

BEFORE THE THREE MEMBER DUE PROCESS PANEL
EMPOWERED BY THE MISSOURI STATE BOARD OF EDUCATION
PURSUANT TO RSMo. §162.961

, by and through his)
Parents, ,)
) May 21, 2009
Petitioners,)
vs.)
)
BLUE SPRINGS R-IV SCHOOL)
DISTRICT,)
)
Respondent.)

COVER SHEET INFORMATION

1. (“Student”) is the daughter of (“Parents”). Student was born on, who, through Parents, filed a request for due process hearing.

2. At all times material to this due process proceeding, Student’s residential address is located within the boundaries of the Blue Springs R-IV School District.

3. The Parents and Student were represented by Deborah S. Johnson, Esq., 9923 State Line Road, Kansas City, MO 64114. James C. Wirken of the Wirken Law Firm Group, P.C., 4740 Grand Blvd., Suite 200, Kansas City, MO 64112 also entered his appearance on behalf of Petitioners, appears on the Complaint and sporadically on some of the filings. Mr. Wirken did not appear at the hearing and did not participate in any discussions with the Hearing Panel Chairperson.

4. The Blue Springs R-IV School District was represented by:

Ryan T. Fry, Esq.
Julius M. Osborn, Esq.
Cochran, Oswald & Roam, LLC
601 NW Jefferson St.
Blue Springs, MO 64013

5. Parents initially requested due process by filing a complaint with the Department of Elementary and Secondary Education (“DESE”) which was received by DESE on May 28, 2008.

7. The hearing panel:

Marilyn McClure, designated by Parents
George Wilson, designated by District
Mr. Richard H. Ulrich, Chairperson

8. Issues: Whether Petitioners are entitled to receive compensatory educational services due to Respondent’s failure to provide Student with a free appropriate public education (“FAPE”) relating to the IEPs in existence prior to the June 11, 2008 IEP; and whether Petitioners entitled to reimbursement for educational expenses incurred.

BEFORE THE THREE MEMBER DUE PROCESS PANEL
EMPOWERED BY THE MISSOURI STATE BOARD OF EDUCATION
PURSUANT TO RSMo. §162.961

STUDENT, by and through her)	
Parents,)	
)	May 21, 2009
Petitioners,)	
vs.)	
)	
SCHOOL DISTRICT,)	
)	
Respondent.)	

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), and Missouri law, §162.961.3-.5 RSMo.

I. THE ISSUES

1. The following fundamental issue was presented to the Hearing Panel:

Issue Number 1. Are Petitioners entitled to receive compensatory educational services due to Respondent’s failure to provide Student with a free appropriate public education (“FAPE”) relating to the IEPs in existence prior to the June 11, 2008 IEP?

Issue Number 2. Are Petitioners entitled to reimbursement for educational expenses incurred?

II. FINDINGS OF FACT

The Hearing Panel makes the following Findings of Fact:

A. The Parties, Counsel and Hearing Panel Members

1. During all times material to this due process proceeding, the Student resided with her parents (“Parents”), within boundaries making her eligible to attend the Blue Springs R-IV

School District (“Blue Springs”, “Respondent” or “District”). The primary mode of communication of Student and her Parents is written and spoken English.

2. Blue Springs is a public school district, organized pursuant to Missouri statutes, and is located in Jackson County, Missouri.

3. The Student and her Parents were represented at the hearing by Deborah S. Johnson, Esq., 9923 State Line Road, Kansas City, MO 64114. James C. Wirken of the Wirken Law Firm Group, P.C., 4740 Grand Blvd., Suite 200, Kansas City, MO 64112 also entered his appearance on behalf of Petitioners, appears on the Complaint and sporadically on some of the filings. Mr. Wirken did not appear at the hearing and did not participate in any discussions with the Hearing Panel Chairperson.

4. Blue Springs was represented at the hearing by Ryan T. Fry, Esq. and Julius M. Osborn of Cochran, Oswald & Roam, LLC, 601 NW Jefferson St., Blue Springs, MO 64013.

5. The Hearing Panel for the due process proceeding was: Richard H. Ulrich, Hearing Chairperson; Marilyn McClure, Panel Member; and George Wilson, Panel Member.

6. Any findings of fact contained herein that could be deemed conclusions of law should be treated as such, and any conclusions of law that could be deemed findings of fact should likewise be treated as such.

B. Procedural Background and Timeline Information

7. The Student's Parents, through counsel, requested due process by filing a complaint with the Department of Elementary and Secondary Education (“DESE”) dated May 28, 2008, which was received by DESE that same day. (Petitioners’ Exhibit 22¹, pp. 142-145; Petitioners’ Exhibit 23, p. 146).

¹ Petitioners’ Exhibits shall be referred to as Petitioners’ Exhibits, Respondent’s Exhibits shall be referred to as Respondent’s Exhibits and Panel’s exhibits shall be referred to as Panel Exhibits.

8. On or about May 30, 2008 DESE, by and through Margaret Strecker, notified the Parties of the appointment of Mr. Patrick Boyle as Hearing Chairperson. (Petitioners' Exhibit 23, pp. 146-148).

9. On or about June 3, 2008, Petitioner notified DESE that they were rejecting Mr. Boyle as the Chairperson. (Petitioners' Exhibit 24, p. 173).

10. On or about June 4, 2008, DESE notified the new Hearing Chairperson, panel members, and Parties, of the selection and designation of Panel Members for the request for due process filed by Petitioners. (Petitioners' Exhibit 23, pp. 167-171).

11. On or about June 5, 2008, the District sent Petitioners a letter requesting a Resolution Meeting be conducted on June 9, 2008. (Petitioners' Exhibit 25, p. 175). Petitioners were agreeable to this date. (Petitioners' Exhibit 25, p. 177). The resolution Conference was held on June 9, 2008. (Petitioners' Exhibit 26, p. 183). It was unsuccessful.

12. On or about June 12, 2008, pursuant to 20 U.S.C. § 1415(c)(2)(B), Respondent filed a Response to Petitioners' due process Complaint. (Petitioners' Exhibit 26, pp. 185-188). On or about June 12, as permitted by 20 U.S.C. § 1415(c)(2)(A), Respondent filed a Motion Challenging the Sufficiency of Petitioners' Due Process Complaint. (Petitioners' Exhibit 26, pp. 189-191).

13. On June 13, 2008, the Hearing Chairperson found the Complaint deficient, sustained Respondent's Motion Challenging the Sufficiency of Petitioners' Due Process Complaint, and granted Petitioners ten days to file an amended complaint. (Petitioners' Exhibit 27, pp. 192-194).

14. On June 23, 2008, Petitioners filed an Amended Complaint, by providing one page of the complaint that was inadvertently omitted from the initial filing. (Petitioners' Exhibit 28, pp. 195-197).

15. On June 26, 2008, the Hearing Chairperson found "[t]he Complaint originally filed with the supplemental attachment constitutes a sufficient Complaint" and triggered the timelines effective June 23, 2008. (Petitioners' Exhibit 29, pp. 198-201).

16. On July 3, 2008, Respondent filed an Answer to Petitioners' Amended Complaint. (Petitioners' Exhibit 30, pp. 202-206).

17. On July 29, 2008, Respondent notified Petitioners that Respondent believed another resolution session would be "simply an exercise in futility," and suggested mediation. (Petitioners' Exhibit 31, p. 207).

18. On July 31, 2008, the Hearing Chairperson entered an Order setting a telephone conference for August 6, 2008, and addressed other pre-hearing issues. (Petitioners' Exhibit 33, pp. 209-210).

19. On August 12, 2008, the Hearing Chairperson entered an Order scheduling the hearing in this matter for October 14, 2008, through October 17, 2008, with a date for decision on or before November 17, 2008. (Petitioners' Exhibit 34, pp. 213-214).

20. On or about September 8, 2008, the Hearing Chairperson signed Subpoenas duces tecum commanding Parents to appear for depositions and bring certain documents with them. (Petitioners' Exhibit 35, pp. 217-218).

21. On September 24, 2008, Respondent filed a Motion to Disqualify Panel Member McClure. (Petitioners' Exhibit 39, pp. 249-251). On or about September 26, 2008, Respondent

also filed a Child Complaint with DESE challenging the impartiality of Panel Member McClure. (Petitioners' Exhibit 42, p. 259).

22. On September 24, 2008, Respondent filed a Motion for Continuance of the hearing scheduled to commence on October 14, 2008. (Petitioners' Exhibit 40, pp. 252-254). Petitioners did not object to the Motion for Continuance.

23. On October 10, 2008, Panel Member McClure responded to the Motion to Disqualify her.² (Petitioners' Exhibit 46, pp. 272-273). On October 15, 2008, Petitioners provided a Response and Suggestions in Opposition to Respondent's Motion to Disqualify Panel Member McClure. (Petitioners' Exhibit 48, pp. 277-281). On October 16, 2008, the Hearing Chairperson ordered that Respondent's Motion to Disqualify Panel Member McClure was denied. (Petitioners' Exhibit 49, pp. 286-288).

24. On November 6, 2008, Petitioners served a Notice to Take Deposition of Paul Kinder, Superintendent of Blue Springs School District, on November 14, 2008, with a request pursuant to Missouri Rules of Civil Procedures 57.03 for documents to be brought to the deposition. (Petitioners' Exhibit 51, pp. 294-297). On November 12, 2008, Respondent filed a Motion to Quash Notice to Take Deposition and Response to Documents Requested. (Petitioners' Exhibit 52, pp. 306-311). On November 14, 2008, Petitioners filed a Response to Respondent's Motion to Quash Notice to Take Deposition and Response to Documents Requested. (Petitioners' Exhibit 55, pp. 316-322). On November 17, 2008, the Hearing Chairperson issued an Order granting Respondent's Motion to Quash. (Petitioners' Exhibit 56, pp. 327-333). The Hearing Chairperson also issued guidelines regarding the discoverability of documents requested in Petitioners' Notice of Deposition. (*Id.*) With a few exceptions,

² Respondent noted in its brief that it did not receive a copy of Ms. McClure's response until receipt of Petitioners' five day disclosures.

discoverable documents were generally limited by the Hearing Chairperson to documents related to the time when Student was in grades 6, 7, and 8. (*Id.*).

25. On November 18, 2008, Petitioners served a Notice to Take Deposition of Paul Kinder, Superintendent of Blue Springs School District on November 26, 2008, with a request pursuant to Missouri Rules of Civil Procedures 57.03 for documents to be brought to the deposition. (Petitioners' Exhibit 57, pp. 334-337). Paul Kinder failed to appear. (Petitioners' Exhibit 61, p. 497 ¶4). On November 26, 2008, Respondent provided Petitioners its Answers to Production of Documents. (Petitioners' Exhibit 98A, pp. 834-837). Many of the documents requested by Petitioners were provided on November 26, 2008, and no Business Records Affidavit was provided. (Petitioners' Exhibit 61, p. 497 ¶5).

26. On November 25, 2008, Respondent served its First Request for Production of Documents on Petitioners pursuant to Rule 58.01. (Petitioners' Exhibit 58, pp. 344-347).

27. On November 28, 2008, Petitioners served Notices to Take Deposition on December 5, 2008, with requests pursuant to Missouri Rules of Civil Procedure 57.03 for documents to be brought to the depositions, for the following: Tara Ely, Kay Thornberry, Sandra Bandelow, Melinda Hodge, M. Hahn, K. Moore, Shirley Atkinson, Heather Edmonson, Elizabeth Roberts, April Harmon, Howard Ward, Jennifer Medina, Fran Brownsberger, P J Petrillo, Steve Cook, Erin Fortney, Kris Mayer, Custodian of Records Blue Springs School District, J Stack, J. Bookasta, Sandy Keck, Randy Dowell, Kirsten Clemons, Rhonda Jacoby, and Paul Kinder, Superintendent. (Petitioners' Exhibit 59, pp. 349-487). On December 2, 2008, Respondent filed a Motion to Quash Notice to Take Deposition and Response to Documents Requested (referring to Petitioners' November 28, 2008, Notices). (Petitioners' Exhibit 63, pp. 519-526).

28. On December 1, 2008, Petitioners filed a Motion for Reconsideration/Clarification of Order [November 17, 2008] Regarding Discovery. (Petitioners' Exhibit 60, pp. 488-491).

29. On December 1, 2008, Petitioners filed a Motion for Continuance and Extension of Time, and Enforcement of Discovery. (Petitioners' Exhibit 61, pp. 496-508). Respondent did not object to the request. The Hearing Chairperson sent a letter to the parties on December 1, 2008, requesting that counsel for Respondent "advise me forthwith as to the District's position" to Petitioners' Motion. (Petitioners' Exhibit 62, pp. 517-518).

30. On December 2, 2008, a telephone conference was held between the Hearing Chairperson and counsel for the Parties, and the Hearing Chairperson indicated he was going to grant Respondent's Motion to Quash. After this telephone conference, for the record, Petitioners filed their Response to Respondent's Motion to Quash Notice to Take Depositions and Response to Documents Requested (referring to Petitioners' November 28, 2008, Notices). (Petitioners' Exhibit 64, pp. 528-535).

31. On December 3, 2008, an Order was issued by the Hearing Chairperson amending the November 17, 2008 Order correcting wording such that it now states "enable Parents to procure the documents requested [by identification in a notice of deposition] is equivalent to a request for production of documents which is not allowable under Missouri Revised Statutes Section 536.073." (Petitioners' Exhibit 56, pp. 327-333; Petitioners' Exhibit 60, p. 488; Petitioners' Exhibit 6, p. 542).

32. Also by Order dated December 3, 2008, the Hearing Chairperson continued the hearing to January 20-23, 2009, with a deadline for decision on or before February 23, 2009. (Petitioners' Exhibit 66, pp. 545-547).

33. Also on December 3, 2008, the Hearing Chairperson issued an Order regarding discovery and granted the Respondent's Motion to Quash. (Petitioners' Exhibit 65, pp. 542-543). Said Order provided Respondent five days to respond to those discovery items specifically designated by the Hearing Chairperson. (Petitioners' Exhibit 66, pp. 545-547).

34. On December 4, 2008, Petitioners contacted Respondent and the Hearing Chairperson requesting its Request for Production of Documents be withdrawn or quashed. (Petitioners' Exhibit 67, p. 549). On December 5, 2008, Respondent filed a Motion to Withdraw its Request for Production of Documents which withdrew its request. (Petitioners' Exhibit 69, pp. 582-583). The Hearing Chairperson granted Respondent's Motion by Order dated December 11, 2008. (Petitioners' Exhibit 72, pp. 622-624).

35. On December 5, 2008, Respondent filed a Motion to Dismiss Petitioners' Complaint and Suggestions in Support Thereof. (Petitioners' Exhibit 68, pp. 550-77). On December 8, 2008, Petitioners filed their Response to Respondent's Motion to Dismiss. (Petitioners' Exhibit 70, pp. 585-595). By Order dated December 11, 2008, the Hearing Chairperson granted Respondent until December 17, 2008, to file a reply to Petitioners' Response, and granted Petitioners until December 24, 2008, to file a sur-reply. (Petitioners' Exhibit 73, pp. 625-626). On December 17, 2008, Respondent filed its Reply to Petitioners' Response to Respondent's Motion to Dismiss Petitioners' Complaint and Suggestions in Support Thereof. (Petitioners' Exhibit 81, pp. 692-699). On December 18, 2008, Petitioners filed their Sur-Reply to Respondent's Motion to Dismiss Petitioners' Complaint. (Petitioners' Exhibit 83, pp. 716-723). On December 22, 2008, the Hearing Chairperson requested the parties to provide a copy of the June 2008 IEP or current operative IEP. (Petitioners' Exhibit 84, pp. 729-730). Respondent responded on December 22, 2008, that the June 11, 2008 IEP is the current operative

IEP. (Petitioners' Exhibit 86, p. 731). On December 23, 2008, Petitioners submitted two affidavits as additional evidence in support of Petitioners' opposition to Respondent's Motion to Dismiss. (Petitioners' Exhibit 87, pp. 736-738). On December 23, 2008, Respondent sent a letter to the Hearing Chairperson in response to the two affidavits provided by Petitioners. (Petitioners' Exhibit 88, pp. 745-751). On December 23, 2008, Petitioners requested the Hearing Chairperson to quash and strike the letter from Respondent. (Petitioners' Exhibit 89, p. 752).

36. On December 9, 2008, Respondent filed its Response to Petitioners' Motion for Continuance and Extension of Time, and Enforcement of Discovery. (Petitioners' Exhibit 71, pp. 606-621). With its Response, Respondent also provided a letter regarding the employment status of certain individuals whom Petitioners' had sought to depose. (Petitioners' Exhibit 71, p. 605).

37. On December 11, 2008, the Hearing Chairperson issued an Order addressing discovery issues. (Petitioners' Exhibit 72, pp. 622-624).

38. On December 11, 2008, Petitioners filed a Motion for Reconsideration of Order Dated, December 11, 1008. (Petitioners' Exhibit 74, pp. 627-633). On December 15, 2008, the Hearing Chairperson amended its Order dated December 11, 2008, to require "Respondent to produce the e-mails between District personnel regarding the Student during the Student's 6th, 7th and 8th grade years for Petitioners' review, inspection and photocopying, on or before December 19, 2008." (Petitioners' Exhibit 78, pp. 666-668).

39. On December 12, 2008, Petitioners requested the Hearing Chairperson sign subpoenas duces tecum commanding the following persons to appear for depositions on December 23, 2008, and bring with them certain documents: Custodian of Records Blue Springs School District, Paul Kinder, Dave Elton, Randy Lakowski, Kris Mayer, Erin Fortney, Margaret

Grice, Shirley Atkinson, Heather Edmonson, Elizabeth Roberts, April Harmon, Howard Ward, Jennifer Medina, Tara Ely, Kay Thornberry, Sandra Bandelow, Melinda Hodge, Marla Hahn, Sandy Keck, Dr. Randy Dowell, Kirsten Clemons, Rhonda Jacoby, Steve Cook. (Petitioners' Exhibit 76, pp. 641-664). By letter dated December 15, 2008, the Hearing Chairperson informed Petitioners' attorney he would sign the subpoenas only if they were resubmitted without the request for documents. (Petitioners' Exhibit 77, p. 665).

40. On December 15, 2008, Respondent filed a letter requesting the Hearing Chairperson reconsider his Order of December 15, 2008, and filed its Response to Petitioners' Motion for Reconsideration of Order, December 11, 2008. (Petitioners' Exhibit 79, pp. 669-677). On December 16, 2008, Petitioners filed their Response to Respondent's Letter Requesting Reconsideration of this Chairperson's Reconsideration of Order, December 11, 2008, and Reply to Respondent's Response to Petitioners' Motion for Reconsideration of Order, December 11, 2008. (Petitioners' Exhibit 80, pp. 679-684). On December 17, 2008, the Hearing Chairperson issued an Order concluding that the e-mails being sought are part of Student's educational records, and ordered the District to "make reasonable efforts to produce the e-mails between the District personnel concerning the Student for 6th, 7th and 8th grades that are stored in the District's computer system and backup of that system, or which have been printed. Said efforts shall be made as soon as possible, with them being made available to Petitioners' attorney at least three (3) days prior to the depositions to be taken by Petitioners' attorney. (Petitioners' Exhibit 82, pp. 712-715). The Hearing Chairperson denied Respondent's request that Petitioners provide their pre-hearing materials on or before December 23, 2008. (*Id.*) The Hearing Chairperson granted Respondent's request not to take depositions on December 23, 2008, and

required the parties to mutually agree upon a convenient date(s) as soon as possible after the District reconvened after the winter break. (*Id.*)

41. On January 2, 2009, the Hearing Chairperson issued an Order partially granting Respondent's Motion to Dismiss wherein Petitioners' proposed resolution of "Define and implement an IEP and BIP that will provide student a free appropriate public education" was dismissed and Petitioners' proposed resolution that the Respondent pay attorney's fees and costs was dismissed. (Petitioners' Exhibit 91, pp. 754-760). The Order also identified the issues the Panel would consider with regard to Parents proposed resolutions as including: (1) Petitioners' claim for compensatory educational services relating to the IEPs in existence prior to the June 11, 2008, IEP; and Petitioners' claim for reimbursement for parenting expenses for costs incurred to obtain a free appropriate public education for student." (*Id.*)

42. On January 6, 2009, Petitioners sent a letter to the Hearing Chairperson identifying continued failure of the District to comply with discovery and the potential impact on hearing dates. (Petitioners' Exhibit 93, pp. 762-763). On January 6, 2009, Respondent sent a response to Petitioners' letter to the Hearing Chairperson, and also indicated that the District did maintain some electronic grade book information that had not yet been provided to Petitioners. (Petitioners' Exhibit 94, pp. 770-771).

43. On January 9, 2009, the Hearing Chairperson issued an Order providing Petitioners additional time to make pre-hearing disclosures, confirming the hearing dates of January 20 through 23, 2009, and date for the decision of February 23, 2009. The Order also allocated two days to each party to present their respective cases. (Petitioners' Exhibit 97, pp. 814-816).

44. Testimony in this matter was heard on January 20, 21, 22 and 23, 2009 with the record being closed on January 23, 2009. Prior to the closing of the record, the parties mutually requested to file post-hearing briefs. The court reporter advised that the transcript shall be completed on or before February 20, 2009 and based upon that date, the parties requested that they file simultaneous briefs on April 1, 2009 with each party having the option to file a responsive brief on or before April 21, 2009. Based upon this schedule, the parties further requested that the decision be entered on or before May 21, 2009. The request of the parties for the filing of post-hearing briefs, responses, and the date the decision is to be rendered was granted. The Hearing Chairperson issued an Order on January 27, 2009, memorializing the contents of this paragraph. (Panel Exhibit 1.)

C. Background Facts

45. Student has lived with her biological Mother at an address within the boundaries of the Blue Springs School District at all times pertinent to this hearing, has attended the District since kindergarten, and has qualified for special education services under IDEA for the pertinent times covered in this decision with an educational diagnosis of Learning Disabled. Student attended Delta Woods Middle School (“Delta Woods”) during the time considered by this decision.

46. While Mother testified that she did not have a good understanding of what was going on in IEP meetings, that she “pretty much had no clue,” (Tr. Vol. III, p. 626, ln. 15-19), she attended every IEP (on occasion with an advocate), participated in discussions and creation of goals, requested accommodations and modifications, received copies of procedural safeguards and made a request for an independent evaluation in 2005. In addition, the District offered explanations of procedural rights. While the Panel is not unmindful of the complexities of the

IDEA and Mother, like most , had some confusion, it does not feel, and so holds, that the limit for bringing an action herein, should be extended before May 29, 2006. To rule otherwise would negate the clear mandate which limits actions to two years.

Independent Education Evaluation of 2005 (“IEE”)

47. Parents requested an independent evaluation (“IEP”) of Student on May 19, 2005, and seek reimbursement for the costs associated therewith. Although there was no specific document evidencing the actual written request, subsequent correspondence confirms such a request was made.

48. Parents obtained an independent evaluation from Psychological Educational Associates, Marilyn N. Metz, Ph.D. which was conducted between May 24, 2005, and July 15, 2005. (Petitioners’ Exhibit 177, pp. 2566-2567).

49. Petitioners provided the District a document indicating the fee for services performed by Dr. Metz, some clearly in conjunction with the independent evaluation, was \$1,918.00, towards which Petitioners paid \$1,600.00. There is no date on this request for payment.

50. The District did not file a due process complaint to request a hearing to show that its evaluation that was in effect on May 19, 2005 was appropriate. Also, the District did not raise as a meaningful issue for this Panel regarding whether the evaluation met agency criteria, and the District has not paid anyone for the evaluation.

51. In regards to the payment for the IEE by Dr. Metz, the District wrote letters to the Parents. One letter is dated June 2, 2005 (Petitioners’ Exhibit 167, p 2160). The letter is succinct and reads as follows:

Dear _____: We are in receipt of your request to have a battery of tests done by Marilyn N. Metz, Ph.D. After reviewing Dr. Metz’s submissions, it was

determined that the Blue Springs School District will pay a total of \$500.00 for the independent evaluation.

If further clarification is needed, please contact me at your convenience.

Sincerely,

(signed)

Jennifer W. Harris, E.D., Ph.D.
Executive Director of Special Education

The second letter is dated October 3, 2005 (Petitioners' Exhibit 167, p. 2153) and reads as follows:

I am writing in response to your recent undated letter requesting reimbursement in the amount of \$1,918.00 for the cost of Independent Education Evaluation (IEE) you obtained from Psychological Educational Associates. As you know, the Blue Springs School District's Department of Special Education Procedure limits reimbursement for the cost of an IEE to \$500.00 unless the person seeking reimbursement demonstrates that costs in excess of that amount reflect the reasonable and customary rate for such services. Because you have failed to demonstrate that the charge for this evaluation reflects the reasonable and customary rate for this type of evaluation, your request for reimbursement of the total cost of the IEE is denied. As noted in my letter of June 2, 2005, however, the district is willing to reimburse you the sum of \$500.00 which represents the maximum amount allowable under Department procedures. Before the District can send you a check for \$500.00, we need a receipt marked paid from Psychological Educational Associates where the evaluation was done.

General Grade Level Curriculum

52. Mother testified that she understood that the District was providing Student grade level curriculum, and she first discovered this was not the case when teachers gave their depositions in this matter in January of 2009. However, suggesting the contrary are Student's 7th and 8th grade IEPs that note "Her deficits in math have a negative impact on her ability to understand grade level math concepts and she will be provided with ". . . specialized education for Math and Communication Arts and modified regular instruction for Science and Social Studies."

53. Annette Seago is the Deputy Superintendent in charge of curriculum and assessment for the District. Ms. Seago testified that the District has developed Curriculum Guides to define its plan to implement the objectives and grade level expectations of the State of Missouri. Curriculum Guides are developed by the District for each grade level. The District represents to state agencies and other organizations that the Curriculum Guides represent the curriculum used in the District. Teachers in the District are supposed to be referring to or using the Curriculum Guides. The Curriculum Guides are important because “it's like a blue print. [The teachers] have that objective in front of them. They have the grade level expectations.” (Tr. Vol. I, p. 222, ln. 12-17)³. If a teacher was not looking at the Curriculum Guides and was not getting direction from another teacher, Ms. Seago would be concerned.

54. Ms. Seago testified that the books listed in the Curriculum Guides would be used as part of the curriculum for the particular class in regular education classroom if that particular curriculum is being provided, although other supplemental books and materials can be used.

55. Curriculum guides also provide information on the various class/course offerings of the District and the content of these classes.

56. Ms. Seago testified that if the regular education curriculum is modified for a student, she would think that the modifications would be listed under the student's IEP goals and modifications.

57. Ms. Seago testified that to determine the appropriateness of the curriculum provided to Student, she did the following:

85

- 11 A. Actually what I reviewed is were they hitting
- 12 some of the GLEs. Were they working on her level.
- 13 Were they using materials and resources that would best

³ References to the hearing transcript are to Volume (there are four), page numbers, and line numbers.

14 help that student be able to succeed. That's what I
15 was looking for, whether it's coming through a 5th
16 grade book, a 6th grade book, or 7th grade book. I was
17 specifically looking at what were the activities and
18 did they correlate with the objectives.
19 Q. And what particular documents or materials
20 were you reviewing in seeing or looking for that type
21 of curriculum?
22 A. In looking for that type of curriculum, I was
23 looking at assignments that were given or assignments
24 that were received.

(Tr. Vol. I, p. 84, ln. 11-24)

58. Ms. Seago also testified that parts of the District's 8th Grade Math curriculum was implemented for Student with accommodations.

59. Ms. Seago testified that to identify what modifications were to be made to the curriculum, she would look at the goals and the modifications in Student's IEP for the relevant period.

60. Ms. Seago also testified that to find out what assignments had been given to Student, she looked at IG Pro and samples. IG Pro provides reports such as the reports in Petitioners' Exhibit 95, pp. 775 - 812. Ms. Seago knew these IG Pro reports existed in September 2008.

61. Ms. Seago further testified that a student's grades are related to the curriculum guide. For example, to get an "A" in 8th Grade Math, "would mean that you are going to pass a certain percentage between 98, maybe 96 and 100 percent of the curriculum that is presented."

(Tr. Vol. I, p. 192, ln. 11-24). Ms. Seago further testified that passing 8th Grade Math does not require completing or accomplishing all of the objectives listed under that course in the District curriculum guide.

62. Dr. Therese E. Finn testified on behalf of Parent. She has a doctorate in educational psychology, is a school psychologist, clinical psychologist, and neuropsychologist. She also taught learning disabilities, has a regular education degree, and she has previously testified in due process hearings both for schools and for students. Dr. Finn has expertise that allows her to explain how curriculum is supposed to work for special education students. Dr. Finn testified that “a special education student should be receiving all of the regular education curriculum for that student’s grade level unless it’s indicated otherwise in that student’s IEP.” (Tr. Vol. II, p. 391, ln. 2, p. 392, ln. 5). If the student was to receive curriculum other than their current grade level placement, it should be clearly stated the present level of academic functioning and the goal and the benchmark would match that. (Tr. Vol. II, p. 392, ln. 6-23). “If it was impossible for the child to do 6th grade work in, let’s say, math, then it should be clearly stated, present level of functioning is second grade, and curriculum -- and the goals and objectives should be along the second grade level.” (Tr. Vol. II, p. 393, ln. 2-6). Student’s applicable IEPs contained the requisite information of below grade functioning and goals to address same. Specifically, the March 27, 2007 IEP on page 3 reads:

“How the Student’s Disability Affects Involvement and Progress in the General Education Curriculum: (or for preschool children, Participation in Age-appropriate Activities) Math: Student’s learning disability affects her ability to succeed in the regular classroom. Her deficits in math have a negative impact on her ability to understand grade level math concepts.”

Page 6 addresses Math, Baselines/Goals/Benchmarks:

Baseline: Math – Operations – Student has difficulty with grade level math operations, math reasoning, and multi-step problems.

Goal: The Student will compute sum, difference, product, quotient when given assigned tasks with 88% accuracy. Direction – Increase.

–The Student will compute sum, difference, product, quotient when given assigned tasks with 88% attainment within one year based upon class assignments.

Page 9 sets forth specialized instruction for math.

The May 16, 2006 IEP, in pertinent part, on page 3 reads:

“How the Student’s Disability Affects Involvement and Progress in the General Education Curriculum: Student has difficulty focusing and staying on task. Student is significantly below grade level in math. She has difficulty attending, staying focused, and understanding directions. Her oral reading skills are stronger than (sic) her comprehension. These weaknesses effect Student in all academic areas.”

Page 7 addresses Baselines/Goals/Benchmarks and reads:

“Baseline: Math – Operations – Student has difficulty (sic) with grade level math operations and multi-step problems.

Goal: The student will compute sum, difference, product, quotient when given daily assignments with 85% accuracy. Direction – Increase.

-The student will compute sum, difference, product, quotient when given daily assignments with 80% attainment with first semester based upon class assignments.

-The student will compute sum, difference, product, quotient when given daily assignments with 85% attainment within second semester based upon class assignments.”

Page 13 sets forth special education for math.

(Respondent’s Exhibit 6, pp. 174, 177, 180, 188, 192 and 198).

63. In her testimony, Dr. Finn opined that a child with a learning disability:

. . . is supposed to receive remediation, as well as accommodations or compensatory . . . they can compensate for their learning disability if it's not able to be totally remediated. If they're in the regular curriculum, the special ed teacher is supposed to be aware of that curriculum, be a consultant to the teacher so that the child is exposed to that level of material . . . the definition of learning disabilities, subject areas is usually they're about two years or more below on achievement tests. So what happens -- let's take an example of math . . . the 6th grade curriculum, they're going to be exposed to long division, but the LD child cannot do math facts. They have trouble with their memory and it just isn't there. So what you do is you allow the child to use a calculator in order to figure out the facts, in order to expose them to the long division process. You wouldn't just remediate math facts all day long.

(Tr. Vol. II, p. 389, ln. 11; p. 390, ln. 7).

64. Petitioners' witness, Dr. Seabaugh, founder and director of Plaza Academy with a Ph.D. in developmental and child psychology, and the author and publisher of scientific and educational journals for 36 years, testified that, at Plaza Academy, Student is being provided regular grade level curriculum and also remedial services in her deficit areas. Dr. Seabaugh also testified that Student, while attending Plaza Academy, was given below grade level curriculum as a part of a sequential learning theory to assist in filling math deficits. This practice was similarly employed by the District.

65. Prior to May of 2008, Mother testified that she did not have any information that an academic skills class existed at the Blue Springs School District that might be an alternative to resource instruction.

66. Mother testified that she has always had concerns that Student was not learning what she needed to be learning or should be learning from the District. Prior to January 2009, Mother indicated that she did not have any evidence that the District wasn't helping Student learn what she should, and the District "always reassured [her] that everything was okay and things were going well" and that the District was "doing everything they could and should do to help [Student] with her education." (Tr. Vol. II, p. 492, ln. 7-18). This position is refuted by Mother's intensive involvement in her daughter's education (to her credit) and her numerous expressions of platitudes and gratitude expressed to District personnel for the quality of education being afforded her daughter by the District. One such example is Mother's written thanks regarding Student's 7th grade year wherein she stated it was her daughter's "best year in school ever." (Respondent's Exhibit 11, p. 426).

67. Mother testified that she did not see any significant change in Student's math goal from the time she was in 4th and 5th grade to 8th grade although she apparently was in agreement with the math goals at the time they were presented.

68. Mother testified that she continuously made requests to try and understand what was going on including with Student's goals, but nobody ever had time to help her. However, District personnel (Tara Ely, Kirsten Clemons and Marla) testified to the contrary by stating that all of Mother's questions posed at the IEPs were answered or addressed.

69. Student's transcript indicates that in Grades 6, 7, and 8, Student progressed at or above an average level in all classes except Sixth Grade Science ("D") and Speech and Drama ("D"), Seventh Grade PE/Health Second Semester ("D"), and Eighth Grade PE/Health ("D") and Art ("F"). (Petitioners' Exhibit 99, p. 838). Student's regular education report cards indicated to Mother that Student "was doing fine." (Tr. Vol. II, p. 499, ln. 23-25). When Mother got the grade reports, they indicated to her that the grades were based on Student doing the regular education curriculum for that grade level, and she felt it was never otherwise indicated even though Student's IEPs indicated that she would be receiving "specialized education and modified regular education" curriculum. (Respondent's Exhibit 6, 180, 198). Also, Student's progress reports indicated that her grades were based upon modified curriculum and later, homebound assignments. (Petitioners' Exhibit 115, p. 1105; Petitioners' Exhibit 116, pp. 2054-2057; and Petitioners' Exhibit 179, p. 2661).

70. Dr. Seabaugh testified that Student has a deficit in math which is significant and generalizes to other things like science education. Dr. Seabaugh testified that Student is also two to three grade levels behind in science and is at least two or three grades below her chronological age.

71. Dr. Seabaugh believed that Student's IEP calls for the remediation of the math deficit and, by extension, other academic deficits and in the remediation of her social skills deficits. Plaza Academy is providing remediation in math and science. He also believes the accommodations provided to Student at Plaza Academy are those that are in her June 2008 IEP which was created by the District's IEP team.

72. Dr. Finn saw that Student's IQ was either 91 or 84 on the two different evaluations, and the statistical variability says you can go plus or minus 6 points on a given day, so her IQ could be as high as 97 or as low as 85. Therefore, Student should not be more than six to eight months below in a subject area. However, the low range, given statistical variability, yielding 85 was based on the higher IQ score Dr. Finn observed. If this analysis was applied to the other IQ score seen by Dr. Finn (84), a statistical variance of 6 points would be 78 and Dr. Finn testified if Student's IQ was in the seventies, there would be a bigger deficit.

73. Dr. Finn testified that based on Student's 2004 evaluation, Student's needs for special education and related services included "math remediation, especially word problems as well as written language." (Tr. Vol. II, p. 400, ln. 13-19). Student was receiving specialized education and communication arts under her 7th and 8th grade IEPs. (Respondent's Exhibit 6, pp. 180, 190).

74. Dr. Finn testified that Student should definitely be exposed to the regular grade curriculum, be receiving resource services, be exposed to such courses as social studies and science, and if there's any kind of math involved, get the remedial service in order to access that curriculum. She further testified that if Student is in 7th grade, she should be receiving the regular education curriculum for 7th graders plus additional special education help to access that curriculum. The Panel finds that Student received exposure to the regular education curriculum

in science and social studies per her IEPs while attending Delta Woods. Student was also being provided remedial and/or specialized education in math and communication arts so she could access grade objectives.

Bullying/Social Skills Needs

75. Student testified that she felt like she was being bullied or harassed when she was in 4th grade, 5th grade, 6th grade, 7th grade, and 8th grade. However, credible evidence, including from Petitioners' witness, Dr. Seabaugh, was presented that Student could not identify bullying behavior from other students and that Student misplaced actions and intentions of others.

76. Chris Coleman, Student's aunt, attended a school meeting regarding Student and complaints about bullying on or about May 3, 2005, and took notes. (Petitioners' Exhibit pp. 2445-2452). Prior to May 3, 2005, she also attended another meeting and took notes. (Petitioners' Exhibit pp. 2455-2464). As a result of the meetings, a plan was developed to address bullying and the District was informed that Student had Tourettes.

77. Student defined bullying to include times when other students were doing the following: "call me names," "push me or shove me," "pretty much torture me and put me through a living hell." (Tr. Vol. I, p. 239, ln. 21; p. 240, ln. 1; p. 307, ln. 12-10). Names included names such as "loser," "fagot," "psycho," and "Emo child." (Tr. Vol. I, p. 240, ln. 2-5; Vol II, p. 308, ln. 4-8). They also would discuss how she cut herself. In 4th grade, a boy pulled on her hood and choked her. She also stated that Students, "would push me, try and shove me up against lockers, trying to shove my head in a locker in middle -- or yeah, in middle school, because elementary they didn't have lockers. But in elementary, down on the playground, they'd knock me over or -- in PE they'd throw the dodge ball at me and throw things at me." (Tr. Vol.

I, p. 244, ln. 10-18; Vol. II, p. 308, ln. 7-10). Parent also reported to the District that Student was receiving troubling telephone calls at home for things that started at school. Mother wanted the District to be watchful since if it was happening outside of school, and from Mother's perspective, it was most likely happening at school. Except for one occasion, Student could not identify any specific students that she said bullied her, nor could she identify any specific staff member with whom she consulted.

78. Referring to the bullying, Student stated, "nobody did a damn thing about it. I felt like nobody ever cared." (Tr. Vol. I, p. 240, ln. 13-15). She reported it to teachers, but she did not feel like the teachers did much about it because other students continued bullying her. In 6th Grade, Student talked to the Principal, Dr. Randy Dowell, about the bullying, and he "Pretty much flat out told me that I'm wasting his time and that he doesn't care and that I'm a liar." (Tr. Vol. I, p. 242, ln. 21; p. 244, ln. 2; p. 305, ln. 4-16). According to Mother, Dr. Dowell told her that Student was wasting his time. According to Student, when Ms. Jacoby was Student's principal, in Student's 4th or 5th grade year, Student gave Ms. Jacoby a note describing conflicts between her and other Students. (Petitioners' Exhibit 170, p. 2443). In April 2005, Student wrote a note in her school agenda describing conflicts between her and other students and Student's teacher(s) reviewed the agenda every day to see what she had written. (Petitioners' Exhibit 170, p. 2444). On April 30, 2007, in P.E. with Ms. Edmundson, Student was being called "faggot" and "Emo child" by another student and retaliated by telling the other student he was a "pussy" and "didn't have any balls" and reported this to Ms. Clemons. On May 29, 2007, Student defended herself and her friend from a kid who wouldn't just leave them alone, by kicking and pushing the other kid. On December 17, 2007, Student swore at other students because they were calling her names, saying she was "psycho" and "stuff like that, and just

nasty.” (Tr. Vol. II, p. 281, ln. 9; p. 282, ln. 8). According to Student, the only thing the District would do is talk to the kids, and then it would just get worse. It is apparent to the Panel, based upon the testimony of staff members and incident reports, that Student kicked, pushed and called other students vulgar names. Provocation of incidents of conflict can partially be attributed to other students while the origin of other disputes can be attributed to Student. Student’s depiction that school was horrible to her is refuted by the fact that Student had many friends at school, was excited to attend school and upon leaving the District, missed other student’s “bugging her.” (Respondent’s Exhibit 21, p. 752; Respondent’s Exhibit 10, p. 342). While the conflicts between Student and other students were often intense and dramatic, some reflect the challenges of adolescence. Credible evidence was presented by Principal Steve Cook and Assistant Principal Kristen Clemons, and the Panel so finds, that the incidents of alleged bullying and threats toward Student were adequately addressed by the District.

79. During the 2007-2008 school year which Student attended the District (her 8th grade year) for approximately five and one-half (5½) weeks, Student would tell her Mother about bullying and harassment that was happening to her at school “all the time.” (Tr. Vol. II, p. 497, ln. 17-21). Mother would then call and report to the principal to let the school know what was going on. During the entire fall semester of the 2007-2008 school year, Mother and the District were in constant communication regarding Student, her time at school and peer interaction. Given the communication received from Petitioners, District staff was convinced that Student’s transition back to school was a success. (Respondent’s Exhibit 10, pp. 324-325, 331-332, 334-335).

80. Steve Cook was the principal at Delta Woods during the 2006-2007 and 2007-2008 school years Student was in 7th and 8th Grades. He testified that he was not aware of any

suicidal behaviors or self injurious behaviors that Student had prior to learning of her September 2007 suicide attempt. He testified that the first time he heard the word bullying being used was after Mother met with Kirsten Clemons, assistant principal at Delta Woods, whose main job was discipline, on September 6, 2007.

81. Student did not believe anything positive or good resulted from her reporting bullying and harassment to people in the Blue Springs School District when Student was in 7th or 8th grades. However, as stated above, the Panel finds that all reports concerning mistreatment of Student were investigated and handled appropriately.

82. Student's May 16, 2006, IEP, indicates Parents have "Concern with comments and how to deal with the frustration. A safe place is a good option . . . Concern of Social Skills to learn to deal with situations (coping skills) group or individual." (Respondent's Exhibit 6, p. 190). Said IEP included a safe place/person (Margaret Grice) and Student was placed in a support group for her 7th grade year. (Respondent's Exhibit 6, p. 194; Respondent's Exhibit 11, p. 365).

83. No one who testified for the District indicated they saw Student being bullied.

84. After September 6, 2007, Mr. Cook contacted Steve Brown, who is someone the District can call for assistance if the terminology bullying was being used. Mr. Brown works for the Department of Public Safety for the school district, central office, and the District considers Mr. Brown to be its bullying expert. His responsibilities include security and he has had training in the Olweus Bullying Prevention Program the District implements. The Olweus program is an internationally renown anti-bullying program. According to Olweus, in order to make an accurate determination of whether or not bullying occurred, you would have to know what the victim was feeling and saying was happening.

85. Mr. Cook testified that Mr. Brown conducted an investigation. Mr. Cook provided Mr. Brown access to Student's discipline records (Respondent's Exhibit 1, p. 10) and discipline notes concerning those discipline actions. Mr. Brown was provided with no other documentation. Mr. Cook did not provide Mr. Brown any information regarding Parents' past complaints regarding bullying of Student as Mr. Cook was not aware of any such events that occurred during elementary school.

86. Mr. Cook testified that Mr. Brown found that no bullying occurred, and, in fact, Student probably instigated many of the confrontations.

87. One of the Olweus program factors for determining whether or not bullying is happening is whether or not there is an imbalance of power. There is an imbalance of power when one student has power over the other one, to humiliate, to upset, to try to control. Mr. Cook testified that there was a potential imbalance of power when Student was hospitalized because she felt hurt by what other people were doing to her. When Student was hospitalized due to a drug overdose in September of 2007, she identified (as being part of the reason she was hospitalized) her sister and boyfriend by making her feel uncomfortable, creating issues for her by pressuring her to fight back at school.

88. Student did not understand why other students treated her as they did and wondered if someone was trying to tell her something. (Tr. Vol. I, p. 241, ln. 15-19). Her perception of the manner in which other students treated her was skewed given her inability to accurately interpret her social interactions with her peers. According to Dr. Seabaugh, Student perceived things to be other than what they are. Student had difficulty in recognizing behaviors directed toward her.

89. Student believed the bullying affected her ability to learn because she “got too upset” and “couldn’t focus” on her school work. (Tr. Vol. II, p. 259, ln. 13; p. 259, ln. 19).

90. Student was diagnosed as having Tourette syndrome by Dr. Wubbenhorst prior to Student being in 6th grade. Mother provided the information to the District and brought it up during IEP meetings when Student was in 6th, 7th and 8th grade. Mother explained to the IEP team that because of Student’s Tourettes, “that under pressure that the child can have outbursts. . . outbursts of language that is not appropriate can occur. They have self-esteem issues because of it, they are embarrassed, and a lot of children don’t want to be around them.” (Tr. Vol. III, p. 595, ln. 5-22).

91. The District was aware that Student was cutting herself sometime around May 2007. Ms. Hahn saw cuts where Student carved the “F” word in her arm when Student was in 7th Grade close to summertime at a location off of the school’s premises. School records indicated that this was reported to the School on May 15, 2007. Also reported to the school was that Student had tried to choke herself at a skating rink (off school premises) and had been seen out on the track at school cutting her wrist. (Petitioners’ Exhibit 1, 21-22). With reference to the report of wrist cutting at school, the incident was investigated by Assistant Principal Kristen Clemons and Ms. Clemons observed no evidence supporting the wrist cutting.

92. Also, with reference to the report of wrist cutting, and in accordance with Ms. Clemons’ follow-up investigation, on May 15, 2007, a student (Student B)⁴ reported to Ms. Clemons that about five students were walking by Student motioning cutting motions with their wrists and saying “hey, [Student], do you cut yourself.” (Tr. Vol. IV, p. 902, ln. 2-14; Respondent’s Exhibit 1, pp. 21-24). Student B also reported to Ms. Clemons that similar

⁴ Students B, C and D referenced in this decision refer to other students whose actual first names appear in the exhibits and the record. The Panel, for obvious privacy concerns, has identified these students by letters.

incidents had been occurring in the cafeteria over the past couple months but those incidents had stopped and said that [Student] cusses at them. Ms. Clemons stated that she talked to some of the students and confirmed at least some of this information. Ms. Clemons also testified that she spoke with Student B's mom about his report. Student B's mom told Ms. Clemons that her son had told her that the students were saying to Student that "are you cutting yourself, are you going to cut yourself again." (Tr. Vol. IV, p. 903, ln. 20-24). Another student (Student C), reported to Ms. Clemons that "in PE [Student] had brought a knife to school and cut her wrists with a knife" and covered it with a hoodie. (Tr. Vol. IV, p. 904, ln. 17-21; p. 905, ln. 6-7). Student C identified other students who also saw the incident that took place on the school track during PE, and described the knife. (Tr. Vol. IV, p. 904, ln. 21; p. 905, ln. 4). Student C was the person who reported that he had witnessed Student trying to choke herself at the skating rink.

93. Ms. Clemons testified that she talked to Mrs. Grice, counselor, regarding the situation related to the May 15 report, and that Mrs. Grice's response was, "We just talked about the situation. She said that she would let me know if students or if she heard any teachers or anything else of this nature come up she would let me know." (Tr. Vol. IV, p. 939, ln. 19; p. 940, ln. 3). Ms. Clemons testified that she did not hear from Ms. Grice after that date.

94. Ms. Clemons testified that she made contact with Student's Mother and provided information to Mother regarding the May 15 report. Ms. Clemons also said she talked to Student who denied the cutting.

95. Prior to the five-day disclosures for the Due Process hearing, Mother testified that no one ever informed her of any information related to the May 15, 2007, report or information in Respondent's Exhibit 1, p. 21-24, regarding the self-choking incident at the skating rink. Had she known, Mother stated that she would have got more intense treatment for Student's social

skills. However, Ms. Clemons' notes indicate the information she gathered, including contact with Mother. (*See* Respondent's Exhibit 1, pp. 21-24). Her testimony confirmed this contact. Absent from Ms. Clemons' notes are Student's denial of the cutting and Mother's response to Ms. Clemons' contact.

96. Ms. Hahn, Student's teacher at the time, testified that she was not aware of anything related to the May 15, 2007, report. Mr. Cook, the Principal at the school at the time testified that he was not aware anything related to the May 15, 2007, report.

97. Ms. Clemons testified that Student was meeting with counselor, Mrs. Grice. Mother testified that no one ever told her anything about Student getting counseling at school. Ms. Grice testified that Mother was aware of the counseling and Student's May 16, 2006 IEP (p. 10) indicated a safe place with Ms. Grice.

98. Prior to the five-day disclosures for the Due Process Hearing, according to Mother, no one ever informed her of the information in Respondent's Exhibit 10, p. 364 which indicates a report was made to the District on September 4, 2007 that Student is saying she is cutting and smoking.

99. On September 10, 2007, Ms. Clemons received a report from Heather Edmonsond (PE Teacher) that Student had approached Ms. Edmonsond "and was concerned girls were making fun of her." (Respondent's Exhibit 17, p. 666). After Student had shared sensitive information with the girls, Ms. Edmonsond advised Student to keep private things to herself and warned other students not to tease Student. (Respondent's Exhibit 17, p. 666).

100. As stated above, in September 2007, Student attempted suicide by taking pills when she was at home. As also stated above, according to Student, the stress that led to Student's attempted suicide and hospitalization in September 2007, included people at school,

Student's sister pressuring her to do the same thing to other students that other students did to her at school with regard to the bullying, and Student's boyfriend pressuring her to fight back against the students at school. (Petitioners' Exhibit 165, pp. 1975-1976).

101. Student went on homebound instruction after the September 2007 suicide attempt. Prior to Student transitioning back to school, there was a meeting and the District, according to Ms. Seago, promised they would "have somebody in close proximity to [Student] at all times in case a bullying issue or harassment would come up, it would be stopped immediately." (Tr. Vol. II, p. 493, ln. 14-21). The District complied with this promise by taking numerous steps to protect Student including a teacher (Tara Ely) meeting Student at the bus every morning and made sure she was close to Student before school, kept her eyes on Student as she went from class to class and trips to the bathroom, and when Student left for the day, walked her to the office. In addition, Mr. Cook met with Student's entire team of teachers advising them to keep a close eye on Student and "described" a safe room where Student could go with Ms. Grice. In addition, Mr. Cook also had an open door policy with Student which Student could use to chat with Mr. Cook, and she did so.

102. On or around November 15, 2007, Mother informed Mr. Cook of a concern that a particular child was bothering Student on the bus which was immediately addressed by Mr. Cook for which Mother thanked Mr. Cook and told him (by e-mail) that Student was "excited to come back" to school. (Respondent's Exhibit 10, p. 338).

103. Mr. Cook testified that in the Fall of 2007, after Student transitioned back to school, she never came to him with any bullying or harassment concerns, and it did not seem to him like Student was like a child that was being bullied or harassed.

104. Ms. Ely testified that she did not recall any major issues arose while she observed with Student between Thanksgiving and Christmas 2007.

105. Mr. Cook testified that during the Fall of 2007, there was a situation . . . where supposedly another student had been calling [Student] some names and he followed up and interviewed the other student. He testified that they could not find anything concrete that there was something happening between the two students.

106. Mr. Cook testified that on November 29, 2007, Student reported to Ms. Ely and Mr. Cook that another student was giving her a look, heard her say her name, also felt like she was going to give her the finger. Mr. Cook stated that in most cases he probably wouldn't have dealt with this situation, but so did because of Student's past he investigated the situation and contacted Mother.

107. On December 16, 2007, Mother expressed concern that during lunch unforeseen problems could occur, and asked if whomever is on lunch duty be close enough to intervene quickly if a problem should occur. (Respondent's Exhibit 10, p. 328).

108. Mr. Cook testified that on December 17, 2007, a situation occurred in the cafeteria. He testified that his investigation indicated that Student was messing with a boy's hair, the boy asked Student to stop, Student continued, and the boy got upset and made the comment that "at least I don't get kicked out of school for overdosing." Another party involved made a statement about Student being a cutter and an emo. At that point Student stood up and yelled. (Tr. Vol. IV, p. 863, ln. 10; p. 864, ln. 3; p. 890, ln. 1; p. 891, ln. 3). Student denied she had messed with the boy's hair. (Respondent's Exhibit 10, p. 326). Subsequently, Student, in writing, apologized for her behavior in the lunchroom on December 17, 2007 and thanked Mr. Cook and his staff for taking good care of her. (Respondent's Exhibit 10, p. 327).

109. In regard to the December 17, 2007 incident, Ms. Clemons also testified as follows:

“We had an incident in the lunch room. Myself and Deb Becker, the activities director, were doing lunch room supervision and we heard [Student] yell shut the fuck up. It was extremely loud, in which quite a few kids had responded and turned their head to look over in [Student's] direction. Ms. Becker and I immediately went over to the table to find out what was going on with [Student] and what provoked her in to saying that.”

(Tr. Vol. IV, p. 928, ln. 10-18).

110. As a follow-up to the December 17, 2007 cafeteria incident, Mr. Cook called Mother and according to Mother, asked, “Is [Student] okay? . . . there was an incident today . . . in the cafeteria.” (Tr. Vol. II, p. 493, ln. 22; p. 494, ln. 6; p. 496, ln. 13-19). “[Student] was in the cafeteria eating lunch. There were some boys that were calling her names and telling her that at least they didn’t get kicked out of school for trying to commit suicide, and just some real demeaning, hurtful things to her.” (Tr. Vol. II, p. 496, ln. 5-12). When Mother and Student went to the school for a meeting related to the incident, “Ms. Clemons came in and asked [Student] what she had done to Student D.” (Tr. Vol. II, p. 495, ln. 4-10). Mother then told Ms. Clemons, “Wow, wait a minute. You need to go ask Student D, did he maybe do something to [Student].” (Tr. Vol. II, p. 495, ln. 13-17). Mother felt that Student D “felt really, really bad because what he had done to [Student] in the cafeteria with the other boys.” (Tr. Vol. II, p. 495, ln. 13-21).

111. On December 27, 2007, Student again attempted suicide when she was at home on Christmas break, by stabbing herself with a key.

112. Student testified that she did not think she would have ever attempted suicide if the bullying and harassment that went on at school had not occurred.

113. As part of Dr. Seabaugh's expertise, he is able to identify whether or not a student has or in the past has had weaknesses in their ability to recognize threats from other students and teachers. Plaza Academy has collected data on Student including empirical observations of her behaviors and other measurements. Dr. Seabaugh has seen Student every day, teaches her first and last hour of the day, and frequently provides critical counseling.

114. Plaza Academy is a North Central Association accredited high school and a Missouri approved private agency. Plaza Academy has expertise and success in treating maladies whereby a student has a weakness in their ability to recognize threats from other students and teachers. One part of the comprehensive treatment protocol at Plaza Academy is to provide social skills training in the form of a weekly adolescent group process, and integration of impulse control, self-management training, and other strategies developed at the University of Kansas.

115. Dr. Seabaugh testified that Student "...has a presenting problem ...where she doesn't perceive social situations among her peers." (Tr. Vol. II, p. 344, ln. 5-8). Dr. Seabaugh testified that Student has "...a social skill deficit that more than likely has existed for some time." (Tr. Vol. II, p. 344, ln. 25; p. 345, ln. 1). Student is "very much" deficient in social skills to the extent "it draws her attention and her motivation and her vigilance away from her schoolwork." (Tr. Vol. II, p. 351, ln. 1-11).

116. Student's social difficulties, as described by Dr. Seabaugh, are exhibited in the following situation described by Ms. Clemons in reference to a disciplinary incident on October 19, 2006:

"ANSWER . . . There was a mixer situation in which we were in the cafeteria with the DJ dancing and [Student] pushed Student E [a student] and Student E had pushed her back. [Student] was

offend -- [Student] reported it to me. I happened to be standing right at the incident when it happened.

QUESTION: Let me stop you right there . . . did you witness the shoving between the girls?

ANSWER: Yes, I did.

QUESTION: Did you witness I guess who shoved first?

ANSWER: Who shoved first? The kids were in a mixer, mind you, middle school, the kids are dancing, running around. It was a situation where Student E had bumped into [Student], [Student] pushed Student E, Student E pushed back.

QUESTION: And from your observation of the incident, did it seem that Student E had done this intentionally?

ANSWER: No, it did not.”

(Tr. Vol. IV, p. 910, ln. 5; p. 910, ln. 14; p. 911, ln. 8).

117. Dr. Seabaugh concluded right after Student came to Plaza Academy that she needed social skills training integrated into her treatment model. To address Student’s social skills deficit, Plaza Academy provides Student a stable social milieu, frequent critical counseling, a therapeutic group, and social skills training. To address Student’s social skills deficit, Plaza Academy also provides a self-management training protocol and other research based methods, and self-defense training. The structure of the building also is designed to help students with social skills problems in that cameras photograph the inside and the outside of the building at all times, on a digital recording device, and provides a preventative effect. The environment enables Student to get feedback almost immediately so Student doesn’t ruminate and dwell on thoughts which produce negative motions which then diminish her motivation to do other things. The social skills training used by Plaza Academy is from the University of Kansas Institute for Learning.

118. Dr. Finn testified that she reviewed Student's 2004 evaluation (Respondent's Exhibit 4, pp. 120-130) and that, in so doing, she noticed the picture arrangement score on the Wechsler intelligent quotient was consistently low. Student's "scale score was either 1 or 3, and 1 being the lowest and the high would be 19 . . . and that subtest measures visual attention, social intelligence, social judgment." (Tr. Vol. II, p. 400, ln. 20-27). With respect to Student's need or deficits in social skills, this told Dr. Finn That she has significant social imperceptions, poor social judgments, poor social interaction skills. It would be difficult for her to initiate a conversation or have a friend. She might have had to be scripted, 'What do you do when you meet a friend.' So I think that her judgment was, you know, very, very poor, very immature." (Tr. Vol. II, p. 401, ln. 8-18). This indicated to Dr. Finn a concern about this Student's ability to defend herself against bullying and harassment or to be the subject of bullying and harassment, because Student ". . .really wouldn't know what to do in that situation. She wouldn't know how to defend herself verbally, and she probably would not be able to pick up the body cues if somebody gave her a dirty look, that kind of thing. Because her attention especially for social skills and social attention is so poor." (Tr. Vol. II, p. 401, ln. 8; p. 402, ln. 5). Dr. Finn testified that Student should have had some goals to work on her social skills deficit with a social worker or psychologist.

6th Grade (2005/2006)⁵

119. The following exhibits constitute the District's Curriculum, although current when printed, were not the exact Guides in place for Grade 6 during the 2005/2006 school year when Student was in Grade 6: Petitioners' Exhibit 100 ("6-8 Grade Health and Physical Education");

⁵ While there was evidence presented about the use (or lack thereof) of grade level curriculum goals, textbooks, workbooks and Student's IEPs for her 6th grade, the Panel's decision concerning the statute of limitations precludes consideration of such evidence except for the final days of Student's 6th grade year. The Panel, as reflected above in this decision, has gone into detail beyond the two year timeline primarily relating to behaviors to give a perspective on Student's personality, needs and deficiencies.

Petitioners' Exhibit 152 (G6 Vocal Music); Petitioners' Exhibit 122 (G6 Social Studies); Petitioners' Exhibit 146 (G6 Art); Petitioners' Exhibit 123 (G6 Science); Petitioners' Exhibit 149 (G6 Speech/Theater); Petitioners' Exhibit 117 (G6 Math); Petitioners' Exhibit 116 (G6 Communication Arts); Petitioners' Exhibit 118 (G6, 7, 8, 9, 10 Read 180); Petitioners' Exhibit 151 (G6 Family and Consumer Science); Petitioners' Exhibit 148 (G6 Introduction to Computers); Petitioners' Exhibit 147 (G6 Introduction to Technology); Petitioners' Exhibit 150 (G6 Communication Arts Foreign Language); Petitioners' Exhibit 153 (G6 Band/Orchestra); Petitioners' Exhibit 118, pp. 1179-1187 (G6 Reading); Petitioners' Exhibit 145 (G6 Communication Arts Reading 6).

120. Textbooks and workbooks that would have been part of the regular education curriculum and used with regular education 6th Grade students during the time Student was in 6th Grade included the following: *Geography Tools and Concepts* (G6 Social Studies); *Language of Literature* (Gold) (Communication Arts); *Language Network* (Gold) (Communication Arts); *Introduction to Physical Science* (Science); (Petitioners' Exhibit 127; Tr. Vol. I, p. 42, ln. 22, p. 46, ln. 13). *Exploring Languages A Complete Introduction for Foreign Language Students* and *Young Living* (Red). (Petitioners' Exhibit 98, p. 817).

121. The District's 6th Grade Curriculum Guide identifies additional books not used by Student included McDougal Littell *Middle School Math-Course 1* (Math) (Petitioners' Exhibit 117, p. 1165). However, grade level curriculum is not required to teach grade level objectives and the District used both 5th and 6th grade level curriculum which often overlap.

122. Student testified that she never used the following books: *Language Network* (Communication Arts); *Exploring Languages A Complete Introduction for Foreign Language Students*; *Language of Literature* (Gold) (Communication Arts). (Tr. Vol-I 234:11-236:7).

Student did use the following books:); *Introduction to Physical Science* (Science); *Geography Tools and Concepts* (G6 Social Studies). (Petitioners' Exhibit 14, p. 92).

123. Ms. Hennessey, Student's special education teacher for Language Arts, Reading, and Math, during all of Student's 6th grade year, testified that Student's primary math textbook in 6th grade was a Houghton Mifflin 5th Grade Math book. (Petitioners' Exhibit 14, p. 91). For curriculum with Student, Ms. Hennessey used 5th and 6th grad Curriculum Guide. (See Petitioners' Exhibit 14, p. 91).

124. Ms. Hennessey testified that Student's primary textbooks she used with Student for Language Arts included: a 5th grade McDougall Editing book, a 5th grade Houghton Mifflin Language Arts Series and a Scott Forzman or Houghton Mifflin series on reading that was at some level between pre primer up to fifth grade. (Petitioners' Exhibit 14, p. 92). These books were not provided to Petitioners. (Petitioners' Exhibit 117, p. 1165). Ms. Hennessey chose these books to use because most of the students she had were reading significantly below grade level and they were materials she had at the time. (Petitioners' Exhibit 14, p. 92). Ms. Hennessey did not use the District 6th Grade Reading Curriculum Guides, but did cover most, if not all, of the Student's 6th grade reading objectives. (See Petitioners' Exhibit 14, p. 93).

125. On August 18, 2005, an IEP was developed for Student, for the period of August 23, 2005, (projected) through August 12, 2006). (Petitioners' Exhibit 121). This period involved approximately all of Student's 6th Grade school year 2005-2006.

126. Student's August 18, 2005, IEP, defined five goals for Student: (1) "The student will solve story problems independently with 80% accuracy."; (2) "The student will compute multiplication facts to 81 independently with 100% accuracy."; (3) "The student will proofread paragraphs when given editing exercises with 80% accuracy."; (4) "The student will stay on task

during each class period with 75% accuracy.”; (5) “The student will use independently with 80% accuracy. - The student will write her name in cursive when given daily writing assignments with 80% attainment within one year based on formal writing samples. - The student will use cursive handwriting in the classroom setting to complete assignments with functional spacing between words and sentences, letter size, and letter formation when given daily writing assignments with 80% attainment within one year based upon formal writing samples.” (Petitioners’ Exhibit 12, p. 1207). Progress toward goals was to be reported every six weeks through an Individualized Progress Report and Regular Education Grade Card Progress Report. (Petitioners’ Exhibit 121, p. 1214).

127. To help Student achieve her IEP goals, Student’s August 18, 2005, IEP provided that Student was to receive 450 minutes per week of modified regular instruction in Science and Social Studies in special/regular education. Student was also to receive 675 minutes per week of Resource special education instruction in Math and Communication Arts. Additionally, Student was to receive 30 minutes per week of Occupational Therapy in regular education. (Petitioners’ Exhibit 121, p. 1215). The 675 minutes of special education was broken out by the special education teacher as 225 min/Math, 225 min/Communication Arts, and 225 min./Reading. (Petitioners’ Exhibit 14, p. 89).

128. Student’s August 18, 2005, IEP, defined a Behavior Intervention Plan targeting “Off task” behaviors for the goal: “The student will stay on task in the classroom 75% of the time.” (Petitioners’ Exhibit 121, p. 1210).

129. Student’s August 18, 2005, IEP, defined a Safety Plan providing that Student’s “teachers/classroom aide are responsible to assist [Student] in case of as emergency. [Student]

could become confused/full of anxiety which may interfere with her thinking process.” (Petitioners’ Exhibit 121, p. 1212).

130. Dr. Finn testified that in her opinion, Student’s August 18, 2005, IEP did not indicate Student would not be provided with the regular education curriculum for her grade level placement, and that according to the IEP Student should have received all of the regular 6th grade education curriculum during the time the IEP was in place. During special education, Student should have received remedial services. However, the Panel holds, given the special education services provided, appropriate modifications and accommodations, and content, that the August 18, 2005 IEP was appropriate and met all requirements for the Student.

131. Student’s regular education grade reports indicate that in Grade 6, Student’s grades for Social Studies were based on modified assignments. (Petitioners’ Exhibit 115, p. 1105). Student’s grade report indicates Student received a 1st Semester grade of “C” and a 2nd Semester Grade of “C-.” Student’s term grades were as follows: 1st Trm – “C+”; 2nd Trm – “D”; 4th Trm – “D-“ and 5th Trm – “D.” (Petitioners’ Exhibit 115, p. 1105).

132. Student’s regular education grade reports indicate that in Grade 6, Student’s grades for Science were based on modified assignments. (Petitioners’ Exhibit 115, p. 1105). Student’s grade report indicates Student received a 1st Semester grade of “D” and a 2nd Semester Grade of “C-“. Student’s term grades were as follows: 1st Trm – “C+”; 2nd Trm – “C-“; 4th Trm – “C”; and 5th Trm – “C-“. (Petitioners’ Exhibit 115, p. 1105).

133. Student’s regular education grade reports indicate that in Grade 6 Math, Student received a 1st Semester grade of “B” and a 2nd Semester Grade of “B+.” Student’s term grades were as follows: 1st Trm – “B”; 2nd Trm – “B-“; 4th Trm – “D”; and 5th Trm – “B”.

(Petitioners' Exhibit 115, p. 1105). Student's Progress Report indicates that on February 22, 2006, Student had a grade of 79% ("C+"). (Petitioners' Exhibit 119, p. 1200).

134. Student's regular education grade reports indicate that in Grade 6 Reading, Student received a 1st Semester grade of "B" and a 2nd Semester Grade of "C-." Student' term grades were as follows: 1st Trm – "A"; 2nd Trm – "B-"; 4th Trm – "D"; 5th Trm – "D". (Petitioners' Exhibit 115, p. 1105).

135. Student' regular education grade reports indicate that in Grade 6 Art, Student made satisfactory progress ("S"). (Petitioners' Exhibit 115, p. 1105).

136. Student's regular education grade reports indicate that in Grade 6 Foreign Language, Student made satisfactory progress ("S"). (Petitioners' Exhibit 115, p. 1105).

137. Student's regular education grade reports indicate that in Grade 6 Computers, Student made satisfactory progress ("S"). (Petitioners' Exhibit 115, p. 1105).

138. Student's regular education grade reports indicate that in Grade 6 Technology, Student made satisfactory progress ("S"). (Petitioners' Exhibit 115, p. 1105).

139. Student's regular education grade reports indicate that in Grade 6 Home Living, Student made unsatisfactory progress ("U"). (Petitioners' Exhibit 115, p. 1105).

140. Student's regular education grade reports indicate that in Grade 6 Speech & Drama, Student made unsatisfactory progress ("U"). (Petitioners' Exhibit 115, p. 1105).

141. Student's regular education grade reports indicate that in Grade 6 Language Arts, Student received a 1st Semester grade of "B" and a 2nd Semester grade of "B+". Student' term grades were as follows: 1st Trm – "A-"; 2nd Trm – "B+"; 4th Trm – "B"; and 5th Trm – "B+". (Petitioners' Exhibit 115, p. 1105). Student's Progress Report indicated that on December 12, 2005, Student had a grade of 87% ("B+").

7th Grade (2006/2007)

142. On May 16, 2006, an IEP was developed for Student. (Respondent's Exhibit 6, pp. 186-201). This IEP was to be effective for the period commencing August 16, 2006 which was Student's 7th Grade year. (Respondent's Exhibit 6, p. 193). Marla Hahn, Student's Special Education teacher, during Student's 7th grade year, taught Student language arts, communication arts, math and resource. Ms. Hahn is certified in special education K through 12. The IEP team created a new IEP on March 27, 2007.

143. Student's May 16, 2006, IEP set forth the following six goals for Student: (1) "The student will proofread & revise paragraphs when given assigned writing tasks with 85% accuracy"; (2) "The student will stay on task during each class period with 75% accuracy"; (3) The student will compute sum, difference, product, quotient when given daily assignments with 85% accuracy"; (4) "The student will answer comprehension question after reading a given selection with 85% accuracy"; (5) "The student will turn assignments during each class period with 85% accuracy"; (6) "The student will take care of personal and school property with 85% accuracy." (Respondent's Exhibit 6, p. 192). The baseline for the sixth goal was, "Behavior - Self Management - [Student] has difficulty organizing her school materials." (Respondent's Exhibit 6, p. 192). Progress was to be reported to parents "according to the District six-week report schedule" using an "individualized progress report." (Respondent's Exhibit 6, p. 200). All of the goals were defined with semester benchmarks. (Respondent's Exhibit 6, p. 192).

144. While there is no indication in the May 16, 2006 IEP Present Level of Performance that Student had a problem or need in the area of taking care of personal and school property, the IEP Goals and Behavior Intervention Plan ("BIP") reference organizational skills

which related to taking care of personal and school property. (See e.g. Respondent's Exhibit 6, pp. 186-201).

145. The May 16, 2006 IEP contains a Baseline/Goal concerning Behavior Self-Management indicating Student had difficulty in organizing her school materials and set forth a goal in conjunction thereto (Respondent's Exhibit 6, p. 192) and reflects that Student made progress in this area. (Respondent's Exhibit 6, pp. 204-206).

146. To help Student achieve her IEP goals, the May 16, 2006 IEP provided that Student would receive specialized instruction in a special education location for 450 minutes per week in Math and Communication Arts. Student would also receive 450 minutes per week of modified regular instruction in a special/regular education location in the areas of Science and Study Skills, and would receive 225 minutes per week of resource special education instruction in a special/regular education location. It also provided that Student would receive 15-20 minutes per week of occupational therapy in a special/regular education location. (Respondent's Exhibit 6, p. 198).

147. Student's May 16, 2006, IEP defined a behavior intervention plan targeting the behaviors of "off task, turn in assignments, keep materials organized." (Respondent's Exhibit 6, p. 194). The goals in the behavior intervention plan were: "The student will stay on task in the classroom 75% of the time, Turn in assignments 85% of time, and keep materials organized 85% of time." (Respondent's Exhibit 6, p. 194). The objectives in the behavior intervention plan were: "Other: Will follow directions with 2 promptings. will turn in assignments, will put paperwork in the appropriate folder." (Respondent's Exhibit 6, p. 194). To achieve goals and objectives, Student was to have a Safe place with Margaret Grice, as well as other components (Respondent's Exhibit 6, p. 194).

148. Student's May 16, 2006, IEP defined a Safety Plan that was identical to the Plan in her August 18, 2005, IEP. (Petitioners' Exhibit 121, p. 1212 and Respondent's Exhibit 6, p. 197).

149. Student's May 16, 2006, IEP defined modifications and accommodations to be provided Student only in the area of assessments. (Respondent's Exhibit 6, p. 193).

150. In Student's 7th grade resource class there were 18 other students in the class with Student and one paraprofessional.

151. Ms. Hahn testified that she reviewed the May 16, 2006, IEP, prior to providing services for Student. The IEP indicates Student has deficits in math. (Respondent's Exhibit 6, pp. 186-201). Ms. Hahn indicated Student was receiving specialized instruction in communication arts because Student "was below grade level on her reading and writing skills" and needed it even though she did not have a disability in that area. (Tr. Vol-IV. 793:13-794:9).

152. Student received the subjects of science and social studies as 'class within a class' and received the remainder of her classes (exploratory classes) in the regular education environment.

153. The following exhibits constitute the District's Curriculum Guides provided to Petitioners for Grade 7 during the 2006-2007 school year when Student was in Grade 8: Petitioners' Exhibit 100 ("6-8 Grade Health and Physical Education"); Petitioners' Exhibit 142 (G7 Music); Petitioners' Exhibit 136 (G7 Social Studies); Petitioners' Exhibit 138 (G7 Art); Petitioners' Exhibit 137 (G7 Science); Petitioners' Exhibit 144 (G7 Speech and Theater); Petitioners' Exhibit 125 (G7 Math); Petitioners' Exhibit 133 (G7 Communication Arts); Petitioners' Exhibit 134 (G7 Academic Skills); Petitioners' Exhibit 118 (G6, 7, 8, 9, 10 Read 180); Petitioners' Exhibit 139 (G7 Family and Consumer Science); Petitioners' Exhibit 141 (G7

Advanced Keyboarding); Petitioners' Exhibit 140 (G7 Technology Fundamentals); Petitioners' Exhibit 143 (G7 Band/Orchestra); Petitioners' Exhibit 135 (G7 Communication Arts Foreign Language); Petitioners' Exhibit 125 (G7,8 Pre-Algebra). These guides were not the exact guides in place during the 2006-2007 school year.

154. Textbooks and workbooks that would have normally been part of the regular education curriculum and used with regular education 7th Grade students during the time Student was in 7th Grade included the following: *Middle School Math* (Course 2) (blue) (G7 Math); *Language of Literature* (Red) (G7 Communication Arts). (Petitioners' Exhibit 127); *Pre-Algebra* (blue) (Pre-Algebra); *Discovering Languages - German*; *Discovering Languages - Spanish*; *Discovering Languages - French*; and *Young Living* (Red). (Petitioners' Exhibit 98, p. 817).

155. The District's 7th Grade Curriculum Guide identifies additional books that were to be used for 7th graders but were not used for Student: Glencoe *Life Science* (Science) (Petitioners' Exhibit 137, p. 1497). In its list of textbooks provided to the Petitioners, the District did not identify any science book that was part of the 7th Grade Curriculum and did not produce the book: *Life Science*. (Petitioners' Exhibit 98, p. 817). Notwithstanding the District's failure to use science curriculum specified books, Student received science education in 7th grade. (Respondent's Exhibit 2, p. 884).

156. Student testified that she never used the following books: *Middle School Math* (Course 2) (blue) (G7 Math); *Language of Literature* (Red) (G7 Communication Arts). She also never used the book: *Pre-Algebra* (blue) (Pre-Algebra).

157. Ms. Hahn testified that she presented below grade level material to Student in math and communication arts because she was below grade level in both math and language arts.

Her reading level was below grade level, and she was probably two grade levels below in math. Ms. Hahn testified that she used a Fifth grade math book with Student and did not use any text book with Student for language arts, reading, or resource, (Petitioners' Exhibit 12, p. 80) although the IG Pro Assignment sheet for Language Arts indicates some book was regularly used. (See Respondent's Exhibit 22, pp. 868-869). Ms. Hahn further testified that she utilized 5th grade level expectations in creating Student's communication arts curriculum.

158. Ms. Hahn testified that she provided Student with the modifications and accommodations in her May 16, 2006 and March 27, 2007 IEPs and also used "learning strategies" that were not listed as modifications or accommodations in the IEP, which included things such as "study guides," "modified science and social studies curriculum," "modified the test," "modified assignments and tests," "used word banks," "multiple choice questions," and "matching." (Tr. Vol-IV. 796:1-797-2). She testified these were necessary modifications because of Student's deficits. (Petitioners' Exhibit 12, p. 76).

159. Ms. Hahn testified that she modified Student's regular 7th grade level science and social studies curriculum that were not identified in her IEPs in the following ways: "modify the test, shortened, gave like word banks, made the matching shorter, more defined, Multiple choice questions I gave them like three answers instead of four . . . study guides." (Petitioners' Exhibit 12, p. 76; Respondent's Exhibit 6, pp. 178-179; Respondent's Exhibit 6, p. 193). She did these things because she thought it was needed and she wanted Student to pass the tests. (Petitioners' Exhibit 12, p. 76).

160. Ms. Hahn testified that the Foreign Language teacher provided modifications or accommodations for Student. (Petitioners' Exhibit 12, pp. 77-78). Student also worked on her Foreign Language work in Ms. Hahn's room during her resource time and had difficulties with

completing and turning in Foreign Language assignments, but Ms. Hahn was not trained in that area and could not assist Student. (Petitioners' Exhibit 12, p. 78). However, Student was offered additional help in this class by her foreign language teacher.

161. Student did not leave her classroom to use the "safe place" of Ms. Grice during 7th grade. Ms. Hahn testified that she assumed Student knew she had the safe place because the IEP would have been provided to Student's parent.

162. Ms. Hahn prepared the IEP Progress Report (Respondent's Exhibit 6, pp. 205-206) for Student and stated that where "0%" is indicated, the goal progress was not measured or reported because the benchmark was based within the semester. Ms. Hahn further testified that Student made progress on her goals and her progress report indicated progress.

163. The IEP Progress Report (Respondent's Exhibit 6, pp. 205-206) indicates that for Goal 1, Written Expression, Student performed at 75% 3rd Period and at 75% 5th Period. (Respondent's Exhibit 6, p. 205). Goal 2, Classroom Behavior, shows the goal was mastered every time measured. (Respondent's Exhibit 6, p. 205). Goal 3, Math Operations, indicates Student performed at 83% the first time measured, and at 83% the second time measured. Goal 4 Reading Comprehension, shows the goal was mastered every time measured and changed from 89% in 3rd Period to 90% in 5th Period. (Respondent's Exhibit 6, p. 205). Goal 5: Behavior, shows the goal was mastered every time measured and Student performed at 85% in 3rd Period and at 85% in 5th Period. (Respondent's Exhibit 6, p. 206). Goal 6: Behavior, shows the goal was mastered every time measured and Student performed at 90% in 3rd Period and at 90% in 5th Period. (Respondent's Exhibit 6, p. 206).

164. Ms. Hahn also prepared the IEP Progress Report (Respondent's Exhibit 6, p. 204) which covered the remainder of Student's 7th Grade, after the new IEP was developed on March

27, 2007. Ms. Hahn testified that this progress report indicates progress. Said IEP Progress report concerning Student's organization goal reflects progress was being made. Ms. Hahn testified that Student made progress on her organizational goal in the spring of 2007.

165. As stated above, on March 27, 2007, an IEP was developed for Student, for the period of March 28, 2007, through March 27, 2008. (Petitioners' Exhibit 124). This period involved approximately the last quarter of Student's 7th Grade school year 2006-2007 and was projected to cover the first three quarters of Student's 8th Grade school year (2007-2008). Prior to the termination date of the March 27, 2007 additional IEPs and addendums were created.

166. In the Present Level of Performance, Student's March 27, 2007, IEP states, that "[Student] has made improvements in all of her academics this school year." (Respondent's Exhibit 6, p. 174).

167. Student's March 27, 2007, IEP, defined two goals for Student: (1) "The student will compute sum, difference, product, quotient when given assigned tasks with 88% attainment within one year based upon class assignments"; and (2) "The student will demonstrate appropriate organization of materials independently with 90% attainment within one year based upon observation by staff." (Petitioners' Exhibit 124, p. 1281). Progress toward goals was to be reported every six weeks through an Individualized Progress Report and Regular Education Grade Card Progress Report. (Petitioners' Exhibit 124, p. 1281).

168. To help Student achieve her IEP goals, Student's March 27, 2007, IEP provided that Student was to receive 450 minutes per week of modified regular instruction in Science and Social Studies in regular education. Student was also to receive 225 minutes per week of Resource special education instruction in special education. Additionally, Student was to receive

450 minutes per week of specialized instruction in Math and Communication Arts in special education. (Petitioners' Exhibit 124, p. 1284).

169. Ms. Hahn testified that Student's Mother attended the IEP meeting where Student's March 27, 2007, IEP was drafted, and she did not "observe anything that made [her] think [Student's Mother] wasn't in agreement with the IEP." (Tr. Vol-IV. 806:15-17). Mr. Cook indicated Mother expressed concerns at the IEP and they were addressed by the IEP team. On April 2, 2007, Mother received the revised IEP and notice of change, and on April 3, 2007, Mother emailed her concerns to Ms. Hahn and Mr. Cook. (Respondent's Exhibit 17, p. 668). Those concerns were promptly addressed to Mother's satisfaction as evidence by her e-mail to Ms. Hahn and Mr. Cook dated April 7, 2007 stating: "I received the new IEP looks great, I appreciate your quick attention to my concerns." (Respondent's Exhibit 11, p. 389).

170. Student did not dress out in 7th Grade PE because she was embarrassed, and this affected her grade.

171. Student testified that she did not believe that she received any educational benefit or that the school took care of her in 7th Grade at Delta Woods. This expressed belief, however, is in drastic contradiction to Mother's belief as evidenced by her raving communication to Ms. Hahn (Student's 7th grade teacher) on February 2, 2007 which is pertinent part, stated: "...Because of your wonderful skills our daughter has had the best year in school ever. Tell your parents we thank them for bringing your into this world." (Respondent's Exhibit 11, p. 426.)

172. Mother was aware that Student had difficulties in Foreign Language and felt Student was not learning. Mother requested the District to provide help in this area, and the District advised Mother extra help would be provided by Student staying after school one or two

days a week for tutoring and inquired as to which days would be convenient for Mother. (Respondent's Exhibit 11, p. 421). Student did not take advantage of the offer of extra help.

173. At some time on or before February 2, 2007, Mother asked Mr. Cook to have Student's homework assignments emailed to Mother on a daily basis, because it was her belief that Student was not getting the help she needed at school and that way Mother could help Student. The District complied with this request, except for the subject of Foreign Language.

174. The March 27, 2007 IEP Team determined it was necessary for Student to be provided an Alpha Smart. (Respondent's Exhibit 4, p. 175). Subsequently, Student was offered an Alpha Smart, but did not take advantage of the keyboard and said she did not want to use it. An Alpha Smart is "a portable keyboard" and is used to type in papers or assignments. Students can take it home and type for keyboard skills or do their assignments on it and the District can plug it back into a computer and print out the assignments.

175. Student's regular education grade reports indicate that in Grade 7, Student's grades for Resource were based on modified assignments. (Petitioners' Exhibit 166, p. 2054). Student's grade report indicates Student received a 1st Semester grade of "A-" and a 2nd Semester Grade of "A+." Student's term grades were as follows: 1st Trm - "A"; 2nd Trm - "A-"; 4th Trm - "A+" and 5th Trm - "A+." (Petitioners' Exhibit 166, p. 2054).

176. Student's regular education grade reports indicate that in Grade 7, Student's grades for Vocal Music were not based on modified assignments. (Petitioners' Exhibit 166, p. 2054). Student's grade report indicates Student received a 1st Semester grade of "C-" and First Term grade of "C-". (Petitioners' Exhibit 166, p. 2054).

177. Student's regular education grade reports indicate that in Grade 7, Student's grades for Home Living were not based on modified assignments. (Petitioners' Exhibit 166, p.

2054). Student's grade report indicates Student received a 1st Semester grade of "B-" and Second Term grade of "C". (Petitioners' Exhibit 166, pp. 2054, 2057). The grade report also noted that Student "Does not turn in assignments," (Petitioners' Exhibit 166, p. 2057), even though according to Student's IEP Progress Report she had at this same time mastered her goal related to turning in assignments. (Respondent's Exhibit 6, p. 206).

178. Student's regular education grade reports indicate that in Grade 7, Student's grades for Technology were not based on modified assignments. (Petitioners' Exhibit 166, p. 2054). Student's grade report indicates Student received a 2nd Semester grade of "A" and Term 4 grade of "B". (Petitioners' Exhibit 166, p. 2054).

179. Student's regular education grade reports indicate that in Grade 7, Student's grades for Art were not based on modified assignments. (Petitioners' Exhibit 166, p. 2054). Student's grade report indicates Student received a 2nd Semester grade of "B-" and Term 5 grade of "A". (Petitioners' Exhibit 166, p. 2054).

180. Student's regular education grade reports indicate that in Grade 7, Student's grades for Foreign Language were based on modified assignments consistent with her IEP. (Petitioners' Exhibit 166, p. 2056). Student's grade report indicates Student received a 1st Semester grade of "C-" and a 2nd Semester grade of "C." (Petitioners' Exhibit 166, pp. 2054, 2056). Student's term grades were as follows: 1st Trm – "C-"; 2nd Trm – "C"; 4th Trm – "B-" and 5th Trm – "C." (Petitioners' Exhibit 166, pp. 2054, 2056). The grade report also noted that Student is "Unprepared for Class," (Petitioners' Exhibit 166, p. 2054). Ms. Hahn provided Mother with Student's assignments for other classes, but would generally get no response from the Foreign Language teacher to do this for that class. (Respondent's Exhibit 11, pp. 373-387, 391, 399, 409, 411-415, 419). Student's IG Pro records indicate Student earned a grade of "F"

(51%) one semester (Respondent's Exhibit 22, pp. 877-878) and a grade of "C-" (72%) another semester.

181. Student's regular education grade reports indicate that in Grade 7, Student's grades for PE/Health were not based on modified assignments. (Petitioners' Exhibit 166, p. 2054). Student's grade report indicates Student received a 1st Semester grade of "A-" and a 2nd Semester grade of "D." (Petitioners' Exhibit 166, p. 2054). Student's term grades were as follows: 1st Trm - "A"; 2nd Trm - "A"; 4th Trm - "C-" and 5th Trm - "D." (Petitioners' Exhibit 166, p. 2054). The grade report also noted that Student "Does not turn in assignments," (Petitioners' Exhibit 166, p. 2054), even though according to Student's IEP Progress Report she had at this same time mastered her goal related to turning in assignments. (Respondent's Exhibit 6, p. 206).

182. Student's regular education grade reports indicate that in Grade 7, Student's grades for Math were based on modified assignments consistent with her IEP. (Petitioners' Exhibit 166, p. 2054). Student's grade report indicates Student received a 1st Semester grade of "B" and a 2nd Semester grade of "B-." (Petitioners' Exhibit 166, p. 2054). Student's term grades as reported on her Grade Report of June 1, 2007 were as follows: 1st Trm - "B"; 2nd Trm - "B"; 4th Trm - "B+" and 5th Trm - "B." (Petitioners' Exhibit 166, p. 2054). Student's Term 4 grade as reported on her Grade Report of February 16, 2007 was "D+." (Petitioners' Exhibit 166, p. 2055).

183. Student's regular education grade reports indicate that in Grade 7, Student's grades for Science were based on modified assignments consistent with her IEP. (Petitioners' Exhibit 166, p. 2054). Student's grade report indicates Student received a 1st Semester grade of "B-" and a 2nd Semester grade of "B-." (Petitioners' Exhibit 166, p. 2054). Student's term

grades were as follows: 1st Trm – “A-“; 2nd Trm – “B”; 4th Trm – “B” and 5th Trm – “B.” (Petitioners’ Exhibit 166, p. 2054).

184. Student’s regular education grade reports indicate that in Grade 7, Student’s grades for Social Studies were based on modified assignments consistent with her IEP. (Petitioners’ Exhibit 166, p. 2054). Student’s grade report indicates Student received a 1st Semester grade of “B-“ and a 2nd Semester grade of “B.” (Petitioners’ Exhibit 166, p. 2054). Student’s term grades were as follows: 1st Trm – “B+”; 2nd Trm – “B”; 4th Trm – “B” and 5th Trm – “B-“ (Petitioners’ Exhibit 166, p. 2054).

185. Student’s regular education grade reports indicate that in Grade 7, Student’s grades for Language Arts were based on modified assignments consistent with her IEP. (Petitioners’ Exhibit 166, p. 2054). Student’s grade report indicates Student received a 1st Semester grade of “A-“ and a 2nd Semester grade of “A-.” (Petitioners’ Exhibit 166, p. 2054). Student’s term grades were as follows: 1st Trm – “B+”; 2nd Trm – “A-“; 4th Trm – “A” and 5th Trm – “A-“ (Petitioners’ Exhibit 166, p. 2054).

8th Grade (2007/2008)

186. During the 2007-2008 school year, the District indicated that the following teachers were involved in providing services to Student:

- a. Shirley Atkinson, Vocal Music 8
- b. Heather Edmondson, PE/Health Girls 8
- c. Tary Ely, Special Instruction Language Arts 8, Resource 8, and Math 8
- d. Erin Fortney, Homebound Services
- e. April Harmon, Art 8
- f. Kris Mayer, Homebound services
- g. Jennifer Medina, Speech & Drama 8
- h. Beth Roberts, Social Studies 8
- i. Howard Ward, Science 8

(Petitioners’ Exhibit 102, p. 862).

187. Tara Ely was Student's 8th grade special education teacher. She reviewed Student's IEP before Student began 8th grade and based on that review understood Student to have a disability only in the area of math reasoning. The IEP in effect at the beginning of 8th grade is set forth in Respondent's Exhibit 6, p. 172.

188. Student spent 675 minutes per week in Ms. Ely's class and during those minutes Ms. Ely provided Student direct instruction in math, communication arts, and resource. Ms. Ely was providing communication arts services to Student because she was below grade level in the area. Ms. Ely testified that Resource "is a class where we work on [Student's] IEP goals. [She] may re-teach something they did in science, re-teach something they did in social studies." (Tr. Vol. III, p. 688, ln. 9-13). In Resource class there were 14 other students. Ms. Ely characterized Student's academic abilities as being "below grade level." (Tr. Vol. III, p. 689, ln. 7-9).

189. Ms. Ely's exposure to Student academically in a teaching capacity was for approximately five and a half weeks during the entire first semester, and many days were not full days. Student was in Ms. Ely's class for about a week and a half before she was hospitalized in September 2007, and for about four weeks between Thanksgiving and Christmas break of 2007. At the beginning of these four weeks, Student only came for an hour and a half as she was gradually transitioning from homebound services by agreement between Mother, District and Student's physician. Student did not return to school after the 2007 Christmas break.

190. Ms. Ely did not provide 'special education instruction' for Student while Student was on homebound instruction. She had a regular sequence of assignments that were provided, and Student's performance on those assignments did not affect what the next assignment would be.

191. The following exhibits constitute the District's Curriculum Guides provided Petitioners which were not exact copies of those in place for Grade 8 during the 2007-2008 school year when Student was in Grade 8: Petitioners' Exhibit 100 ("6-8 Grade Health and Physical Education"); Petitioners' Exhibit 103 ("8th Grade Middle School Vocal Music"); Petitioners' Exhibit 104 (G8 Social Studies); Petitioners' Exhibit 106 (G8 Art); Petitioners' Exhibit 108 (G8 Science); Petitioners' Exhibit 110 (G8 Speech/Theater); Petitioners' Exhibit 111 (G8 Pre-Algebra); Petitioners' Exhibit 113 (G8 Communication Arts); Petitioners' Exhibit 114 (G8 Academic Skills); Petitioners' Exhibit 118 (G6, 7, 8, 9, 10 Read 180); Petitioners' Exhibit 154 (G8 Family and Consumer Science); Petitioners' Exhibit 155 (G8 Keyboarding and Computer Skills); Petitioners' Exhibit 156 (G8 Applied Technology); Petitioners' Exhibit 157 (G8 Algebra I); Petitioners' Exhibit 158 (G8 Social Studies Curriculum Guide - Pending Approval); Petitioners' Exhibit 159 (G8,9,10,11,12 Spanish I, French I); Petitioners' Exhibit 160 (G8 Orchestra/Band).

192. Textbooks and workbooks that would have been part of the regular education curriculum and used with regular education 8th Grade students during the time Student was in 8th Grade included the following: *Earth Science* (Red) (G8 Science); *Language Network* (Green) (G8 Communication Arts); *Language of Literature* (Green) (G8 Communication Arts); *The Interactive Reader Plus w/additional Support* (G8 Communication Arts); *McDougal, Littell Wordskills Green Level* (G8 Communication Arts); *Read 180 - R Book (Read, write, react)*; *Juntos-Uno; Pre-Algebra* (blue) (G8 Pre-Algebra). (Petitioners' Exhibit 127). On January 9, 2009, the District supplemented this list to include the following: *Creating America* (Social Studies). (Petitioners' Exhibit 98, p. 817).

193. Student testified that she never used the following books: *Pre-Algebra* (blue) (G8 Pre-Algebra); *Language of Literature* (Green) (G8 Communication Arts); *Language Network* (Green) (G8 Communication Arts); *McDougal, Littell Wordskills Green Level* (G8 Communication Arts); *The Interactive Reader Plus w/additional Support* (G8 Communication Arts); *Juntos-Uno*. She did use the following books: *Creating America* (Social Studies); *Read 180 - R Book (Read, write, react)*; *Earth Science* (Red) (G8 Science); Prentice Hall *Middle Grades Math Tools for Success, Course 1*; Prentice Hall *Practice Workbook, Middle Grades Math Tools for Success, Course 1*.

194. The District represented that it had provided all textbooks and workbooks to Petitioners. The District represented that the book, *Middle Grades Math Tools for Success Course 1* by Prentice Hall and *Middle Grades Math Tools for Success Practice Workbook Course 1* by Prentice Hall were not available within the District. Annette Seago testified that the District has the book and workbook.

195. Tara Ely testified that the math book she used with Student was an old sixth grade math book, (Petitioners' Exhibit 3, p. 21) and also testified that she used a modified version of the 8th grade math curriculum.

196. In Grade 8, Student received the following grades for Science: Term 1 – “B”; Term 2 – “B”; 1st Semester – “B”; Term 4 – “B+”; Term 5 – “B”; and 2nd Semester – “B-.” (Petitioners' Exhibit 99, p. 839). Student's regular education grade reports indicate that in Grade 8, Student's grades for Science were based, at various times, on modified and homebound assignments. (Petitioners' Exhibit 99, p. 839-41). Student's First Progress Report indicates Student completed all but 1 assignment, and that assignment was excused. (Respondent's Exhibit 23, p. 893-4). Student's Second Semester Progress Report for Grade 8 Science indicates

that on April 11, 2008, 10 of 17 assignments were excused for Student (Petitioners' Exhibit 109, p. 970), and that at the end of the semester 29 of 53 assignments were excused. (Petitioners' Exhibit 109, p. 970). Student was assigned grades based upon assignments turned in while on homebound placement.

197. In Grade 8, Student received "F" grades for Art. (Petitioners' Exhibit 99, p. 839). Student's regular education grade reports indicate that in Grade 8, Student's grades for Art were based on homebound assignments. (Petitioners' Exhibit 99, p. 840-1). Many of the assignments were excused and Student refused to complete others. Student's failing grade in art for the second semester for her 8th grade years was commensurate with the work she completed and submitted.

198. In Grade 8, Student received the following grades for Special Instruction Language Arts: Term 1 – "B"; Term 2 – "B"; 1st Semester – "B-"; Term 4 – "B"; Term 5 – "B"; and 2nd Semester – "A-." (Petitioners' Exhibit 99, p. 839). Student's regular education grade reports indicate that in Grade 8, Student's grades for Special Instruction Language Arts were based on homebound assignments completed and submitted by Student. (Petitioners' Exhibit 99, p. 840-1).

199. In Grade 8, Student received the following grades for Special Instruction Resource: Term 1 – "A"; Term 2 – "A"; 1st Semester – "A-"; Term 4 – "B"; Term 5 – "B"; and 2nd Semester – "B." (Petitioners' Exhibit 99, p. 839). Student's regular education grade reports indicate that in Grade 8, Student's grades for Special Instruction Resource were based on homebound assignments completed and submitted by Student and participation with her homebound instructor. (Petitioners' Exhibit 99, pp. 840-841).

200. In Grade 8, Student received the following grades for Special Instruction Math: Term 1 – “B”; Term 2 – “B”; 1st Semester – “B”; Term 4 – “F”; Term 5 – “A-“; and 2nd Semester – “A-.” (Petitioners’ Exhibit 99, p. 839). Student’s regular education grade reports indicate that in Grade 8, Student’s grades for Special Instruction Math were based on homebound assignments completed and submitted by Student. (Petitioners’ Exhibit 99, p. 840-841). Student’s Second Semester Progress Report for Special Instruction Math indicates that as of March 26, 2008, only 1 of 18 assignments had been completed. However, by the end of the semester, all assignments were turned in. Student was provided higher level math concepts in 2005 than in 2008, even though Student performed well on the assignments in 2005. (Respondent’s Exhibit 20, p. 704 and Petitioners’ Exhibit 170, p. 2431). The assignment in 2005 would also be considered by Ms. Fortney to be an assignment that would help Student learn order of operations for 8th grade math. During first semester, Student completed all 22 assignments, and all but one exam were excused. (Respondent’s Exhibit 23, pp. 890-891). Many, if not most, of the second semester math assignments and instruction were completed with the assistance of Mr. Coleman.

201. In Grade 8, Student received the following grades for Speech & Drama: Term 4 – “C”; Term 5 – “C”; and 2nd Semester – “C.” (Petitioners’ Exhibit 99, p. 839). Student’s regular education grade reports indicate that in Grade 8, Student’s grades for Speech & Drama were based on homebound assignments completed and submitted by Student. (Petitioners’ Exhibit 99, p. 840-841). According to Student’s Agenda, Student did not receive any assignment while on homebound for Speech & Drama until April 29, and only received a total of 4 assignments. (Petitioners’ Exhibit 179).

202. In the first Semester of grade 8, Student received the following grades for PE/Health: Term 1 – “C”; Term 2 – “C”; and Semester – “D”. (Petitioners’ Exhibit 99, p. 839). Student’s regular education grade reports indicate that in Grade 8, Student’s grades for PE/Health were not based on modified or homebound assignments. (Petitioners’ Exhibit 99, p. 840-841). Student testified that she did not dress out in 8th Grade PE because she was embarrassed. Her failure to dress out affected her grade. Student’s IEP for her second semester of grade 8 stated that she would not participate in PE because of her homebound status. Mother was never given any understanding of how she got a “C” in Term 2 when Student was on homebound instruction. According to the assignment sheet, Student received credit for being in class August 27, and November 1 through November 29, and for doing a “Muscles” homework on November 19, 2007. (Respondent’s Exhibit 23, pp. 902-903). All other assignments were excused, except possibly on August 28 through August 31 (Respondent’s Exhibit 23, pp. 902-903).

203. In first Semester of grade 8, Student received the following grades for Vocal Music: Term 1 – “C”; Term 2 – “C”; and Semester – “C”. (Petitioners’ Exhibit 99, p. 839). Student’s regular education grade reports indicate that in Grade 8, Student’s grades for Vocal Music were not based on modified or homebound assignments. (Petitioners’ Exhibit 99, pp. 839-841). Mother was never given any understanding of how Student got a “C” in Term 2 when Student was on homebound instruction, however, as stated in footnote 5 a “C” was recorded due to the fact an incomplete could not be recorded. According to the assignment sheet, Student completed 5 out of 47 assignments. (Respondent’s Exhibit 23, p. 898).

204. In grade 8, Student received the following grades for Social Studies: Term 1 – “B”; Term 2 – “B”; 1st Semester – “C”; Term 4 – “B-”; Term 5 – “B”; and 2nd Semester – “B.”

(Petitioners' Exhibit 99, p. 839). Student's regular education grade reports indicate that in Grade 8, Student's grades for Social Studies were based at various times on modified and homebound assignments. (Petitioners' Exhibit 99, pp. 839-841). Student's First Semester Assignment Sheet indicates Student received a grade of F. (Respondent's Exhibit 23, p. 896). Student's Second Semester Progress Report for Grade 8 Social Studies indicates that six of twenty-five assignments were excused for Student, and that on April 11, 2008, Student had a grade of 64% (D). (Petitioners' Exhibit 105, p. 899). Student's Second Semester Progress Report at the end of the Semester indicated Student had an 85% (B) and 6 assignments were excused. (Petitioners' Exhibit 23, pp. 896-897) Her grades, while on homebound placement, were awarded upon assignments completed and submitted.

205. The District had a policy during the 2007-2008 school year that a homebound student would receive approximately five hours (300 minutes) of instruction per week. (Petitioners' Exhibit 173, p. 2501). This approximate time could be expanded if the student's needs so required. The District, through Randy Laskowski, indicated that more time could be provided Student if she needed it. In order for a student to be counted as a student for the purposes of the District getting state aid when the Student is on homebound instruction, the Student's plan must provide the Student a minimum of five hours (300 minutes) of instruction per week.

206. In order for Student to get homebound instruction, a doctor had to sign the homebound instruction form.

207. Mr. Cook was aware that Student was on homebound because of serious emotional problems. While the District wanted to try to transition Student back into regular education as quickly as possible, it knew that, in order for Student to successfully return to

school, Student's emotional problems would need to be addressed and the transition should accommodate her needs. During the time Student was on homebound in the first and second semester, the District did not provide any specific services for Student to help address her emotional problems, but Student's IEP team and Mother had frequent communication regarding Student's psychological treatment and medication. During the time Student was on homebound second semester, it was still the District's plan for Student, at some point, to transition back to regular school environment.

208. When Mother went to IEP meetings to discuss the provision of homebound services for Student, she expressed concern that 300 minutes would not be enough, and testified that the District told her "that 300 minutes was the law and what the district provided." However, the District advised Mother that more minutes would be provided if Student needed it. The 300 minutes per week of homebound services was determined by the IEP team which took into consideration whether Student would be overwhelmed and her medication.

209. Mother testified that Mr. Cook, Principal of Delta Woods, told her around the time that Student went on homebound instruction, that, with regard to the selection of homebound teachers, they post the job on a board and whatever teacher came forth to take that position is the one used. This manner of teacher selection varies from that stated by Mr. Cook who indicated that the first criteria used to match up a student with a homebound instructor was a teacher who knew Student.

210. The only people who came and provided face-to-face instruction to Student when she was on homebound instruction were Kris Mayer and Erin Fortney.

211. Tara Ely testified that she performed the following functions: "I collected work, modified Student's work, gave it to Kris [Mayer], she would take it home, bring it back, return it

to me, I would review lessons with Kris to teach Student...I would grade it and put it in my grade book.” (Tr. Vol. III, p. 703, ln. 13-20).

212. During the time Student was on homebound instruction, Ms. Ely testified that whenever she believed modifications to Student’s assignments, such as word banks and identifying page numbers to help her find things in the book, were needed she made those modifications.

213. The legal requirements for a person to teach in the State of Missouri require that the person be certified in the area of which they teach. However, this requirement does not apply to substitute or homebound teachers. (See 5 C.S.R. §80-800.290). Student’s homebound teachers, Ms. Mayer and Ms. Fortney had Master’s degrees in education at the time they provided homebound services to Student.

214. Mother and Student’s physician requested homebound services for Student. When Mother made the request, she testified that she did not have any idea that Student would not receive the regular education curriculum while she was on homebound or that Student would not be provided the regular 8th Grade curriculum. Mitigating against this belief is the fact that Student’s IEPs of May 2006, March 2007 and October 2007 all indicated that Student would receive specialized, modified regular or homebound instruction. (Respondent’s Exhibit 6, pp. 161-168, 180, 198).

215. Mother met with Ms. Clemons on September 6, 2007, after Student’s first suicide attempt, and requested homebound services for Student. On September 25, 2007, a meeting occurred with Mr. Cook (principal), Margaret Grice (counselor), and Mother, and Mother was told the District would start with 300 minutes of homebound instruction. Using the word “start”

suggests credibility to the District's position that more time would be added if the Student so needed.

216. On October 11, 2007, an IEP was developed for Student, for the period of October 11, 2007 projected through October 11, 2008. (Petitioners' Exhibit 101, pp. 851-861; Respondent's Exhibit 6, pp. 159-169). This period involved approximately the last three quarters of Student's 8th Grade school year 2007-2008 and the first quarter of Student's 9th Grade school year (2008-2009). IEP addendums were completed for November 2007 and January 2008. (Respondent's Exhibit 10, p. 355).

217. Student's October 11, 2007, IEP, defined two goals for Student: (1) "The student will compute sum, difference, product, quotient independently with 88% attainment within one year based on class assignments"; and (2) "The student will demonstrate appropriate organization of materials independently with 90% attainment within one year based upon observation by staff." (Petitioners' Exhibit 101, p. 856). Progress toward goals was to be reported every six weeks through an Individualized Progress Report and Regular Education Grade Card/Progress Report. (*Id.*)

218. To help Student achieve her IEP goals, Student's October 11, 2007, IEP provided that Student was to receive 300 minutes per week of homebound instruction in Math, Science, Social Studies, Communication Arts, and Study Skills. (Petitioners' Exhibit 101, p. 859).

219. On September 30, 2007, Ms. Mayer met with Mother and established a schedule for the homebound instruction. At this time, Ms. Mayer only had brief information about Student. Ms. Mayer began providing services at Student's home during Student's first semester on October 2, 2007. (Respondent's Exhibit 1, p. 4).

220. Kris Mayer was Student's homebound teacher in the fall of 2007 (first semester). Student believed she learned some things from Ms. Mayer.

221. Ms. Mayer testified that she provided Student direct instruction in all the core areas: math, social studies, science, and communication arts, and provided a health assignment. Ms. Mayer visited with Student's teachers at Delta Woods "to get assignments, to know what the requirements were for the classroom, and to know how [Student] should complete her assignments." (Tr. Vol. III, p. 653, ln. 10-19). If modifications were needed, Ms. Ely would make them. Ms. Mayer did not review Student's IEP until toward the end of the time she provided services to Student. Ms. Mayer did not grade Student's work, did not assign grades, and did not formulate Student's assignments.

222. Mother expected Kris Mayer would be at their home for a minimum of two hours on Tuesday and two hours on Thursday. However, it was Mother's understanding that Ms. Mayer only came for about an hour and a half each time. Ms. Mayer credibly testified that when she provided homebound, she came for one and a half to two hours or more, and it was her goal to spend 300 minutes a week actually providing services to the Student. Ms. Mayer testified that her travel time was not included in the minutes. Ms. Mayer testified that the environment in the home was hospitable, clean and orderly, and there were days when Student was inattentive and Ms. Mayer did a lot of refocusing with Student.

223. Ms. Mayer testified that, except for a large social studies project, Student completed all of her assignments and there were no issues with Student not completing assignments. Student put forth an effort to be a successful student.

224. Ms. Mayer did not help Student use her school planner to organize her materials. (Tr. Vol. III, p. 669, ln. 18-20).

225. The language arts and reading instruction that Ms. Mayer provided Student was different from that provided to regular education 8th grade language arts students as she was provided specialized instruction in her homebound placement just as she was under her March 2007 and May 2006 IEPs. (Respondent's Exhibit 6, pp. 180, 198). The Student did not have a literature textbook that regular education 8th grade language arts students would have used. Student took assessments that were different than those given regular education students.

226. Ms. Mayer testified that in the area of writing, the errors Student was making were beyond what could reasonably be accommodated in a regular classroom setting.

227. An IEP Addendum was developed on November 14, 2007, that provided for Student to transition from homebound back to school. (Respondent's Exhibit 6, pp. 157-158). When the IEP addendum was created for Student to transition back to school, it was Mother's understanding that Student would return to school and also receive homebound services. Ms. Mayer said that based on the IEP Addendum (Respondent's Exhibit 6, p. 157), it was her understanding that Student was no longer going to receive homebound services. However, she then acknowledged that the IEP addendum, with her interpretation, would also mean that Student would no longer receive any instruction in math or resource study skills and it was important for a student to have math instruction.

228. District attendance records indicate that on November 26, 27, and 28, 2007, Student went to school during some portion of the day to ease her back into the school routine. Her unexcused absences were noted as homebound instruction. (Respondent's Exhibit 1, p. 4). Student did not receive homebound services between November 26, 2008, (her return to school) and December 21, 2008 (Student's last day of school).

229. When Student transitioned back to school in November 2007, she testified that she did not know a safe room was defined where she could go, and did not know that Ms. Mayer was supposed to be available to help her if she had any problems. This testimony is directly controverted by Ms. Mayer who stated that Student came to see her every couple of days.

230. On or about January 1, 2008, Mother informed Ms. Ely, Ms. Grice, and Mr. Cook that Student had to be hospitalized and needed to be placed back on homebound for the rest of the school year. (Respondent's Exhibit 15, p. 573).

231. On January 4, 2008, Angela Lippa, MSW, Licensed clinical Social Worker, informed Margaret Grice, Counselor for District, that Student had been diagnosed as having bipolar and that Student is fragile, on the edge and suicidal. (Petitioners' Exhibit 130).

232. On January 10, 2008, a IEP Addendum was written that returned Student to 300 minutes per week of homebound services. (Respondent's Exhibit 6, pp. 155-156).

233. District attendance records indicate Student began receiving homebound instruction during the Second Semester on January 3, 2008. (Respondent's Exhibit 1, p. 4). However, as noted above, unexcused absences were noted as homebound instruction. Student actually received homebound instruction from Erin Fortney during second semester beginning February 5, 2008, through the end of the semester. (Petitioners' Exhibit 131).

234. Tara Ely testified that the delay in starting homebound at the beginning of 2008 was because they were trying to obtain a medical recommendation for a homebound placement and were waiting for that from Student's parent.

235. Erin Fortney, Student's homebound teacher for the second semester of Student's 8th grade year was certified to teach Elementary Education 1-6 having attained a Master's degree in Literacy and had approximately 5 years experience in assisting children with disabilities.

(Petitioners' Exhibit 102, p. 863). She was not a certified special education teacher. She never saw Student's IEP, but she did go over the accommodations and modifications with [Ms. Ely] prior to meeting with Student.

236. It was Ms. Fortney's understanding that she was to be personally providing instructional services to Student in social studies, science, math, reading, and communication arts. Ms. Fortney received Student's assignments from Tara Ely. Ms. Fortney explained to Student what was required for each assignment. Ms. Fortney also testified that she introduced new skills, concepts or academic content for art and speech and drama.

237. Ms. Ely testified that during the time Ms. Fortney provided homebound services to Student, Ms. Ely modified Student's science and social studies and assigned her language arts and her math. Ms. Fortney testified that she understood that she was to be providing Student modifications such as page numbers, paragraph numbers, and a word bank and believed that these modifications would be classified as modifications in the IEP document. Ms. Fortney also testified that Ms. Ely only made modifications to tests that she had already done for her students.

238. Ms. Fortney testified that she would go see Student on Tuesdays and Thursdays, and would usually get there approximately 3:25 or 3:30, and leave approximately 4:45 to 5:00. (1.25 - 1.5 hours). She stated that it was her understanding that her travel time was included in the homebound minutes, and her total drive time for each visit would be 20 to 25 minutes. Ms. Fortney testified that preparation time of modifying assignments would account for the remainder of the minutes. The Panel questions whether such preparation time constitutes homebound services. It is apparent to the Panel that Student did not receive 300 minutes a week of homebound instruction during the second semester of Student's 8th grade year and the Panel approximates the shortfall of minutes to be 25 hours for the semester.

239. Mother testified that she had a conversation with Mr. Cook and a conversation with Mr. Laskowski regarding homebound minutes during the second Semester, and that the teacher was not there the entire 300 minutes and Mother thought maybe the minutes needed to be increased. There were no changes made as a result of Mother's request. Mr. Laskowski said he would get back with Mother but Mother never heard back from him.

240. Ms. Fortney testified that the environment in the home was "Very distractible. The TV was on and not on a low volume; very high. There were several times [Student's Father] would be getting after [Student] because [Student] would want to call a friend to come over or she had done something during the day and he was upset about it and talked to her during my homebound." (Tr. Vol. III, p. 758, ln. 19-25). Ms. Fortney testified that she did not text while performing homebound services (contrary to Student's testimony) and she only recalls one time she was on the telephone and it was just for a few seconds. Ms. Fortney never suggested an IEP meeting or made a request that the location of the homebound be changed to address the environment problems about which she testified. Ms. Fortney would ask Student if, for example, it was as distractible to Student as it was for Ms. Fortney that the television was on. Ms. Fortney did not feel at liberty to tell Student she had to turn the television off, and took Student's word for it as to whether she could study.

241. Ms. Ely testified that during the time Ms. Fortney provided homebound services to Student, there was an issue with the assignments and examination materials being returned from Student. On April 4, 2008, Scott Coleman, Student's uncle, (on behalf of Mother/Student) sent an email to Ms. Ely, Ms. Fortney, and Mr. Cook, and stated:

"Unfortunately, [Student] has yet to master the organizational skills of assignment management. So the second favor is a request to communicate assignments in some fashion that is not subject to

[Student's] organizational dysfunction -- preferably written, preferably in one location [agenda is suggested]. I suspect that without oversight, all of her assignment obligations may not get captured [by Student] in her agenda. Can we please collectively redouble our efforts to insure that all [Student's] obligations are entered into her agenda . . . [except for math assignments listed on the progress report] for other subjects, we have no record of obligations other than the sparse and infrequent entries [Student] makes in her agenda.”

(Petitioners' Exhibit 167, pp. 2202-2203). Mother sent an email to Mr. Cook April 15, 2008, expressing concern about assignments they had not been receiving. (Petitioners' Exhibit 167, p. 2200). Mother testified that there were continuous problems, especially for the second semester of the 2007-2008 school year, in that Student did not receive assignments when she was on homebound and Mother would contact Tara Ely and Mr. Cook regarding this issue. Ms. Fortney testified that there were issues with Student not completing homework and she helped Student complete many assignments.

242. Petitioners' Exhibit 179, pp. 2601-2638 is Student's 2007-2008 agenda (planner) which documents most of her assignments. The agenda would go back and forth from school to home. Ms. Fortney testified that the purpose of Student's agenda was so Student “could keep track of any homework she was to do on the days [Ms. Fortney] wasn't there. To keep herself organized as well.” (Tr. Vol. III, p. 750, ln. 9-23, p. 762, ln. 14-21). She testified that “at the beginning [Student] wrote in the planner and towards the end [Ms. Fortney] wrote in the planner because Ms. Fortney wanted to make sure the assignments were there when Parent said Ms. Fortney wasn't giving homework. (Tr. Vol. III, p. 750, ln. 9-13). Ms. Fortney further testified that she gave Student all the assignments that were given to her from Ms. Ely for Student. At Ms. Fortney's deposition, she testified as follows:

Q: What help, if any, did you provide [Student] to help her demonstrate appropriate organization of materials?

A: I believe I wrote in her agenda to help her organize assignments.

Q: Did you always write [Student's] assignments that you gave her in her agenda?

A: Yes, I did.

Q: So if an assignment is not in her agenda, then it was not given to her, is that correct?

A: Correct.

(Tr. Vol. III, p. 764, ln. 12; p. 765, ln. 4)

Ms. Fortney then testified at the hearing, “At the beginning the math was not written in the agenda because I had given [Mother] and [Student] the yellow sheet of math assignments.” (Tr. Vol. III, p. 765, ln. 9-11). The first time Ms. Fortney’s handwriting is on the agenda is April 22, 2008, to make sure the assignments were being recorded.

243. Ms. Fortney would not give Student new assignments if she hadn’t finished assignments she already had because Ms. Fortney and Parents didn’t want Student to be overwhelmed.

244. Ms. Fortney testified that she also helped Student be organized because, “we would organize her assignments . . . we would put her worksheet in with chapter 13. I know she had a folder system to keep herself organized.” (Tr. Vol. III, p. 762, ln. 22-26). Ms. Fortney testified that sometimes she would assist Student with organization and thinks Student used it independently “because she would pull assignments out of there.” (Tr. Vol. III, p. 763, ln. 7-13).

245. The services Ms. Fortney provided are described in her notes. (Petitioners’ Exhibit 131; Respondent’s Exhibit 9, pp. 254-257). Ms. Fortney testified that the document does

not include every assignment given to Student at the beginning, but towards the end, every assignment was listed. Ms. Fortney changed her consistency in recording because she realized assignments were not being turned in and she wanted to keep track for her personal use.

246. Ms. Ely understood that Mr. Coleman was going to be tutoring Student in science and math.

247. Student did not believe she learned much from Ms. Fortney because, contrary to Ms. Fortney's testimony, all she'd ever do is sit there and text on her phone, and she would talk about her boyfriend and home. While Student was on homebound, she completed language arts assignments (Read 180), science assignments, social studies assignments, art assignments, and math assignments. However, when asked, "Wouldn't it be fair to say that, when you completed these assignments, you continued to learn from the assignments you were completing?", she responded, "Well, I didn't understand them. So I don't know how I would learn from them." (Tr. Vol. II, p. 303, ln. 8, p. 304, ln. 13). According to Student, Ms. Fortney never sat down with Student and helped Student do assignments, which directly contradicts Ms. Fortney's testimony that she assisted Student in completing assignments.

248. Student testified that she completed assignments, but she didn't know if she was completing them correctly. As an example of an assignment, Student was provided a "Richard Byrd" language arts assignment (Respondent's Exhibit 21, pp. 856-858), and received a score of 10 out of 10. (Respondent's Exhibit 23, p. 891). However, in reality, Student's answers were only correct for one out of the 10 comprehension questions. This occurred during Student's second semester of grade 8. (Respondent's Exhibit 21, pp. 856-858).

249. Ms. Fortney testified that she would often have problems motivating Student to complete work and she attempted to do so by trying to ease Student back into her studies.

250. Student testified she did not believe she received educational benefit during 8th Grade, which, at least partially, was contradicted by her statement that she learned from Ms. Mayer during the first semester.

251. Student testified she did not believe the school took good care of her in 8th Grade. (Tr. Vol. II, p. 331, ln. 7-9). This belief is refuted by Mother's glowing praise of the District's personnel and credible evidence of the measures taken to protect Student upon her transition back to school after the first hospitalization.

252. Scott Coleman was retained by Parents to provide Student tutoring beginning in January 2008, in Math and Science. Initially, Parents asked him to help because there was such a long period before the homebound services started, and Parents wanted to stimulate her. Mr. Coleman never represented to the District that he was anything other than a tutor for Student, and never represented he was qualified to be a teacher for Student in math. At an IEP meeting with Ms. Ely and Ms. Grice in late January 2008, Mr. Coleman requested any guidance from the District that the District could offer, but according to Mr. Coleman's testimony, the District provided him with minimal guidance, although numerous communications and a cooperative relationship developed, but not until After April 3, 2008. In the absence of guidance from the District, Mr. Coleman obtained the *Washington State Exemplar Mathematics Standard for 2008* to use as a curriculum guide and assessment tool for Student. (Petitioners' Exhibit p. 2672-2734).

253. Ms. Fortney testified that on or before February 7, Parent told her that Mr. Coleman would be working with Student in math, so Ms. Ely provided a list of 10 to 11 math assignments that would be due over the course of a couple weeks. Ms. Fortney testified that at every session she would ask Student for the math that Student had done, and Student would often

say she was working on it with her uncle. When she discovered that Student was not working on assignments with her uncle, Ms. Fourtney resolved the situation by talking to Mr. Coleman and testified that, “I believe Mr. Coleman and I, we both worked on the assignments with [Student] for the rest of the semester” and the assignments were eventually completed. (Tr. Vol. III, p. 756, ln. 17-24). Mr. Coleman confirmed that all of the assignments were completed.

254. The District provided Mr. Coleman and Parents a math progress report, Petitioners’ Exhibit 179, p. 2670, when requested by Parents after Parents received a regular education report card showing Student had an “F” as her third quarter grade in Math. Prior to April 3, 2008, the District had provided math assignments to Student but had not provided Mr. Coleman with assignments. Mr. Coleman focused on working with Student on remedial math skills. After March 26, 2008, Mr. Coleman was to work with Student on accomplishing all of the assignments that had not been completed, so rather than focusing on remedial skills, Mr. Coleman began focusing on current assignments. All of the assignments were from *Middle Grades Math Tools for Success Course 1* and *Middle Grades Math Tools for Success Course 1 Workbook*. The District did not offer any assistance to help Mr. Coleman know how to help Student accomplish the assignments, and he developed his own teaching plan. (Petitioners’ Exhibit 179, pp. 2670-2671).

255. Between February 7 and April 4, 2008, Mr. Coleman logged 72 tutor assignments of which Student completed 67 on time. Five were late. During that this period, Mr. Coleman provided Student remedial math skills (Petitioners’ Exhibit 167, p. 2202).

256. While Student was in 8th Grade, it did not appear to Mother that the District was working with Student on her IEP goals.

257. At an IEP meeting towards the end of Student's 8th Grade year, Mother questioned the progress that Student had made and testified that Tara Ely and Sandy Keck advised her not to get Student retested because Student would not qualify for special education. Ms. Ely testified that she only advised Mother of the re-evaluation process and the Missouri criteria in the areas of learning disability. Mother independently decided not to procure a re-evaluation.

258. Prior to the District making its five day disclosures for the due process hearing, Mother testified the District never provided her the document entitled "Progress Report" (Respondent's Exhibit 6, pp. 153-154). Mother further testified that she did not see any IEP Progress Reports while Student was in 8th Grade and the District never provided her any information that suggested to her that Student was making progress or lack of progress on her IEP goals. Ms. Mayer never saw the document entitled "Progress Report" (Respondent's Exhibit 6, pp. 153-154). Ms. Ely testified that Respondent's Exhibit 6, pp. 153-154 is Student's progress report that she created for Student, and that when it was created it was true and accurate to the best of her knowledge. No other IEP Progress Reports were created during this period according to Ms. Ely.

259. Tara Ely testified that she could not specifically identify anything that Student could do at the end of the year that she couldn't do at the beginning of the year because Ms. Ely did not have her enough at the beginning of the year, but did specifically describe progress during the 2007-2008 school year.

Post Due Process Hearing Request

260. In June 2008, a new IEP was prepared that placed Student in Plaza Academy.

261. Significant differences Mother sees in the education Student was provided under the June 2008 IEP at Plaza Academy, from what was provided under her previous IEP include: Student is learning, Student is proud, Student wants to go to school, Student is happy. Student is being given grade level curriculum by Plaza Academy.

III. – CONCLUSIONS OF LAW – DECISION

The hearing Panel makes the following Conclusions of Law:

1. The District is a Missouri Public School District which is organized pursuant to Missouri statutes.

2. The Student is now and has been during all times material to this proceeding, a “child with a disability” as that term is defined in the Individuals with Disabilities Education Act, 20 U.S.C. § 1401(3)(A) (“IDEA”) and its regulations, 34 C.F.R. § 300.8. The Student is now and has been a resident of the District during all times relevant to this due process proceeding, as defined by Section 167.020 RSMo.

3. The IDEA, its regulations and the *Missouri State Plan for Special Education: Regulations Implementing Part B of the Individuals with Disabilities Education Act (2007)*, (“State Plan”) set forth the rights of students with disabilities and their parents and regulate the responsibilities of educational agencies, such as the District in providing special education and related services to students with disabilities.

4. The purpose of IDEA and its regulations is: (1) “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living”; (2) “to ensure that the rights of children with

disabilities and their parents are protected”; and, (3) “to assess and ensure the effectiveness of efforts to educate children with disabilities.” 34 C.F.R. § 300.1.

5. The IDEA is designed to enable children with disabilities to have access to a free appropriate public education which is designed to meet their particular needs. *O’Toole by O’Toole v. Olathe District Schools Unified School District No. 233*, 144 F.3d 692, 698 (10th Cir. 1998). The IDEA requires the District to provide a child with a disability with a “basic floor of opportunity. . . which [is] individually designed to provide educational benefit to the handicapped child.” *Board of Education of the Hendrick Hudson Central School District, Board of Education, Westchester County v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034, 3047, 73 L.Ed.2d 690 (1982).

6. IDEA does not require that a school district “either maximize a student’s potential or provide the best possible education at public expense,” *Rowley, supra.*, 102 S.Ct. 3034, 3049; *Fort Zumwalt School District v. Clynes, supra.* 119 F.3d 607, 612; and *A. W. v. Northwest R-1 School District*, 813 F.2d 158, 163-164 (8th Cir. 1987). Likewise, the IDEA does not require a school district to provide a program that will, “achieve outstanding results”, *E.S. v. Independent School District No. 196*, 135 F.3d 566, 569 (8th Cir. 1998); that is “absolutely [the] best”, *Tucker v. Calloway County Board of Education*, 136 F.3d 495, 505 (6th Cir. 1998); that will provide “superior results,” *Fort Zumwalt School District v. Clynes, supra.* 119 F.3d 607, 613; or, that will provide the placement the parents prefer. *Blackmon v. School District of Springfield, R-12*, 198 F. 3d 648, (8th Cir. 1999); *E.S., supra.* 135 F.3d 566, 569. See also: *Tucker, supra.*, 136 F.3d 495, 505; and *Board of Education of Community Consolidated School District No. 21 v. Illinois State Board of Education*, 938 F. 2d 712, 716-17 (7th Cir. 1991).

7. IDEA requires that a disabled child be provided with access to a “free appropriate public education.” (“FAPE”) *Rowley, supra.*, 102 S.Ct. 3049. The term “free appropriate public education” is defined by 34 C.F.R. § 300.17 as follows:

Free appropriate public education or *FAPE* means special education and related services that—

- (a) Are provided at public expense, under public supervision and direction, and without charge;
- (b) Meet the standards of the SEA [(State Educational Agency)], including the requirements of this part [(34 C.F.R. Part 300)];
- (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§ 300.320 through 300.324.

8. A twofold inquiry has been defined by the *Rowley* Court to determine whether a student has received a free, appropriate public education:

- (a) has the State complied with the procedures set forth in the Act? And
- (b) is the individualized educational program developed through the act's procedures reasonably calculated to enable the child to receive educational benefits?

Rowley, Supra, 458 U.S. at 206-207.

9. The first of the Court’s twofold inquiry, looks at whether the District has satisfied IDEA’s procedural requirements:

In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies –

- (I) impeded the child’s right to a free appropriate public education;

- (II) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents' child; or
- (III) caused a deprivation of educational benefits.

20 U.S.C. § 1415(f)(3)(E)(ii) (2005); *See Independent Sch. Dist. No. 283 v. S.D. by J.D.*, 88 F.3d 556, 562 (8th Cir. 1996).

10. The second of the Court's twofold inquiry, regarding the individualized educational program, looks at whether the District has satisfied the substantive requirements of IDEA. A Student is substantively provided a free, appropriate public education ("FAPE") when the Student receives:

personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. Such instruction and services must be provided at public expense, must meet the State's educational standards, must approximate the grade levels used in the State's regular education, and must comport with the child's IEP. In addition, the IEP, and therefore the personalized instruction, should be formulated in accordance with the requirements of the Act and, if the child is being educated in the regular classrooms of the public education system, should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.

Rowley, Supra, 458 U.S. 176, 203-4 (1982). Two 'student achievement' components in the *Rowley* standard that must be satisfied for a Student to be deemed to have substantively received FAPE are: the "benefit" component, and the "advance" or 'progress' component.

11. The 'benefit' component of the *Rowley* standard refers specifically to the use of the term "benefit" in the definition of "related services."

The term 'related services' means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational

therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education.

20 U.S.C. § 1401(26)(A) (2005). The term “special education” means “specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability....” 20 U.S.C. § 1401(29). Thus, to satisfy the ‘benefit’ component, a Student must receive “benefit” from his special education instruction.⁶ Courts have defined benefit as being a requirement for “some benefit,” “meaningful benefit,” and “more than de minimis benefit.” *Neosho, Supra*, 315 F.3d at 1027-30.

12. The ‘progress’ or “advance” component of the *Rowley* standard, is that portion that requires the IEP to “be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.” *Rowley*, 458 U.S. at 203-4. This ‘progress’ component merely mirrors the requirements found in the statutory definition. The statutory definition of an individualized education program (IEP) is:

a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes –

- (a) a statement of the child’s present levels of academic achievement and functional performance, including - (aa) how the child’s disability affects the child’s involvement and progress in the general curriculum . . .

⁶ In *Rowley*, the Court specifically stated that it was defining “to benefit” within the circumstances of the facts of *Rowley*. *Rowley*, 458 U.S. at 203 n.25. The Court in *Rowley* was “presented with a handicapped child who is receiving substantial specialized instruction and related services, and who is performing above average in the regular classrooms of a public school system.” *Id.* at 203-4. The Court specifically noted, “We do not hold today that every handicapped child who is advancing from grade to grade in a regular public school system is automatically receiving a ‘free appropriate public education’.” *Id.* at 203 n.25.

- (b) a statement of measurable annual goals, including academic and functional goals, designed to (aa) meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and (bb) meet each of the child's other educational needs that result from the child's disability . . .
- (c) a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child - (aa) to advance appropriately toward attaining the annual goals; (bb) to be involved and make progress in the general education curriculum . . . and to participate in extracurricular and other nonacademic activities; and (cc) to be educated and participate with other children with disabilities and non-disabled children in the activities described in this subparagraph.

20 U.S.C. § 1414(d)(1)(A) (2005).⁷

Student's IEPs material to the decision, as written, all meet these requirements.

13. If parents believe that the District has violated IDEA in the “identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child,” they may obtain a state administrative due process hearing. 34 C.F.R. § 300.507; *Thompson v. Board of the Special School District No. 1*, 144 F.3d 574, 578 (8th Cir. 1998); *Fort Zumwalt School District v. Clynes*, 119 F.3d 607, 610 (8th Cir. 1997). The right to file a request for a due process hearing is also available to the Local Educational Agency (“LEA”), which in this case is the District.

14. The burden of proof in an administrative hearing arising under the IDEA is generally placed upon the party seeking relief. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49,

⁷ Additionally, the IEP must define how progress will be measured and reported. 20 U.S.C. § 1414(d)(1)(A)(III) (2005).

126 S.Ct. 528, 537 (2005). The due process complaint in this case was filed by the Student's Parents, and accordingly, Student's Parents are the party seeking relief. However, in this case, Petitioners maintain that the exception to the rule applies, and the burden of proof is properly placed on the District, primarily because the District had not timely provided Parents with grade / assignment records and did not advise them that Student was not receiving grade level curriculum. Due to this "withholding" of information, Petitioners maintain that they were left to challenge the District's actions without realistic access to necessary information. The Court's main concern in *Schaffer* was that parents have an equal opportunity to access independent experts so they could review the same information that the school district maintains.

"IDEA thus ensures parents' access to an expert who can evaluate all the materials that the school must make available, and who can give an independent opinion. They are not left to challenge the government without a realistic opportunity to access the necessary evidence, or without an expert with the firepower to match the opposition." *Schaffer v. Weast*, 546 U.S. 49, 60-61 (2005).

Petitioners had opportunity to present all the materials that Respondent maintained to their educational experts, Dr. Therese Finn and Dr. Gary Seabaugh. These independent sources had the ability to review materials and provide ample input to support Petitioners' arguments. Petitioners were zealously and competently represented by counsel, hired their own experts and had access to documents, even though there were several pre-hearing discovery disputes. Petitioners' claim that the burden of proof or persuasion should shift on this basis is denied. However, having so ruled, the burden of proof in this matter, to whomever assigned, would not effect the Panel's decision. The Panel's decision would be the same whether the burden of proof is placed on the District or on Petitioners.

15. The request for due process in this case was filed by the Student's Parents on May 28, 2008. The Eighth Circuit recognizes a two-year statute of limitations for due process claims

raised pursuant to the IDEA. *Strawn v. Missouri State Board of Education*, 210 F.3d 954, 959 (8th Cir. 2000). This statute of limitations begins when the filing party “knew or should have known about the alleged action that forms the basis of the due process complaint.” See 34 C.F.R. § 300.511(e). The Statute of Limitations in this case began on May 29, 2006.

In this case, the Statute of Limitations issue comes into play in two respects:

First, Petitioners maintain that the Panel has authority to examine whether Student received a FAPE prior to May 29, 2006, primarily on the basis that Parents were confused as to their rights and were not informed as to what specific curricula and educational benefits were being afforded Student. The Panel unanimously rejects this position because parents attended every IEP meeting (on occasion with an advocate), received, on numerous occasions, copies of their procedural rights, and requested reimbursement of an Independent Education Evaluation in 2005. A similar case is *Shawsheen Valley Regional Vocational Technical School Distr. School Committee v. Commonwealth of Massachusetts Bureau of Special Education*. Appeals, D. Mass. 2005, 367 F.Supp.2d 44. Therein, parents accepted services different from a prior IEP, did not discuss or request changes to a subsequent IEP, and on numerous occasions stated they were happy with the services being rendered. Determining that the parents accepted the subsequent IEP, the Court further held that the IEP was not invalidated by any lack of knowledge or understanding with respect to their rights since they received a parents’ rights brochure many times.

To extend the two year timeline in this case would negate the clear two year mandate. Accordingly, the Panel’s scope of review commenced on May 29, 2006.

Second is Petitioners’ claim for reimbursement for monies expended for Dr. Metzl’s independent education evaluation completed in July of 2005. Petitioners maintain that pursuant

to 34 C.F.R. §300.502(b), their demand for reimbursement requires the District to file for due process if the District elects not to pay for the evaluation and defend its evaluation and the District's failure to do so makes the District obligated to pay for the IEE in question. 34 C.F.R. §300.502(b) reads as follows:

A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section. If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either -- (i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or (ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a [due process hearing] that the evaluation obtained by the parent did not meet agency criteria.

This language must, however, be read in context with the Missouri State Plan for Education Part B ("State Plan") which allows for exactly the type of payment limitation found in the District's Independent Education (IEE) Policy. (Respondent's Exhibit 13, p. 450). The State Plan provides as follows:

"D. that is the responsible public agency has a policy reimbursement for independent evaluations, that policy will specify the factors to be considered in the determination of public funding for the evaluation. That determination should be based on:

- 1) the qualifications and location of the evaluators, and
- 2) the cost of the evaluation.

"The public agency may only impose limitations on the cost of an IEE if the agency uses those same limitations when conducting an evaluation. If a public agency uses such costs limitations, it must ensure that its procedures require payment for an IEE at a higher rate if an appropriate IEE cannot, in light of the child's unique needs and other unique circumstances, be obtained within those cost limitations..."

E. that if the responsible public agency has a policy regarding reimbursement for independent evaluations and that policy establishes allowable maximum charges for specific tests or types of evaluations, the maximum set will still enable parents to choose from among qualified professionals in the area and will result only in the elimination of excessive fees. The policy shall specify that the responsible public agency will pay for the independent evaluation up to the maximum established. Additionally, the policy will anticipate that a student's "unique circumstances" may justify an evaluation that exceeds the allowable cost criteria."

Missouri State Plan for Education, Part B, Regulation V, Independent Educational Evaluation (IEE) (34 CFR 300.520).

The District's policy provided to Petitioners at the time they requested an IEE followed the language of the State Plan. The District's policy provided for a maximum payment amount (\$500.00) along with exceptions for payment of fees exceeding the stated maximum, if certain conditions were met. (Respondent's Exhibit 13, p. 450). Petitioners failed to provide information to the District that would justify the extra expense of the evaluation. Petitioners were unequivocally aware of the District's position as of the date they received Dr. Harris' letter of October 5, 2005. Petitioners' claim that the District was under an obligation to file for due process might have merit if the District was denying payment, but here, the District was not disputing that some payment was due if appropriate procedures were taken. Herein, the District was disputing the excessive portion of the evaluation. Instead of raising this issue in a timely manner Petitioners waited over three (3) years.

Respondent was in compliance with the State Plan in imposing the payment limitations enumerated above. Petitioners' failure to comply with Respondent's policy resulted in non-payment. Petitioners' failure to pursue payment in a timely fashion raises a host of speculative questions about the charges, their amount, what was really included in the charges and whether the charges were paid by Petitioners' insurance coverage. Due to Petitioners' failure to file for

reimbursement prior to May 29, 2006, the Panel unanimously holds that Petitioners are not entitled to reimbursement for the 2005 IEE.

16. Petitioners maintain that Student was provided below grade level curriculum without their knowledge. Mother admitted attending every IEP meeting held for Student. In her attendance at IEP meetings, Mother was an active member of Student's IEP team and assisted in the creation of IEP documents. Petitioners claim that Mother was unaware of Student's below grade level curriculum is not consistent with other credible testimony. (Respondent's Exhibit 11, p. 389). In both her 7th and 8th grade IEPs, Student is described as significantly below grade level in math. (Respondent's Exhibit 6, pp. 174, 188). Additionally, Student's IEPs specifically noted that she would receive "Specialized Instruction" Math and Communication Arts and "Modified Regular Instruction" for Science and Social Studies. (Respondent's Exhibit 6, pp. 180, 198).

Petitioners complain that Student was taught with "below grade level" materials and the need for the use of grade level materials was emphasized by Petitioners' experts (Dr. Finn and Dr. Seabaugh). However, even though Student was working in below grade level materials, at times, she was also being provided with materials addressing grade level objectives.

Virtually all of the professional educators credibly testified about spiraling curriculum,⁸ differentiated instruction⁹ and the necessity of building on simpler concepts to advance to more complicated concepts. Student was often presented grade level concepts along with more basic concepts that she was required to master in order to continue the progression along the educational spiral upward. Even Petitioners' experts recognized the necessity of spiraling curriculum and the need to work on more remedial skills before advancing to complex skills.

17. Petitioners maintain that Student was not provided FAPE in 6th grade (2005-2006 school year). The Panel, although finding it difficult to specifically address the final days of Student's 6th grade year, which is the applicable time frame not barred by the two year timeline, finds that the IEP in place was appropriate and provided Student educational benefit. Evidence presented to the Panel concerning academic achievement in the 6th grade was her transcript which depicted educational benefit.

18. Petitioners maintain that Student was not provided FAPE in the 7th grade (2006-2007 school year). Student's 2006-2007 IEP (Respondent's Exhibit 6, pp. 172-184) and 2007-2008 IEPs (Respondent's Exhibit 6, pp. 159-169 and 142-152) clearly display: a statement of present levels of educational performance (Respondent's Exhibit 6, pp. 174-175, 161-162 and

⁸ Ms. Seago explained the meaning of spiraling curriculum as follows: When a curriculum spirals, certain concepts, key concepts go throughout grade levels. So it's not just that you're teaching a concept in isolation. It may be introduced in a grade level, but it could be taught fifth, sixth, seventh. It keeps going until it's mastered and it builds on another key concept. Our curriculum is articulated K through 12. So we know exactly where these key concepts are and how they're taught and how they spiral. And our curriculum does spiral. And that's why it becomes one of those components that occasionally you are going to grab a resource that is of lower grade level, and even regular ed teachers do this all the time, to teach a key concept that student's don't have. So they'll go back, grab from something that may seem like it's on a lower level, but it's building on that key concept that they have to have in a certain grade level to continue. So teachers are very adaptable, and they're very practical on how they grab things. (Tr. Vol. I, p. 87, l. 12-25, p. 88, l. 1-7).

⁹ Differentiated Instruction was described by Ms. Seago as the method of teaching grade level objectives which using potentially below grade level curriculum. She stated that "They could definitely teach an objective by using a below grade level, because our curriculum spirals. We have 12th graders learning a math concept out of a 9th grade math book. That's not, quite, a novel thing. It happens a lot. Because teachers will go to the resources they need to reinforce the skills to help our students build on that foundation so they can be successful. That is done on a daily basis in this school district. (Tr. Vol. I, p. 77, l. 4-12).

144-145); a statement of annual goals, including short-term instructional objectives (Respondent's Exhibit 6, pp. 177, 164 and 147); a statement of specific regular educational services to be provide to Student, and the extent to which she will be able to participate in regular education programs (Respondent's Exhibit 6, pp. 178-181, 165-168 and 148-151); the projected date for initiation and anticipated duration of services (Respondent's Exhibit 6, pp. 172, 159, and 142); and appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved (Respondent's Exhibit 6, pp. 177, 164 and 147). Respondent clearly satisfied the IDEA requirements for content in creating Student's IEPs.

In her attendance at Delta Woods, Student flourished under the instruction of Marla Hahn in the 7th grade. Mother's correspondence with Marla Hahn, Student's progress reports for 7th grade, testimony from Ms. Hahn, and her progress/mastery of IEP goals in 7th grade, clearly indicate progress. (Respondent's Exhibit 6, pp. 204-206). As stated above, Mother related to Ms. Hahn that in 7th grade, "our daughter has had the best year ever." (Respondent's Exhibit 11, p. 426). Mother further stated in the same e-mail, "Tell your parents we thank them for bringing you into this world." (*Id.*)

The Panel unanimously holds that Student received a FAPE during her 7th grade year.

19. Petitioners maintain that Student was not provided FAPE in 8th grade (2007-2008 school year). Given the fact that Student, due to hospitalization, only actually attended Delta Woods for approximately five and one-half weeks during the first semester of 8th grade, it was challenging for the District to afford FAPE to Student during this timeframe, but it did so. Student acknowledged that she made progress under the tutoring and homebound instruction of Kris Mayer in the fall of 2008. Student's grade reports confirmed progress. Ms. Mayer and Tara

Ely also credibly testified to Student's progress during the fall semester of her 8th grade year. Mother certainly seemed to indicate that Student was progressing, or, at the very least, being given the opportunity to progress as evidenced by her October 11, 2007 e-mail: "...on my way home after the meeting I was thinking how fortunate my family is to have the opportunity to have such wonderful and caring teachers and staff. I truly believe that because of all of you, our child will have opportunities she might otherwise not have." (Respondent's Exhibit 10, pp. 347-348).

Upon Student's return to school in the fall semester of her 8th grade, the District took extraordinary steps to assure her care and safety.

The Panel holds, by a 2-1 vote, that Student received a FAPE during the first semester of her 8th grade year. Ms. McClure registered the dissenting vote.¹⁰

Student's second semester of her 8th grade is different. During the timeframe Student was exclusively serviced by homebound instruction from Erin Fournety. The time afforded for services was 300 minutes a week, however, the credible evidenced showed that this time was not provided with Student being denied approximately 25 hours for the semester. Part of this shortage was caused by the fact that Ms. Fournety counted her travel time against the 300 minutes a week. Clearly, minutes of service Student is to receive pursuant to his/her IEP cannot be diminished by the distance the service provider happens to live from the student. Accordingly, the Panel unanimously holds that there was a procedural violation of Student's IEP during the second semester of her 8th grade year.

Having found procedure inadequacies, the Panel must go to step two and determine if Student received a FAPE because the procedural inadequacies:

- 1) impeded the child's right to a free appropriate public education;

¹⁰ Ms. McClure's dissent is attached to this decision.

- 2) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents' child; or
- 3) caused a deprivation of educational benefits.

20 U.S.C. §1415 (F)(3)(E)(ii)(2005).

The Panel unanimously holds that the significant shortage of homebound minutes caused a deprivation of educational benefits. Student testified that she did not learn during the second semester. Until Student's uncle became involved, there were very few assignments completed. At least one of the examinations administered purportedly denoting progress reveals only one of 10 answers were correct whereas the District's grade sheet reflected a perfect score.

Decision

The Panel believes that the District professionally and appropriately dealt with the emotional and behavioral needs of the Student. The Panel holds that Student received FAPE during the last days of her 6th grade year, her 7th grade year and first semester of her 8th grade year. She did not receive FAPE the second semester of her 8th grade year. Parents are not entitled to reimbursement for the Independent Education Evaluation by Dr. Metzl.

Remedy

The District shall offer 25 hours of instructional service to Student in area(s) mutually agreed upon. If mutual agreement is not reached, the service shall be offered in deficit academic area(s) identified by her current educational provider. If mutual agreement is not reached and if the current educational provider does not identify the requested area(s) of deficit within 14 calendar days of the District's written request to do so, then the identified area of deficit to be served shall be math.

The parties may, but are not required to, consider contracting with another agency, e.g. The Joshua Center or The Plaza Academy, to offer the twenty-five (25) hours of service.

If provided by the District, the services shall be offered at mutually agreed upon times and location. If mutual agreement cannot be achieved regarding the times for service, the service will be offered one hour daily immediately following Student's regular school day, or, if Student is not attending school, 1 hour daily between the hours of 9:00 a.m. and 6:00 p.m. as selected by the District. If mutual agreement cannot be achieved regarding the location for service, the location shall be Student's public attendance area school or Student's home or Student's school of attendance (if located within 20 miles of the District's boundary), as selected by Parents. Such services shall not be offered during weekends or District holidays (except by mutual agreement), and shall not be offered during a day or time prohibited by a doctor's order.

The offer of services shall commence within sixty (60) days of this decision unless a later date is mutually agreed upon, and shall cease following twenty-five (25) hours of offered services.

Appeal Procedure

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

Dated: _____

Richard H. Ulrich, Chairperson

Marilyn McClure, Hearing Panel Member

George Wilson, Hearing Panel Member

Given by Order of :



Richard H. Ulrich, Hearing Chair, on this
21st day of May, 2009
8909 Ladue Road
St. Louis, MO 63124
(314) 991-4999
(314) 991-2413 (Fax)

CERTIFICATE OF SERVICE

I do hereby certify a copy of the foregoing was e-mailed and placed in the U.S. Mail, postage prepaid, by Certified Mail, Return Receipt Requested this 21st day of May, 2009 addressed to:

Deborah S. Johnson, Esq.
9923 State Line Road
Kansas City, MO 64114
DebJohnson@kc.rr.com
Attorney for Petitioner

Ryan T. Fry, Esq.
Cochran, Oswald & Roam, LLC
601 NW Jefferson
Blue Springs, MO 64013
rfry@cochranoswaldlaw.com
Attorney for School District

Marilyn McClure
Post Office Box 16
Strasburg, MO 64090-0016
kcspecialled@hotmail.com
Panel Member

George Wilson
2656 County Road 2950
Clark, MO 65243
(417) 849-1847
gwilson123@gmail.com
Panel Member

Jacqueline Bruner, Director of Compliance
Missouri Department of Elementary
and Secondary Education
Special Education Compliance
Post Office Box 480
Jefferson City, Missouri 65102
jacqueline.bruner@dese.mo.gov



Dissent by McClure

v. Blue Springs

This panel member sees that the student was not provided FAPE for the fall semester of her 8th grade year (fall 2007).

The district failed to evaluate in the area of OHI as a suspected disability. This foundational oversight, if it were, may have resulted in the turmoil as presented in this case. It impacts all issues presented in this case. The student has Tourette Syndrome which went unaddressed by the district, other than being mentioned in the IEP as a contribution of information by the parent. Tourette Syndrome has implications on education performance other than the learning disabilities displayed by this student. The failure of the district to deal with the Tourette Syndrome had significant ramifications on the educational experience of this student. In evaluations that the district performed, int indicated there was no need for assessing for other issues of which this student obviously struggled beyond what a typical student would. IDEA 2004 included for the first time at 300.8(c)(9)(i) that an eligibility determination can be made as OHI for students with Tourette. As a result, this panel member would order that student be evaluated for eligibility for OHI.

Social skills training is often a need of student's with significant Tourette; these were not addressed in the IEP's. Dr. Seabuagh testified the student needs social skills training.

The parent was a lay person who was going through extreme emotional turmoil in that the child had made suicide attempts. Parents going through such turmoil may comment favorably about personnel in their community who seek to return normalcy to such a situation. I see that as the situation here. The parent made favorable comments about school staff after the student returned to programming. I don't see the comments made by the parent as referred by my fellow panel members above as the parent placing approval on the appropriateness of the programming.