was used as the Respondent.

B. Social Skills Rating System (SSRS) – The SSRS was used to review the Student’s performance. This assessment indicated that the Student achieved a standard score of one hundred nine (109) on the social skills scale which is within the average range. On the problem behaviors scale of the SSRS, the Student achieved a standard score of one hundred thirty-four (134) which is more than two standard deviations above the mean.

C. Rossetti Infant-Toddler Language Scale and REEL-2 – The Rossetti and REEL-2 were administered to the Student. These assessment tests indicated that on both scales the Student’s language comprehension and production were at the thirty-sixth month level. The examiners noted that these results likely underestimated the Student’s ability since the instruments had ceilings of thirty-six (36) months.

37. On June 14, 1996, the Diagnostic Staffing Summary was conducted. (SD Exh 4, p. 29). The Diagnostic Staffing Summary indicates that the Student was determined to be eligible for early childhood intervention services in the area of “speech/language as evidenced by significant delays in articulation and language due to a progressive hearing loss.” (SD Exh 4, p. 43). Immediately following preparation of the Diagnostic Staffing Summary, the Student’s IEP Team met and prepared an IEP for regular school year services for school year 1996-97 (SD Exh 5, pp. 46-54) and extended school year services for the 1996 summer program. (SD Exh 6, pp. 55-66).
38. During the Summer of 1996, the Student was enrolled by his Parents in the Lawson Early Childhood Center. (P Exh 54, p. 143A). The Lawson Early Childhood Center is a part of the School District.
39. In or around September, 1996, the Student was re-enrolled and attended St. Joseph Institute as a full-time student through the end of the first semester of school year 1996-97. (SD Exh 12, p. 88).
40. On or around January 20, 1997 the Parents completed the School District’s Registration Information form (SD Exh 11, p. 84; P Exh 54, p. 143A; Tr Vol 3, p. 21).
41. On January 23, 1997 an interim IEP was prepared for the Student and an interim placement was made in a self-contained special education classroom at the School District’s South Elementary School. (SD Exh 13, pp. 93-111). The Student attended the School District for the remainder of the regular portion of school year 1996-97 on a half-time basis. During the other half of the school day, the Student accessed the School District’s Parents As First Teachers Program.
42. Around March or April, 1997 the Student’s cochlear implant failed and he was reimplanted with a new cochlear implant on or around April 7, 1997. (SD Exh 13, p.103; Tr Vol 3, p. 24).
43. On April 29, 1997 the Student’s IEP Team determined that the appropriate placement for the Student was in the Resource Special Education/Early Childhood and Development Program. (SD Exh 13, p. 110). The Permission For Placement/Release Form notes that the Parents requested that the Student utilize the auditory-oral communication mode. (Tr Vol 1, p. 47; SD Exh 13, p. 111). The IEP indicates that the Student would spend approximately fifty-six percent of his time in the regular education classroom. (SD Exh 13, p. 104). The Student’s IEP team rejected a continued self-contained program due to the Student’s need for socialization. (SD Exh 13, p. 111).
44. On May 14, 1997 an IEP was prepared for the Student for extended school year services. At the request of the Parents, the School District agreed to pay for a placement for extended school year services at the Oral School run by Moog Center for Deaf Education (“Moog”). (SD Exh 16, pp. 121-135; SD Exh 18, p. 171). The Student attended Moog during June and July, 1997. Moog is a private educational center in St. Louis, Missouri which operates an Oral School which provides educational services to children age birth to 11.

45. On August 28, 1997 an IEP was prepared for the Student for school year 1997-98, the Student's Pre-Kindergarten year. (SD Exh 17, pp. 136-170). The Student's placement was determined to be Self-Contained Special Education and Modified Regular Instruction. (SD Exh 17, p.153).

46. During school year 1997-98, the Student attended the School District on a full-time basis in a full-day pre-kindergarten classroom. (Tr Vol 4, p. 122). In addition, the Student received individualized speech/language therapy from Tina Johnson and one-on-one instruction from the District's pre-kindergarten teacher. (SD Exh 25, p. 259).

47. On April 28, 1998 the Student was evaluated by the IU Project. At the time of this evaluation the Student was years, months of age. Subsequently, the IU Project prepared a document entitled *Research Findings For Speech Perception And Speech Production Abilities* ("1998 Research Findings"). (SD Exh 20, pp. 174-189). The 1998 Research Findings were provided to the School District prior to the preparation of the Student's Diagnostic Summary in September, 1998 and were included as a part of that Diagnostic Summary (SD Exh 25, pp. 262-266). The 1998 Research Findings indicated that

“[the Student] continues to make good progress in the development of his listening skills. He demonstrated solid closed-set word recognition skills and considerable open-set speech understanding with his cochlear implant when in an optimal listening situation. Although [the Student] showed improved performance on the measures in our language battery, the rate of growth in his language abilities is of some concern. Despite the fact that he continues to demonstrate growth in his understanding and use of various language structures, the delayed time course in which these skills are being mastered results in [the Student] falling further behind his hearing peers.”

(SD Exh 20, p.177). The 1998 Research Findings recommended that the Student receive auditory-plus-visual approach with one-on-one practice with auditory-only input, intensive one-on-one tutoring at school in language, comprehension checks at home and at school, using spelling as an oral repair strategy (incorporated with phonics work if necessary). (SD Exh 20).

48. On May 13, 1998 the Student's IEP Team met and prepared a plan that called for the Student to participate in a pre-kindergarten, self-contained program at South Elementary School. (SD Exh 24, p. 233). Initially, the Parents refused to consent to this placement because they wanted to explore other options and possible additions to the IEP. (SD Exh 24, p. 253). However, on September 8, 1998, the Parents provided permission to implement the proposed placement. (SD Exh 24, p. 253). At the May 13, 1998 meeting the Parents also requested and the School District agreed to pay for the Student to attend the extended school year program at Moog during June and July, 1998. (SD Exh 23, pp. 229-230).

49. At the end of school year 1997-98 the Parents again requested that the School District reevaluate the Student. (SD Exh 25, p. 258). The School District agreed to conduct the reevaluation and in late May and June, 1998 the Student was again reevaluated by the School District. (SD Exh 25, p. 258). The Student's parents requested that the Student's speech and language be evaluated by the IU Project. (Tr Vol 1, p 68; SD Exh 25, p. 261). Pursuant to this

request, the School District utilized and attached the 1998 Research Findings to the Diagnostic Summary. The remainder of the reevaluation was conducted by the School District. The following tests were administered by qualified School District personnel:

A. Wechsler Preschool & Primary Scale of Intelligence - Revised – The Wechsler was administered by Jan Griffin on May 26, 1998. The test indicated that the Student achieved a Verbal Score of sixty-six (66), which is not valid; Performance Score of one hundred eleven (111), which is within the average range; and, a Full Scale Score of eighty-six (86). The Full Scale Score was not valid because of invalidity of the Verbal Score.

B. Leiter International Performance Scale – The Leiter was administered by Jan Griffin on May 28, 1998. The test indicated that results indicated that the Student had a nonverbal IQ of one hundred twenty-two (122), which is more than one standard deviation above the mean in the superior range.

C. Revised Brigance Diagnostic Inventory of Early Development – The Brigance was administered by Jeannette Lloyd on June 3, 1998. The test indicated:

1) General Knowledge and Comprehension Section — that the Student named 11 of 11 colors and knew 3 of 4 shapes. He had difficulty with quantitative concepts, directional and positional concepts and with classification. The Student knew what to do in different situations 5 out of 12 times; knew the use of objects 10 out of 13 times; knew functions of community helpers 1 out of 3 times; and, knew where to go for services 1 out of 3 times.

2) Social and Emotional Development — that the Student exhibited 9 out of 15 behaviors in general social and emotional development; 2 out of 6 behaviors in play skills; and behaviors and 6 out of 6 behaviors in work-related skills and behaviors.

3) Readiness Section — that the Student responded to all questions requiring visual discrimination of 2 and 3 symbols; correctly recited the alphabet to the letter G; and named 23 out of 26 uppercase and 19 out of 26 lower case letters.

4) Basic Reading Skills Section — that the Student could not read 5 out of 10 words at the pre-primer level or read 7 out of 11 color words. The Student was able to auditorily discriminate 6 out of 8 letters.

5) Manuscript Writing Section — that the Student wrote 3 out of 3 correct responses regarding personal data; wrote the lowercase alphabet to the letter C and uppercase alphabet to the letter D.

6) Basic Math Section — that the Student answered 6 out of 6 questions regarding number concepts; read numbers to 10; matched all symbols to

numerals; comprehended 7 out of 7 ordinal positions; knew 1 out of 3 coins; and had 0 out of 3 correct responses to questions involving time.

7) The Student's motor and speech-language skills were not assessed in this test

D. Behavior Evaluation Scale - 2 (BES) – The BES was administered by Jeannette Lloyd on May 29, 1998. The test indicated that the Student had a Total Scale Score of one hundred one (101), which is within the average range.

E. Social Skills Rating System – The Social Skills Rating System was administered by Jeanette Lloyd on May 29, 1998. The test indicated that the test was given but the results were not set forth on the cover sheet.

50. In June and July, 1998, the Student attended Moog's summer school program.

51. On September 8, 1998 a Diagnostic Summary was prepared for the Student. (SD Exh 25, pp. 258-276). Immediately following preparation of the Diagnostic Summary, an IEP was prepared for the Student for school year 1998-99, the Student's Kindergarten year. (SD Exh 24, pp. 233-257). The Student's IEP team agreed to place the Student in the self-contained special education speech classroom at South Elementary. (SD Exh 24, p. 256). Pursuant to this IEP, the Student received sixteen hundred minutes per week of self contained special education services and one hundred fifty minutes per week of speech services which were all delivered at South Elementary. (SD Exh 24, p. 233). The Parents requested that the Student's program use the oral/aural communication mode. (SD Exh 24, p. 257). The Parents also raised concerns about the Student's auditory memory.

52. During school year 1998-99 the Student's Kindergarten year, he was a full-time student in the School District. (Tr Vol 3, pp. 31-32; Tr Vol 4, p. 123).

53. On September 18, 1998, in response to the concerns expressed by the Parents at the September 8, 1998 IEP meeting, the Student's IEP Team requested that the School District have an "outside evaluation" performed on the Student with respect to his auditory memory. (SD Exh 26, p. 277). Dr. Arthur Allen approved the request. (SD Exh 26, p.279).

54. On September 23, 1998 Dr. Allen employed Dr. Sue Randich, a school psychologist at St. Joseph Institute to perform the Leiter-Revised (Attention and Memory Scale), WPPSI-Revised (Sentence Sub Test) and WISC-3 (Digit Span Sub Test) on the Student. (SD Exh 26, p. 279).

55. On September 29, 1998 the Student was evaluated by Dr. Randich. (SD Exh 26, p. 280).

56. On or about November 12, 1998 Dr. Randich sent her Report of Psycho-Educational Evaluation dated October 29, 1998 to the School District. (SD Exh 26, pp. 280-286). Dr. Randich's report states in pertinent part that the Student had above-average intellectual ability, well-developed visual and visual-motor skills, excellent non-verbal reasoning and problem-

solving skills. Dr. Randich noted that the Student had areas of memory at or above age level including short-term memory, rote visual memory, spatial memory, memory for visual patterns and working memory. Short-term and intermediate-term visual association and recognition memory were below age-expectancy. Dr. Randich also noted that the Student had mild attentional problems and monitoring of them was recommended. (SD Exh 26, pp. 280-285). Dr. Randich's report was incorporated into the School District's September 8, 1998 Diagnostic Summary at the request of the Parents. (SD Exh 25).

57. On December 4, 1998 following receipt of Dr. Randich's Report, the Student's IEP Team met and his school year 1998-99 IEP was revised. (SD Exh 27, pp. 287-315). The Student's placement was changed to "Resource Special Education" (SD Exh 27, pp. 314-315) and he was scheduled to receive one hundred fifty (150) minutes per week of speech services, eight hundred (800) minutes per week of resource special education services and seven hundred fifty (750) minutes per week of modified regular education all at South Elementary School. (SD Exh 27, p. 287). The Parents agreed to this placement at the meeting. (SD Exh 27, p. 314).

58. On February 1, 1999 the Parents sent a letter to Sheila Logan requesting a "hearing to change [the Student's] diagnostic summary or for [a] meeting to write [a] new diagnostic summary." (SD Exh 29, pp. 316-319). The Parent stated that the request was made pursuant to the Family Educational Rights and Privacy Act.

59. On February 2, 1999 the Student was again evaluated by the IU Project. At the time of this evaluation the Student was years, months of age. Subsequently, the IU Project prepared *Research Findings For Speech Perception And Speech Production* ("1999 Research Findings") (SD Exh 30, pp. 320-334) which were provided to the School District by the Parents. The 1999 Research Findings indicated that the Student continued to demonstrate good listening skills, had many speech production errors but had gained in language skills and his speech perception skills were very good. The 1999 Research Findings also state that the Student's performance was very encouraging because "he has made more progress in his acquisition of new vocabulary words than would be anticipated by the amount of time that has elapsed since his last evaluation." (SD Exh 30, p. 323). The 1999 Research Findings recommended an effort be made to maximize language development through a continuation of one-on-one tutoring and an auditory-plus-visual approach. The 1999 Research Findings were provided to and considered by the School District. (Tr Vol 1, pp. 73-74).

60. On April 22, 1999 the Student was evaluated by the St. Joseph Institute. A *Summary of Three Year Cochlear Implant Evaluation* was prepared by St. Joseph Institute (SD Exh 30, pp. 335-341). At the time of the evaluation the Student was years, months of age. The St. Joseph evaluation was provided to the School District by the Parents.

61. On April 26, 1999 the Student's IEP team met and developed the Student's school year 1999-00 (first grade) IEP. (SD Exh 31, pp. 342-368). The Student's team agreed to place the Student in a resource special education classroom at South Elementary for the regular school year (SD Exh 29, p. 363) and in a self-contained speech/language/audition therapy program at South Elementary for the extended school year program during the summer of 1999. (SD Exh 31, p. 365). The IEP team agreed that the Student should have one hundred fifty (150) minutes

per week of speech therapy, five hundred fifty (550) minutes per week of speech, language and auditions and seven hundred (700) minutes per week of modified regular education all delivered at South Elementary. (SD Exh 31, p. 342). The Parents agreed to the extended school year services and the school year 1999-2000 placement proposed by the School District. (SD Exh 31).

62. During school year 1998-99, the Student mastered and/or made progress with respect to the goals and objectives set forth in his IEP.

63. Prior to the end of school year 1998-99, the Student's teacher, Jeanette Lloyd, indicated that she would not be returning to the School District for the next school year. As a result, the School District hired Tori Sisson, a certified speech-language pathologist to work specifically with the Student beginning in the summer of 1999. (Tr Vol 2, pp. 5-9, 62-65; Tr Vol 8, p. 162). Ms. Sisson is not certified as a teacher of the deaf. However, the School District hired Ms. Sisson because it concluded that a speech-language pathologist could better address the Student's needs that were primarily centered on speech and language deficits. (Tr Vol 2, pp. 62-65).

64. During the summer of 1999, the Student attended full-day extended school year services in the School District and was provided individualized instruction by Tori Sisson in speech, language and audition using the aural/oral approach. (Tr Vol 1, p. 52; Tr Vol 2, pp. 9-10, 69-70; Tr Vol 3, p. 34; Tr Vol 4, p. 123; Tr Vol 6, p. 44).

65. During school year 1999-2000, the Student's first grade year, the Student attended the School District at South Elementary School on a half-time basis. The Parents enrolled the Student for the remainder of the school day at St. Peter's School, a parochial school in Jefferson City ("St. Peters"). At South Elementary, the Student received one-on-one instruction from Ms. Sisson and was accompanied by Ms. Sisson to Jeanne Sill's regular first grade classroom for approximately thirty minutes each school day. (Tr Vol 1, p. 52; Tr Vol 2, p. 11). Prior to the beginning of this school year, the Student's Mother had requested that the Student be placed in Jeanne Sill's classroom. The School District agreed to this request. (Tr Vol 8, p. 166). Ms. Sill testified that she had the Student in her classroom for approximately one-half hour per day during which time she presented a literacy curriculum. (Tr Vol 8, pp. 181-183). Ms. Sill found the Student to be "very age-appropriate as to academics." (Tr Vol 8, p. 182, lns 22-25). The Student also received individualized speech therapy while at South Elementary from Tina Johnson. (Tr Vol 9, p. 39).

66. Various accommodations were made by the School District to assist the Student while he was in the regular education classroom including preferential seating, an attempt to eliminate outside noise sources, structured teaching, reteaching, use of carpeted areas for teaching, tennis balls on chair legs in the non-carpeted areas and use of Tori Sisson as a facilitator. (Tr Vol 8, pp.184-190, 195). Ms. Sill also worked with Nancy Nickelson to insure that the material was appropriately presented to the Student. (Tr Vol 8, p. 190).

67. At St. Peters the Student was placed in the regular education classroom and participated in lunch, recess, religion, computers, math and art. (Tr Vol 3, p. 42). Due to this arrangement, the Student was not able to participate in science and social studies at either school. (Tr Vol 1, p. 56; Tr Vol 5, p. 28).

68. On October 14, 1999 the Student's IEP team met and revised his IEP. (SD Exh 34, pp. 425 - 447). This IEP gave the Student one hundred fifty (150) minutes per week of speech therapy in the Speech Room, four hundred twenty-five (425) minutes per week of speech, language and audition in the Resource Room and one hundred fifty (150) minutes per week of modified regular education in the regular education classroom. (SD Exh 34, p. 425).

69. On April 12, 2000 the Student was again evaluated by the IU Project. At the time of this evaluation the Student was years, months of age. Subsequently, the IU Project prepared a *Summary of Cochlear Implant Evaluation* ("2000 Research Findings")(SD Exh 35, pp. 448 - 451) which was provided to the School District by the Parents and was considered by the School District. (Tr Vol 1, p 75). The 2000 Research Findings indicated that the Student's receptive language abilities were at the mid-to-late four-year level and his expressive abilities were at the early five-year level. These reflected 3 months progress during 14 months time receptively and 10 month's growth expressively in 14 months time. However, the "intent" of the IU Project and its testing of the Student (and others) was not to show the Student's progress or lack of progress in an educational setting. (Tr Vol 3, p. 112). The 2000 Research Findings were provided to and considered by the School District. (Tr Vol 1, pp. 74 - 75).

70. On May 15, 2000 the Student's IEP team met and prepared the Student's IEP for school year 2000-01. The IEP team agreed that the Student should have one hundred fifty (150) minutes per week of speech therapy in the Speech Room, four hundred twenty-five (425) minutes per week of speech, language and audition in the Resource Room and three hundred seventy-five (375) minutes per week of modified regular education in the regular education classroom. (SD Exh 37, p. 461). The School District agreed to have Tori Sisson meet with the Student at 7:45 a.m. each school day, forty-five minutes prior to the beginning of the school day, in order to provide him with additional instruction regarding the deficits relating to his hearing impairment. (Tr Vol 5, p. 60).

71. On May 15, 2000 the School District provided the Parents with a Notice of Action which states that the Student's placement was changed from self-contained to resource room at the May 15, 2000 IEP meeting as a result of the Student's regular education time being extended which gave him more time in the classroom. (SD Exh 37, p. 477).

72. During or around the May 15, 2000 IEP meeting, the Parents again requested that the Student be reevaluated in the area of language. (SD Exh 38). The School District agreed to do the additional testing and on May 22, 2000 the Mother consented to the School District giving the additional tests. (SD Exh 38, pp. 479 - 480).

73. During the summer of 2000, the Student attended Extended School Year Services in the School District. The Student received individualized speech, language and audition therapy with

Tori Sisson and attended an enrichment program with Ms. Sill. (SD Exh 39; Tr Vol 1, p 53; Tr Vol 2, pp. 11 - 12; Tr Vol 4, p. 124; Tr Vol 6, pp. 44 - 52). During this period, the School District administered several tests to the Student. These tests were as follows:

A. Bracken Basic Concept Scale (BBCS) – The BBCS was administered on July 10, 2000 by Tori Thiel. The test results indicated a Total Test Score of seventy-six (76) or one and one-half standard deviations below the mean.

B. Test of Auditory Comprehension of Language - R (TACL-R) – The TACL-R was administered on June 6, 2000 by Tori Thiel. The test results indicated a Standard Score of seventy-four (74) or one and one-half standard deviations below the mean. The score on the Word Classes and Relations subtest was low average. The Student's Standard scores for the Grammatical Morphemes and Elaborated Sentences subtests were at the lowest limits of the test or more than two standard deviations below the mean.

C. Test For Examining Expressive Morphology (TEEM) – The TEEM was administered on June 6, 2000 by Tori Thiel. The test results indicated an age-level approximation of 3-0 to 3-6 or more than two standard deviations below the mean.

74. During school year 1999-2000, the Student mastered and/or made progress on the goals and objectives set forth in his IEP. (Tr Vol 8, pp. 191-193; Tr Vol 9, pp. 38-41).

75. During school year 2000-01, the Student's second grade year, he attended the School District on a half-time basis between the beginning of the regular school year and April 27, 2001. (Tr Vol 4, p. 124). While in school at South Elementary, the Student attended the regular second grade classroom for an hour each day with Tori Sisson who served as his facilitator. (Tr Vol 1, p. 58; Tr Vol 2, pp. 11 - 12; Tr Vol 6, p. 41). During that time period, the Student was also enrolled at St. Peters for the remainder of each school day. (SD Exh 56, p. 649; Tr Vol 2, pp. 11 - 13). During the time the Student was at St. Peters he was in the regular education classroom.<sup>2</sup> The Student's Parents reported that while at St. Peters, the Student received instruction in math, physical education, art, music and religion. (Tr Vol 1, p. 56). The regular education classrooms at St. Peters did not have acoustic accommodations for the Student and he received no special education services there. (Tr Vol 4, p. 63). Due to this arrangement, the Student was unable to participate in Science and Social Studies curriculum due to having only a half-day at both schools. (Tr Vol 1, p. 56; Tr Vol 5, p. 28; Tr Vol 6, p. 11).

76. During school year 2000-01 and thereafter, the School District made acoustic accommodations to the Student's environment including, purchase and use of large area rugs in the classroom; installation of acoustical tile around the furnace area, additional insulation in the walls of the classroom; installation of tennis balls on the legs of classroom chairs and tables; use of static guard; restriction on the use of the classroom telephone and intercom; use of an auditory trainer or FM by the Student and teacher; turning off the air conditioner and computers and preferential seating for the Student. (Tr Vol 6, pp. 13-15; Tr Vol 8, p. 165; Tr Vol 9, pp. 13-16,

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<sup>2</sup> On April 27, 2001 the Parents opted to enroll the Student full-time in the School District.

20-22). Tori Sisson monitored the Student's acoustic environment in the classroom and made necessary adjustments to the environment to insure that it was as free as possible from external noise sources. (Tr Vol 6, pp. 104-105).

77. During school year 2000-01, the Student was in Judy Kollmeyer's second grade regular education classroom for one-hour per day during the reading lesson. (Tr Vol 9, pp. 5-7). There were no more than eighteen and usually less students in the class during the school year (Tr Vol 6, p. 12). Much of the instruction in the classroom was accomplished in a small group setting (Tr Vol 6, p. 12) during which the Student worked in small reading groups of around four students. (Tr Vol 9, p. 27). During his time in the regular education classroom, the Student was integrated into these small groups in the various curricular areas. (Tr Vol 6, p. 12). While in Ms. Kollmeyer's classroom the Student was accompanied by Tori Sisson, his facilitator. (Tr Vol 9, pp. 7-8). The Student also received one-on-one instruction from Tori Sisson on audition, language and speech and from Tina Johnson. (Tr Vol 1, p. 55; Tr Vol 2, pp. 11-12). Ms. Kollmeyer also worked with Nancy Nickelson to insure that the material was appropriately presented to the Student. (Tr Vol 9, p. 22).

78. During school year 2000-01, the Student made progress on the goals and objectives set forth in this IEP. (Tr Vol 9, pp. 41-43).

79. On November 9, 2000 the Student's IEP team met at the request of the Parents. During this meeting, the Parents requested that the School District agree to contract with an independent consultant who had experience in oral communication and recommended Ms. Elizabeth Ying. (Tr Vol 1, p.78). The School District agreed to the Parents' request. (SD Exh 41, pp. 571-573; SD Exh 42, p. 574; Tr Vol, p. 61). Ms. Ying is a speech/language pathologist and an independent consultant with the IU Project. (SD Exh 42, p. 574). Ms. Ying was employed by the School District to provide input regarding the Student's educational programming and his future rehabilitation needs (Tr Vol 3, p. 90), but not as an "educational consultant." (Tr Vol 3, p. 120, lns. 4-7). She did not, therefore, review the Student's past diagnostic summaries or IEPs (Tr Vol 3, pp. 119-120) and did not meet or directly observe the Student. (Tr Vol 3, pp. 101-102, 108).

80. On or around December 4, 2000 a language sample and other materials were provided to Elizabeth Ying by Tori Sisson. (SD Exh 42, pp. 575-578).

81. On or around February 5, 2001 Elizabeth Ying prepared a report and provided it to the School District. (SD Exh 42, pp 579-590). In her report, Elizabeth Ying recommended that:

- A. Specific vocabulary and concepts presented within general education instruction be previewed/reviewed.
- B. Modifications be made so the Student could increase participation in the general language arts curriculum.

C. The Student be given increased involvement in cooperative learning groups with full-time use of an FM system, incorporation of more auditory demands within ongoing articulation, language and literacy tasks.

D. Consideration be given to a remedial reading program subsequent to formal diagnostic findings.

Ms. Ying also observed that consideration must always be given to a child's "listening age" when assessing the results of evaluation tests. "Listening age" is calculated as the time during which the child has functional benefit of his or her cochlear implant. (Tr Vol 3, p. 117). Ms. Ying explained the concept as follows:

"... if I see a Peabody score of a child who's listened for five years listed at five years, I say, great awesome. If I see the vocabulary and language level of a child who has been listening for five years at two years, I get worried because we've got a three-year gap between how long they have been listening and what their language level is. Over time his listening age and chronologic age with appropriate training should narrow."

(Tr Vol 3, p. 118, lns. 17-23). Ms. Ying prefers to use standard scores on tests when she assesses a student's progress with standard evaluation tests. (Tr Vol 3, pp. 132-133). Ms. Ying also indicated that the Indiana University testing should not be viewed as a "thorough" or "comprehensive" assessment of the Student's communication skills, in part because the intent of such testing was not to evaluate progress in the Student's educational setting. (Tr Vol 3, p. 112; SD Exh 42, p. 582).

82. Following receipt of the Elizabeth Ying's report, Tori Sisson consulted with Ms. Ying on several occasions by telephone. (Tr Vol 6, pp. 53-57). During these conversations Ms. Ying indicated that:

A. She felt the best placement for the Student was in a mainstream classroom as long as he continued to be successful.

B. She felt that a placement in the Central Institute for the Deaf ("CID") would not be in the best interest of the Student because he was doing well in the mainstream classroom.

C. The Student's Mother wanted the Student to attend CID or St. Joseph Institute, but that Ms. Ying would not make that recommendation.

(Tr Vol 6, pp. 53-57; SD Exh 42, pp. 574-578).

83. On February 7, 2001 after receiving the report from Elizabeth Ying, the Student's IEP team met to discuss the report. At this meeting the Parents requested that the Student's reading

be reevaluated. As a result of the Parents' request, the Student's IEP team decided to reevaluate the Student. (SD Exh 43, p. 591).

84. Between February 7, 2001 and February 13, 2001 the Parents requested that the IEP Team be reconvened "to finish what didn't get finished," (SD Exh 43, p. 591), that professional development opportunities be written into the Student's IEP and that a conference titled "Bringing Sound to Life" be presented. (SD Exh 43, p. 592).

85. On February 13, 2001 the School District issued two Notice of Action forms which rejected the Parents' requests. The first Notice of Action indicates that the Parents' request to resume the February 7, 2001 IEP meeting was rejected because the School District was in the process of performing a reevaluation on the Student after which the team would meet to discuss the results and modify the Student's IEP as needed. (SD Exh 43, p. 591). The second Notice of Action indicates that the Parents' request for the inclusion of professional development activities and a conference in the Student's IEP was rejected because they were not required to provide the Student with a free, appropriate public education ("FAPE"). (SD Exh 43, p. 592; P Exh 24, p. 358).

86. Around February 13, 2001 the Student's Mother and South Elementary Principal Sheila Logan met at least twice to discuss the Mother's unannounced visits to the Student's classroom. Ms. Logan followed these conversations up with letters to the Student's Mother. (SD Exh 44, pp. 593-594). One of these letters states in pertinent part as follows:

"I am especially concerned with your use of demeaning and disparaging communication directed at staff members during instructional time in the presence of your son, [the Student]. On Monday, I twice heard you refer to the teacher as a liar. I also heard you say to Mrs. Thiel Sisson, 'Can't you stand up for yourself, Ms. Thiel (Sisson)?' The instructional time is also disrupted by you entering unannounced in the middle of a therapy session and attempting to videotape. Videotaping is highly disruptive to the educational setting. When you were denied the opportunity to videotape, the session ended early at your request."

(SD Exh 44, p. 593).

87. On February 15, 2001, pursuant to the request of the Parents, the School District provided notice to the Parents that a meeting would be held on February 23, 2001 to discuss the screening of the Student and develop a reevaluation plan for the Student. (SD Exh 45).

88. On February 23, 2001 the Student's IEP team met to review the screening of the Student and to prepare a reevaluation plan for the Student. (SD Exh 45, p. 595). During the February 23, 2001 meeting, a Summary of Screening was completed and discussed. (SD Exh 46). During the screening of the Student by the School District, all seven areas were screened by the team and a determination was made to assess or not assess the Student in each area. (SD Exh 46). The Summary of Screening

form documents the screening procedures, as well as the results and conclusions of the screening. (SD Exh 46). A decision was made to assess the Student in the areas of Speech/Language, Cognitive/Intellectual/Adaptive Behavior and Academic/ Prereadiness/Transition, (SD Exh 46, pp. 596-599) and an evaluation plan was prepared. (SD Exh 47). During this meeting the Student's Mother expressed concern about the Student's cognitive development. While School District personnel did not feel that there were significant concerns in this area they agreed to test the Student in this area. (Tr Vol 1, pp. 82-83). The team also discussed whether to evaluate the Student in the area of social/emotional/behavioral. The consensus was that the behavior problems which had been present in 1998 were no longer being observed at school and there was no need to test the Student further in this area. (Tr Vol 1, pp 84-85). At the meeting the Student's Mother signed a Notice of Consent for Evaluation and did not indicate on the evaluation plan or elsewhere that she was dissatisfied or disagreed with the areas to be tested, the tests to be utilized or the individuals listed who were to conduct the testing. (SD Exh 48, pp 602-604; Tr Vol 1, p. 91; Tr Vol 2, p. 23).

89. The date of the notice to reevaluate the Student was within thirty (30) days of the request for reevaluation of the Student. (SD Exh 47, pp. 600-601; SD Exh 48). The notice of intent to reevaluate sets forth a description and explanation of the action to be taken; the areas to be reevaluated; that an observation of the Student would be conducted; describes the options considered; and, describes the reasons for rejecting any options not selected (SD Exh 48, p. 602).

90. The School District conducted various tests on the Student as a part of his reevaluation in February-March, 2001. At the time of the testing, the Student was at grade level 2.6 and was years months of age. The School District conducted the following testing including:

A. The Developmental Approach to Successful Listening (DASL II) Placement Test – The DASL II was administered on January 16 through January 25, 2001 by Tina Johnson. The test indicted that the Student passed all tasks included in the Placement Test for Sound Awareness and Placement Test for Phonetic Listening. On the Placement Test for Auditory Comprehension he had difficulty following directions containing three elements. The DASL-II is not normed.

B. Speech/Language Observation – A speech/language observation was conducted on February 14, 2001 by Tori Sisson and Tina Johnson. The speech/language observation indicated that the Student could maintain a topic of conversation but sometimes started talking before others were finished which resulted in inappropriate comments or questions. The Student used language to get another person's attention, named objects, asked/answered questions, requested information and requested repetition of information. The Student had difficulty understanding multiple meanings, figurative language and complex language situations. Observations were obtained in the Student's classroom and therapy sessions. The examiners reported that the Student's teachers did not indicate that pragmatic language skills affected his ability to communicate with peers at South School.

C. Informal Gross Motor Screen – An informal gross motor screening was performed on February 21, 2001 by Scott Sisson. The Informal Gross Motor Screen results indicated that the Student's fine motor and gross motor skills appeared adequate.

D. Test of Word Knowledge (TOWK) – The TOWK was administered on February 27, 2001 by Tina Johnson. The results of the TOWK indicated a Receptive Composite of eighty-three (83) or one standard deviation below the mean and an Expressive Composite of ninety-three (93) which was within the average range. Subtest scores in receptive and expressive vocabulary were one standard deviation below the mean..

E. Language Samples – Language Samples of the Student's language were obtained on February 28 through March 5, 2001 by Tina Johnson and Tori Sisson. Results of the 100-sentence language sample analysis indicated that forty-seven (47) utterances were affected because of syntactic errors. Word phrase repetitions were also noted.

F. Teacher Assessment of Grammatical Structures (TAGS) – The TAGS was used to compare and analyze the Student's language on February 28 through March 5, 2001. The TAGS was applied to the language sample reported above to consider evidence of use of several syntactic structures in the sample. Results indicated evidence of use in this sample of possessives, articles, plurals, third person pronouns, plural pronouns, indefinite pronouns, irregular plurals, reflexive pronouns, adjectives, later adjectives, adjective strings, comparatives, irregular comparatives, adverbs, prepositions, present progressives, irregular past tense, simple past, present tense, present irregular, copula, auxiliary, future tense, infinitive, passives. Prepositions, participles, plurals, possessives, demonstratives, negation, questions, coordination, subordination, adverbial clauses and related clauses.

G. Comprehensive Assessment of Spoken Language (CASL) – The CASL subtests were administered on March 1 through 13, 2001. The CASL results indicated the following category and processing indexes: Lexical/Semantic, eighty (80) or one standard deviation below the mean; Syntactic, seventy-eight (78) or one standard deviation below the mean; Receptive, eighty-five (85) or one standard deviation below the mean; Expressive, seventy-nine (79) or one standard deviation below the mean. Subtest scores ranged from Syntax Construction, sixty-four (64) or more than two standard deviations below the mean, to Grammatical Morphemes one hundred (100) or average.

H. Goldman-Fristoe Test of Articulation – The Goldman-Fristoe was administered on March 5, 2001 by Tina Johnson. The result of the GFTA indicated several articulatory errors of substitution, omission and distortion at the word level with variable intelligibility in connected speech.

I. Woodcock-Johnson Tests of Achievement Revised – The Woodcock-Johnson was administered on March 6 through 13, 2001 by Nancy Nickelson. At the time of administration the Student was years, months of age and had completed 2.6 years (grades) of schooling. Average scaled scores are 85-115. The results indicated the following scores:

Test	Age Equivalent	Grade Equivalent	Scaled Score
Letter-Word Identification	7-10	2.3	95
Passage Comprehension	8-4	2.8	103
Calculation	8-6	3.0	112
Applied Problems	7-11	2.3	96
Dictation	7-10	2.3	96
Writing Samples	7-4	1.8	93
Science	7-2	1.9	95
Social Studies	5-6	K.2	75
Humanities	3-11	K.0	61
Broad Reading	7-11	2.5	99
Broad Math	8-2	2.7	102
Broad Written Language	7-7	2.1	95
Broad Knowledge	5-6	K.3	76
Skills	7-10	2.3	95
Word Attack	7-3	1.8	91
Reading Vocabulary	7-10	2.3	96
Quantitative Concepts	7-9	2.3	95
Proofing	8-9	3.4	114
Writing Fluency	7-10	2.3	95
Punctuation & Capitalization	7-5	2.0	92
Spelling	7-9	2.3	95
Usage	10-1	4.7	121
Basic Reading Skills	7-7	2.0	94
Reading Comprehension	8-0	2.5	99
Basic Math Skills	8-1	2.6	100
Basic Written Skills	8-2	2.8	104
Written Expression	7-7	2.1	93

All scores were within the average range with the exception of Broad Knowledge which was more than one standard deviation below the mean.

J. Wechsler Intelligence Scale for Children-III (WISC-III) – The WISC-III was administered on March 8 - 9, 2001 by Jan Griffin. Results of the WISC-III indicated Verbal IQ, eighty-eight (88) which was not valid; Performance IQ, one hundred thirty two (132); and Full Scale IQ, one hundred nine (109) which was not valid because of the invalid verbal IQ results.

K. CID Phonetic Inventory – The CID Phonetic Inventory was done on March 13, 2001 by Tina Johnson. This Inventory was not completed because of the failure of the Student’s cochlear implant. Information regarding supra segmental aspects of speech was derived from previous articulation testing.

L. Brigance Diagnostic Comprehensive Inventory of Basic Skills – The Brigance was administered on March 14, 2001. Results of the Oral Reading Subtest of the Brigance Diagnostic Comprehensive Inventory of Basic Skills indicated that performance on Form A Third Grade Level was 94% and on Form B was 90%. A student must receive 97% to receive grade level credit and this was achieved at the second grade level.

91. On February 26, 2001 the Parents objected to the two Notices of Action issued on February 13, 2001. (SD Exh 49, pp 604-605; P Exh 15, p. 144).

92. On March 8, 2001 Dr. Allen responded to the Parents' February 26, 2001 letter. In his response, Dr. Allen stated that the "staff is proceeding with the evaluation in a timely manner and will be contacting you to arrange for a meeting to review the results of the testing." (P Exh 15, p. 145).

93. On or about March 18, 2001 failure of the Student's cochlear implant was suspected. At that time the School District had completed all but two measures on the Student's reevaluation. Failure of the cochlear implant was confirmed on April 1, 2001 by Beverly Fears, the audiologist at St. Joseph's Institute. (SD Exh 51, p. 608; Tr Vol 1, p. 217). At the time of the failure, the School District had completed all but one test on the Student's reevaluation. (Tr Vol 1, pp. 95-96).

94. Around April 1, 2001 the Student's Mother contacted CID in St. Louis to determine whether the Student could be admitted there for the remainder of school year 2000-01. (Tr Vol 5, pp. 183-184). The Parents rejected that option because of the cost. (Tr Vol 5, p. 184).

95. On April 5, 2001 the Student's IEP team met to prepare a revised Diagnostic Summary following the reevaluation of the Student. (SD Exh 50; SD Exh 51, pp. 608-641). The Diagnostic Summary states that the Student continues to meet the eligibility criteria to be diagnosed as hearing impaired. During the meeting:

A. The Student's Mother expressed disagreement with the test scores in the academic area and indicated that she expected the Student to score lower than the scores he made on the tests administered during the evaluation. (Tr Vol 1, p. 136; Tr Vol 2, pp. 56, 133-134, 163, 177; Tr Vol 4, pp. 51-52, 146).

B. The Parents did not state they felt the diagnostic was incomplete or request permission to conduct an independent educational evaluation on the Student. (Tr Vol 1, p. 137).

Dr. Arthur Allen testified that the School District's IEP Team recognized that the then completed reevaluation was not intended to evaluate the Student post-reimplantation and that if the IEP Team needed additional information in order to appropriately serve the Student, the reevaluation process would need to be started anew. (Tr Vol 2, p. 193; Tr Vol 4, p. 168). It was also the School District's stated intent to continue to informally observe the Student during the Extended School Year Services

that summer to determine whether further reevaluation would be necessary as a result of the malfunction and reimplantation of his cochlear implant. At the conclusion of the April 5, 2001 meeting, the Student's Mother informed the School District that she would enroll the Student on a full-time basis at South School the following Monday, April 9, 2001. (Tr Vol 1, p. 63).

96. The diagnostic staffing was conducted within forty-five (45) days following the Consent to Reevaluate. A written diagnostic summary was prepared (SD Exh 50) which documents the evaluation and provides the following required information:

- A. A statement that all seven areas were considered.
- B. A statement of medically relevant medical findings.
- C. A discussion of the relevant behavior which was noted during the observations and the relationship of that behavior to the Student's academic functioning.
- D. A statement of the existence and nature of the categorical disability for which the evaluation was conducted
- E. A basis for the determination of continued eligibility and need for special education and related services for reevaluation.

Present at the meeting were two regular education teachers, a teacher with knowledge in the areas of suspected disability, a qualified examiner and a certified specialist in speech.

97. On April 5, 2001 the Parents requested an IEP Meeting "to discuss full time enrollment, summer and fall placement, medical issues, review IEP and changes for full day, and aide for full day program." (SD Exh 52, p. 642).

98. On April 16, 2001 the School District issued a Notice of Action regarding a request made by the Parents. The Parents requested that the Student receive post-surgical therapy services from St. Joseph. The School District rejected this request because the request was "premature" in that the School District did not "have information regarding what [the Student's] needs will be after re-implantation." (P Exh 18, p. 273).

99. On April 20, 2001 the Student was re-implanted with a Clarion Bionic Ear cochlear implant at St. Louis Children's Hospital. (Tr Vol 3, pp. 169-170; P Exh 59). The re-implantation was successful. (Tr Vol 7, p. 164). Approximately three weeks after reimplantation, the Student was fitted with the external equipment and the process of "mapping" the implant (described below) began. (Tr Vol 3, pp 155-156).

100. When a cochlear implant is reimplanted, the device must be “remapped” to produce intelligible sounds for the person who has been implanted. The cochlear implant works through a series of electrodes, each of which is responsible for providing electrical current to the auditory nerve. During the mapping process the implant’s electrodes are “set to generate a specific amount of electrical current at a level where the person perceives it as a hearing stimulus.” (Tr Vol 3, p.140, lns.17-25; p. 141, lns. 1-2). A person who has experienced a failure of his cochlear implant and is reimplanted usually reaches the level where he had previously been. However, the length of time that it will take the person to return to the previous levels is not capable of accurate prediction. (Tr Vol 3, p. 144, lns. 3-9). Dr. Lusk testified that he would predict that the Student’s new implant would give him benefit. However he was unable to quantify the amount of that benefit. (Tr Vol 7, p 165, lns.19-23). During the remapping process, the audiologist relies heavily on the student’s teachers and audition therapists, with their knowledge and day-to-day observations of the student, to make appropriate adjustments to the device. (Tr Vol 7, pp. 80-81).

101. On April 27, 2001 the Parents enrolled the Student for full-time school in the School District rather than a half-day at St. Peters and a half-day in the School District. (SD Exh 56, p. 649).

102. On May 4, 2001 Dr. Rodney Lusk, Medical Director of the Pediatric Otolaryngology Department at St. Louis Children’s Hospital, and the surgeon who re-implanted the Student with his cochlear implant, wrote to Tori Sisson. (SD Exh 57, pp. 653-654; P Exh 31, pp. 464-465). Dr. Lusk testified that he and Jennifer Goldin, audiologist, prepared the letter “to define the educational setting that [the Student] should be in for him to be able to utilize the device that. . . he had been implanted with.” (Tr Vol 7, p 166, lns. 24-25; p. 167, lns. 1-6; pp. 174-175). Dr. Lusk indicated that the Student was at high risk due to his multiple failures and the recommendations in the letter were designed to allow maximal utilization of the cochlear implant (Tr Vol 7, pp. 167-168), and the Student’s needs “are beyond what we’d expect the normal cochlear implant child [to have] that was . . . implanted at [age] . . . two or three.” (Tr Vol 7, p. 176, lns. 7-9). In this letter Dr. Lusk stated in pertinent part:

“The importance [the Student’s] educational setting will have on his adjustment and success with his replacement cochlear implant should not be underestimated. Given the repeated problems [the Student] has had with his implant, he must be placed in the appropriate educational setting. As you know, [the Student] attended the auditory-oral program at St. Joseph Institute for the Deaf when he was first implanted and is an oral communicator. Auditory-oral programs, such as St. Joseph Institute for the Deaf, are able to maximize a cochlear implant user’s potential for many reasons. These schools provide the following services:

- Access to audiologists on site during all school hours who have special training in the maintenance and programming of all of the cochlear implant devices currently available.

- Orally trained teachers and speech language pathologists who specialize in auditory training, language development, and teaching of oral language to deaf children.
- Intense language curriculums which foster the development of age appropriate oral language skills.
- Acoustically treated rooms above and beyond the standards recommended by the American Speech and Language Association guidelines to maximally reduce outside noise and make the classroom environment as quiet as possible.
- Small child to staff ratio.
- An age appropriate peer group with similar linguistic and learning skills so these children can develop social relationships and self confidence.
- Parent support groups and counseling.

Children with cochlear implants must be educated by trained professionals in oral education in order to acquire oral language and speech skills with their implant. Therefore, it is vital that [the Student] is taught by an oral teacher of the deaf. In order for him to adjust to his new implant and continue to make appropriate academic progress, I am recommending that he be placed in the type of auditory-oral educational setting described above.”

(SD Exh 57, pp. 653-654; P Exh 31, pp. 464-465).<sup>3</sup> Dr. Lusk testified that CID provides the type of services he described in his letter. (Tr Vol 7, p.169). Following receipt of the letter, Tori Sisson consulted with Jennifer Goldin concerning the recommendations in the letter. (Tr Vol 6, p. 18). After discussing the recommendations with Ms. Goldin, Ms. Sisson concluded that the School District had provided “an appropriate environment for [the Student].” (Tr Vol 6, p. 19, lns. 2-6).

103. On May 16, 2001 the Student’s IEP team met to review and revise the Student’s IEP and discuss the Parents’ request for extended school year services and for an aide. An IEP was developed by the IEP team for school year 2001-02 and for extended school year services. During the meeting the following additional items were discussed:

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<sup>3</sup> Tori Sisson testified that the letter was not received by her until May 17, 2001, the day following the meeting of the Student’s IEP team, (SD Exh 57, p. 653; Tr Vol 6, pp. 28-29) and that it was not provided to her at the Student’s May 16, 2001 IEP meeting. (Tr Vol 6, p. 29). Other witnesses indicated that the letter was discussed at the Student’s May 16, 2001 IEP meeting. The Hearing Panel credits the testimony of Ms. Sisson on this point, in part because she noted the date of receipt on the letter and she was a forthright and candid witness.

A. The School District agreed to provide the Student with a classroom facilitator “to restate, rephrase and reexplain all information” to the Student. (Tr Vol 6, pp. 26-27; SD Exh 58, p. 666). The facilitator was to accompany the Student to all academic subjects, music and art as requested by the Parents (SD Exh 58-A, pp. 656-671), make sure the classroom was acoustically appropriate for the Student, (Tr Vol 6, p. 26), and assist the Student like a “tutor” when needed. (Tr Vol 6, pp. 26-27, 37).<sup>4</sup>

B. A discussion occurred concerning the effect of the Student’s re-implantation on the evaluation results which were conducted prior to the failure of the Student’s cochlear implant. Tori Sisson indicated that she would reassess the Student’s performance on the DASL and the SPICE tests during the extended school year. The School District members of the Student’s IEP team indicated that they would continue to observe the Student during the extended school year session and at the beginning of the regular session for school year 2001-02 and would amend the Student’s IEP, placement or conduct additional testing if needed. (Tr Vol 5, pp. 71-73; Tr Vol 6, pp. 20-21, 100-102). The team further agreed that it might be necessary to change the Student’s audition goals and objectives depending upon how well he did on those tests. (Tr Vol 1, pp. 134-135).

C. The Student’s IEP team spent a long time during the meeting discussing the accommodations to be made for the Student. (Tr Vol 6, pp. 33-34; SD Exh 58A, pp. 665-667).

D. Tori Sisson discussed with the Student’s IEP team that within two weeks of the Student’s return to school following the reimplantation of his cochlear implant she had administered the SPICE to him and “his performance was almost back to where it had been.” (Tr Vol 6, p. 100, lns.15-25). The Parents did not request that the DASL and/or the SPICE or any other test be re-administered at that time. (Tr Vol 1, p. 135, lns 21-25).

E. The Student’s Mother again expressed disagreement with the test scores in the academic area and indicated that she expected the Student to score lower than the scores he made on the tests administered during the evaluation. (Tr Vol 1, p. 136).<sup>5</sup>

F. The School District offered the Student extended school year services which were to be provided by Tori Sisson. (Tr Vol 6, pp 65-67).

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<sup>4</sup> Sheila Hodge-Logan testified that each school year there were several facilitators employed for students at South Elementary School. Prior to the beginning of the school year each facilitator is assigned to a student and the classroom teacher, special education teacher and the facilitator design the facilitator’s job description in accordance with the specific needs of the child to which they are assigned. (Tr Vol 8, pp. 167-168).

<sup>5</sup> Following the meeting the Student’s Mother continued to express this disagreement with the Student’s test scores. (P Exh 42, p. 677; SD Exh 66, p. 781).

G. The School District proposed a change in the Student's placement to a less restrictive environment (Tr Vol 6, p. 36) based upon the Student's success in that environment at South School and his reported progress at St. Peters. (Tr Vol 5, p. 46; Tr Vol 6, p. 8; Tr Vol 9, p. 61). The proposed IEP actually provided more services to the Student than he was receiving during first and second grades because at St. Peters, he did not have the support of an educational facilitator in the regular education classroom. (Tr Vol 9, p. 61).

H. At the conclusion of the meeting the Student's Mother requested that the School District pay for an independent educational evaluation of the Student. (HP Exh 1).<sup>6</sup>

104. The May 16, 2002 IEP (SD Exh 58) met the following requirements:

A. The IEP was developed prior to initiation of services for the Student and at the time of the development of the IEP, a current IEP was in place.

B. The revised IEP (SD Exh 58) contains the following:

(1) A description of the specific special education services to be provided to the Student and the amount of time to be committed to each service.

(2) A description of the applicable related services to be provided to the Student and the amount of time to be committed to each service.

(3) A description of the extent of the Student's participation in the regular education program.

(4) The projected date for initiation of services and the anticipated duration of the services.

(5) A description of modifications to the regular education program.

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<sup>6</sup> The Parents testified that they requested that the Student be "reevaluated." This testimony of the Parents is overshadowed by the letter of the Student's Mother to Shiela Logan, dated June 19, 2001 (SD Exh 63, p. 764) where the Parent states:

"I am unsure of where to obtain an IEE and I am asking for your assistance. Do you have any information explaining where an IEE may be obtained?"

Likewise, following the May 16, 2001 IEP meeting the School District personnel treated the request made by the Parents as one for an "independent educational evaluation." See: letter from Teri Goldman to Pam Williams dated June 12, 2001 (SD Exh 61, p. 762); letter from Dr. Bert Kimble to Parents dated June 14, 2001 (SD Exh 62, p. 763); letter from Dr. Arthur Allen to the Parent (SD Exh 64, p. 770); letter from Teri Goldman to Parents dated July 3, 2001 (SD Exh 65, pp. 771-773); and, letter from Teri Goldman to Parents dated July 5, 2001 (SD Exh 66, pp. 774-776). The testimony of the Parents is also at odds with the testimony of Tori Sisson who testified: "[The Mother] requested an independent evaluation. I never heard her say reevaluation." (Tr Vol 6, p. 68, Ins. 2-4).

- (6) A statement concerning the Student's participation in physical education.
- (7) A statement that extended school year services were considered for the Student.
- (8) A statement of the present levels of the Student's educational performance.
- (9) A statement of the annual goals, including short-term instructional objectives for the Student.
- (10) A statement of the appropriate objective criteria which are established for each short-term instructional objective.
- (11) A statement of the appropriate evaluation procedures which are established to determine whether each short-term instructional objective is achieved.
- (12) A statement of the schedule which will be used to determine whether the short-term instructional objectives are achieved.

C. The Student's IEP team was composed of at least one School District representative; at least one of the Student's teachers; the Student's Parents; members of the evaluation team; and, other School District personnel who were knowledgeable about the evaluation procedures used with the Student and familiar with the results of the evaluation.

D. The IEP describes the placement options considered for the Student and the reasons any such options were rejected.

105. The Student's Mother testified that at the conclusion of the May 16, 2001 IEP meeting she notified the School District that she was withdrawing the Student from the School District. (Tr Vol 5, p. 90). The Mother further testified that during the meeting she made it entirely clear to the Student's IEP team that the Student ". . . would not be attending Jefferson City Public School District for the . . . summer or fall." (Tr Vol 5, p. 90, lns.14-18). The Hearing Panel does not credit the testimony of the Student's Mother on this matter for the reasons hereafter set forth. Rather, the Hearing Panel finds that during the May 16, 2001 IEP meeting, the Parents did not inform the Student's IEP team that they were withdrawing the Student at that time and thereafter took no action which would have placed the School District on notice that the Student was being removed from the School District until the School District learned that the Student had been enrolled at CID around August 23, 2001.

106. Generally, the Hearing Panel does not credit the testimony of the Student's Mother where her testimony conflicts with the testimony of other witnesses because she provided rambling and confusing testimony; failed to directly answer questions posed to her on occasion; and, contradicted her own testimony. Specifically, the Hearing Panel does not credit the Student's Mother on the

question of whether the Parents informed the School District that they were withdrawing the Student at the May 16, 2001 IEP meeting for the following reasons:

A. On cross-examination the Student's Mother altered her testimony stating that she told the IEP team that she was withdrawing the Student at the end of the regular school session. (Tr Vol 5, pp. 155-156). And upon examination by the Hearing Chair said she "withdrew [the Student] from school" at the May 16, 2001 meeting. (Tr Vol 5, pp. 186-187).

B. The Student continued to attend the School District for the remainder of the regular school session in school year 2000-01 and following the regular school session, the School District continued to prepare for the Student to attend extended school year services during the summer, (Tr Vol 5, p. 73 , Tr Vol 6, pp. 65-67), which obviously would not have occurred if the Parent had communicated that the Student was being withdrawn from the School District.

C. There is no mention of the Parents' intent to withdraw the Student in the Parents' letter to Sheila Logan dated June 19, 2001 (SD Exh 63, p. 764); or to Dr. Allen dated June 25, 2001 (P. Exh 46, pp. 717-721).

D. The statements of the Parents in their letter to Dr. Kimble on July 15, 2001 (SD Exh 66, pp. 777-778) indicate that if the School District did not listen to or answer their concerns they would remove the Student from the School District, (SD Exh 66, p. 777), not that they had already withdrawn the Student from the School District.

E. The Parents' letter to Teri Goldman on July 17, 2001(SD Exh 66, pp. 779-781) mentions nothing about removing the Student from the School District and states that the Parents were "looking forward to resolving these conflicts with the school district...". (SD Exh 66, p. 781).

107. On May 20, 2001 the Parents filed an Application for Student Enrollment with CID. (P Exh 49, pp. 752-753; Tr Vol 5, p. 185). According to the Student's Mother, this application was for the CID's summer session. The Student was not accepted because CID did not have an opening for the summer term. (Tr Vol 5, p.191).

108. On or before June 1, 2001 the Parents made twenty-four requests that the School District take certain action regarding the Student's educational services. On June 1, 2001, the School District issued twenty-four Notices of Action which were responsive to the requests made by the Parents. A summary of the Notices of Action follows:

A. The Parents requested that the School District utilize C-print to give the Student a written form of information that the teacher verbalizes in the classroom. The School District rejected this request because the Student "does not need written information in order to receive and respond appropriately to the information that is presented by the teacher." The

School District agreed to use a facilitator to restate, rephrase and re-explain all communication in a more interactive way than C-print. (SD Exh 60, p. 738; P Exh 29, p. 417).

B. The Parents requested that the Student's language arts assignments have a lower difficulty level than his peers. The School District rejected this request because the "classroom teacher and special educator noted that [the Student] is able to successfully complete language arts class work." (SD Exh 60, p. 739; P Exh 29, p. 418).

C. The Parents requested that the Student be allowed to utilize specialized curriculum in the classroom. The School District rejected this request because the Student "has been able to successfully utilize the general curriculum presented to him in a mainstream classroom." (SD Exh 60, p. 740; P Exh 29, p. 419).

D. The Parents requested that the Student have preferential seating in the mainstream classroom such as no seat near noise from car, student traffic, air conditioner, computer or movement and noise from ADHD/behavior problem students. The School District rejected this request because the Student's "preferential seating will be adjusted as needed to avoid any distractions to the best of the classroom teacher and special educator's ability in the mainstream classroom." (SD Exh 60, p. 741; P Exh 29, p. 439).

E. The Parents requested that the Student's teachers communicate with the Parents on a daily basis using a communication notebook. The School District rejected this request because the "IEP team decision to utilize an assignment notebook listing daily assignments from the classroom and special educators . . . and two notebooks are not necessary." (SD Exh 60, p. 742; P Exh 29, p. 420).

F. The Parents requested that the Student receive individual or small group counseling for emotional/behavioral problems. The School District rejected this request because the School District has not observed "significant emotional/behavioral concerns." It was noted that the services of the school counselor were available to all students. (SD Exh 60, p. 743; P Exh 29, p. 421).

G. The Parents requested that the Student's teachers be inserviced by CID/Moog Schools. The School District rejected this request because "such inservice is not required to provide [the Student] with FAPE" . . . [in that the Student's] "are fully qualified to implement his IEP" and "professional development opportunities are provided by [the School District] and [the Student's] teachers seek out and attend workshops/conferences on a regular basis." (SD Exh 60, p. 744; P Exh 29, p. 422).

H. The Parents requested that the School District provide the Student with more than four weeks of extended school year services for audition therapy. The School District rejected this request because the Student "has progressed rapidly following re-implantation." The School

District also noted that “four weeks may be adequate but the possibility of extending extended school year services needs to be considered at a later time . . . [and] audition activities can also occur in the home environment throughout summer to increase [the Student’s] auditory skills.” (SD Exh 60, p. 745; P Exh 29, p. 423).

I. The Parents requested that the School District provide the Student with access to an audiologist on-site during all school hours. The School District rejected this request because the Student utilized his Cochlear implant device during all activities at home and school, there are a lack of qualified audiologists in the Jefferson City area and the School District provides equipment for emergency situations. (SD Exh 60, p. 746; P Exh 29, p. 424).

J. The Parents requested that the School District provide the Student with an orally trained teacher who specializes in auditory training. The School District rejected this request because the Student’s current special educators are speech/language pathologists who “specialize in speech and language acquisition of children who are deaf/hard of hearing” and “a certified hearing impaired teacher is part of [the Student’s] IEP team. The School District also noted that the Student’s special educators “have received training on the auditory/oral mode of communication and interventions with students who are deaf/hard of hearing” which is “adequate to provide [the Student] with FAPE.” (SD Exh 60, p. 747; P Exh 29, p. 425).

K. The Parents requested that the Student’s teachers utilize an intense separate language curriculum which “fosters the development of age appropriate oral language skills.” The School District rejected this request because the Student’s teachers “have the educational background and expertise to select appropriate activities to facilitate language development within the curriculum selected by [the School District].” (SD Exh 60, p. 748; P Exh 29, p. 426).

L. The Parents requested that the School District pay for transportation to the audiologist. The School District rejected this request because the Student uses his cochlear implant to hear in all situations and the implant is considered a personal device under the IDEA. (SD Exh 60, p. 749; P Exh 29, p. 427).

M. The Parents requested that the School District pay for visits to the audiologist. The School District rejected this request because the Student uses his cochlear implant to hear in all situations and the implant is considered a personal device under the IDEA. (SD Exh 60, p. 750; P Exh 29, p. 428).

N. The Parents requested that the School District pay for parent support groups and/or counseling services. The School District rejected this request because the requested services were not necessary in order to provide the Student with FAPE. (SD Exh 60, p. 751; P Exh 29, p. 429).

O. The Parents requested that the School District provide the Student with an auditory/oral interpreter for speakers and assemblies. The School District rejected this request because the Student will be provided with a facilitator to restate, rephrase and re-explain all communication for speakers, assemblies and extra curricular activities as needed and an auditory/oral interpreter is limiting because such a person silently mouths a speaker's words for a deaf person. (SD Exh 60, p. 752; P Exh 29, p. 430).

P. The Parents requested that the School District provide the Student with an auditory/oral interpreter in the classroom. The School District rejected this request because the Student will be provided with a facilitator to restate, rephrase and re-explain all communication for speakers, assemblies and extra curricular activities as needed and an auditory/oral interpreter is limiting because such a person silently mouths a speaker's words for a deaf person. (SD Exh 60, p. 753; P Exh 29, p. 431).

Q. The Parents requested that any information from any presentation used as required knowledge be given to the Student in written form. The School District rejected this request because "there is no such information required at the third grade level and [the Student] has been able to progress with regular presentation of materials. (SD Exh 60, p. 754; P Exh 29, p. 432).

R. The Parents requested that additional tutoring or explanation be given to the Student by the interpreter. The School District rejected this request because the Student will be provided with a facilitator to restate, rephrase and re-explain all communication for speakers, assemblies and extra curricular activities as needed and an auditory/oral interpreter is limiting because such a person silently mouths a speaker's words for a deaf person. (SD Exh 60, p. 755; P Exh 29, p. 433).

S. The Parents requested that the School District pay the fees for the Student to attend Central Institute for the Deaf ("CID") for extended school year services. The School District rejected this request because it could provide the Student with appropriate extended school year services. (SD Exh 60, p. 756; P Exh 29, p. 434).

T. The Parents requested that the School District pay for the placement of the Student at CID in the Fall. The School District rejected this request because it could provide the Student with appropriate services in the least restrictive environment. (SD Exh 60, p. 757; P Exh 29, p. 435).

U. The Parents requested that the School District reimburse fees for services from Judy Harper for more than four weeks of extended school year services for audition. The School District rejected this request because the Student "has progressed rapidly following re-implantation." The School District also noted that "four weeks may be adequate but the possibility of extending extended school year services needs to be considered at a later time, if

needed audition therapy can be provided by the School District and audition activities can also occur in the home environment throughout summer to increase [the Student's] auditory skills.” (SD Exh 60, p. 758; P Exh 29, p. 436).

V. The Parents requested that the School District pay for the Student's annual eye examination by his ophthalmologist. The School District rejected this request but stated it will screen the Student's vision two times a year. (SD Exh 60, p. 759; P Exh 29, p. 437).

W. The Parents requested that the Student receive more than four hundred minutes of language therapy per week. The School District rejected this request because the Student was successful with the language goals and objectives set forth in this IEP. (SD Exh 60, p. 760; P Exh 29, p. 438).

X. The Parents requested that the Student's classroom be acoustically treated above and beyond the standards recommended by the American Speech-Language-Hearing Association guidelines to maximally reduce outside noise and make the classroom environment as quiet as possible. The School District rejected this request because the Student “is being successfully mainstreamed [so] it is felt that his acoustical environment is adequate at this time.” (SD Exh 60, p. 761; P Exh 29, p. 416).

109. On June 8, 2001 the Parents met with Dr. Bert Kimble, the School District's Superintendent. (SD Exh 62, p. 763).

110. The Student did not attend the School District's extended school year program during the Summer of 2001. (Tr Vol 1, p. 135; Tr Vol 5, p. 73). According to the Parents, they unsuccessfully looked for other programs and ultimately elected to keep the Student at home, (Tr Vol 4, pp. 41-44; Tr Vol 6, pp. 192-194), even though the School District had prepared for the Student to attend the extended school year program. (Tr Vol 5, p. 73). The Student's speech, language and audition skills regressed over the summer. (Tr Vol 6, p. 65; pp. 193-194).<sup>7</sup>

111. On or about June 12, 2001 the School District, through its Counsel, sent a letter to DESE requesting a due process hearing. (HP Exh 1) The request for the due process hearing was received by DESE on June 12, 2001. The letter states in pertinent part as follows:

“On or about May 16, 2001 [the Student's] IEP team convened. At the conclusion of that meeting, [the Student's mother] requested an independent evaluation with respect

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<sup>7</sup> Audiologist Beverly Fears testified that the fact that the Student did not receive therapy during the summer caused her “concern, because this was a very critical time period for him. He was still learning this new device and the new signals and the new sound percepts.” (Tr Vol 7, p. 87, lns. 1-5). She further testified that she would anticipate that the lack of a summer program “would really significantly impede his progress, because . . . you wouldn't have that feedback through the audiologist, who . . . would still be programming him.” (Tr Vol 7, p. 87, lns. 10-13).

to the District's most recent reevaluation. The District is initiating due process pursuant to the IDEA with regard to the [Parents'] request.”

112. On June 14, 2001 Dr. Bert Kimble sent a follow-up letter to the Parents with his response to the issues the Parents discussed with him during their meeting on June 8, 2001. (SD Exh 62, p. 763).

113. On June 19, 2001 the Student's mother wrote to Sheila Logan regarding the Student “and an independent evaluation and a copy of his complete file.” In this letter the mother stated that she was “unsure of where to obtain an IEE” and asked for Ms. Logan's assistance. (SD Exh 63, p. 764; Tr Vol 4, p. 10).

114. On June 25, 2001 the Parents sent a letter to Dr. Allen. (HP Exh 7; SD Exh 71, pp. 888 - 891). In this letter the Parents address questions they have about the Student's reevaluation which culminated with the Diagnostic Staffing meeting on April 5, 2001.

115. On June 28, 2001 Dr. Allen responded to the Mother's June 19 letter. Dr. Allen's letter enclosed a copy of the School District's independent educational evaluation policy “in response to your request for an independent evaluation.” Dr. Allen also states:

“Of course, I am sure you are aware that the District had initiated a due process proceeding because of that request and is asking a three-member panel to determine that the District's most recent reevaluation of [the Student] is appropriate such that the District is not required to fund an independent educational evaluation.”

(SD Exh 64, pp. 765 - 770).

116. On July 3, 2001 Ms. Goldman, Counsel for the School District, responded to the Parents' June 25, 2001 letter to Dr. Allen. (SD Exh 65, pp. 771-773). In this letter Ms. Goldman states:

“Finally, I must respond to your letter with respect to the fact that you consider the reevaluation incomplete. We assumed that you disagreed with the evaluation or you would not have requested an independent educational evaluation at public expense. It is the District's position that these matters will need to be addressed and resolved by the three-member hearing panel.”

(SD Exh 65, pp. 772-773).

117. On July 5, 2001 Ms. Goldman responded to the June 19, 2001 letter written by the Student's Mother to Dr. Allen. (SD Exh 66, p. 774). In this letter Ms. Goldman states:

“Dr. Allen asked that I respond to your correspondence of June 19, 2001. Enclosed please find a copy of the District's independent educational evaluation policy in

response to your request for an independent evaluation. Of course, I am sure you are aware that the District has initiated a due process proceeding because of that request and is asking a three-member panel to determine that the District's most recent reevaluation of [the Student] is appropriate such that the District is not required to fund an independent educational evaluation.”

(SD Exh 66, p. 774).

118. On July 9, 2001 the Parents filed a second Application for Enrollment with CID for school year 2001-02. (Tr Vol 6, pp. 158-159; Tr Vol 7, p. 44).<sup>8</sup> Shortly thereafter the Parents were informed that the Student had been accepted at CID for school year 2001-02. (Tr Vol 7, p. 9).

119. On July 15, 2001 the Parents wrote a letter to Dr. Kimble. (SD Exh 66, pp. 777-778). In this letter the Parents state in pertinent part:

“ We are formally requesting for the district to reconsider [the Student's] current IEP, services and placement. We feel his unique needs are not being met in your proposed IEP. [The Student] requires a program that allows for benefit concerning his communication mode, his specific communication needs, his linguistic needs, his academic level, his social and emotional needs. His placement requires one that considers the severity of his hearing loss and the use of the cochlear implant.

We believe [the Student] requires a certified teacher of the deaf whose background training and expertise is in the auditory oral mode of communication. Program, Services and Placement considerations should be based on aural rehabilitation.

We believe an appropriate solution would include the following but should not be limited to, the following:

- A certified teacher of the deaf and speech pathologist whose background, training or expertise is in [the Student's] mode of communication or quarterly consultation visits/training from a specialist in the field of aural rehabilitation . . .
- Placement in an auditory oral program within the district, which places him in an appropriate setting to meet his unique needs.

We feel our concerns have not been heard or answered. We are asking you to reconsider our son's needs. We will be awaiting your response within ten days before

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<sup>8</sup> The second Application for Enrollment in CID is a material document to this proceeding which the Parents apparently elected not to reveal to the School District or the Hearing Panel.

we choose to seek alternative action. If you are not willing, as we stated before on May 16, 2001 we are removing [the Student] from the public school and are rejecting the district's proposed program and placement. We feel your services don't allow our son to receive FAPE and placing [the Student] in an appropriate private setting. Consider this your ten-day notice of our intent to place [the Student] in a private placement in which we will be seeking reimbursement."

120. On July 18, 2001, Dr. Kimble responded to the Parents' July 15 letter. Dr. Kimble states the following in this letter:

"I am in receipt of your correspondence dated July 15, 2001, in which you are formally requesting the District to reconsider [the Student's] current IEP, services and placement. As I am sure you are aware, the District is not required to reconvene [the Student's] IEP team until the necessary staff members of the team are under contract for the 2001-02 school year. Moreover, you need to direct your request to Dr. Arthur Allen. As I am sure you are aware, the type of request that you are making would need to be presented to [the Student's] IEP team for its consideration. If you would like for the IEP team to reconvene to consider your request, please contact Dr. Allen and he will schedule an IEP meeting to be held once the necessary individuals are under contract."

121. On July 19, 2001 the Student was evaluated by Dr. Julie T. Steck and Ms. Diane Widdifield of Children's Resource Group ("CRG") in Indianapolis, Indiana. (Tr Vol 7, p. 127; P Exh 42, pp. 675-684). At the time of the evaluation the Student was years, months of age and had completed the second grade at the School District. The results of this evaluation were not provided to the School District until the August 24, 2001 meeting. (Tr Vol 1, p. 194). During this evaluation, CRG administered the following tests to the Student:

- A. Weschler Intelligence Scale for Children – Third Edition – CRG administered the Picture Arrangement and Block Design subtests of the Weschler. The Student achieved scores of fifteen (15) on each subtest, more than one standard deviation above the mean.
- B. Wechsler Individual Achievement Test – CRG administered the Listening Comprehension subtest to the Student. The Student scored **sixty-nine (69), more than two standard deviations below the mean, with a corresponding Grade Score of K-0.**
- C. Peabody Individual Achievement Test – Revised – CRG administered the Reading Comprehension subtest to the Student. The Student scored ninety-five (**95**), **which is within the average range, with a corresponding Grade Score of 2-8.**
- D. Woodcock-Johnson III Tests of Achievement – CRG administered the Reading Vocabulary and Writing Samples subtests to the Student. On the Reading Vocabulary subtest

the Student scored ninety-five (95), with a corresponding Grade Score of 2-6. On the Writing Samples subtest, the Student scored ninety-two (92), with a corresponding Grade Score of 2-2. Both standard scores are within the average range.

E. Wide Range Achievement Test – 3 – CRG administered the Spelling subtest to the Student. The Student scored a seventy-two (72), almost two standard deviations below the mean, with a corresponding Grade Score of 1.

F. Vineland Adaptive Behavior Scales – CRG administered the Communication, Daily Living and Socialization subtests to the Student. The Student **achieved the following scores:**

<u>Domain</u>	<u>Standard Score</u>	<u>Age Equivalency</u>
<b>Communication</b>	<b>72</b>	<b>6-8</b>
<b>Daily Living</b>	<b>101</b>	<b>8-11</b>
<b>Socialization</b>	<b>65</b>	<b>4-11</b>
<b>Adaptive Behavior Comparison</b>	<b>77</b>	

**The score in the Daily Living Domain was within the average range. The Communication domain score was almost two standard deviations below the mean and the Socialization domain score was more than two standard deviations below the mean.** CRG did not obtain information from the School District to complete this evaluation. (Tr Vol 1, p. 194; Tr Vol 7, pp. 145-146).

G. Ravens Coloured Progressive Matrices – CRG administered this test to the Student. The Student scored **greater than the ninety-fifth (95<sup>th</sup>) percentile.**

H. Bender Gestalt Test – CRG administered this test to the Student. The Student scored an age-equivalency of 9-0 to 9-11.

I. The Conners’ Continuous Performance Test – CRG administered this test to the Student. The Student’s responses fell within “the mildly to markedly atypical range in nine of the twelve areas measured.”

J. Child Behavior Checklist – CRG requested that the Student’s Mother complete this checklist reporting “behavioral and emotional concerns.” Results indicated that the Mother’s responses “fell within the significant to very significant range on the Social Problems, Thought Problems, Attention Problems and Aggressive Behavior Subscales.” The Mother’s responses “fell within the Clinical Range on the total test as well as indications of both Internalizing and Externalizing tendencies. Elevated (above the 85<sup>th</sup> percentile) concerns were also noted on the Withdrawn, Somatic Complaints and Anxious/Depressed Subscales.” CRG did not seek information from the educators at the School District who had directly interfaced with the Student. (Tr Vol 7, pp. 136-138).

K. The Conners' Parent Rating Scale-Revised: Long Version – CRG analyzed this rating scale, completed by both of the Student's parents. Results indicated that "their responses fell above the 99<sup>th</sup> percentile on the Oppositional, Perfectionism, and Social Problems Subscales. Scores above the 90<sup>th</sup> percentile were also noted on the Cognitive Problems, Hyperactivity and Anxious-Shy Subscales. Elevated scores were noted in all of the Index scores, including the ADHD Index, the Global Index: Restless-Impulsive and Emotional Lability and on the Total Test.

The CRG examiners noted that findings were consistent with a diagnosis of Attention Deficit Hyperactivity Disorder – Mixed Type ("ADHD") and indicated that an underlying language processing difficulty was also "strongly suspected." (P Exh 42, pp. 675-684). Dr. Steck further indicates that she believes that the Student may have "an auditory verbal sequential learning weakness," which means that even if he had normal hearing he would struggle with remembering things in order, hanging onto verbal information and have difficulty with reading, spelling and writing skills. (Tr Vol 7, pp. 148-149).

122. In early August, 2001 the Parents registered the Student with the School District for School Year 2001-02 and also registered him at St. Peters. (Tr Vol 2, p. 183; Tr Vol 5, pp. 56, 73, 155-156).

123. In early August, 2001 the Parents were informed by CID that the Student had been approved for a scholarship of thirty four thousand one hundred dollars (\$34,100.00) for school year 2001-02. (Tr Vol 6, pp.164-165; Tr Vol 7, pp.5-7).

124. On August 13, 2001 Laura McCann was informed that the Student would be assigned to her department at CID. (Tr Vol 8, pp. 143-144). By that date the Student had been accepted and the Parents had indicated an intent to enroll him in the educational program at CID. (Tr Vol 8, pp. 145-147).

125. On August 22, 2001 the Student moved into the dormitory at CID. (Tr Vol 7, p. 7). On August 23, 2001 the Student began receiving regular full-time educational services from CID for school year 2001-02. (P Exh 50, p. 757; Tr Vol 4, p. 44; Tr Vol 5, pp. 118, 191; Tr Vol 6, pp. 183 - 184; Tr Vol 8, pp. 10, 71). Since August 23, 2001 the Student has been enrolled in and has attended CID as a residential student.

126. Prior to the date the Student entered CID, the Parents had provided Victoria Kozak, CID's Principal with the Student's diagnostic summary prepared by the School District in April, 2001 (SD Exh 51), other evaluations performed by the IU Project and information from St. Joseph Institute. (Tr Vol 6, pp 162-163). Immediately prior to August 23, 2001, the first day of school, Laura McCann, the coordinating teacher of the Middle School Department at CID reviewed the Student's diagnostic summary (SD Exh 51), his previous IEP and his IEP for school year 2001-02 in order to make initial plans for the Student's attendance at CID. (Tr Vol 8, pp. 10-12). On the basis of this information, CID

determined that it did not need to further evaluate the Student for the purposes of admission into the CID program. (Tr Vol 6, p.162, ln. 25, p. 163, lns. 1-9). Following this decision, in August, 2002, the Student was accepted into the CID program. (Tr Vol 6, p. 164).

127. The Administration at CID believes they are responsible for complying with the Individuals with Disabilities Education Act (Tr Vol 7, p. 11) and intend to comply with Missouri regulations regarding children with disabilities (Tr Vol 7, p. 25).

128. When the Student entered CID an IEP was not prepared for him until October 11, 2001. (P Exh 51, pp.768-783; Tr Vol 5, pp. 118-119). During the interim period CID used the IEP developed by the Student's IEP team on May 16, 2001. (SD Exh 58). CID placed the Student in groups "the best we could with the [School District's] diagnostic summary and knowing [the Student] had come out of second grade, and especially his language sample." (Tr Vol 7, p. 19, lns. 8-11).

129. On August 24, 2001 the Student's School District IEP team met to discuss additional information about the Student which was provided by the Parents. (SD Exh 66, pp. 791-792; SD Exh 67, pp. 793-866). During this meeting the School District's IEP team was under the impression that the Student would be attending South Elementary School that school year and the Parents said nothing that caused the School District's IEP team to believe that the Student would not be attending South Elementary School that school year. (Tr Vol 8, p. 173).<sup>9</sup> At the meeting the parties decided to meet again on September 4, 2001. However, that meeting was cancelled due to a death in the Parents' extended family. (SD Exh 68, p. 867). The Parents did not reschedule the meeting. (Tr Vol 1, pp. 139-140).

130. On or around August 31, 2001 the School District learned that the Student had been enrolled and was attending CID. (Tr Vol 8, p. 174).

131. On October 11, 2001 CID prepared an IEP for the Student. (P Exh 45, pp. 695-711; Tr Vol 5, pp. 118-119). The CID IEP team did not evaluate the Student or do a speech perception test on the Student prior to the preparation of the Student's CID IEP. (Tr Vol 7, pp. 34-35). Rather, the CID IEP team used the School District's April, 2001 diagnostic summary and the language sample in that diagnostic summary as the starting point for the goals and objectives contained in the IEP. (Tr. Vol 7, p. 18, lns 17-21; pp. 34-35; Tr Vol 8, pp. 18-20, 74-76). Victoria Kozak testified that the CID IEP team used "a stab in the dark" as the basis for the non-speech, language and audition goals in the CID IEP. (Tr Vol 7, p 18, lns. 22-25). The only change that was made to the May 16, 2001 IEP was the

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<sup>9</sup> The School District's expectation that the Student would attend South Elementary School is corroborated by the fact that prior to that meeting the Student had been assigned to Mrs. Veatch's third grade classroom and a facilitator had been hired. (Tr Vol 8, pp. 173-174).

addition of goals eight and nine. (P Exh 51; Tr Vol 7, pp 8 - 9; Tr Vol 8, p. 75). Goal eight, a behavior goal, was based solely on the general characteristics of students with attention deficit disorder (Tr Vol 8, p. 104) and the CID IEP Team did not conduct a functional behavioral assessment with regard to those behaviors nor did it write a behavioral intervention plan for the Student. (Tr Vol 8, p. 106). Goal nine is merely a general “independence” goal and was not individualized for the Student, but was included in the IEPs of all middle school students at CID. (Tr Vol 8, p. 75).

132. The Student’s educational program at CID consists of the following:

A. The Student is educated in small groups of five to six students, except in speech, where he is with a group of three other students. (Tr Vol 6, p. 152). The Student receives daily speech, language and audition instruction from a teacher of the deaf who is under the supervision of a speech/language pathologist. (Tr Vol 6, p. 153). The Student’s reading class has a total of four students. (Tr Vol 8, p. 87).

B. There are 73 students enrolled in CID’s program during school year 2001-02. All of the Students at CID are hearing impaired. Seventy percent of the students have cochlear implants and the remaining thirty percent use hearing aids. (Tr Vol 6, pp. 166-167).

C. The Student has a weekly class with CID’s counselor. (Tr Vol 6, p. 153).

D. All of the Student’s teachers have a masters degree in deaf education, except the Student’s physical education teacher who has a bachelor’s degree in deaf education. (Tr Vol 6, p. 153).

E. The classrooms at CID have a sound-field system and other acoustic treatments to minimize external noise interference. (Tr Vol 6, p. 155). The classrooms also meet ANSI standards which require that all noise which is external to the classroom be eliminated. (Tr Vol 7, p. 48).

F. The Student attends class only with hearing disabled peers. During the school year CID has arranged for non-disabled peers to interact with the CID students on at least four occasions. (TR Vol 8, pp. 111-112).

G. The Student receives one hundred fifty (150) minutes of speech and audition from Vicky Martin, a speech/language pathologist, and three hundred (300) minutes of language instruction with Becky Ritter each week. (Tr Vol 8, pp. 1112-114). The Student also receives nine hundred seventy-five (975) minutes of academic instruction and three hundred (300) minutes of Physical Education, Art, music and counseling each week. (Tr Vol 8, pp. 147-149).

133. The Student’s “tuition” at CID includes both educational and residential costs. The tuition for school year 2001-02 was thirty six thousand six hundred dollars (\$36,600.00) which was comprised of

residential costs of eighteen thousand dollars (\$18,000.00) and educational costs of eighteen thousand six hundred dollars (\$18,600.00). During school year 2001-02 the Student received a scholarship which paid all but three thousand five hundred dollars (\$3,500.00) of his total tuition. (Tr Vol 6, pp. 164-165; P Exhs A and B).

134. During the school year, the Student is able to remain in the dormitory during the weekend but the Parents have elected to transport him to and from St. Louis each weekend. (P Exh 50, p. 767A). The one-way mileage between the Parents' home in Jefferson City and CID is approximately one hundred fifty (150) miles. (P Exh 50, p. 767A).

## II. CONCLUSIONS OF LAW

135. The Student is a "child with a disability," as that term is defined in the IDEA, its regulations, 34 C.F.R. §300.7, and the State Plan.

136. The School District is a Missouri school district organized pursuant to Missouri statutes.

137. The Student is now and has been a resident of the School District during all times relevant to this due process proceeding, as defined by Section 167.020 RSMo.

138. The IDEA, its regulations and the State Plan set forth the rights of students with disabilities and their parents and regulate the responsibilities of educational agencies, such as the School District in providing special education and related services to students with disabilities.

139. The purpose of the IDEA and its regulations is: (1) "to ensure that all children with disabilities have available to them a free appropriate public education that includes special education and related services to meet their unique needs"; (2) "to ensure that the rights of children with disabilities and their parents are protected"; and, (3) "to assess and ensure the effectiveness of efforts to educate those children." 34 C.F.R. §300.1.

140. The IDEA requires that a disabled child be provided with access to a "free appropriate public education." *Board of Education of the Hendrick Hudson Central School District, Board Of Education, Westchester County v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034, 3049, 73 L.Ed.2d 690 (1982). The term "free appropriate public education" ("FAPE") is defined by 34 C.F.R. §300.8 as follows:

"...the term 'free appropriate public education' means special education and related services that--

- (a) Are provided at public expense, under public supervision and direction, and without charge;
- (b) Meet the standards of the SEA, including the requirements of this part;

- ©) Include preschool, elementary school, or secondary school education in the State involved; and,
- (d) Are provided in conformity with an IEP that meets the requirements of §§300.340--300.350.”

A principal component of the definition of FAPE is that the special education and related services provided to the student with a disability, “meet the standards of the SEA” (State Board of Education), and “the requirements of this part”, 34 C.F.R. Part 300.

141. If parents believe that the educational program provided for their child fails to meet this standard, they may obtain a state administrative due process hearing. 34 C.F.R. §300.506; *Thompson v. Board of the Special School District No. 1*, 144 F.3d 574, 578 (8<sup>th</sup> Cir. 1998); *Fort Zumwalt School District v. Clynes*, 119 F.3d 607, 610 (8<sup>th</sup> Cir. 1997), *cert. denied* 523 U.S. 1137, 118 S.Ct. 1840, 140 L.Ed 2d 1090 (1998).

142. The IDEA is designed to enable children with disabilities to have access to a free appropriate public education which is designed to meet their particular needs. *O’Toole by O’Toole v. Olathe District Schools Unified School District No. 233*, 144 F.3d 692, 698 (10<sup>th</sup> Cir. 1998). The IDEA requires the School District to provide a child with a disability with a “basic floor of opportunity...which [is] individually designed to provide educational benefit to the handicapped child.” *Rowley, supra.*, 102 S.Ct. 3034, 3047. In so doing the IDEA does not require that a school district “either maximize a student’s potential or provide the best possible education at public expense,” *Rowley, supra.*, 102 S.Ct. 3034, 3049; *Fort Zumwalt School District v. Clynes, supra.* 119 F.3d 607, 612; and *A.W. v. Northwest R-1 School District*, 813 F.2d 158, 163-164 (8<sup>th</sup> Cir. 1987). Likewise, the IDEA does not require a school district to provide a program that will, “achieve outstanding results”, *E.S. v. Independent School District No. 196*, 135 F.3d 566, 569 (8<sup>th</sup> Cir. 1998); that is “absolutely [the] best”, *Tucker v. Calloway County Board of Education*, 136 F.3d 495, 505 (6<sup>th</sup> Cir. 1998); that will provide “superior results,” *Fort Zumwalt School District v. Clynes, supra.* 119 F.3d 607, 613; or, that will provide the placement the parents prefer. *Blackmon v. School District of Springfield, R-12*, 198 F. 3d 648, (8<sup>th</sup> Cir. 1999); *E.S., supra.* 135 F.3d 566, 569. See also: *Tucker, supra.*, 136 F.3d 495, 505; and *Board of Education of Community Consolidated School District No. 21 v. Illinois State Board of Education*, 938 F. 2d 712, 716-17 (7<sup>th</sup> Cir. 1991).

143. Article IX §2(a) of the Missouri Constitution states in pertinent part that “[t]he supervision of instruction in the public schools shall be vested in a state board of education. . . .”

The State Board of Education for the State of Missouri is the “State Educational Agency” (SEA) for the State of Missouri, as that term is defined in the IDEA, 20 U.S.C. §1401(28).

144. Section 162.670 RSMo states in pertinent part:

“ . . . it is hereby declared the policy of the state of Missouri to provide or to required public schools to provide to all handicapped and severely handicapped children within the ages prescribed herein, as an integral part of Missouri’s

system of gratuitous education, special educational services sufficient to meet the needs and maximize the capabilities of handicapped and severely handicapped children.”

In *Lagares v. Camdenton R-III School District*, 68 S.W. 3d 518, (Mo App. 2001), the Missouri Court of Appeals, Western District held that Section 162.670 RSMo sets forth Missouri’s special education policy which:

“ . . . is to provide special educational services sufficient to meet the needs and increase to the highest degree the capabilities of handicapped children.”

(*Lagares, supra.*, 68 S.W. 3d, 525). The Court in *Lagares* stated that the maximizing standard for determining the sufficiency of special educational services for children with disabilities is higher than the “educationally benefit” standard set by the IDEA. However, neither the *Lagares* Court nor Missouri Statutes define “maximize the capabilities.” Therefore, it is up to this Hearing Panel to determine, in the context of this case, what constitutes the Student’s “maximization of capabilities.”

145. Section 162.685(1) states that the State Board of Education:

“ . . . shall adopt . . . [s]tandards to be used throughout the state of Missouri in determining whether children shall be defined under sections 162.670 to 162.995 as “handicapped children” or “severely handicapped children” together with regulations implementing these standards.”

The State Plan establishes these standards and recognizes that the policy statement set forth in Section 162.670 RSMo is “the legal basis and source for Missouri’s policy relating to FAPE.” (State Plan, p. 30). The “plain and ordinary meaning” of this language is that the provisions of the State Plan are consistent with and define the Missouri “maximization” policy set forth in Section 162.670 relating to the provision of special education and related services to children with disabilities within the State. Therefore, the provisions of the State Plan constitute the yardstick by which this Panel must determine whether the School District provided FAPE to the Student which meets his needs and maximizes his capabilities or, as the *Lagares* Court defined it, to provide special educational services sufficient to meet the needs and increase to the highest degree the capabilities of the Student.

146. The IDEA regulations, 34 C.F.R. §300.502(3)(b) state in pertinent part as follows:

“(b) *Parent right to evaluation at public expense.*

(1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency.

(2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either —

- (I) Initiate a hearing under §300.507 to show that its evaluation is appropriate; or,
- (ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing under §300.507 that the evaluation obtained by the parent did not meet agency criteria.”

147. The State Plan, Section V.2.B, p. 47, states that “the right to an independent educational evaluation assures”:

“B. that parents have the right to an independent evaluation at public expense for any agency evaluation, or any component of that evaluation, with which the parents disagree. However, the local school district or responsible public agency may initiate a hearing as described in Regulation V.6 to show that the evaluation is appropriate or that the evaluation obtained by the parent did not meet agency criteria. If the final decision is that the evaluation is appropriate, the parents still have the right to an independent educational evaluation, but not a public expense.”

148. The School District fully complied with the IDEA, its regulations, Missouri law and the State Plan which was in effect at that time, when it notified the Parents that it had filed a request for a due process hearing pursuant to 34 C.F.R. §300.507 to determine whether the School District’s February-March, 2001 reevaluation of the Student was appropriate.

149. The screening of the Student and development of the reevaluation plan by the Student’s IEP team on February 23, 2001 met the procedural and substantive requirements of the IDEA, its regulations, Missouri law and the State Plan which was in effect at that time.

150. The reevaluation of the Student conducted in February and March, 2001 met the procedural and substantive requirements of the IDEA, its regulations (including but not limited to 34 C.F.R. §300.532), Missouri law and the State Plan which was in effect at that time.

151. The IDEA and the State Plan require that children with disabilities be educated in the least restrictive environment (“LRE”). 34 C.F.R. §§300.550 - 556. In so doing, the States must ensure that disabled and non-disabled children are educated together “to the maximum extent appropriate” and that “special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” 34 C.F.R. §300.550(b). The LRE factor should always be considered when determining whether a parentally preferred placement is appropriate. *Independent School District No. 83 v. S.D.*, 88 F.3d 556, 561 (8<sup>th</sup> Cir. 1996).

152. The preparation of the Student’s IEP on and around May 16, 2001 met the procedural and substantive requirements of the IDEA, its regulations, Missouri law and the State Plan which was in effect at that time.

153. The Student's May 16, 2001 IEP and the placement proposed by the School District are appropriate and are reasonably calculated to provide the Student with a free, appropriate public education in the least restrictive environment. The IEP and proposed placement are also reasonably calculated to provide special educational services sufficient to meet the needs and increase to the highest degree the capabilities of the Student consistent with the "maximization" standard described in *Lagares v. Camdenton R-III School District*, 68 S.W. 3d 518, (Mo App. 2001). The IEP and proposed placement meet the procedural and substantive requirements of the IDEA, its regulations, Missouri law and the State Plan which was in effect at that time.

154. The placement of the Student at CID is not a placement in the least restrictive environment as required by 34 C.F.R. §300.550 in that:

- (a) The placement of the Student at CID does not, "to the maximum extent appropriate" educate the Student with children who are non-disabled because there are no non-disabled students at CID; and,
- (b) The nature or severity of the Student's disability is not such that education in the School District's proposed placement, with the use of supplementary aids and services cannot be achieved satisfactorily.

155. Parents are not required to keep their child in an educational program they feel is inappropriate. However, the IDEA "operates in such a way that parents who unilaterally change their child's placement during the pendency of the review proceedings, without the consent of State and local officials, do so at their own financial risk." *School Committee Of The Town Of Burlington, Massachusetts v. Department of Education*, 471 U.S. 359, 373 - 375, 105 S.Ct 1996; 85 L.Ed.2d 385 (1985); *Fort Zumwalt School District v. Clynes, supra.*, 119 F.3d, 611 - 612. Reimbursement is proper only if the IEP is determined to be inappropriate and the parents' placement is determined to be appropriate. *Burlington, supra.*, 471 U.S., 370. Otherwise the costs do not shift and the parents must bear the costs of the private placement. *Burlington, supra.* 471 U.S., 370; *Florence County School District Four v. Carter*, 510 U.S. 7, 114 S.Ct. 361, 126 L.Ed.2d 284 (1993).

156. The IDEA Regulations, 34 C.F.R. §300.403 state in pertinent part as follows:

- " (a) *General.* This part does not require an LEA to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made FAPE available to the child and the parents elected to place the child in a private school or facility. . . .
- (b) *Disagreements about FAPE.* Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures of §§300.500-300.517.
- ©) *Reimbursement for private school placement.* If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary, or secondary school without the consent of or referral by

the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the SEA and LEAs.

(d) *Limitation on reimbursement.* The cost of reimbursement described in paragraph ©) of this section may be reduce or denied —

(1) If —

(i) At the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school a public expense; or

(ii) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information describe in paragraph (d)(1)(I) of this section;

(2) . . .

(3) Upon a judicial findings of unreasonableness with respect to the actions taken by the parents.

(e) *Exception.* Notwithstanding the notice requirements in paragraph (d)(1) of this section, the cost of reimbursement may not be reduced or denied for failure to provide the notice if —

(1) The parent is illiterate and cannot write in English;

(2) Compliance with paragraph (d)(1) of this section would likely result in physical or serious emotional harm to the child;

(3) The school prevented the parent from providing the notice; or,

(4) The parents had not receive notice, pursuant to section 615 of the Act, of the notice requirement in paragraph (d)(1) of this section.”

157. The School District did not consent or refer the Student to CID. At the time the Student was enrolled him at CID during the Summer of 2001, it was without the knowledge, consent or referral of the School District. Prior to his enrollment at CID, the Student had received a free, appropriate public education in the least restrictive environment in the School District. At the time of the enrollment, the Student had been offered a free, appropriate public education in the least restrictive environment by the School District pursuant to the May 16, 2001 IEP and the placement proposed by the School District.

158. While the Parents did indicate to the School District that they were contemplating withdrawing the Student from the School District and did provide the School District with written concerns about the educational program proposed for the Student, their conduct and actions when taken as a whole did not provide the School District with the notice required by 34 C.F.R. §300.403(d)(1) and were unreasonable (as that term is used in 34 C.F.R. §300.403(d)(3)) for the following reasons:

- (a) The statements made by the Parents at the May 16, 2001 IEP meeting concerning the removal of the Student from the School District were vague and the Student remained in the educational program for the School District for the remainder of the school year;
- (b) The School District reasonably believed that the Student would attend extended school year services during the Summer of 2001 and the School District hired Tori Sisson to work on a one-on-one basis with the Student;
- (c) The Parents enrolled the Student in the School District for school year 2001-02 in August, 2001 and the School District made reasonable preparations for the return of the Student, including assigning the Student to a classroom;
- (d) An IEP meeting was scheduled and held on August 24, 2001. A subsequent IEP meeting was scheduled for early September, but was not held due to a death in the Parents' extended family. During the August, 2001 IEP meeting the Parents continued to discuss possible changes to the Student's IEP and proposed placement but did not state that they rejected the proposed placement or state that they had already enrolled the Student at CID.
- (e) At the time of the August 24, 2001 IEP meeting, the Student had already been enrolled and was in attendance at CID, having arrived there on August 23, 2001.
- (f) At the August 24, 2001 IEP meeting, the School District reasonably believed that the Student would be returning to the School District for school year 2001-02.

159. The Parents are literate and can read and write in English. Compliance with paragraph 34 C.F.R. §300.403(d)(1) will not likely result in physical or serious emotional harm to the Student. The School District did not prevent the Parents from providing the notice required by 34 C.F.R. §300.403 and there is no evidence on the record that the Parents had not received notice, pursuant to section 615 of the IDEA, of the notice requirement in 34 C.F.R. §300.403(d)(1).

### **III. DECISION**

The Hearing Panel issues the following decision regarding the issues presented to it by the parties:

160. School District's Issue Number 1 — Whether the School District's April 5, 2001 reevaluation of the Student was appropriate?

Decision – The screening and reevaluation of the Student conducted by the School District in February and March, 2001 which culminated with the preparation of a Diagnostic Summary on April 5, 2001 was appropriate and met the requirements of the IDEA, its regulations, Missouri law and the State Plan which was in effect at that time. In that regard, the tests administered by the School District were appropriate and provided an accurate measure of the Student's disability and educational needs.

In Missouri, the reevaluation of a student with a disability must be completed within forty-five days. In this case, as the reevaluation was being completed, the Student's cochlear implant failed. The failure of the Student's cochlear implant occurred after the vast majority of the evaluation had been completed and the Diagnostic Summary was prepared prior to the reimplantation of the Student's new cochlear implant device. The completion of the reevaluation and the development of the April 5, 2001 Diagnostic Summary did not foreclose future testing or reevaluation of the Student and the School District so informed the Parents.

Subsequent to the reimplantation of the Student's cochlear implant, the Parents obtained an independent evaluation on July 19, 2001 by Dr. Julie Steck of Children's Resource Group in Indianapolis, Indiana. The CRG evaluation substantiated the appropriateness and validity of the School District's February-March reevaluation and April 5, 2001 Diagnostic Summary for the Student with the exception of an additional diagnosis being made of Attention Deficit Hyperactivity Disorder-Mixed Type and a possible underlying language processing difficulty.

This holding is further justified by the fact that CID did not reevaluate the Student when the Student was enrolled there and, as of the date of the close of the record in this case, the Student had not been reevaluated by CID. Thus, CID effectively adopted the reevaluation conducted by the School District to initially program for the Student's educational needs.

This decision is by unanimous agreement of the Hearing Panel.

161. **School District's Issue Number 2 — Whether the School District is required to pay for an independent evaluation of the Student as requested by the Parents on or around May 16, 2001?**

**Decision** – At the conclusion of the May 16, 2001 IEP meeting the Student's Mother requested that the School District pay for an independent educational evaluation of the Student. Following this request, on June 12, 2001 the School District, through its Counsel, sent a letter to DESE requesting a due process hearing which stated in pertinent part as follows:

“On or about May 16, 2001 [the Student's] IEP team convened. At the conclusion of that meeting, [the Student's mother] requested an independent evaluation with respect to the District's most recent reevaluation. The District is initiating due process pursuant to the IDEA with regard to the [Parents'] request.”

Thereafter, on June 19, 2001 the Student's mother wrote to Sheila Logan regarding the Student “and an independent evaluation . . .” In this letter the mother stated that she was “unsure of where to obtain an IEE” and asked for Ms. Logan's assistance. Thereafter, on June 28, 2001 Dr. Allen responded to the Mother's June 19 letter and enclosed a copy of the School District's independent educational evaluation policy. In this letter from Dr. Allen and in Ms. Goldman's letter dated July 5, 2001 the School District stated that the due process proceeding filed by the School

District would determine whether the School District's reevaluation of the Student was appropriate such that the District would not be required to fund an independent educational evaluation.

The State Plan, Section V.2.B, p. 47, states that "the right to an independent educational evaluation assures":

"B. that parents have the right to an independent evaluation at public expense for any agency evaluation, or any component of that evaluation, with which the parents disagree. *However, the local school district or responsible public agency may initiate a hearing as described in Regulation V.6 to show that the evaluation is appropriate* or that the evaluation obtained by the parent did not meet agency criteria. *If the final decision is that the evaluation is appropriate, the parents still have the right to an independent educational evaluation, but not at public expense.*" [emphasis added].

The School District is not required to pay for an independent evaluation of the Student because: (1) the record reveals that on June 12, 2001 the School District filed a request for due process in this matter with DESE pursuant to the above-cited provision of the State Plan; and, (2) this Hearing Panel has determined that the School District's February-March, 2001 evaluation and April 5, 2001 Diagnostic Summary are appropriate and comply in all respects with the IDEA, its regulations, Missouri law and the State Plan which was in effect at that time.

In addition, the credible evidence on the record does not reveal that the Parents ever actually requested that the School District reimburse them for an independent educational evaluation. They did request information about how to obtain such an evaluation, but they did not submit a request for reimbursement for the evaluation conducted by Dr. Steck or any other evaluation. Even if there had been such a request, the School District's evaluation was appropriate, as noted above. While the Parents may still obtain an independent educational evaluation and submit it to the School District for their consideration, the School District is not required to reimburse the Parents for the evaluation.

This decision is by unanimous agreement of the Hearing Panel.

162. Parents' Issue Number 1 — Whether the Student's May 16, 2001 IEP was reasonably calculated to provide the Student with a free, appropriate public education?

Decision – The Student's May 16, 2001 IEP and the placement proposed by the School District are appropriate and are reasonably calculated to provide the Student with a free, appropriate public education in the least restrictive environment. The IEP and proposed placement are also reasonably calculated to provide special educational services sufficient to meet the needs and increase to the highest degree the capabilities of the Student consistent with the "maximization" standard described in *Lagares v. Camdenton R-III School District*, 68 S.W. 3d 518, (Mo App. 2001) . The IEP and proposed placement meet the procedural and substantive

requirements of the IDEA, its regulations, Missouri law and the State Plan which was in effect at that time.

While the Parents argue that the IEP was not reasonably calculated to provide the Student with FAPE, the apparent appropriateness of the IEP is further borne out by the fact that CID used the School District's May 16, 2001 IEP until October 11, 2001 when it prepared its own IEP for the Student.

This decision is by a 2 - 1 decision of the Hearing Panel. Hearing Panel Member Gale Rice has filed a separate dissenting opinion which is attached hereto.

163. Parents' Issue Number 2 — Whether the Parents were justified when they unilaterally placed the Student at the Central Institute for the Deaf beginning in August or September, 2001?

**Decision** – The Parents were not justified when they unilaterally placed the Student at CID on August 23, 2001. The School District did not consent or refer the Student to CID. At the time the Student was enrolled him at CID during the Summer of 2001, it was without the knowledge, consent or referral of the School District. Prior to his enrollment at CID, the Student had received a free, appropriate public education in the least restrictive environment in the School District. At the time of the enrollment, the Student had been offered a free, appropriate public education in the least restrictive environment by the School District pursuant to the May 16, 2001 IEP and the placement proposed by the School District.

This decision is by unanimous agreement of the Hearing Panel.

164. Parents' Issue Number 3 — Whether the School District should reimburse the Parents for the tuition, fees, expenses and transportation costs associated with the Student's placement at the Central Institute for the Deaf beginning in August or September, 2001?

**Decision** – The School District will not be required to reimburse the Parents for the tuition, fees, expenses and transportation costs associated with the Student's placement at CID on and after August 23, 2001. As previously found the Parents were not justified when they unilaterally placed the Student at CID on August 23, 2001. The School District did not consent or refer the Student to CID. At the time the Student was enrolled him at CID during the Summer of 2001, it was without the knowledge, consent or referral of the School District. Prior to his enrollment at CID, the Student had received a free, appropriate public education in the least restrictive environment in the School District. At the time of the enrollment, the Student had been offered a free, appropriate public education in the least restrictive environment by the School District pursuant to the May 16, 2001 IEP and the placement proposed by the School District.

In addition, while the Parents did indicate to the School District that they were contemplating withdrawing the Student from the School District and did provide the School District with written concerns about the educational program proposed for the Student, their conduct and actions when

taken as a whole did not provide the School District with the notice required by 34 C.F.R. §300.403(d)(1) and were unreasonable (as that term is used in 34 C.F.R. §300.403(d)(3)) for the following reasons:

- (a) The statements made by the Parents at the May 16, 2001 IEP meeting concerning the removal of the Student from the School District were vague and the Student remained in the educational program for the School District for the remainder of the school year;
- (b) The School District reasonably believed that the Student would attend extended school year services during the Summer of 2001 and the School District hired Tori Sisson to work on a one-on-one basis with the Student;
- (c) The Parents enrolled the Student in the School District for school year 2001-02 in August, 2001 and the School District made reasonable preparations for the return of the Student, including assigning the Student to a classroom;
- (d) An IEP meeting was scheduled and held on August 24, 2001. A subsequent IEP meeting was scheduled for early September, but was not held due to a death in the Parents' extended family. During the August, 2001 IEP meeting the Parents continued to discuss possible changes to the Student's IEP and proposed placement but did not state that they rejected the proposed placement or state that they had already enrolled the Student at CID.
- (e) At the time of the August 24, 2001 IEP meeting, the Student had already been enrolled and was in attendance at CID, having arrived there on August 23, 2001.
- (f) At the August 24, 2001 IEP meeting, the School District reasonably believed that the Student would be returning to the School District for school year 2001-02.

Accordingly, the School District will not be required to reimburse the Parents for the tuition, fees, expenses and transportation costs associated with the Student's placement at CID on and after August 23, 2001.

This decision is by unanimous agreement of the Hearing Panel.

#### IV. ORDER

The Hearing Panel issues the following order regarding the issues presented to it by the parties:

165. The issues presented in the School District's June 12, 2001 Request for Due Process are sustained as follows:

(a) School District's Issue Number 1 — Whether the School District's April 5, 2001 reevaluation of the Student was appropriate — is found in favor of the School District for the reasons set forth above.

(b) School District's Issue Number 2 — Whether the School District is required to pay for an independent evaluation of the Student as requested by the Parents on or around May 16, 2001 — is found in favor of the School District for the reasons set forth above.

166. The issues presented in the Parents' September 20, 2001 Request for Due Process are denied as follows:

(a) Parents' Issue Number 1 — Whether the Student's May 16, 2001 IEP was reasonably calculated to provide the Student with a free, appropriate public education — is found in favor of School District for the reasons set forth above.

(b) Parents' Issue Number 2 — Whether the Parents were justified when they unilaterally placed the Student at the Central Institute for the Deaf beginning in August or September, 2001 — is found in favor of the School District for the reasons set forth above.

(c) Parents' Issue Number 3 — Whether the School District should reimburse the Parents for the tuition, fees, expenses and transportation costs associated with the Student's placement at the Central Institute for the Deaf beginning in August or September, 2001 — is found in favor of the School District for the reasons set forth above.

167. The Parents' Request for Due Process dated September 20, 2001 is dismissed.

168. **Parents' Motion to Supplement Record** dated May 1, 2002 — The Parents' Motion to Supplement the Hearing Record by adding two documents marked Parents' Exhibit A and B is granted.

169. Parents' Motion for Summary Judgment dated March 1, 2002 is dismissed for the reasons stated above.

## V. APPEAL PROCEDURE

**PLEASE TAKE NOTICE** that these Findings of Fact, Conclusions of Law, Decision and Order constitute the final decision of the Department of Elementary and Secondary Education in this matter.

**PLEASE TAKE NOTICE** that you have a right to request review of this decision pursuant to the IDEA and/or the Missouri Administrative Procedures Act, Section 536.010 *et seq.* RSMo. Specifically, Section 536.110 RSMo. provides in pertinent part as follows:

- "1. Proceedings for review may be instituted by filing a petition in the circuit court of the county of proper venue within *thirty days* after the mailing or delivery of the notice of the agency's final decision....
3. The venue of such cases shall, at the option of the plaintiff, be in the circuit court of Cole County or in the county of the plaintiff or of one of the plaintiff's residence...

**PLEASE TAKE NOTICE** that you also have a right to file a civil action in Federal or State Court pursuant to the IDEA. See 34 C.F.R. §300.512.

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Ransom A Ellis, III  
Hearing Chairperson

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Dr. Gale B. Rice  
Hearing Panel Member

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Dr. Kim Ratcliffe  
Hearing Panel Member

## DISSENTING OPINION

### **Parents' Issue Number 1—Whether the Student's May 16, 2001 IEP was reasonably calculated to provide the Student with a free, appropriate public education**

This panelist's opinion regarding this issue is dissenting, generally because the Student's status had dramatically changed with his second cochlear reimplantation and adequate current information was not available to develop the May 16, 2001 IEP. Specifically, I dissent to the Hearing Panel's decision with regarding Parents' Issue Number 1 in the following areas:

1. Statement of the Student's Present Level of Performance in the IEP.

- The statement of the Student's present level of performance did not give any indication of the Student's status after his second reimplantation, yet this information was used to make determinations which directly influenced his IEP.
- Information from the District's consultant, Liz Yang was not included.
- There was no statement of the Student's present levels for academics, listening and learning style.
- Parent concerns were limited to one, non-specific sentence.

2. Modification of the Educational Environment for Hearing Loss.

- Environmental accommodations for hearing loss were haphazard and were neither specific nor systematic.
- No acoustic analysis of the classrooms in which the Student was to be instructed was evident.
- Several experts testified as to the critical nature of sound-proofed learning environments for children who are deaf and/or who utilize cochlear implants.

3. Teacher of the Deaf.

- The nature of the involvement of the deaf education teacher was neither described nor specified, and her involvement in the education of a deaf child in a mainstreamed environment is critical.

4. Reading Services.

- While the Student's reading achievement scores were generally within the average range, they are markedly discrepant from his nonverbal IQ. To that extent, grade level reading achievement is not the only standard by which determinations should be made.
- The need for specialized reading services was identified by at least two experts.
- It is commonly accepted information in the deaf education community that children who are deaf often display appropriate emergent literacy skills, but lag behind their peers as they advance in grades because of the increased specificity and language required during the reading process. To that extent, they require increased support in reading in order to prevent this from occurring.

It is for these reasons that I consider the Student's May 16, 2001 IEP was not reasonably calculated to provide the Student with a free, appropriate public education.

Gale B. Rice, Ph.D., CCC-SLP  
Hearing Panel Member

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was served upon each party to this action, to-wit:

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by depositing same in Federal Express at Springfield, Missouri, postage prepaid,  
duly addressed to said parties on this 29<sup>th</sup> day of May, 2002.

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Ransom A Ellis, III  
Hearing Chairperson