

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

,)
by his parent ,)
,)
Complainants,)
vs.)
WEST PLATTE COUNTY R-II)
SCHOOL DISTRICT,)
Respondent.)

DECISION COVER SHEET

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

THE PARTIES

Student: .

Complainant: Mother,.

Respondent: WEST PLATTE -II SCHOOL DISTRICT.

The complainant was represented by:

AdoLisa Anarado
Rebecca Terry
Shook, Hardy & Bacon, LLP
2555 Grand Blvd.
Kansas City, MO 64108.

The school district was represented by:

Teri B. Goldman
Attorney at Law
36 Four Seasons Center, #136
Chesterfield, MO 63017.

HEARING OFFICERS:

Kenneth M. Chackes	Hearing Chair
Dayna Deck	Panel Member selected by parents
Patty Smith	Panel Member selected by school district

RELEVANT DATES

Request for due process hearing: July 9, 2003
Dates of hearing: October 28-31, 2003 and January 12-16, 2004
Date of Decision: April 15, 2004

DECISION

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

STATEMENT OF ISSUES

The parent raised both procedural and substantive issues alleging violations of the student's rights under the IDEA:

- I. Whether the West Platte R-II School District failed to comply with procedural requirements mandated by the IDEA, including:
 - A. Evaluation and reevaluation procedures and conduct, and determination of the student's eligibility for services;
 - B. Development of IEPs; and
 - C. Assembling of IEP teams.

- II. Whether the West Platte R-II School District denied the student a free, appropriate public education when it failed to develop IEPs for the student, during the 2001-2002 and 2002-2003 school years, which were reasonably calculated to provide the necessary services

and support the student needed in order to enable him to receive an educational benefit or to increase his capabilities to the highest degree.¹

FINDINGS OF FACT

1. The student is a twelve year-old (DOB:) who resides in the West Platte R-II School District with his mother.

1996-2000 Kindergarten through Second Grade

2. At the age of five, the student enrolled in the district as a kindergarten student for the 1996-97 school year. Ex. R-1 at 1; Transcript (“Tr.”) 755. During that year, the student’s mother referred him for a special education evaluation. Ex. R-1. In response, the district conducted the requested evaluation, but the student did not qualify for special education services. Ex. R-1 at 6; Tr. 755-56.
3. The student was promoted to the first grade for the 1997-98 school year. Ex. R-2; Tr. 757. During that school year, his mother again referred the student for a special education evaluation based on her concerns about his difficulties in reading and math. Ex. R-2 at 8; see also Tr. 757-59. The district again evaluated the student. Ex. R-2. On

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The parent submitted to the panel and the school district an amended statement of issues on October 14, 2003, two weeks before the start of the hearing. Ex. R-69 at 717-20. The amended statement also contained a fourth issue, involving an alleged failure to comply with IEPs, but the parent appears to have abandoned that issue in her post-hearing brief. Petitioners’ Brief at 26-31.

or about January 22, 1998, a multidisciplinary team met to review the results of the evaluation. Ex. R-2 at 8; Tr. 758. The evaluation showed that the student had a full-scale IQ of 108, placing him in the average range of intelligence. Ex. R-2 at 11-12. Based on deficits in his achievement testing in reading and math, the multidisciplinary team concluded that the student was learning disabled in those areas and qualified for special education services. R-2 at 13; Tr. 885.

4. On or about February 5, 1998, a team met to prepare the student's initial Individualized Education Program (IEP). Ex. R-2 at 18; Tr. 759. The initial IEP calls for a placement of 290 minutes per week of special education and 1810 minutes of regular education. Ex. R-2 at 18. The IEP also calls for 60 minutes per week of language therapy as a related service. Ex. R-2 at 20.
5. On or about May 12, 1998, the student's IEP team met to prepare an IEP for the following school year. Ex. R-2 at 31; Tr. 761, 886. His IEP for that year calls for a placement of 360 minutes per week in special education and 1740 minutes in regular education. Ex. R-2 at 31. The IEP also provides for 60 minutes per week of language therapy and notes the student's eligibility for extended school year services. Ex. R-2 at 33-34. For the 1998-99 school year, based upon the agreement of the student's mother and the district, the student was retained in first grade. Ex. R-63 at 542, 547.
6. On or about May 17, 1999, the student's IEP team convened to review and revise his IEP. Ex. R-3 at 43. That IEP provides for a placement of 330 minutes per week in special education and 1770 minutes per week in regular education. Ex. R-3 at 43; Tr. 889. The team reduced the student's language therapy to 30 minutes per week. Ex. R-3 at 45. For

the 1999-00 school year, the student was promoted to and attended second grade. Ex. R-62 at 521; Tr. 762.

7. On or about January 25, 2000, the parent requested an independent evaluation of the student. Ex. R-3 at 53; Tr. 891. Lee Ann Rick, the district's special education director, telephoned the parent and requested clarification of her request. Ex. R-3 at 54. During that conversation, Ms. Rick and the parent agreed that the student's team would meet on January 31 to prepare an evaluation plan and the parent informed Ms. Rick that she would not be opposed to the district conducting some of the testing itself. *Id.*
8. Following the district's reevaluation, the parents and district staff met on or about March 16, 2000, to discuss the results. Ex. R-3 at 56. The team concluded that the student continued to meet the criteria to be diagnosed as learning disabled in the areas of reading and expressive language, but also concluded that he no longer met criteria to be classified as learning disabled in math. Ex. R-3 at 66; Tr. 895. The parents indicated their agreement with the team's diagnostic conclusions. Ex. R-3 at 67.
9. On or about March 16, 2000, the student's IEP team also met and prepared a new IEP based on the district's reevaluation. Ex. R-3 at 74; Tr. 899. That IEP calls for 390 minutes per week in special education, 90 minutes per week of language therapy, and 1710 minutes per week in regular education. Ex. R-3 at 74-76.

2000-2001 Third Grade

10. After the 1999-00 school year, the student was promoted to third grade and attended third grade in the district through approximately November 17, 2000. Ex. R-62 at 522.

11. In the fall of 2000, Tanya Adams (now Tanya Adams Lock) was hired by the West Platte District as a special education teacher. Tr. 99. At that time Ms. Adams had a bachelor's degree in elementary education and was certified by the State of Missouri to teach elementary and early childhood education and had a temporary or provisional certification to teach special education. Tr. 98, 1098. According to the district witnesses, that temporary or provisional certification authorized Ms. Adams to teach special education pursuant to State standards. Tr. 1013, 1073, 1098. Ms. Adams estimated that approximately one-third of the course work required to obtain her bachelor's degree included courses in the teaching of reading, including the teaching children with disabilities. Tr. 317-18. Ms. Adams learned the use of differentiated instruction, which is a multisensory approach, and she testified that she has always incorporated and used a multisensory approach in her teaching. Tr. 319-21, 1282-83. At the time of hearing, Ms. Adams was completing a master's degree in special education. Tr. 98. Before her employment with the West Platte District, Ms. Adams had 2 ½ years of experience teaching preschool and kindergarten. Tr. 98-99, 316. During that prior employment and during her college practicums and student teaching, she had experience as a regular classroom teacher teaching students with disabilities. Tr. 99-100, 106, 1282-85.
12. On or about September 1, 2000, the student's multidisciplinary team met to prepare an evaluation plan for the independent evaluation previously requested by the parent. Ex. R-5 at 106-07. The parent suggested and the district agreed on Dr. Warren Wheelock, of the University of Missouri-Kansas City (UMKC), to conduct the evaluation. The district

contracted with and paid for Dr. Wheelock's evaluation. Tr. 517-18. On or about September 8, 2000, Dr. Wheelock conducted the independent evaluation. Ex. R-6.

13. Dr. Wheelock is Director of the UMKC Reading Clinic, and has been a professor of Education at the University for 37 years. Tr. 363. Dr. Wheelock's only public school teaching experience was for several years in the 1950s. Tr. 367. Dr. Wheelock also has a private practice in which he has conducted over 3000 reading evaluations. Tr. 367. Dr. Wheelock testified that reading is defined as the ability to read connected print fluently and with understanding. Tr. 425. He explained that reading incorporates two basic skill areas: (1) decoding, word recognition, or phonics and (2) understanding or comprehension. Tr. 425-26.
14. .Based on his evaluation in September 2000, Dr. Wheelock diagnosed the student with "specific developmental dyslexia (severe)."² Ex. R-6 at 112. Dr. Wheelock described dyslexia as a type of learning disability in the area of reading. Tr. 368. He stated that the outstanding characteristic of a person with dyslexia is the inability to learn to read the way most children do, by using a visual-auditory approach. Tr. 369. Dr. Wheelock explained that when most children come to school, they have an extensive speaking vocabulary - words the child can say and understand. *Id.* Teaching them to read involves teaching the association between the word that the child says and the printed form of the word. *Id.* Dr. Wheelock stated that most children learn to read with the visual-auditory approach: "The teacher puts the word on the board, the child hears the teacher say the

² "Specific" means that it specifically relates to reading; "developmental" means it is not the result of any brain damage. Tr. 413.

word, the child says the word back again, and, in so doing, begins to make the association.” *Id.* Children with dyslexia, however, “cannot learn to read that way. They must use what’s known as a multisensory approach. You have to use other sense modalities: Namely, kinesthetic, which is motor movement, and tactile, which is the sense of touch.” Tr. 369-70.

15. In his written recommendations concerning the student, Dr. Wheelock stated:

In cases like this the tendency is to try different approaches in an attempt to teach a youngster his basic decoding skills. It will be best in [the student’s] case to adopt, and stick with, a multisensory approach. That is, use the approach that employs all of the sense modalities - visual, auditory, kinesthetic and tactile.

Ex. R-6 at 112. Dr. Wheelock testified at the hearing that for the multisensory approach to work, all of the modalities should be used simultaneously. Tr. 417.

16. Sometime between Dr. Wheelock’s evaluation of September 8, and the student’s next IEP meeting on October 9, 2000, Lee Ann Rick, the student’s parents, Dana O’Toole (the district’s speech-language pathologist), and Tanya Adams met with Dr. Wheelock in his office to discuss his report. Tr. 109-10, 323-25, 456, 1193; Ex. R-65 at 645-46. Tanya Adams, the student’s special education teacher for third through fifth grades, testified that she understood that decoding was the most critical area for the student’s instruction. Tr. 314. On or about October 9, 2000, the student’s IEP team reconvened. Ex. R-7 at 115. The team noted in the Present Levels of Educational Performance section of the IEP that the student had been evaluated by Dr. Wheelock, mentioned his dyslexia diagnosis, and reported Dr. Wheelock’s recommendation that his regular education teachers should

modify their expectations for the student. R-7 at 116-17. When Dr. Wheelock reviewed the Present Levels section of the following year's IEP, developed at the beginning of the student's fourth grade year in August 2001, which paraphrased the same recommendations, he testified: "They are the least significant ones." Tr. 478-79; Ex. R-12 at 157.

17. The October 2000 IEP includes a placement of 460 minutes per week in special education and 1515 minutes per week in regular education. Ex. R-7 at 115. The special education minutes include 90 minutes per week of language therapy and 30 minutes per week of occupational therapy. *Id.* The IEP contains goals and objectives in the area of reading, including a goal for teaching sight words from the first and second grade levels and decoding skills using a multi-sensory approach. Ex. R-7 at 123-125. The October 9, 2000 IEP was implemented until mid-November when the student was removed for home schooling. Tr. 329.
18. On or about November 17, 2000, the student's parents removed him from the district to provide him with home schooling. Ex. R-62 at 522; Tr. 905-06. The parent testified at the hearing that she removed the student because he was shutting down, expressing that he hated school and was increasingly frustrated. Tr. 767-68. She also testified that she removed him because she had not observed any improvement after the implementation of the October 2000 IEP. Tr. 769.
19. In April 2001, the parent informed the district that she would be returning the student to the public schools at the beginning of the next school year. Ex. R-10; Tr. 906. The district scheduled an IEP meeting to review evaluation information and develop an

evaluation plan. Ex. R-10 at 140. At the conclusion of the meeting, the team agreed to wait until August to develop an evaluation plan.

20. During the summer of 2001, the student attended two sessions of a class taught by Wilson Anderson at the Raytown and Belton public schools. *See* Ex. R-11 at 142-54; Tr. 188-89, 771-72, 906. The student attended for approximately two weeks, then had a break of one to two weeks, and then attended another two weeks. Tr. 1747-48. Each session involved fourteen hours of tutoring by teachers learning the Orton-Gillingham approach that was being taught by Mr. Anderson. Tr. 652-53. During the first summer tutoring session, the Gates Oral Reading test showed that during the two-week tutorial, the student increased his reading from the 2.0 grade level to the 2.4 grade level. Ex. R-11 at 145. After the break, the student's reading score on the Gates had decreased to a 1.9 reading level. Ex. R-11; Tr. 1748-49; *see also* Tr. 665-66. At the conclusion of the second session, the student's score on the Gates was at a 2.8 level. Ex. R-11 at 152.
21. Wilson Anderson is president of Education Consultants of the Midwest. He has been working with students with learning disabilities in reading since 1967. Mr. Anderson received a master's degree in special education in 1977, and now trains teachers and consults with school districts on remediation approaches for dyslexic students. He also teaches Multisensory Synthetic Phonics, a graduate course teaching reading remediation approaches at Baker University in Overland Park, Kansas. This course counts towards special education certification in both Kansas and Missouri. Ex. P-32, R-72; Tr. 163-69.
22. Mr. Anderson testified that dyslexia is a neurologically-based language processing disorder, and is a type of learning disability that is characterized by problems in

phonological awareness, word decoding, fluency, vocabulary, and in some cases written expression and spelling. Tr. 176-77. He explained that a child with dyslexia does not have a good visual memory for words and often has poor auditory processing. Tr. 170. Consequently, Mr. Anderson agreed with Dr. Wheelock's testimony that a multisensory approach must be used to teach a child with dyslexia to read. Mr. Anderson described such an approach as, "see it with the eyes, say it with the mouth, and trace it on the tabletop with the nerve endings on the two writing fingers of the preferred hand." Tr. 170, 618-19. He explained that the nerve endings in the index and middle fingers have a direct neurological connection to the left hemisphere of the brain, where information regarding language is organized and stored. Tr. 632. For a child with dyslexia, the tactile and kinesthetic is the strongest system, so the teacher must use "a tremendous amount" or "constant" tracing. Tr. 170, 632. Mr. Anderson testified that constant tracing must be used to put the desired information into the student's long-term memory. Tr. 632. According to Mr. Anderson, because of the severity of the dyslexia of the student in this case, he needs to use his fingers "for every word" he reads. Tr. 643. With severe dyslexia, the instruction needs to be intense and specialized. Tr. 181-83.

23. Wilson Anderson generally advocates the use of the Orton-Gillingham approach to teach reading to children with dyslexia, but he acknowledges that it is only one of many commercially available multisensory approaches, almost all of which are similar to Orton-Gillingham. Tr. 171-72, 624-25. To properly teach the student in this case, Mr. Anderson testified, the teacher would not necessarily require training in Orton-Gillingham, but the teacher would have to be trained in phonetics, syllable patterns, and

multisensory approaches. Tr. 628. According to Mr. Anderson, the structure of the instruction is key. Tr. 642. The approach must be structured and organized and follow a particular sequence. Tr. 176. He explained that structure is critical, because the typical child with dyslexia cannot automatically see patterns; the patterns have to be taught. Tr. 632. The teacher must have an understanding of the structure and logic of the English language. Tr. 638. The teaching must be cumulative, in the sense that it must build on existing knowledge, and constantly introduce new information. Tr. 644-45. For the student in this case, Mr. Anderson testified that without the proper structure in his instruction, it is unlikely that the student will make any progress. Tr. 646.

2001-2002 Fourth Grade

24. On or about August 29, 2001, the student's IEP team convened to develop an IEP for his fourth grade year. Ex. R-12 at 156. The parent brought Wilson Anderson with her to the IEP meeting to help her explain to the school district that her son was succeeding in reading in the summer sessions that Mr. Anderson taught. Tr. 771-73, 777. According to Mr. Anderson, the student made significant progress in his reading skills over the course of those summer programs. Tr. 216, 614-16.³ The student's mother testified that his self-esteem had improved and he was talking excitedly about school for the first time in his life. Tr. 780-81. As a result of his successes, the parent requested that the district provide for her son what had been so successful for him over the summer, and suggested several alternatives as to how the district might do that. During the meeting, Mr.

³ Although Ms. Adams testified that the student made no progress during the period he was home schooled, she reported on the August 29, 2001 IEP that he "has made progress on word attack skills." Ex. R-12 at 158.

Anderson provided input to the team, Tr. 909, and he and the parent presented the district with the report from the summer tutorials. Tr. 124, 342; *see also* Tr. 614. The parent wanted the district to get a teacher trained in an approach that worked for her son. Tr. 778. She believed Ms. Adams needed more training, and wanted the district to allow Mr. Anderson to provide the training he was proposing. Tr. 779. The parent asked the district if it would send one of its own teachers for training, or to bring Mr. Anderson in to the district to train a teacher. Tr. 782. Ms. Adams testified that although Mr. Anderson told the IEP team that she should get the two-week specialized training he provided over the summer, she said it was not possible for her to do so and the school district decided she didn't need it. Tr. 1298-1300. The parent suggested that the district could hire on a temporary basis a teacher who already had been trained in the approach advocated by Mr. Anderson. Tr. 781-82. The parent testified that she was not seeking Orton-Gillingham specifically, but someone trained in a reading program that would work for children with dyslexia. Tr. 931. Based on Wilson Anderson's recommendations and knowledge she obtained from others, the parent wanted an intense, systematic, and structured approach. Tr. 1743-45. The August 2001 IEP provides for 340 minutes per week in a special education resource classroom, 90 minutes per week of language therapy, and 30 minutes per week of occupational therapy. Ex. R-12 at 156.

25. During the August 2001 IEP meeting, a great deal of interaction occurred between Mr. Anderson and Ms. Adams and Mr. Anderson provided Ms. Adams with many suggestions and recommendations. Tr. 120, 637. Mr. Anderson discussed the multi-sensory approach that was used in his summer program and also discussed the strategies

of sound cards and tracing on the table. Tr. 124-25. Based on Ms. Adams' statements at the IEP meeting, Mr. Anderson believed she had sufficient knowledge to implement the program for the student, but after later observing her teach, he concluded she did not have sufficient expertise. Tr. 639. Mr. Anderson observed that she lacked knowledge of the syllable patterns that need to be taught. Tr. 639-40. He tried to offer assistance as a friend of the school district. Tr. 616. Mr. Anderson suggested that he do demonstration lessons and work with and coach Ms. Adams to help and guide her. Tr. 628-30, 639. He testified that consultation with someone with expertise in a multisensory approach was essential. Tr. 634-35. The school district rejected Mr. Anderson's offer, however, which, according to Mr. Anderson, meant the district did not have an individual capable of implementing the IEP effectively. Tr. 629-30. The district's witnesses, Ms. Rick and Ms. Adams, acknowledged that Mr. Anderson offered to conduct a demonstration lesson, to come to the school and work with the student and Ms. Adams, Tr. 1047-50, but the district refused his offer because Mr. Anderson wanted to charge the district for it. Tr. 1050-51, 1300-02. Mr. Anderson testified, however, that he did not seek any contract or payment from the school district; his only contract was with the parents. Tr. 630. According to Mr. Anderson, neither the school principal nor Ms. Adams refused his offer; Ms. Rick refused it. Tr. 695. The principal then offered a compromise of allowing Ms. Adams to observe in another school district. Tr. 695-96. Sometime after January 24, 2002, Ms. Adams observed an Orton-Gillingham trained teacher teach a class of nondisabled students using that method. Tr. 1136; Ex. R-17.

26. At the August 29, 2001 IEP meeting, the student's classroom teacher, Julie Rodell, reported that the student's "math skills are right on target with the rest of the class." Ex. R-12 at 157; Tr. 1393-95. He did not maintain that skill level for long. Tr. 1395. On October 8, 2001, Ms. Rodell completed a questionnaire in connection with the student's application for social security disability benefits, on which she noted that in the area of math, the student did well during the first month of school, but began having problems as the work became more difficult. Ex. R-13 at 177; Tr. 1407-08.
27. Toward the end of the student's fourth grade year, on or about April 12, 2002, the student's IEP team convened to review and revise his IEP and to discuss extended school year services. Ex. R-21; Tr. 788-92, 919-920, 1137-38. The parent brought with her to that IEP meeting Wilson Anderson and an advocate, Rand Hodgson, to help her articulate the student's needs. Tr. 787-88. With their help, the parent requested that the district increase the time to teach the student to read, to two hours per day, and provide a properly trained teacher. Tr. 789. The parent testified that she thought the student's primary need to help him with reading was a properly trained teacher. Tr. 790-92. Ms. Adams acknowledged that the parent and Mr. Anderson requested two hours of reading instruction per day, but the district was not willing to provide that much. Tr. 1138. The resulting April 2002 IEP provides for 490 minutes per week in a special education resource room, 90 minutes per week of language therapy, and 30 minutes per week of occupational therapy. Ex. R-21 at 196.
28. The student's special education teacher, Ms. Adams, testified that she has always incorporated and used a multisensory approach in her teaching, even prior to teaching the

student. Tr. 319-21, 1282-83. She testified that she already had familiarity with most of Mr. Anderson's recommendations and had already determined that the tactile approach worked well with the student. Tr. 126. She stated she had been using that method prior to the time the student was removed to be home schooled. Tr. 126. Ms. Rick testified, however, based on her observations of Ms. Adams as her supervisor, that Ms. Adams' multisensory approach did not use all the modalities all the time; sometimes she would use sound, sometimes sight, sometimes tactile, and sometimes all together. Tr. 1043-44. That approach is contrary to the testimony of Dr. Wheelock and Mr. Anderson, who, as described above, testified that the student needed to be taught all or substantially all the time with the tactile and kinesthetic approach. Tr. 170, 369-70, 417, 632, 643. Ms. Adams testified that learning that the student had been diagnosed with severe dyslexia did not cause her to change her approach to teaching him. Tr. 326.

29. Although the student's IEPs for fourth grade provided for 340 and then 490 minutes per week of special education services, Ms. Adams testified that during most of that time the student was in her classroom along with one or more other students. Although Ms. Adams knew that decoding was the most critical area for the student to work on, Tr. 314, she testified that during fourth grade she provided the student with only ten minutes per day of one-on-one instruction in phonics. Tr. 1224. That is directly contrary to the testimony of Dr. Wheelock, that the student would need one hour per day of one-on-one reading instruction, Tr. 565, 580-81, and the testimony of Mr. Anderson that he would need up to two hours per day of such instruction, Ex. R-23 at 235. Dr. Wheelock explained that trying to teach a child like the student to read with other children in the

room would not be effective because of his low tolerance for frustration, high level of distractibility, and short attention span. Tr. 580-81.

30. The Present Levels of Educational Performance section and the goals and objectives of the student's April 2002 IEP remained the same as the prior IEP from the beginning of fourth grade, even though the Present Levels section was no longer accurate. The student's IEP continued to indicate that his math skills "were right on target with the rest of the class," although he was continually behind. Ex. R-21 at 198; Tr. 1409-13. His fourth grade teacher, Ms. Rodell, testified that she and Ms. Adams discussed the possibility that the student's math difficulties were due to a learning disability and the suspicion of a learning disability in math probably crossed her mind. Tr. 1411, 1413-14. Ms. Rodell never made a formal referral for an evaluation of that question because she assumed the student's difficulties were because "he missed out on such a big part of his math curriculum" and she wanted to "get him caught up and then look at whether he was having other problems." Tr. 1414-15. Ms. Rodell admitted, however, that she really did not know what math instruction the student had when he was home schooled during third grade. Tr. 1418-19.

2002-2003 Fifth Grade

31. During the 2002-03 school year, the student attended fifth grade at the district. Tanya Adams continued to serve as the student's special education teacher. On or about August 27, 2002, the student's IEP team reconvened to review and revise his IEP for his fifth grade year. Ex. R-27 at 254. The IEP calls for 620 minutes per week in the special education classroom, 200 minutes per week of class-within-a-class, 90 minutes per week

of language therapy, 30 minutes per week of occupational therapy, and 1235 minutes per week of regular education. Ex. R-27 at 254; Tr. 1151-54. The student's time in special education was increased because he began attending a special education study hall with Ms. Adams. Tr. 1153. At that meeting, the parent discussed the student's need for more help in reading and math, Tr. 793-94, and made a request for a trained tutor to help teach the student to read. Tr. 800-01.

32. After the August 2002 IEP meeting, the parents followed up with a letter to the district, dated August 30, 2002, seeking an appropriately trained tutor to teach the student in a formal multisensory approach, such as Orton-Gillingham. Ex. R-28 at 275; Tr. 1088-89. After the parent discussed that request with Ms. Rick, the district scheduled another IEP meeting to discuss the parents' request. Ex. R-30 at 277-78. At the meeting, the parents and their advocate, Mr. Hodgson, requested that the district provide a tutor for two hours per day, four days a week, who uses a multisensory approach to teach the student reading. The district refused that request. Ex. R-31 at 281-82. The parents also informed the district at that meeting, that as an alternative, they were going to remove the student during the morning hours to provide tutoring to him outside the district. Ex. R-30 at 280; Tr. 853, 1093. The district informed the parents that such removal would result in the student being considered a private school student under the IDEA. Tr.1093-94, 1901. In response, the parents requested that their tutor be permitted to come into the school to provide services to the student. Tr. 1168. The district superintendent denied that request. Ex. R-32 at 283. The parents did not remove the student during the morning to provide tutoring. Tr.1094-95, 1901.

33. During fifth grade Ms. Adams testified that she provided the student one-on-one instruction in reading for 20 to 30 minutes per day. Tr. 1105-06, 1224-32.
34. Beverly McCormick was the student's homeroom teacher and his regular education math teacher during fifth grade. Tr. 1429-30. She testified that at the beginning of the year the student did relatively well in math but struggled with math facts. Tr. 1430. When the class progressed to division, multiplication, fractions and decimals, he had difficulty. Tr. 1430. Ms. McCormick considered a referral to special education for math, but also considered whether the student truly had a disability in the math area or merely had gaps in learning from being home schooled. Tr. 1431-32.
35. On or about March 14, 2003, the district conducted a meeting and prepared an evaluation report to summarize the results of the student's three year reevaluation. Ex. R-47 at 354. After reviewing the information presented, the student's multidisciplinary team concluded that the student met criteria to be diagnosed under the IDEA as learning disabled in reading, reading comprehension, math and written language. Ex. R-47; Tr. 1170, 1433. The district concluded that the student's "significant discrepancy and processing deficits are not primarily caused by . . . lack of instruction in reading or math." Ex. R-47 at 365.
36. On or about March 27, 2003, the student's IEP team convened to prepare an IEP based on the new evaluation information. Ex. R-49 at 383. Because the team was not able to complete the IEP at that meeting, the team reconvened on April 2, 2003 to complete the IEP. Ex. R-50. The IEP provides 660 minutes per week in the special education room, 200 minutes per week in class within a class, 90 minutes per week of language therapy,

and 30 minutes per week of occupational therapy. Ex. R-50 at 386; Tr. 1172. The parent again requested that the student be taught to read by a person specially trained to teach a child with dyslexia and that student's time in special education be increased to two hours a day. Tr. 803-04.

2003-2004 Sixth Grade

37. During the 2003-04 school year, Shari Hart has been the student's special education teacher. Ms. Hart testified that she uses a multidisciplinary approach to teach reading to the student, but her explanation of what that means does not comport with the description of the student's needs provided by Dr. Wheelock and Mr. Anderson. Tr. 1560-61, 1594-95, 1613-15. Ms. Hart testified that she does very little of the kind of tactile and kinesthetic activities that the parent's experts testified was essential for the student. *Id.* Ms. Hart also testified that she works with the student one-on-one on phonics instruction approximately 30 to 35 minutes per day. Tr. 1602-03, 1613.

Evidence Regarding the Student's Progress in Reading

38. The testimony and the results of various assessments performed over the years are very inconsistent and do not provide a clear picture of whether the student made significant progress in reading.
39. According to Dr. Wheelock, who conducted assessments of the student in September 2000, at the beginning of third grade, and in March 2002, toward the end of fourth grade: "In the seventeen months since that original evaluation, there are presently no indications of any significant improvement in [the student's] reading and writing skills." Ex. R-19 at 188. Dr. Wheelock explained at the hearing that after the second assessment, near the

end of fourth grade, “there wasn’t really any evidence that [the student] was able to decode.” Tr. 435. Although some of the student’s reading scores increased between the two assessments, Dr. Wheelock testified that these increases showed that the student learned more sight words, not improvement in decoding or independent reading. Tr. 435, 441, 556-59. Dr. Wheelock testified regarding the student’s reading abilities between September of 2000 and March of 2002:

Q: (Ms. Goldman) So can we conclude from that that there was at least some progress despite the fact that he was home schooled?

A: Yes. Not towards independent reading though. It was that he recognized more sight words. So these stories, remember, are made up basically of sight words.

...

Q: So did you see some progress in spite of the fact of the home schooling?

A: Yeah. What I said in the report was I didn’t see any significant progress. So I didn’t consider this significant progress.

Tr. 559-60.⁴

40. Another measure of the student’s reading progress can be made by comparing Woodcock-Johnson achievement testing administered by the school district in March 2000, in second grade, and private testing by Dr. Suderman in April 2002, toward the end of fourth grade.⁵ Dr. Suderman determined that at the end of fourth grade, the student’s

⁴ Dr. Wheelock did not recall being told that the student had been home schooled for a significant amount of third grade, and stated that with that information he would have written the report differently. Tr. 504, 559-60. The parent testified that Dr. Wheelock was aware of the student’s home schooling. Tr. 852. In any event, Dr. Wheelock never stated how he would have written his report differently had he considered the home schooling.

⁵

Comparisons of the standard scores between the two versions of the Woodcock-Johnson may not be meaningful, but the percentile scores from both versions are intended to show the same

decoding skills were lower than 99.5% of other students his age and his broad reading abilities were lower than 99.7% of his peers.

	2000 WJ-R		2002 WJ-III	
	Std. Score	Percentile	Std. Score	Percentile
Letter-Word Identification	79	8	61	.5
Passage Comp.	85	16	62	1
Broad Reading	81	10	59	.3
Broad Written Language	94	34	69	2

- Another set of test results allows a comparison of the student's reading abilities between the end of fourth grade, in March 2002, and the end of fifth grade, March 2003. Ex. R-19 at 191-94; R-53 at 462-64. Dr. Marc Schlosberg administered the Wechsler Individual Achievement Test, Second Edition (WIAT-II) on both occasions and reported the following results:

	March 2002			March 2003		
	Std. Score	Percent-ile	Raw Score	Std. Score	Percent-ile	Raw Score
Word Reading	63	1	68	65	1	76
Reading Compreh.	68	2	84	76	5	106
Pseudo Decoding	80	9	15	64	1	3
Reading Composite	67	1	211	64	1	205

thing, how the child compares to his peers. Tr. 1632, 1685, 1841-43, 1858-60, 1871-72. Wilson Anderson testified that meaningful comparisons can be made between Wood-Johnson standard scores. Tr. Deck Qs.

These results, like those of Dr. Wheelock during an earlier period, show a slight improvement in the student's word reading and comprehension abilities, but regression in decoding and either no significant change or slight regression in his overall reading composite score. The district's special education director, Ms. Rick, testified that the results of the student's last assessment, in March 3003, show he still tests as severely learning disabled and that he has gotten further and further behind his peers. Tr. 1045-47. Dr. Wheelock reviewed those test results and concluded that they showed the student made no gains in his ability to decode over the two and one-half years from his testing in September 2000 through the end of fifth grade in March 2003. Tr. 469-76; 502. At the end of fifth grade, the student's decoding skills and composite reading abilities were lower than 99% of his peers.

1. The students' teachers testified, however, based on their informal observations that they believed the student was capable of reading material at his grade level. For example, Ms. Rodell testified that during the student's fourth grade year he sometimes volunteered to read aloud in her classroom and seemed confident in reading from the fourth grade texts. Tr. 1399. The student also received passing grades in his regular fourth grade curriculum with Ms. Rodell. Ex. R-26; Tr. 928, 1149, 1404. The student's fifth grade teachers also testified that he read aloud in class. Tr. 1437-38; 1481-82, 1507-08. He also made passing grades in fifth grade and was promoted to sixth grade. R-54; Tr. 1190-91, 1439, 1483, 1487, 1509.
2. Tanya Adams, the student's special education teacher who provided him all of his instruction in reading, testified that he made progress with respect to his IEP goals and

objectives during both fourth and fifth grade. Ex. R-25; Ex. R-48 at 370-80; Ex. R-51 at 427-47; Tr. 131-32, 241-50, 308, 926, 1142-48, 1181-87. She based her conclusion on her observations, the student's classroom work, and her administrations of the Gallistel-Ellis and Gates tests. R-65; Tr. 132-33, 137, 278-79, 280-81, 1128-30, 1142-48. Wilson Anderson testified that some of Ms. Adams' testing, using the Gates and Gallistel-Ellis tests that he had recommended, did show progress. Tr. 626. He also testified, however, that when he or one of his associates administered the same tests to the student, the results were not consistent with Ms. Adams' - they did not show the gains she was reporting. Tr. 626-27, 678. Mr. Anderson also testified that Ms. Adams was "teaching the test" to the student by using many of the words in her lessons that were the same words that appear on the Gallistel-Ellis test. Tr. 640-42. He testified that practice would effect the integrity of the results. *Id.* The parent also testified that at August 2002 IEP meeting Ms. Adams admitted prompting the student during the testing; helping him by giving him one of the words he was struggling with. Tr. 794-95. The parent then took him to Lori Wolfe, who had been trained by Wilson Anderson, who retested the student and found a much lower reading level. Tr. 795-96. Comparing the student's scores during fifth grade on the Gallistel-Ellis as reported by the school district, shows an irregular pattern of improvement and regression, with significant regression at the end of the year:

Gallistel-Ellis Tests 10/16/02 12/18/02 3/10/03 5/12/03

Reading 1-3	100%	100%	100%	100%
Reading 4	100%	93%	93%	80%
Reading 5	76%	80%	88%	
Reading 6	93%	100%	100%	47%
Reading 7	72%	76%	84%	55%
Reading 8	68%	48%	68%	52%
Reading 9			40%	0%

1. Throughout his educational career the student was absent more than the average student in the district and in the state. His parent testified, however, that at IEP meetings and other meetings the district never said the student’s attendance was a problem. In the district’s report regarding its three-year reevaluation of the student conducted at the end of his fifth grade year, in March 2003, the district reported: “Attendance has been regular.” Ex. R-47 at 354.

Parent’s Request for Hearing and Explanation of Deviation From 45 Day Time-line

2. The parent submitted a request for a due process hearing which was received by the Missouri Department of Elementary and Secondary Education (DESE) on July 9, 2003. The original deadline for hearing the case and completing and mailing a written decision, therefore, was August 25, 2003, 45 days from the date DESE received the request.

3. Both parties requested an extension of the time to complete the hearing and decision. They agreed on a hearing during the week of October 27, 2003, and a deadline for completion of the decision of December 1, 2003. On August 19, 2003, the Chair entered a Scheduling Order granting those requests, scheduling the hearing for October 28-31, 2003, and extending the deadline for decision to December 1, 2003. The hearing was not concluded on October 31, 2003, however, and, based on the availability of the parties, their attorneys, and the panel members, additional days of hearing were agreed upon for the week of January 12, 2004. On November 11, 2003, the parents requested an extension of the decision deadline to February 16, 2004. The Chair entered an Order on November 12, 2003, granting that request. The hearing resumed on January 12, 2004, and was concluded on January 16, 2004. On the final day of the hearing the parties jointly requested the opportunity to file written post-hearing briefs by February 20, 2004, and to extend the deadline for decision to March 15th, 2004. Tr. 1948-49. On February 12, 2004, however, the district requested and the Chair granted an extension of the briefing deadline to February 23, 2004. The district then requested, on February 14, 2004, that the decision deadline also be extended by three days. Subsequently, on February 23, 2004, the parent requested two more days to complete the briefs and another two-day extension of the decision deadline. On February 23, 2004, the Chair granted the parent's requests, and extended the deadline for completing the decision to March 22, 2004. The panel members conferred during the week of March 15, 2004, and decided and informed the parties that due to the volume of testimony, exhibits, and issues, and some unavailability of panel members to confer, the panel would benefit from at least one

more week, and maybe two, in which to complete the decision. On March 18, 2004, the parent requested that the decision deadline be extended to Monday, April 5, 2004. The Chair granted that request on March 19, 2004.

CONCLUSIONS OF LAW

This matter arises under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§1400, *et seq.*, and Missouri law, §162.961, RSMo. This Hearing Panel has jurisdiction pursuant to 20 U.S.C. §1415 and §162.961, RSMo.

The burden of proving compliance with the IDEA is on the school district. According to the United States Court of Appeals for the Eighth Circuit, which governs the federal courts in Missouri: “At the administrative level, the District clearly had the burden of proving that it had complied with the IDEA.” *E.S. v. Independent Sch. Dist. No. 196*, 135 F.3d 566, 569 (8th Cir. 1998). The burden of proof is on the district for procedural as well as substantive issues. *Seattle School District No. 1 v. B.S.*, 82 F.3d 1493, 1498 (9th Cir. 1996) (appropriateness of evaluation and placement).

The United States Supreme Court has described the determination of whether a public entity has complied with the IDEA as requiring a two-part analysis:

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

Board of Education v. Rowley, 458 U.S. 176, 206-07 (1982) (footnotes omitted). The Supreme Court emphasized the importance of procedural compliance:

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

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

The case law under the IDEA requires an educational program to be set aside on procedural grounds when the procedural inadequacies have “compromised the pupil’s right to an appropriate education,” and also in two other circumstances. *Independent School District No. 283 v. S.D. by J.D.*, 88 F.3d 556, 562 (8th Cir. 1996). A denial of procedural rights can be sufficient to support a violation when the district’s conduct has “seriously hampered the parent’s opportunity to participate in the formulation process.” *Id.* In addition, independent of whether the student’s substantive “right to an appropriate education” has been compromised, a procedural violation can be based on “a deprivation of educational benefits.” *Id.* Each of those three factors is stated by the courts to be an alternative ground for finding a procedural violation significant enough to require setting aside the educational program developed by the district. *Id.* As recently summarized by the Ninth Circuit, “‘procedural inadequacies that result in the loss of educational opportunity,’ **or** seriously infringe the parents’ opportunity to participate in the IEP formulation process, **or** that ‘caused a deprivation of educational benefits,’ clearly result in the denial of a FAPE.” *Amanda J. v. Clark County Schl Dist.*, 267 F.3d 877, 892 (9th Cir. 2001) (citations omitted; emphasis added). Where a school district has “failed to develop the IEP according to the procedures required by the Act,” the hearing panel “need not address the question of whether” the resulting IEP “was reasonably calculated to enable [the student] to

receive educational benefits.” *W.B. v. Target Range School District*, 960 F.2d 1479, 1485 (9th Cir. 1991). A school district’s failure to develop an IEP “in accordance with the procedures mandated by the IDEA” may, “in and of itself” deny the student a free appropriate public education. *Amanda J., supra*, 267 F.3d at 895.

ALLEGED PROCEDURAL VIOLATIONS

A. Evaluation and Eligibility Determination

The parent alleges that the district violated the IDEA by failing to evaluate the student for a learning disability in math during his fourth grade school year. “The IDEA imposes an affirmative obligation on the School District to identify and evaluate children with disabilities.” *Seattle School District No. 1 v. B.S.*, 82 F.3d 1493, 1499 (9th Cir. 1996); 20 U.S.C. §1412(a)(3)(A). For a student who already has been identified as a child with a disability, a school district must conduct a reevaluation at least every three years, and more often, “if conditions warrant a reevaluation.” 20 U.S.C. §1414(a)(2); 34 C.F.R. §300.536. The Missouri State Plan for Special Education provides that the requirement to identify and evaluate applies “to children who are suspected of being a child with a disability and in need of special education even though they are advancing from grade to grade.” *Missouri State Plan for Special Education* III.1. (2001).

Between 1998 and 2000 the student was diagnosed as learning disabled in math. The district reevaluated him in March 2000, however, and determined at that time he no longer had a math disability because he did not demonstrate a severe discrepancy between ability and achievement in that area. Ex. R-3 at 56. Upon his return to school at the beginning of fourth grade, for the 2001-02 school year, his math skills were, “right on target with the rest of the

class.” Ex. R-12 at 157. As the year progressed, however, he struggled in math, but his teacher, Julie Rodell, testified that she attributed those struggles to lack of instruction in the third grade curriculum. That might have been a reasonable assumption at the time. During that year, however, the student fell significantly behind the class and his teacher testified that she probably suspected that he had a disability in math. The question whether lack of instruction might have explained the student’s math difficulty should have been addressed by the IEP team when they met at the end of fourth grade or the beginning of fifth grade. At the end of fourth grade, an IEP meeting was held, but there is no indication that there was any discussion of the student’s deficiency in math. In fact, the Present Levels section of that IEP was copied verbatim from the IEP that had been written at the beginning of fourth grade, indicating incorrectly that the student was still keeping up with the class in math. The failure to provide an accurate statement of Present Levels was another procedural violation of the IDEA, as discussed below. Beverly McCormick, the student’s fifth grade math teacher, testified that the student did not have a good concept of numbers, that he probably always had that kind of problem, and that it could be a sign of a learning disability. See R-50, 4/2/03 IEP (5th grade) at 390 (“does not have good concept of numbers”). The district should not have assumed that lack of instruction caused the student to be behind in math in fourth and fifth grades. They did not know what instruction he had when he was home schooled. When they finally did evaluate him at the end of fifth grade, the district determined his deficiency was not due to lack of instruction. Ex. R-47.⁶ Had they performed the

⁶ The district’s argument, that “it is probable that the discrepancy that was manifested in the District’s evaluation is merely the reflection of a lack of third grade instruction,” is directly contradicted by the school district’s explicit finding that lack of instruction was not the cause of the student’s discrepancy. Respondent’s Brief at 15; Ex. R-47 at 365.

evaluation earlier, in the spring of fourth or the beginning of fifth grade, they would have discovered his learning disability earlier and provided him specialized services a full year earlier. We find that the failure to do so was a violation of IDEA.

The school district argues that based on the test results of Linn Suderman the student would not have been diagnosed with a learning disability in math in the spring of 2002. Respondent's Brief at 15. Yet the district also acknowledges that when Dr. Suderman's test results were reviewed by the district in 2003, along with other assessment information, they did show a significant discrepancy in math calculation. Respondent's Findings ¶125 and n. 44. In addition, Dr. Schlosberg's Spring 2002 assessment shows a significant discrepancy in the area of math. Ex. R-19 at 191-94.

The district also argues that any delay in evaluation and identification of the student's math disability was harmless because the district always provided "assistance to [the student] in math." Respondent's Brief at 15. Assistance is not the same thing as special education services with goals and objectives that are implemented pursuant to an individualized education program. In the *Austin* case cited by the school district in support of this argument, the school district did provide special education services. *Austin Indep. Sch. Dist.*, 25 IDELR 875 (SEA TX 1997). The hearing officer in *Austin* noted that even though the student was not formally diagnosed with a reading disability, his "difficulties in reading have been fully assessed, and he has had goals and objectives and a specialized reading program in place to address his reading disabilities." *Id.* The West Platte School District did not fully assess this student's difficulties in math and did not develop goals and objectives to address those difficulties.

B. Development and Content of IEPs

The parent challenges the procedures employed by the school district in developing individualized education programs (IEPs) for the student. An IEP is “a comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs.” *School Committee of Burlington v. Massachusetts Dept of Ed.*, 471 U.S. 359, 368 (1985). The Court in *Burlington* described the IEP as the “*modus operandi* of the Act.” *Id.*

1. Alleged Deficiencies in Goals

The parent argues that during the student’s fourth and fifth grade years the district failed to properly construct IEPs that included appropriate goals in reading and math. Under the IDEA, the IEP must include “measurable annual goals, including benchmarks or short-term objectives, related to (I) meeting the child’s needs that result from the child’s disability to enable the child to be involved in and progress in the general curriculum; and (II) meeting each of the child’s other educational needs that result from the child’s educational disability.” 20 U.S.C. §1414(d)(1)(A)(ii); 34 C.F.R. §300.347(a)(2)(i).

The parent’s claim with respect to reading goals is that the district did not have a teacher who was trained to implement them. Petitioners’ Brief at 27. That issue will be addressed below with respect to the alleged substantive violations, but the hearing panel does not believe that the lack of appropriately trained teachers automatically renders the IEP goals inappropriate.

With respect to math, however, we have concluded, as stated above, that the district violated the IDEA by not evaluating the student sooner and finding he was disabled in the area of math. Based on that violation, we also conclude that his IEPs, from the end of fourth grade

through the end of fifth grade, denied the student an appropriate education in math in violation of the IDEA.

2. Alleged Deficiency in Present Levels of Educational Performance

The parent also alleges that the student's IEP of April 12, 2002, violated the requirement of the IDEA that an IEP include an accurate statement of his present levels of educational performance. The IDEA requires that an IEP include a statement of the child's present levels of educational performance, including a statement describing how the child's disability affects his involvement and progress in the general curriculum. 20 U.S.C. §1414(d)(1)(A)(i); 34 C.F.R. §300.347(a)(1)(i). The United States Department of Education's interpretative guidance on the IDEA indicates that the statement of present levels of educational performance is one of the "major . . . IEP requirements" that govern a student's involvement and progress in the general curriculum. 34 C.F.R. Part 300 Appendix A - Notice of Interpretation, Section I (question 1), 64 Fed. Reg. 12471 (1999). Commenting on the requirement for a statement of present levels, the Department states: "The IEP team's determination of how each child's disability affects the child's involvement and progress in the general curriculum is a primary consideration in the development of the child's IEP." *Id.*

When a student's IEP does not contain an accurate statement of his present levels of performance and fails to give an adequate description of the student's current level of functioning as required by the IDEA, the IEP causes a loss of educational opportunity, and should be set aside. *G by RG and AG v. Fort Bragg Dependent Schools*, 34 IDELR 176 (E.D. N.C. 2001), *rev'd on other grounds*, 343 F.3d 295 (4th Cir. 2003) (holding IEP denied FAPE because the document was substantially unchanged from the previous year's program, despite

fact that student made little or no academic gains); *Evans v. Board of Educ.*, 930 F.Supp. 83, 95-96 (S.D. N.Y. 1996) (present levels of educational performance deficient because not sufficiently detailed and based on outdated information); *Seattle School District*, 34 IDELR 196 (SEA WA 2001) (finding a violation where “the present levels of performance fail to give an adequate description of the Student's current level of functioning”); *Daleville City Board of Education*, 28 IDELR 144 (SEA AL 1998) (holding that IEP lacking statement of present performance in the academic and behavior areas was inadequate and denied FAPE).

In this case it is undisputed that the present levels of educational performance section of the April 12, 2002, IEP was copied verbatim from the IEP developed the previous August, and, at least in the area of math, the April 2002 IEP present levels were inaccurate. That was not a mere technical violation or harmless error. As discussed above, the student’s IEP team failed to discuss the student’s performance in math during the Spring of 2002, although he was struggling in math and his teacher “probably” suspected it was due to a disability. Had the team properly considered his level of performance in math at that time they should have concluded that a reevaluation was warranted. The failure to include an accurate statement of the student’s math performance, therefore, was a procedural violation of the IDEA that denied the student an appropriate education and deprived him educational opportunities and benefits.

3. Alleged Use of Single Procedure as Sole Criterion

The parent’s third procedural challenge to the district’s development of IEPs claims that the district failed to ensure that no single procedure was used as the sole criterion for determining an appropriate educational program. The parent’s claim is based on the argument that while the student’s IEPs specify that progress on his reading goals is to be measured by

classroom observation and the Gallistel-Ellis and Gates reading tests, since his teacher incorrectly administered those reading tests, the sole remaining criterion for measuring his progress was teacher observation. Petitioners' Brief at 30-31. However, the "sole criterion" prohibition that the parent relies on does not apply to IEPs at all, but to evaluations. 20 U.S.C. §1414(b)(2)(B); 34 C.F.R. §300.532(f). The IDEA provisions regarding IEPs do not prohibit use of a single criterion to measure progress on IEP goals. 20 U.S.C. §1414(d)(1)(A); 34 C.F.R. §300.347(a).

C. Required Participants at IEP Meetings

The parent alleges that the district violated the IDEA by failing to include on the student's IEP teams an individual with expertise regarding dyslexia and an individual qualified to interpret evaluation results.

The parent's argument regarding a person with expertise in dyslexia is based on the IDEA regulation that provides, "[t]he public agency shall ensure that the IEP team for each child with a disability includes . . . [a]t the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child." 34 C.F.R. §300.344(a)(6). By its clear terms that provision is discretionary, and the parent points to no authority to support the proposition that it was mandatory in this case. This claim fails, therefore, as a matter of law.

Although the IDEA regulations do require that the IEP team include "an individual who can interpret the instructional implications of evaluation results," the regulation also indicates that that individual may be the same as one of the other mandated members. 34 C.F.R. §300.344(a)(5); *Rebecca S. v. Clarke County Sch. Dist.*, 22 IDELR 884 (M.D. Ga. 1995) (failure to have psychologist at meeting not a violation); *E.D. by Dukes v. Enterprise City Bd. of Educ.*,

273 F. Supp. 2d 1252 (M.D. Ala. 2003) (even if technical violation, no harm shown); *Yarmouth Sch. Dept.*, 36 IDELR 148 (SEA ME 2001) (finding that district complied with procedural requirement to have present an individual who can interpret instructional implications where special education administrator and service provider were present and so qualified). Lee Ann Rick and Tanya Adams stated their qualification to serve as the individual who could interpret instructional implications of evaluations and, although other district personnel may have been better qualified, we do not find that Ms. Rick and Ms. Adams were not qualified to do so.

ALLEGED SUBSTANTIVE VIOLATIONS

Free Appropriate Public Education

We now turn to the second prong of the *Rowley* test: “is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits?” *Board of Education v. Rowley*, 458 U.S. 176, 206-07 (1982). The specific substantive issue raised by the parent in this case is whether the West Platte R-II School District denied the student a free, appropriate public education when it failed to develop IEPs for the student, during the 2001-2002 and 2002-2003 school years, which were reasonably calculated to provide the necessary services and support the student needed in order to enable him to receive an educational benefit or to increase his capabilities to the highest degree.

The IDEA defines the term “free appropriate public education” as:

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). By defining an appropriate education as “special education,” Congress requires that school districts provide “specially designed instruction . . . to meet the unique needs of a child with a disability.” 20 U.S.C. §1401(25) (definition of “special education”). See *Rowley*, 458 U.S. at 188-89. According to the Court in *Rowley*, “appropriate” services are those that are “reasonably calculated to enable the child to receive educational benefits.” 458 U.S. at 192, 206-07. Under that standard, the substantive issue in this case is whether the district’s IEPs for the student met his unique needs and were reasonably calculated to provide him educational benefits.

Missouri State Standards

The IDEA also requires a free appropriate public education to “meet the standards of the State educational agency.” 20 U.S.C. §1401(a)(8). The standard for determining whether the district offered an appropriate educational program is significantly higher under Missouri law than the minimal standards of the IDEA standing alone. *Lagares v. Camdenton R-III Sch. Dist.*, 68 S.W.3d 518, 525 (Mo. App. W.D. 2001). Until it was repealed in 2002, Missouri law declared, “it is . . . the policy of the state of Missouri . . . to require public schools to provide . . . special educational services sufficient to meet the needs and maximize the capabilities of handicapped and severely handicapped children.” §162.670 RSMo. The same statute expressly recognized, “the need of such children for early recognition, diagnosis and intensive educational services.” *Id.* In addition, Missouri law defined the “special educational services” to which students were entitled, as “programs designed to meet the needs and maximize the capabilities of handicapped or severely handicapped children.” §162.675 RSMo. It is well established under the IDEA, that when a state standard is more demanding than the requirements of the federal

law, the state standard must be applied. *See, e.g., David D. v. Dartmouth School Committee*, 775 F.2d 411(1st Cir. 1985), *cert. denied*, 475 U.S. 1140 (1986); *Board of Education of East Windsor Regional School District v. Diamond*, 808 F.2d 987, 992 (3d Cir. 1986); *Lagares*, 68 S.W.3d at 524.

Describing the difference between the Missouri requirement to “maximize the capabilities” and the federal requirement to provide educational “benefit,” the court in *Lagares* stated:

The dictionary definition of the term "maximize" is "to increase to the highest degree[.]" WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1396 (1971). The dictionary definition of the term "benefit" is "to be useful or profitable to: AID, ADVANCE, IMPROVE[.]" *Id.* at 204. Applying the dictionary definitions of these terms to the articulated standards, 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. In contrast, the standard set by the IDEA is that the special educational services be useful to, or aid, advance, or improve handicapped children.

Lagares, 68 S.W.3d at 525.

For the IEPs that were developed when Missouri’s higher standard was in effect, the issue in this case is whether the district’s IEPs “provide special educational services sufficient to meet the needs and increase to the highest degree the capabilities of” the student. *Id.* The higher standard has been in the Missouri statutes since it was enacted in the 1970s until it was repealed in 2002. The effective date of the statute that repealed the higher standard was August 28, 2002. All of the IEPs developed prior to that date were subject to the higher Missouri standard.

Requirement to Meet the Student’s Unique Needs

Under both the federal and state standards, the district was required to provide the student with instruction that was “specially designed” to meet his “unique needs.” 20 U.S.C. §1401(25)

(definition of “special education”). The regulations adopted by the United States Department of Education to implement the IDEA further emphasize the need to focus on the individual needs of each child. The regulations define “specially-designed instruction” to mean:

adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction--(i) To address the unique needs of the child that result from the child's disability; and (ii) To ensure access of the child to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the public agency that apply to all children.

34 C.F.R. §300.26(b)(3). Accordingly, the district was required to consider the specific and unique characteristics of the student’s learning disability. *Strawn v. Missouri State Board of Educ.*, 210 F.3d 954 (8th Cir. 2002) (communication needs of student with multiple disabilities); *Union School Dist. v. Smith*, 15 F.3d 1519, 1525, (9th Cir.), *cert. denied*, 115 S. Ct. 428 (1994) (autism); *Mr. X v. New York State Education Department*, 975 F.Supp. 546, 558-59 (S.D. N.Y. 1997) (autism); *Evans v. Board of Educ.*, 930 F.Supp. 83, 89-90, 98-102 (S.D. N.Y. 1996) (dyslexia and emotional condition).

Questions of Methodology

The school district argues that educational methodology must be left to the educators and not determined solely by the preferences of parents. That may be true when there are two or more methodologies that would provide an appropriate education to the student. Where a particular methodology is an integral part of what is individualized about a student's education, it would need to be incorporated into the student's IEP. As noted above, the IDEA regulations require “adapting, as appropriate to the needs of an eligible child . . . the content, methodology, or delivery of instruction--to address the unique needs of the child.” 34 C.F.R. §300.26(b)(3).

Commenting on the adoption of that provision in 1999, and the court decisions that preceded it, the United States Department of Education stated:

Case law recognizes that **instructional methodology can be an important consideration in the context of what constitutes an appropriate education** for a child with a disability. At the same time, these courts have indicated that they will not substitute a parentally-preferred methodology for **sound educational programs** developed by school personnel in accordance with the procedural requirements of the IDEA to meet the educational needs of an individual child with a disability. In light of the legislative history and case law, it is clear that in developing an individualized education, **there are circumstances in which the particular teaching methodology that will be used is an integral part of what is “individualized” about a student's education** and, in those circumstances will need to be discussed at the IEP meeting and incorporated into the student's IEP. **For example, for a child with a learning disability who has not learned to read using traditional instructional methods, an appropriate education may require some other instructional strategy.**

64 Fed. Reg. 12552 (1999) (emphasis added).

The Student's Unique Needs and the Services Provided by the District

The evidence in this case reveals that the student had severe dyslexia and, according to the parent's experts and the testing data, practically no ability to read phonetically, or to decode words. As a result, it is undisputed that the student needs to be educated with a multisensory approach. Both Dr. Warren Wheelock and Wilson Anderson testified that to learn to read the student needed to be taught using all the sensory modalities all the time: visual, auditory, tactile and kinesthetic. The student also required a sequential teaching approach, to teach him the structure of the English language. The parent's experts also agreed that the student needed at least one or two hours per day of one-on-one instruction in phonics. Wilson Anderson further emphasized the student's need for a teacher with special training and expertise in teaching a child with severe dyslexia. The needs described by the parents' experts, for a student with

severe dyslexia, are very similar to those described by the parents' experts in *Evans v. Board of Educ.*, 930 F.Supp. 83, 89, 98-99 (S.D. N.Y. 1996). For example, the *Evans* court stated: "The uncontroverted testimony of the experts on dyslexia demonstrates that an integrated, multi-sensory, sequential method is a necessity rather than an optimum situation for Frank, because of the nature and severity of his dyslexia and his associative emotional problems." 930 F.Supp. at 101.

What the district provided the student during the relevant time frame did not meet his needs as described by the parent's experts. The district provided some multisensory teaching, but there is no evidence that it was consistent or that it utilized constant tactile and kinesthetic approaches. In addition, the district offered no evidence that it used a structured and sequential approach in teaching the student. When Mr. Anderson observed Ms. Adams teaching the student, he observed that she was not using such an approach. Instead of providing the student with one hour or more each day of one-on-one phonics instruction, the district's evidence showed it provided approximately 10 minutes of daily phonics instruction during fourth grade, 20-30 minutes in fifth grade, and 30-35 minutes in sixth grade. The district did not provide a teacher who was trained to provide the type of multisensory instruction the student needed. The district's teacher was new to special education, was only temporarily certified to teach special education, and had no experience or training teaching children with dyslexia. The district refused to send her to training or to allow Mr. Anderson to work with her and coach her. The district allowed her to go observe a properly trained teacher one time, but that observation did not even involve a special education student. The school district's program can be found to be inappropriate because the district does not have personnel properly trained in educating children

with the child's disability. *Drew P. v. Clarke County School Dist.*, 877 F.2d 927 (11th Cir. 1989), *cert. denied*, 494 U.S. 1046 (1990); *Evans, supra*, 930 F.Supp. at 100.

As was true in the *Evans* case, this case “has not presented a contest of experts in which [the hearing panel] must choose between competent expert testimony presented by opposing parties.” 930 F.Supp. at 101. While the District presented opinion testimony from special education teachers and administrators, as in *Evans*, “none has any specific expertise in the area of [this student’s] disability.” *Id.*

The panel has carefully considered the cases in the Eighth Circuit that address the education of children with learning disabilities in the area of reading. *E.S. v. Independent Sch. Dist., No. 196*, 135 F.3d 566 (8th Cir. 1998); *Fort Zumwalt Sch. Dist. v. Clynes*, 119 F.3d 607 (8th Cir. 1997); *Independent Sch. Dist. No. 283 v. S.D. by J.D.*, 88 F.3d 556, 558 (8th Cir. 1996). Each of those cases was decided before the IDEA regulations were amended in 1999 to specifically refer to “methodology” as a component of special education that in some circumstances must be considered an “integral part of what is ‘individualized’ about a student’s education.” 34 C.F.R. §300.26(b)(3); 64 Fed. Reg. 12552 (1999). Moreover, each of those cases was decided based on the particular needs of the student and in each case the initial administrative hearing resulted in a finding that the school district provided the student with an appropriate education. In *E.S.*, the hearing officer specifically “found that E.S. could learn either with one-to-one instruction or in a small group,” and “was receiving a free appropriate public education without one-to-one tutoring under the Orton-Gillingham method.” 135 F.3d at 568, 569. In *Fort Zumwalt*, “the hearing panel found that Nicholas had benefitted from the instruction provided” by the school district. 119 F.3d at 614. Another significant factor in that

case was that the parents abruptly removed the student from the public school, preventing the district from following through on the parents' request for improved services. 119 F.3d at 614. Finally, the court in *Independent Sch. Dist. No. 283*, noted that the administrative hearing officer found there were no significant differences between the program offered by the district and the private services the parents sought, and the public program had the significant benefit of educating the student in the least restrictive environment, with nondisabled children. 88 F.3d at 561-62.

Evidence of the Student's Progress

As the district points out, the inquiry in determining whether a district is providing an appropriate education is to assess "whether a proposed IEP is adequate and appropriate for a particular child at a given point in time." *Burlington v. Dep't of Educ.*, 736 F.2d 773, 788 (1st Cir. 1984), *aff'd*, 471 U.S. 359 (1985). Nevertheless, actual progress can be a factor in determining whether a district is providing an appropriate education, especially when the student is receiving all or part of his education in the regular classroom is achieving passing marks and advancing from grade to grade. *Rowley*, 458 U.S. at 203-04. The Supreme Court pointed out the limited nature of its holding in *Rowley*, however, explaining:

One child may have little difficulty competing successfully in an academic setting with nonhandicapped children while another child may encounter great difficulty in acquiring even the most basic of selfmaintenance skills. We do not attempt today to establish any one test for determining the adequacy of educational benefits conferred upon all children covered by the Act. . . . **We do not hold today that every handicapped child who is advancing from grade to grade in a regular public school is automatically receiving a "free appropriate public education."**

458 U.S. at 202, 203 n.25 (emphasis added).

The evidence regarding the student's progress in reading in this case is mixed. The teachers who testified at the hearing, and some of the testing they administered, suggest the student made progress in reading, including on the reading goals and objectives of his IEP. The student's scores on standardized, criterion referenced tests, however, paint quite a different picture, and in some respects show the student regressed in his reading skills. Commenting on the determination of a student's progress in the context of developing an appropriate educational program, the United States Department of Education expressed a preference for criterion-referenced and standardized tests:

The IEP team's determination of how each child's disability affects the child's involvement and progress in the general curriculum is a primary consideration in the development of the child's IEP. In assessing children with disabilities, school districts may use a variety of assessment techniques to determine the extent to which these children can be involved and progress in the general curriculum, such as criterion-referenced tests, standard achievement tests, diagnostic tests, other tests, or any combination of the above.

The purpose of using these assessments is to determine the child's present levels of educational performance and areas of need arising from the child's disability so that approaches for ensuring the child's involvement and progress in the general curriculum and any needed adaptations or modifications to that curriculum can be identified.

34 C.F.R. Part 300 Appendix A - Notice of Interpretation, 64 Fed. Reg. 12471 (1999). Many courts have relied on standardized test scores to determine whether a child with disabilities made sufficient progress. *See, e.g., Hall v. Vance County Bd of Educ.*, 774 F.2d 629 (4th Cir. 1985); *R.R. v. Wallingford Bd of Educ.*, 35 IDELR 32 (D. Conn. 2001); *Mather v. Hartford School District*, 928 F. Supp. 437 (D. Vt. 1996).

Conclusions Regarding Substantive Issue of Appropriate Education

The student in this case is severely learning disabled in the area of reading and has severe dyslexia, a particular type of learning disability. The parent and school district agree that

teaching him to read is his primary educational need in order to prepare him for independent living and economic self sufficiency. As many witnesses put it, their goal is to make him an independent reader, to change him from a student who must learn to read, into a student who is able to read to learn. The student's most critical need in order to achieve that goal, is to learn to decipher or decode words that he does not know by sight. The parties also agree that he needs a multidisciplinary approach.

Before addressing the question whether the school district's reading programs for the student met the standards of being sufficient to maximize his capabilities or to provide him with educational benefit, the hearing panel must determine whether the district provided the student with "individualized" services to meet the "unique needs" that result from his disability, severe dyslexia. We conclude that the district's programs failed to meet that standard. The evidence is overwhelming that the district did not meet the student's unique needs as described by the only experts in dyslexia who testified in this case: his need for a multidisciplinary approach that utilizes: (1) all the sensory modalities all the time; (2) structured, sequential teaching to teach him the structure of the English language; (3) at least one or two hours per day of one-on-one instruction in phonics; and (4) a teacher with special training and expertise in teaching a child with severe dyslexia. We do not hold that the district was or is required to provide any particular reading program or methodology, such as Orton-Gillingham, or that all students with severe dyslexia need the four educational components listed above. Instead, we find that the individual student in this case, because of his severe dyslexia and the unique needs that his dyslexia creates for him, needs an educational program with those particular features. We conclude, therefore, that the district denied the student a free appropriate public education under either the federal or

the higher state standard, because it failed to provide those services that were individualized to meet his unique needs.

The panel also must measure the student's IEPs developed during his fourth grade year, and his first IEP in fifth grade, against Missouri's requirement "to provide special educational services sufficient to meet the needs and increase to the highest degree the capabilities" of the student. *Lagares*, 68 S.W.3d at 525. We conclude that the district's programs failed to meet that standard. Even if the district's services were sufficient to provide some benefit, in order to maximize the student's capabilities in the area of reading he needs to have the type of program described by the parent's experts.

Finally, the panel must determine whether the student's IEP that was developed in April 2003, after Missouri repealed its higher standard, was sufficient to confer educational benefit under the federal IDEA standard. We hold the district's program failed to meet the lower federal standard because, as discussed above, the district failed to develop an individualized program to meet the student's unique needs for a multidisciplinary approach that utilizes all the sensory modalities all the time; sequential teaching of the structure of the English language; one or two hours per day of one-on-one instruction in phonics; and a teacher with special training and expertise in teaching a child with severe dyslexia. Our holding is also supported by the fact that the district failed to prove the student made significant progress in his phonics and decoding skills under the programs provided by the district.

REMEDY AND ORDER

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

The district violated the IDEA by failing to reevaluate the student during fourth grade or at the beginning of fifth grade to determine whether he had a learning disability in math. Related to that violation, the district also violated the Act by failing to include an accurate statement of the student's present levels of educational performance in his April 2002 IEP. As a consequence of those procedural violations, the district denied the student a free appropriate public education by failing to include appropriate goals and objectives in the area of math on the student's IEP for fifth grade. The district did not begin to provide the student with special education services in math until the beginning of sixth grade, thereby depriving the student of a full year of appropriate math services. The student is entitled to compensatory education services for the year that the math services were not provided. When the district added math services for the student in his April 2003 IEP, the team determined that he needed 200 minutes of math instruction per week in a special education classroom. Ex. R-50 at 386. The appropriate remedy is compensatory education services for one year of special education in math. *Miener v. Missouri*, 800 F.2d 749 (8th Cir. 1986). We therefore order the school district to provide the student with a total of 7200 minutes (200 minutes times 36 weeks) of special education math services, as compensatory services, to be provided in addition to the services he currently needs.

The district also violated the IDEA with respect to the services it provided the student in the area of reading, in the IEPs it developed for the student during his fourth and fifth grade school years. The last IEP developed for the student in fifth grade also was implemented in sixth grade, so the violation continued at least until the time of the hearing.

The remedy for the district's substantive violations in the area of reading must be both compensatory and prospective in nature. The district is ordered to amend the student's IEP to

incorporate the reading services that he presently needs: a multidisciplinary approach that utilizes: (1) all the sensory modalities all the time; (2) a structured, sequential teaching approach, to teach him the structure of the English language; (3) at least one hour per day of one-on-one instruction in decoding/phonics; and (4) a teacher with special training and expertise in teaching a child with severe dyslexia. In addition, the student was deprived of at least one hour per day of the type of instruction he needed, since the beginning of fourth grade. He is now near the end of sixth grade. He therefore is entitled to, and the district is ordered to provide, compensatory services of one additional hour per day of the type of instruction described above, for three years. Thus, the student's educational program for the next school year shall include at least two hours of the reading instruction we have found is necessary to provide him an appropriate education, one hour of which is compensatory. In the two succeeding school years, the student's IEP team will determine the appropriate amount of services and the district will provide an additional hour per day of compensatory services as prescribed in this order.

APPEAL PROCEDURE

This is the final decision of the Department of Elementary and Secondary Education in this matter. Either party has a right to request review of this decision pursuant to the Missouri Administrative Procedures Act, §§536.010 *et seq.* RSMo. The parties also have a right to file a civil action in federal or state court pursuant to the IDEA. *See* 20 U.S.C. §1415(i).

Dated: April 15, 2004

Kenneth M. Chackes
Chairperson

Panel Member Dayna Deck concurs with this decision and adds a concurring opinion.
Panel Member Patty Smith dissents and submits a dissenting opinion.

Copies of this decision and separate decisions of the panel members will be mailed to the parties on this date, by certified mail, return receipt requested.

CONCURRENCE

Dayna Deck

Hearing Officer

vs. West Platte County R-II School District

I concur with the Chair on all findings and remedies. I write separately to add:

The District argued in this case that the Student showed progress because he made passing grades and advanced from grade to grade.

The Student did receive As and Bs in 5th grade English/reading. The record shows that he received these grades however with all his tests being read to him and significant modifications.

Presumably receiving an A or B means that the child can read at the fifth grade level; that the child is proficient in all the concepts the school expects a 5th grade reader to understand. The Student got As and Bs with support from his aids however, that doesn't necessarily show he is progressing, especially in the area of his learning disability --reading. The objective test data show that in March of the fifth grade year the Student was word reading at the 2nd grade level, his decoding was still at the kindergarten level and his reading comprehension was at the third grade level.¹ (See Respondents Ex. p. 462-464 for test data.)

Education is supposed to mean that we teach the child to read independently and grades should reflect appropriate mastery of the grade level concepts. Nevertheless, the objective test data show that the Student regressed from the end of 4th grade to the end of 5th grade. It is the School District's burden to show that they offered him appropriate services and yet they did not adequately, if at all, address this regression.

¹ I use the grade equivalent scores here, but report them with caution. "Age-equivalent and grade-equivalent scores require careful interpretation because . . . they can be misleading" for a variety of reasons. J. SATTLER, ASSESSMENT OF CHILDREN: COGNITIVE APPLICATIONS 100 (4th ed. 2001)

DISSENTING STATEMENT

Dr. Patty Smith

Hearing Officer

vs. West Platte County R-II School District

It is my opinion that the West Platte School District complied with all procedural requirements and met the “burden of proof” under IDEA through presented information and testimony. Further, applying legal precedent to the evidence in the case it was clear that there was not a denial of FAPE.

's IEPs for the 2001-02 and 2002-03 school years were appropriately calculated and provided services in the least restrictive environment at each given point in time. He was receiving educational benefit and was being educated alongside his nondisabled peers as much as possible. The IEPs included goals and objectives that addressed each of 's deficits and parents, as well as advocates, were a part of the team that helped draft and agreed to the appropriateness of these goals and objectives. Further, the IEPs included the use of a multi-sensory approach of instruction even though it was not a requirement.

No district or teacher is held accountable if the student does not make progress on an IEP. If no progress is noted, it does not mean that the IEP is inappropriate. Many factors can influence the lack of progress for a student. For instance, level of disability, attendance and the lack of instruction at a particular grade level might well influence progress. Additionally, there are many indicators other than simply scores on a test that can indicate progress. Passing marks, being promoted from grade to grade and continued observation within a classroom or reports from adults that work with the student on a daily basis would be indicators of progress.

The student in this case has a significant reading disability and his progress would be very difficult to track given the gaps of instruction and no baseline data established upon his return to school after third grade. However, assessments (Gates and Gallistel-Ellis) recommended by the so-called “expert” did show progress of the student.

In the fall of 2000 's multidisciplinary team met to prepare an evaluation plan for an independent evaluation requested by the parent. The evaluation was paid for by the district and conducted by Dr. Warren Wheelock of University of Missouri – Kansas City. Dr. Wheelock is a delightful man that currently acts as a professor of education and has a private practice in which he evaluates children with reading difficulties. During his testimony he recommended a multi-sensory approach to teaching students with reading difficulties. He also reported that staff and parents should “not become discouraged if this method does not seem to work all at once”. One of the things that characterizes children like is long periods of no gain”. He also reported that a teacher using a multi-sensory approach does not need specialized training, but simply needs to understand what the approach entails. He continued to testify that he was unaware of any research that the Orton-Gillingham methodology is particularly effective with dyslexic students and that he had observed teachers creatively craft their own multi-sensory approach. Dr. Wheelock was supportive of the practices of 's special education teacher.

During this hearing Mr. Wilson Anderson also testified on the Petitioner's behalf. He has been referred to as the "expert" witness in this case. Mr. Anderson had been employed as a regular education teacher at the secondary level. He is certified to teach History and English in Minnesota. He did receive a Master's Degree in Special Education in 1977, but he has never been a special education teacher. Mr. Anderson was first exposed to the Orton-Gillingham multi-sensory approach to reading in 1967 when he took a three-week course in the method. During the summer of 2001, attended two sessions of a tutorial class and Mr. Anderson did have some interaction with . He did not tutor him.

From the time the student entered kindergarten until the time of this hearing, the district welcomed input from the parents, advocates and outside evaluators. However, parental or outside evaluator's preference does not compel a school district to use a certain methodology or instructional program.

It seems to me that the "experts" that should have been identified in this case were 's teachers. They are in fact more qualified to teach students with disabilities than either of the "expert" witnesses brought by petitioners. While I understand that outside evaluators can contribute meaningful insight to a student, it is important to note that both in this case had very limited out-of-school contact with , unlike, those trained professionals that worked with him on a daily basis over a long period of time.

This hearing seemed to pull forth the question, "Who decides educational methodology?". I agree with the United States Department of Education when identifying that the "courts have indicated that they will not substitute a parentally-preferred methodology for sound educational programs developed by school personnel in accordance with the procedural requirements of the IDEA to meet the educational needs of an individual child with a disability". I do not agree with the other panel members that we should allow outside sources to dictate methodology in the public school setting. Nor do I agree with the remedy and order set forth by the Chairperson of this Due Process Hearing Panel.