

**BEFORE THE THREE PERSON DUE PROCESS HEARING PANEL
EMPOWERED BY THE MISSOURI STATE BOARD OF EDUCATION
PURSUANT TO SECTION 162.961 RSMo.**

_____,)
)
Petitioner,)
)
v.)
)
SPECIAL SCHOOL DISTRICT)
OF ST. LOUIS COUNTY,)
)
Respondent.)

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

FINDINGS OF FACT

Background

1. _____ is an eight-year-old student [DOB: _____] in the University City Schools. University City School District is located in St. Louis County. The Special School District of St. Louis County (“SSD”) provides special education and related services to children with disabilities, as that term is used in the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, *et seq.*, who reside in St. Louis County.
2. _____ lives with his mother, _____ and two sisters. [R-1 at 001; Tr. 83:16]
3. _____ is currently a third grade student at _____ Elementary. He has attended _____ Elementary School since Kindergarten. [R-2 at 049]
4. _____ had previously attended preschool for two years at _____.
[R-2 at 049]
5. _____ was referred for a special education evaluation during the spring of 2000, at the end of his first grade year. [R-1 at 001; Tr. 84:11-12]
6. The referral packet indicated concerns with reading and behavior. [R-1 at 015]

7. _____ had difficulty following directions in Kindergarten. [R-2 at 049]
8. _____ reportedly engaged in disruptive behaviors, both in large and small group settings. He always had to be first. He had difficulty keeping his hands to himself, pushing, and running in the hall. [R-1 at 007;R-2 at 047]
9. There were reports of inappropriate contacts with girls. [R-2 at 047]
10. _____ was evaluated by the Special School District on May 30, 2000, and found to be Learning Disabled in Basic Reading Skills and Reading Comprehension and Behaviorally Disordered. [R-1 at 009]
11. Many of the behaviors that were of concern during the 1999-2000 school year have been mitigated or extinguished, such that behavior was not at issue in the present hearing. The Behavior Disorder diagnosis has been removed from _____'s current diagnosis. [R-6 at 075] However, following an independent evaluation by Dr. Leigh Berry [R-5], a psychologist who was then in practice at St. Louis Children's Hospital, the SSD has added a Other Health Impaired diagnosis. [R-6 at 075; Tr. 96:21-25]

The Current Dispute

12. The issues in the current matter have to do with the implementation of _____'s current IEP. _____'s mother complains that the IEP for _____ is not being implemented — or, at least, not being implemented appropriately — and that as a result, _____ is making unsatisfactory progress in reading. For relief, _____'s mother wants an order from the hearing panel compelling the Special School District of St. Louis County to implement _____'s IEP and requiring the Special School District to provide _____ with a 1:1 aide. [Tr. 97:21-23]

13. The SSD contends that it is implementing _____'s IEP, that _____ is making anticipated progress, and that the assignment of a 1:1 aide to work with _____ is not only not warranted, it is counter-indicated and would serve as an impediment to _____'s educational progress.

14. _____ had previously requested a due process hearing at the beginning of the 2000-01 school year. That request for due process was dismissed on October 17, 2001. The next day _____ wrote expressing concern about the implementation of _____'s IEP.

15. As a result, the SSD reconvened _____'s IEP team. The IEP team met on October 25, 2001. [R-14]

16. _____ indicated that she wanted a one-on-one paraprofessional to work with _____ to help keep him on tasks and provide the support she believes he needs. [Tr. 112:1-12]

17. The IEP team determined that a 1:1 aide was not necessary. However, the IEP team increased the amount of special education to include 300 minutes a week of special education pull out services and another 300 minutes a week of push in services. [R-14 at 181]

18. In the IEP process, a child's needs and abilities are discussed in the present level of educational performance. [R-14 at 178-79]

19. _____'s IEP, as it was written on October 25, 2001, depicted _____'s educational needs and abilities. [R-14]

20. _____'s IEP team then wrote goals and objectives which the team thought he could reasonably attain in the context of a year, given the nature and extent of his abilities. The IEP is

written to meet _____'s needs, and affords _____ the opportunity to maximize his capabilities. [R-14]

21. A review of the IEP progress reports indicates that _____ has been progressing on his IEP goals. [R-15 at 200-01]

22. One of _____'s current IEP goals is to work on second grade Dolch words. Dolch words are a set of words that children are expected to learn and be able to recall from sight. _____ is already working on third grade Dolch words, thus exceeding the expectation of the IEP goal. [Tr. 104:7-8]

23. Ms. _____ is _____'s Case Manager. [Tr. 104: 7-8] Ms. _____ has been teaching special education for 17 years. [Tr. 104: 18-20]

24. Ms. _____ works with _____ for 60 minutes a day in the regular classroom (push in services). [Tr. 105:25 - 106:1-11] Under Ms. _____'s tutelage, _____'s performance with respect to Dolch words has improved. He is now able to identify Dolch words at the third grade level. [Tr. 107:20-23]

25. In the regular classroom, Ms. _____ works with _____ primarily on reading in the content area. [Tr. 106:3-9] From an IEP perspective, she is working on comprehension, as well as the practical application of word identification skills, including working on Dolch words. [Tr. 107-117:passim]

26. Ms. _____ has worked with _____ on the social skills goal and objectives in his IEP. [Tr. 108:1-10]

27. Ms. _____ reports, based on her observations and having worked with _____ during the 2000-01 school year, that _____'s behavior is much improved over last year. [Tr. 109:9-23] Most of the aggressive behavior that was observed during the

2000-01 school year has not been observed during the 2001-02 school year. [Tr. 109:16-18]

_____’s Godmother, _____, confirmed this during the hearing in this matter. [Tr. 69:19-22]

28. _____ has not been sent to the office this year. [Tr. 109:19-21]

29. _____ does display one behavior that is of particular importance to this hearing.

That is, he often vocalizes that he “can’t do this.” [Tr. 109:24 and Tr. 110:1] However, when properly cued, _____ consistently demonstrates that he can perform the task at hand. [Tr.

110:2-22] In addition, _____ does not like to be singled out in class. For example, if

Ms. _____ sits next to _____ for any extended period of time, he will not

work. On the other hand, if she moves around the room, working with other children, then stops

at _____’s desk to provide assistance, he is more receptive to her working with him. [Tr.

128:18-25]

30. Ms. _____ is _____’s third grade teacher. [Tr. 147: 14-16]

31. Ms. _____ is a first-year teacher. Ms. _____ has prior experience in education, having worked as an intern at Clayton and as an assistant at SSD. [Tr. 147:17-25;

Tr. 148:1-7]

32. Ms. _____ makes the applicable modifications called for in

_____’s IEP. [Tr. 159:5-24]

33. _____ is making appropriate progress working on the third grade curriculum. [Tr.

153:6-14] Again, _____’s Godmother confirmed this during the hearing. [Tr. 72:16-25;

73:1-25; 74:1-14; and 75:1-23]

34. Ms. _____ customizes spelling words for each student in her class. [Tr.

150:4-8]

35. Ms. _____ is _____'s reading (SPIRE) teacher. [Tr. 178:12-13] Ms. _____ and Ms. _____ work closely together to coordinate _____'s reading program and his regular education program. [Tr. 195:21-25 and Tr. 196:1-5]

36. Ms. _____ meets with _____ for two 30 minute blocks, daily. [Tr. 195:18-20]

37. Ms. _____ has been specially trained to teach reading using the SPIRE program. [Tr. 180:6-15] The SPIRE program is a systematic approach to teaching reading through phonological and phonemic awareness, word building, and decoding. The program also stresses the application of those skills in reading passages, spelling, and sentence writing. [Tr. 179:20-25 and Tr. 180:1-5]

38. SPIRE uses a consistent approach to introducing and teaching new sounds. Ms. _____ demonstrated the process. With SPIRE, students are introduced to new sounds by having the student say the letter, pair it with a key word that is visually presented, say the key word, then say the target sound in isolation. [Tr. 181-187]

39. _____ demonstrated that he understood the process. [Tr. 50-53]

40. Ms. _____ stated _____ is making anticipated progress using the SPIRE program. There was no competent or substantial evidence to the contrary. _____'s improvement in reading is apparent even to the untrained eye. _____'s Godmother, Mrs. _____, testified that she has seen improvement in _____'s reading since the beginning of the 2001-02 school year. [Tr. 73: 5-10; 74: 9-10 and 13-14]

41. _____'s scores, as recorded on SSD "Goals/Objectives/Benchmark – Progress Reports" reflect progress in all areas that have been worked on. [R-15 at 200-01]

42. An IEP is written for a year. Therefore, it is not anticipated that all objectives will have been addressed at the time of the most recent report. [Tr. 114:8-21]

43. Ms. _____ complains that the IEP is not being followed, in that SSD did not contact summer school teachers. Her complaint grows out of a recommendation that was contained in a write up of a resolution conference that was conducted in the spring of 2001. [P-I]

Although _____ did not qualify for ESY, he did attend summer school. [Tr. 96:11-19]
The summer school that _____ attended during the summer 2001 was not directly related to his IEP. It was an enrichment program offered by the University City School District. The recommendation was that _____'s special education teacher should meet with _____'s summer school teachers. This did not happen. Despite this, _____ did quite well in the reading class that he took. [R-9 at 094] He did not do as well in another class.

44. Talking to the summer school teachers was only a recommendation made in the resolution conference. [P-I at 0038] It was not part of _____'s IEP. Not talking to the reading teacher did not impair _____'s performance in the class: Reading for Success. [R-9 at 094]

45. _____ also complains that the resource room teacher is not sending home daily behavior reports. [Tr. 86:4-5; Tr. 99:5-9]

46. Daily reports are being sent home on a daily basis. They are completed by Ms. _____. [R-10 at 095-166]

47. The whole time that Ms. _____ works with _____, he is in the general education (Ms. _____'s) classroom. [Tr. 105: 23-25]

48. Ms. _____ seeks input from both Ms. _____ and Ms. _____ when filling out the daily behavior report. Ms. _____ and Ms. _____ meet regarding _____ on a daily basis. [Tr. 157: 21-25]
49. The one time that Ms. _____ had a particular matter to report in a daily behavior report, she filled out a form. [Tr. 125:17-25]
50. The daily behavior reports are intended to keep Mrs. _____ informed of _____'s behavior. [Tr. 119:5-25] Generally, if a student is aware that his parents are being kept informed, the student tends to conform his behavior to expected norms.
51. Ms. _____ also complains that a system of rewards has not been established. However, both Ms. _____ and Ms. _____ use reward systems. [Tr. 150-152] Ms. _____ complains that the rewards system is not unique to _____, and that other students are eligible for the rewards. _____ indicated that he was aware of the awards system used in his classes. [Tr. 59: 1-25 and Tr. 60:1-24]
52. Both Ms. _____ and Ms. _____ have worked on social skills. [Tr. 153:15-25 and Tr. 154:1-11 and 18-25]
53. _____'s behavior during the 2001-02 school year indicates that their efforts with respect to social skills has been successful. [Tr. 109:13-15]
54. SSD and the University City School District have been implementing _____'s IEP.

CONCLUSIONS OF LAW

Jurisdiction

55. This matter arises under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq. ("IDEA").

56. The IDEA is “an ambitious federal effort” to “assist state[s] . . . in educating [disabled] children.” Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176, 179 (1982)(“Rowley”). “To accomplish this ambitious objective, the Act provides federal money to state and local educational agencies that undertake to implement the substantive and procedural requirements of the Act.” School Committee of the Town of Burlington v. Department of Education of Massachusetts, 471 U.S. 359, 368 (1985)(“Burlington”). The Supreme Court has noted that the purpose of the Act is “more to open the door of public education to handicapped children on appropriate terms than to guarantee any particular level of education once inside.” Rowley, 458 U.S. at 192.

57. Missouri accepts money under the IDEA. The IDEA requires that states which accept funds under the IDEA require local educational agencies within the state to participate in the IDEA. 20 U.S.C. § 1412.

58. The SSD serves as an umbrella district for the twenty-three school districts within the county of St. Louis. As a special school district, it is responsible for making available direct special educational services to children with disabilities who reside in the county and desire a public education. Id.; see also §§ 162.825-162.925, RSMo., most specifically § 162.890, RSMo.

59. SSD receives federal IDEA funds.

School districts that accept federal funds under the IDEA must provide each qualifying disabled child within their jurisdictions with a “free, appropriate public education.” 20 U.S.C. §§ 1400(d)(1)(A), 1412(a)(1)(A). A school district must tailor such education to meet the unique needs of each disabled child, see 20 U.S.C. § 1400(d)(1)(A). A school district addresses this goal through the development of an IEP for each child setting forth her present level of performance, annual goals and objectives, specific services to be provided, an explanation of the extent to which she will not receive education with nondisabled children, a statement of modifications to district-wide assessment procedures needed in order for her to participate in such assessments, transition services

needed, the projected dates and duration of proposed services, and objective criteria and evaluation procedures. See 20 U.S.C. § 1414(d).

Blackmon v. Springfield R-XII School District, 198 F.3d 648, 685 (8th Cir. 1999) (“Blackmon”).

60. _____ is a child with a disability. “[T]he term child with a disability means a child evaluated in accordance with Secs. 300.530-300.536 as having mental retardation, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, serious emotional disturbance (hereafter referred to as emotional disturbance), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.” 34 C.F.R. § 300.7; 20 U.S.C. § 1401(3)(A)(i).

61. Parents of a child with a disability have “an opportunity to present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” 20 U.S.C. § 1415(b)(6). See also 34 C.F.R. § 300.350(c) (“Nothing in this section limits a parent’s right to ask for revisions of the child’s IEP or to invoke due process procedures”).

62. Such a complaint is presented in “an impartial due process hearing, which shall be conducted by the State educational agency or by the local educational agency, as determined by State law or by the State educational agency.” 20 U.S.C. § 1415(f).

63. In Missouri, IDEA complaints are filed with the State Board of Education. Missouri’s General Assembly has provided that

[e]xcept as provided in subsection 6 of this section, the board or its delegated representative shall within fifteen days after receiving notice empower a hearing panel of three persons who are not directly connected with the original decision and who are not employees of the board to which the appeal has been made. All of the panel members shall have some knowledge or training involving children with disabilities, none shall have a personal or professional interest which would conflict with his or her objectivity

in the hearing, and all shall meet the department of elementary and secondary education's training and assessment requirements pursuant to state regulations. One person shall be chosen by the local school district board or its delegated representative or the responsible educational agency, and one person shall be chosen at the recommendation of the parent or guardian. If either party has not chosen a panel member ten days after the receipt by the department of elementary and secondary education of the request for a due process hearing, such panel member shall be chosen instead by the department of elementary and secondary education.

§ 162.961.3, RSMo.

64. Mrs. _____ filed a complaint with the State on or about November 21, 2001.

The State Board, through its designee, empowered the hearing panel which heard this case.

Several requests for extensions of the timelines were received from the parties and granted by the hearing panel prior to and subsequent to the hearing. *See* Exhibits H-4, H-5, H-8, H-9 and H-

10. The hearing panel has jurisdiction to hear the matter presented. § 162.961, RSMo.

Order of Proof Issue

65. During the hearing in this matter, Petitioner requested that the hearing panel order Respondent to present its case-in-chief before Petitioner presented his case-in-chief. Petitioner could not cite the hearing panel to any statute, regulation or caselaw supporting Petitioner's position on this issue. [Tr. 12: 6-7; 14:6-17] To-date, Petitioner has still failed to persuade this panel that it erred in requiring Petitioner to present his case-in-chief prior to Respondent's case-in-chief.

Free Appropriate Public Education

66. Because _____ is a child with a disability, he is entitled to a free appropriate public education. 20 U.S.C. § 1412.

67. **“The term free appropriate public education [or FAPE] means special education and related services that — (A) have been provided at public expense, under public supervision**

and direction, and without charge; (B) meet the standards of the *State educational agency*; (C) include an appropriate preschool, elementary, or secondary school education in the State involved; and (D) are provided in conformity with the individualized education program required under section 1414(d) of this title. 20 U.S.C. § 1401(8) (emphasis added).

Public Expense, Public Supervision and Direction, Without Charge

68. Mrs. _____ does not complain that she had to pay for _____’s education or that the education provided to _____ was beyond the scope of supervision of the public schools. _____’s education took place in a public school. It was provided by employees of the public school districts involved in providing him with a free appropriate public education. Mrs. _____ was not charged for the education provided to _____.

69. We conclude that the SSD provided _____ with special education and related services that have been provided at public expense, under public supervision and direction, and without charge. 20 U.S.C. § 1401(8)(A).

Standards of the State Educational Agency

70. **Recently, the Missouri Court of Appeals for the Western District of Missouri noted that “while the IDEA sets forth the minimum standard a state’s program must meet, ‘[i]f a state legislature chooses to require more for its program, the state standard must be met in order to obtain federal special education funds.’” Lagares v. Camdenton R-III School**

District, ___ S.W.3d ___, Slip Op. at 10 (Mo. App. 2001) (quoting Gill v. Columbia 93 School Dist., 217 F.3d 1027, 1035 (8th Cir. 2000) (“Gill”)).¹

71. However, both the Missouri Court of Appeals and the Eighth Circuit misread the IDEA. The IDEA requires that the special education and related services must meet the standards of the *State Educational Agency*. 20 U.S.C. § 1401(8). “Courts must presume that a legislature says in a statute what it means and means in a statute what it says there.” Holder v. Hall, 512 U.S. 874, 933 (1994) (citations and internal quotations omitted); see also Honig v. Doe, 484 U.S. 305, 325 (1988) (the [IDEA] “means what it says”); Hyde Park Hous. P’ship v. Dir. of Revenue, 850 S.W.2d 82, 84 (Mo. banc 1993) (“It is presumed that the legislature intended that every word, clause, sentence, and provision of a statute have effect. Conversely, it will be presumed that the legislature did not insert idle verbiage or superfluous language in a statute.”) (cited favorably in Lagares v. Camdenton R-III School District, ___ S.W.3d ___ (Mo. App. 2001)).

72. We, therefore, presume that Congress meant what is said when requiring that any deviation from the federal standard must conform with the standards of the state educational agency.

73. The SEA in Missouri is the State Board of Education. 20 U.S.C. § 1401 (28) (“[t]he term ‘State educational agency’ means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the

¹ Lagares was decided by the Court of Appeals for the Western District of Missouri. The instant action arises in the Eastern District. Lagares, while instructive, is not binding on this panel.

Governor or by State law.”); Mo. Const., Art. IX, § 2(a) (“The supervision of instruction in the public schools shall be vested in a state board of education.”).

74. There is good reason for Congress to require that any change in the federal standard be made by the state education agency. Each state’s education agency must submit the respective state’s plan for implementing the IDEA to the United States Department of Education for review and approval. In that way, any modification to the federal standards can be checked to make certain that it comports with federal standards. It is not unheard of that a state’s legislature would pass a statute which, no matter how well intended, ends up being more restrictive than the federal law would permit. Johnson v. Indep. Sch. Dist. No. 4 of Bixby, 921 F.2d 1022, 1029 (10th Cir. 1990) (finding Oklahoma statute more restrictive than the federal statute).

75. Although the Missouri General Assembly has granted the State Board of Education the authority to adopt regulations pertaining to certain aspects of special education, “[n]one of the regulations the state board of education is empowered to adopt . . . concern the standard to be used in evaluating the sufficiency of the special educational services provided to a particular handicapped child.” Lagares v. Camdenton R-III School District, ___ S.W.3d ___, Slip Op. at 14 (Mo. App. 2001).

76. Even assuming the Court of Appeals is correct that the Missouri General Assembly has established a higher standard than the federal standard for assessing the sufficiency of an individual education program, the General Assembly has failed to give the State Board the authority to see to it that the alleged higher standard would be incorporated into the IDEA as it applies to Missouri school districts. Therefore, it is understandable that

Missouri’s “regulations governing special education do not recognize a greater obligation than that found in the federal standard.” Gill at 1036.

77. Missouri statutes do not even require — or authorize — school districts to develop an individualized education program or IEP for a school-aged child with a disability. §§ 162.670-162.999, RSMo. Therefore, the State Board is without the authority to adopt regulations pertaining to IEPs and services provided to a particular handicapped child. Lagares v. Camdenton R-III School District, ___ S.W.3d ___, Slip Op. at 14 (Mo. App. 2001).

78. Because the State Board is not empowered to adopt regulations pertaining to the standard to be used in evaluating the sufficiency of the special education services provided to a particular handicapped child, it follows that the State Board could not adopt a standard that was different from the federal standard.

79. Because the IDEA requires that any modification to the FAPE standard be consistent with standards established by the State Board of Education, and because the State Board could not adopt a standard that was different from the federal standard, the federal standard must apply, Lagares notwithstanding.²

80. In reaching its decision in Lagares, the Missouri Court of Appeals looked to cases from three other jurisdictions. Johnson v. Indep. Sch. Dist. No. 4 of Bixby, 921 F.2d 1022, 1029 (10th Cir. 1990) (finding Oklahoma statute did not require more than the federal statute); Brian D. v. Dartmouth Sch. Comm., 775 F.2d 411, 419-20 (1st Cir. 1985) (finding that the Massachusetts “standard” of “maximum feasible benefit” exceeded that of the federal statute); Nelson v. Southfield Pub. Sch., 384 N.W.2d 423, 425 (Mich. Ct. App. 1986)

(finding Michigan’s “standard” of requiring that special educational services be designed “to develop the maximum potential of every handicapped person” is “more rigorous” than the standard set by the federal standard).

81. The only jurisdiction where a “maximizing” standard appears to be extant (other than Missouri) is Michigan.

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

Lagares v. Camdenton R-III School District, ___ S.W.3d ___, Slip Op. at 11-12 (Mo. App. 2001). See also § 162.670, RSMo. While a noble policy, as Michigan has observed, see below, as a standard it is impossible to quantify.

83. Missouri’s maximizing standard for determining the sufficiency of special educational services for disabled or handicapped children is said to be higher than the “educationally benefit” standard set by the IDEA, which the Court of Appeals reads as requiring only minimal or trivial benefit. Lagares v. Camdenton R-III School District, ___ S.W.3d ___, Slip Op. at 12 (Mo. App. 2001) (citing [Nelson v. Southfield Pub. Sch., 384 N.W.2d 423, 425 (Mich. Ct. App. 1986)]).

84. Neither Missouri statutes nor the Court of Appeals defines “capabilities.” Similarly, neither explains how a given child’s capabilities are to be determined.

85. Looking to Michigan for guidance, we note that Michigan courts and hearing officers have recognized that a school district simply cannot predict exactly what a student’s maximum potential may be. McLaughlin v. Board of Educ. of Holt Pub. Schs.,

² However, because we find that the school district met the Lagares standard, this point is moot.

133 F. Supp. 2d 994, 1005 (W.D. Mich. 2001) (citations omitted); Kalamazoo City Pub. Sch. and Kalamazoo Valley ISD, 2 ECLPR ¶ 180 (Mich. SEA 1996); (“no one can really ever determine anyone’s maximum potential”). One reason for this may be that “maximum potential” is not well-defined in Michigan law. Soraruf v. Pinckney Community Sch., 208 F.3d 215 (table), 2000 WL 245501 at **3 (6th Cir. 2000) (per curiam)(unpublished) (“Soraruf”).

86. Similarly, the term “maximize the capabilities” is not well-defined in Missouri law, and the Court of Appeals in Lagares has provided little insight into the meaning of the phrase. In Michigan, the Sixth Circuit, in applying Michigan’s “more rigorous” standard, has determined that it would require a public school district to provide a child with a disability with a free appropriate public education that was reasonably calculated to provide the child with educational benefits. Soraruf at **3.

87. Providing a child with a disability with a free appropriate public education that is reasonably calculated to provide the child with educational benefits is consistent with the observation that the “maximum potential standard does not necessarily require the best education possible or require a model education, adopting the most sophisticated pedagogical methods without fiscal or geographical constraints.” McLaughlin v. Board of Educ. of Holt Pub. Schs., 133 F. Supp. 2d 994, 1005 (W.D. Mich. 2001) (citations and internal quotations omitted).

88. We agree, then, with the Sixth Circuit, that under a reasonable application of a so-called “maximizing” standard, a public school district in Missouri meets its obligation under Missouri law to provide a child with a disability with a free appropriate public education when it provides that child with an IEP that is reasonably calculated to provide

the child with something more than de minimis educational benefits. Further, we note that there is simply no consensus within the educational community on the most effective method for teaching children with learning disabilities in basic reading skills. Renner v. Board of Education of the Public Schools of the City of Ann Arbor, 185 F.3d 365 (6th Cir. 1999).

89. Accordingly, whether one were to assume that the language in Missouri’s policy statement applies to the instant situation or not, the ultimate outcome is the same: a public school district in Missouri meets its obligation under Missouri law to provide a child with a disability with a free appropriate public education when it provides that child with an IEP that is reasonably calculated to provide the child with meaningful educational benefits. This standard is in line with the decision of the Missouri Court of Appeals and provides some degree of guidance to the public schools in Missouri by keeping Missouri within the mainstream of jurisprudential analysis under the IDEA. See, e.g., J.S.K. v. Hendry County School District, 941 F.2d 1563 (11th Cir. 1991) (“Educational benefits provided under the IDEA must be more than trivial or *de minimis*.”); Urban v. Jefferson County School District R-1, 89 F.3d 720 (10th Cir. 1996) (same); Cypress-Fairbanks Independent School District v. Michael F., 118 F.3d 245 (5th Cir. 1997) (same); Doe v. Board of Education of Tullahoma City Schools, 9 F.3d 455, 459 (6th Cir. 1993) (same).

90. Although _____ may not be progressing as quickly or as well as Mrs. _____ might have hoped,³ the overwhelming weight of the evidence was that _____ has been making meaningful progress in the SSD’s program and that _____

³ “Part B of the Act does not require that any agency, teacher, or other person be held accountable if a child does not achieve the growth projected in the annual goals and benchmarks

such progress was more than de minimis. Even _____'s Godmother testified that this was true. We conclude that the special education and related services provided to _____ by the SSD meet the standards of the Missouri State Board of Education, 20 U.S.C. § 1401(8)(B), as well as the standard announced by the Missouri Court of Appeals for the Western District of Missouri in Lagares.

91. Mrs. _____'s only complaint about the sufficiency of the IEP developed by the SSD and the University City School District for _____ is that it does not provide for an individual aide for _____. Although _____ does not have a 1:1 aide assigned to him, he does receive a significant degree of individualized attention. The overwhelming weight of the evidence is that providing _____ with a 1:1 aide would be counter-productive. As it is, _____ is making good progress — progress that is noticeable even to the untrained eye of his Godmother. As such, the program devised by the SSD and the University City School District is reasonably calculated to provide _____ with meaningful educational benefit and is sufficient to maximize his capabilities. We conclude that the special education and related services provided to _____ by the SSD and the University City School District meet the standards of the Missouri State Board of Education. 20 U.S.C. § 1401(8)(B).

Include an Appropriate Elementary School Education

92. _____ attends _____ Elementary School in the University City School District.

93. The University City School District is a public school district located in St. Louis County.

or objectives.” 34 C.F.R. § 300.350(b).

94. _____ has access to the general education curriculum at _____
Elementary School.

95. We conclude that the special education and related services provided by the SSD and the University City School District includes an appropriate elementary school education. 20 U.S.C. § 1401(8)(C).

In Conformity with an IEP

96. In addition to meeting the standards of the SEA, the special education and related services required by the IDEA must be provided “in conformity with an individualized education program (IEP) that meets the requirements of Secs. 300.340-300.350.” 20 U.S.C. § 1401(8).

97. “[T]he term individualized education program or IEP means a written statement for a child with a disability that is developed, reviewed, and revised in a meeting in accordance with Secs. 300.341-300.350.” 34 C.F.R. § 300.340.

98. Except with respect to children with disabilities who have been unilaterally placed in a private school by their parents, a local education agency, such as the SSD in this case, is required to develop and implement an IEP for each child with a disability served by that agency, including each eligible child placed in or referred to a private school or facility by the LEA. 34 C.F.R. § 300.341(a).

99. Mrs. _____ does not dispute that the SSD and University City School District had an IEP in place for _____. Mrs. _____ does dispute whether the IEP was being appropriately implemented. However, evidence adduced at hearing leads this hearing panel to conclude that Mrs. _____’s complaint is without merit. Mrs. _____ was never at the school to witness the implementation of the IEP. The teachers who testified at hearing stated that the IEP was being implemented and detailed the

schedule and process by which it was being implemented. We therefore conclude that the SSD and the University City School District developed and implemented an IEP for _____ as required by the IDEA.

100. An IEP is to be in effect at the beginning of the school year. It is to be in effect before special education and related services are provided to a child with a disability and it to be implemented as soon as possible following the IEP meeting at which it was written. The child's teachers and service providers are to have access to the IEP and are to be made aware of his or her specific responsibilities related to implementing the IEP, including the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP. 34 C.F.R. § 300.342.

101. An IEP was in place for _____ at the beginning of the school year. _____'s teachers were familiar with the contents and requirements of the IEP.

102. An IEP is a fluid document, subject to ongoing review. A. school district is required to review each child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved. If appropriate, a school district is to revise the child's IEP to address any lack of expected progress toward the annual goals, the results of any reevaluation, information about the child provided to, or by, the parents, or the child's anticipated needs. 34 C.F.R. § 300.343.

103. Mrs. _____ voiced some concern to the SSD and the University City School District on or about October 17, 2001. When Mrs. _____ voiced her concern regarding the IEP and _____'s progress under the IEP, the SSD and the University City School District reconvened _____'s IEP team. The IEP team revised _____'s

IEP. We conclude that the actions of the SSD and the University City School District were consistent with and met the requirements of the IDEA. 34 C.F.R. §§ 300.343 and 300.346.

104. The IDEA specifies persons who are to be members of a child's IEP team. They include: the parents of the child; at least one regular education teacher of the child (if the child is, or may be, participating in the regular education environment); at least one special education teacher of the child; a representative of the public agency who is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities, is knowledgeable about the general curriculum, and is knowledgeable about the availability of resources of the public agency; an individual who can interpret the instructional implications of evaluation results; at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and if appropriate, the child. 34 C.F.R. § 300.344.

105. The cover sheet from the October 25, 2001, IEP demonstrates that SSD and the University City School District had all of the required members in attendance at _____'s IEP meeting. Mrs. _____ had invited _____'s Godmother to the IEP meeting. She was permitted to attend and to participate in the IEP process.

106. Mrs. _____ was permitted to participate in the IEP meeting. 34 C.F.R. § 300.345. Although a school district is required to permit parents to participate in the IEP meeting, the school district is not required to acquiesce to any and all requests or demands made by the parents.

107. _____'s IEP contained all of the components required by 34 C.F.R. 300.347.

108. The SSD and the University City School District provided _____ with special education and related services in conformance with his IEP. _____'s IEP met the requirements of the IDEA.

Mrs. _____'s Specific Complaints

109. Addressing Mrs. _____'s specific complaints —

a. *Progress in reading* — With the exception of Mrs. _____'s impressions, all of the other evidence adduced at hearing demonstrated that _____ was making satisfactory progress on the reading goals and objectives in his IEP. Again, even _____'s Godmother confirmed _____'s progress and improvement. We conclude that _____ was receiving a FAPE. 20 U.S.C. § 1412(a); Lagares v. Camdenton R-III School District, ___ S.W.3d ___ (Mo. App. 2001).

b. *1:1 Aide* — _____ was making satisfactory progress on the goals and objectives in his IEP. All of the educators who testified at hearing stated that providing _____ with a 1:1 aide would actually have a deleterious effect on his performance. There was no evidence to the contrary. _____ was receiving a FAPE without a 1:1 aide. Even assuming that Missouri has a more rigorous standard than the federal standard, we learn from Michigan that more rigorous standards do not require “a model education, adopting the most sophisticated pedagogical methods without fiscal or geographic constraints” Barwacz v. Mich. Dept. of Educ., 674 F.Supp. 1296, 1302 (W.D. Mich. 1987). We conclude that SSD and the University City School District did not violate the IDEA when it refused to provide _____ with a 1:1 aide. 20 U.S.C. § 1412(a); E.S. v. Independent School District No. 196, Rosemount-Apple Valley-Eagan, 135 F.3d 566, 569 (8th Cir. 1998) (“As long as a student is

benefitting from her education, it is up to the educators to determine the appropriate methodology. See Rowley, 458 U.S. at 208, 102 S.Ct. at 3051-52. Although [the student] did not read as well as her non-disabled peers, her record indicates that she was making progress and that the 1995-96 proposed IEP would have provided educational benefit to her.”).

c. *Written communication with parent* — Mrs. _____ complains that she should have been receiving written communication on a daily basis from each of _____’s three teachers — the regular classroom teacher, the resource teacher providing the push-in services, and the resource teacher providing the pull-out services. In other words, she believes the IEP requires three separate notes. We do not read the IEP as requiring three separate notes. Teachers are already overly burdened by too much paperwork. It was sufficient that all three teachers had input into the daily notes that were going home. We conclude that SSD and the University City School District did not violate the IDEA by sending only one note home to Mrs. _____ per day. _____ received a FAPE. 20 U.S.C. § 1412(a).

d. *Rewards* — Mrs. _____ concedes that _____’s teachers were using a system of rewards. However, Mrs. _____ complains that _____’s IEP required his teachers to established a separate and unique system of rewards for _____. We do not read the IDEA as prohibiting teachers from using a successful technique required in one student’s IEP with other students in the same academic environment. We conclude that SSD and the University City School District did not violate the IDEA by using a reward system with other students in the classroom. _____ received a FAPE. 20 U.S.C. § 1412(a).

e. *Consulting with the summer school teachers* — _____ did not qualify for extended school year services. In other words, _____ did not need ESY services in order to receive a FAPE. Mrs. _____ does not challenge that determination of _____'s IEP team. The summer school services that _____ did receive were not special education and related services and they were not provided pursuant to an IEP. Although the recommendation by the resolution conference chairperson may have been laudable, failing to follow up on that recommendation did not violate or run afoul of _____'s IEP. Therefore, Mrs. _____'s complaint on this issue is beyond the scope of this hearing panel's jurisdiction. 20 U.S.C. § 1415(b)(6) (complaints limited to matters "relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.").

DECISION

In light of the foregoing, this hearing panel finds unanimously in favor of the Special School District of St. Louis County on all points raised by Petitioner.

Robert K. Angstead, Chair