

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

**, on behalf of** )  
, )  
)  
**Petitioners** )  
**v.** )  
**Kansas City Missouri School District,** )  
)  
**Respondent** )

**COVER SHEET**

1. ("Student") is the son of ("Parent"). The Student was born on.
2. At all times material to this due process proceeding, the Student resided with his Parent. Between on or around October 24, 2006, and October 11, 2007, the Student and Parent resided in the Pleasanton Unified School District in the State of California, having moved there from the District. Since October 11, 2007, the Student and Parent have resided within the boundaries of the Kansas City 33 School District ("District") and the Student has attended school there.
3. The District is a Missouri public school district which is located in Jackson County, Missouri. During school year 2008-09 the District had an enrollment of approximately 22,200 students. (Missouri School District Directory).
4. The Student and Parent were represented by Deborah S. Johnson, 9923 State Line Road, Kansas City, Missouri, 64114, through June 24, 2009, when Order Number 11 (Withdrawal of Counsel) was issued by the Hearing Chairperson (HP Exh 61) in response to Ms. Johnson's Notice of Withdrawal, dated June 23, 2009 (HP Exh 60). After June 24, 2009, the Student and Parent were not represented by counsel and pursued the matter as *pro se* litigants.
5. During this proceeding the District was represented by W. Joseph Hatley and Kristina V. Giddings, Spencer Fane Britt & Browne, L.L.P., 1000 Walnut, Suite 1400, Kansas City Missouri, 64106.

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

Ransom A Ellis, III	Hearing Chairperson
Dr. Patty Smith	Panel Member
Pam Walls	Panel Member

7. The due process complaint was filed by the Parent with the Department of Elementary and Secondary Education (“DESE”) on October 24, 2008. (HP Exh 1).

8. On November 3, 2009, the District filed its Response To Due Process Complaint. (HP Exh 4). On November 10, 2008, the District filed its Notice of Deficient Due Process Complaint. (HP Exh 6). On November 17, 2008, the Hearing Chairperson issued her Ruling Regarding the District's Notice of Deficient Complaint and Order Requiring Complaint to be Amended, which found that the complaint lacked sufficiency, in part, and gave Petitioner an opportunity to file a First Amended Complaint. (HP Exh 7).

9. On January 29, 2009, Petitioner filed Petitioners' First Amended Complaint. (HP Exh 12). On February 9, 2009, the District filed its Response to Due Process Complaint. (HP Exh 15). On February 9, 2009, the District On February 13, 2009, Respondent filed Notice of Deficient Amended Due Process Complaint. (HP Exh 17). On February 18, 2009, Hearing Chairperson Samara Klein issued her Ruling Regarding Respondent's Notice of Deficient Amended Complaint and Order Requiring Complaint to be Amended (HP Exh 19) which found the Complaint was not sufficient and directed the Petitioner to file an amended complaint.

10. On February 28, 2009, Petitioners filed Petitioners' Second Amended Due Process Complaint (HP Exh 20). On March 10, 2009, the District filed its Response to Second Amended Due Process Complaint. (HP Exh 23). On or around that same date, the District filed its Notice of Deficient Second Amended Due Process Complaint. (HP Exh 28).

11. On or about March 17, 2009, the parties filed their Joint Motion For Recusal and Substitution (HP Exh 30). On March 17, 2009, Hearing Chairperson Samara Klein issued her Recusal of Chairperson. (HP Exh 31). On March 18, 2009, this matter was assigned to Hearing Chairperson Ransom Ellis, III. (HP Exh 33).

12. On March 31, 2009, Order Number 4 (Notice of Insufficiency) was issued by the Hearing Chairperson (HP Exh 41).

13. On April 9, 2009, Order Number 7 (Order Following Pre-Hearing Conference and Notice of Hearing) (HP Exh 48) was issued by the Hearing Chairperson and defined the issues to be decided in the hearing. On April 9, 2009, Order Number 8 (Amendment To Order Number 4 Regarding Sufficiency Of Second Amended Due Process Complaint) (HP Exh 49) was issued by the Hearing Chairperson.

14. On April 9, 2009, the District filed its Motion For Extension of the Statutory Deadlines requesting that the hearing time lines be extended through June 30, 2009. (HP Exh 50). On April 9, 2009, Order Number 9 (Extending Time Lines In Case) was issued (HP Exh 50) by the Hearing Chairperson and extended the time lines for issuing the decision through June 30, 2009.

15. On June 2, 2009, the District filed its Motion to Extend Statutory Deadline for Decision. (HP Exh 56). On June 4, 2009, Order Number 10 (Extending Time Lines In Case and Notice of Hearing) (HP Exh 57) was issued by the Hearing Chairperson and extended the time lines for issuing the decision through October 31, 2009.

16. The first portion of the hearing in this matter was held in Kansas City, Missouri on May 18, 2009 through May 21, 2009. On September 10 and 11, 2009, the remainder of the hearing was held in the same location. The record in the hearing was closed at the conclusion of the hearing on September 11, 2009. The Hearing Chairperson for the hearing was Ransom Ellis, III. The Hearing Panel Members were Dr. Patty Smith and Pam Walls.

17. On October 6, 2009, the District requested that the time lines in this case be extended through December 4, 2009, because the record of the hearing had not been received by the parties. On October 12, 2009, the Hearing Chairperson issued Order Number 17 (Extending Time Lines In Case) and extended the time lines for mailing the decision in this case through December 4, 2009.

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

**XXXXXXXXXXXXXXXXXXXXXXX,** )  
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 **Petitioners** )  
 **v.** )  
 )  
 **Kansas City Missouri School District,** )  
 )  
 **Respondent** )

**FINDINGS OF FACT, CONCLUSIONS OF LAW,  
DECISION AND ORDER**

The Hearing Panel, after conducting the due process hearing in this matter on August 5-8, 2008, issues the following Findings of Fact, Conclusions of Law, Decision and Order:

**I. FINDINGS OF FACT**

The Hearing Panel makes the following Findings of Fact:

**A. The Parties**

1. At all times material to this due process proceeding, the Student resided with his Parent. Between on or around October 24, 2006, and October 11, 2007, the Student and Parent resided in the Pleasanton Unified School District in the State of California, having moved there from the District. Since October 11, 2007, the Student and Parent have resided within the boundaries of the Kansas City 33 School District (“District”) and the Student has attended school there.
2. The District is a Missouri public school district which is located in Jackson County, Missouri. During school year 2008-09 the District had an enrollment of approximately 22,200 students. (Missouri School District Directory).
3. The Student and Parent were represented by Deborah S. Johnson, 9923 State Line Road, Kansas City, Missouri, 64114, from the filing of the due process complaint through June 24, 2009, when Order Number 11 (Withdrawal of Counsel) was issued by the Hearing Chairperson (HP Exh 61) in response to Ms. Johnson's Notice of Withdrawal, dated June 23, 2009 (HP Exh

60). After June 24, 2009, the Student and Parent were not represented by counsel and pursued the matter as *pro se* litigants.

4. During this proceeding the District was represented by W. Joseph Hatley and Kristina V. Giddings, Spencer Fane Britt & Browne, L.L.P., 1000 Walnut, Suite 1400, Kansas City Missouri, 64106.

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

Ransom A Ellis, III	Hearing Chairperson
Dr. Patty Smith	Panel Member
Pam Walls	Panel Member

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

Dr. John Martin	Interim Superintendent
Dr. Christine Hernandez	Director of Exceptional Education Department
Dr. Juanita Hempstead	Principal -- Paseo Academy
Thomas Shelton	Principal
Steve Belems	Vice-Principal -- Paseo Academy
Gayla Wampler	Exceptional Education Coordinator
Jennifer Cramer	Exceptional Education Coordinator
Betty Hartwig	Exceptional Education Facilitator
LaShon Gant	Special Education Process Representative
Leigh Anne Guminger	Special Education Teacher
Douglas Decker	Special Education Teacher
Marlene Vann	Special Education Teacher
Karen Cobb	Special Education Teacher
Courtney Ng	Occupational Therapist
Jane Leis	Speech Language Pathologist
Nelson Hull	Behavior Intervention Team
Elisa R. Konzak	Regular Education Teacher
Harold Smith	Computer Applications Teacher
Lisa May	Paraprofessional

## **B. Procedural Background**

7. The due process complaint was filed by the Parent with the Department of Elementary and Secondary Education (“DESE”) on October 24, 2008. (HP Exh 1).

8. On October 24, 2008, this matter was assigned to Hearing Chairperson Samara Klein. (HP Exh 2).

9. On January 29, 2009, Petitioner filed Petitioners' First Amended Complaint. (HP Exh 12). On February 9, 2009, the District filed its Response to Due Process Complaint. (HP Exh 15). On February 13, 2009, the District filed its Notice of Deficient Amended Due Process Complaint. (HP Exh 17). On February 18, 2009, Hearing Chairperson Samara Klein issued her Ruling Regarding the District's Notice of Deficient Amended Complaint and Order Requiring Complaint to be Amended (HP Exh 19) which found the Complaint was not sufficient and directed the Petitioners to file an amended complaint.
10. On February 28, 2009, Petitioners filed Petitioners' Second Amended Due Process Complaint (HP Exh 20). On March 10, 2009, the District filed its Response to Second Amended Due Process Complaint. (HP Exh 23). On or around that same date, the District filed its Notice of Deficient Second Amended Due Process Complaint. (HP Exh 28).
11. On February 28, 2009, Petitioners filed Petitioners' Motion For Extra Hearing Days (HP Exh 21) which requested that Petitioners be allowed two (2) days to present their case at the hearing. Thereafter, Hearing Chairperson Samara Klein issued the Order Allowing Additional Days for a Due Process Hearing (HP Exh 16).<sup>1</sup> In her Order, the Hearing Chairperson set the hearing for five (5) days, giving two days to each party and reserving one (1) hearing day for problems associated with witness availability.
12. On March 13, 2009, the District filed its Unopposed Motion For Extension Of Statutory Deadline For Decision requesting that the timelines for this case be extended through May 18, 2009. (HP Exh 25).
13. On or about March 17, 2009, the parties filed their Joint Motion For Recusal and Substitution (HP Exh 30). On March 17, 2009, Hearing Chairperson Samara Klein issued her Recusal of Chairperson. (HP Exh 31). On March 18, 2009, this matter was assigned to Hearing Chairperson Ransom Ellis, III. (HP Exh 32, 33).
14. On March 20, 2009, Petitioners' Counsel wrote Hearing Chairperson Ellis requesting that he recuse himself from the case. (HP Exh 34). On March 23, 2009, the Hearing Chairperson issued Order Number 1 (Petitioner's Motion Requesting Hearing Chairperson To Recuse), which denied the request made by Petitioners' Counsel. (HP Exh 35).
15. On March 11, 2009, Petitioners filed their Motion To Quash Respondent's Amended Notice Of Deposition With Suggestions In Support. (HP Exh 24). On March 17, 2009, the District filed its Memorandum In Opposition To Petitioner's Motion To Quash Amended Notice of Deposition. (HP Exh 29). On March 25, 2009, Hearing Chairperson Ellis issued Order Number 2 (Petitioners' Motion To Quash Respondent's Amended Notice Of Deposition). (HP Exh 38). On March 25, 2009, Petitioners filed their Motion To Reconsider Or Clarify March 25, 2009, Order In Response To Petitioner's Motion To Quash Amended Notice Or Deposition. (HP

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<sup>1</sup> This Order appears on its face to be dated February 12, 2009. However, there are references in the body of the Order to events that occurred in March, 2009, which leads the Hearing Panel to believe that the Order was issued between March 5, 2009 and March 17, 2009.

Exh 39). On March 25, 2009, the Hearing Chairperson issued Order Number 3 (Petitioner's Motion To Reconsider Or Clarify Order Number 2). (HP Exh 40).

16. On or around March 17, 2009, the District filed its Notice Of Deficient Second Amended Due Process Complaint. (HP Exh 28). On March 31, 2009, the Hearing Chairperson issued Order Number 4 (Notice Of Insufficiency). (HP Exh 41). Following the April 2, 2009, Pre-Hearing Conference, on April 9, 2009, the Hearing Chairperson issued Order Number 8 (Amendment To Order Number 4 Regarding Sufficiency of Second Amended Due Process Complaint). (HP Exh 49).

17. On March 10, 2009, the District filed its Response To Second Amended Due Process Complaint. (HP Exh 23). On March 16, 2009, Petitioners filed their Motion For Order Requiring Respondent To Provide An Appropriate Response To Petitioner's Second Amended Complaint. (HP Exh 27). On March 23, 2009, the District filed its Memorandum In Opposition To Petitioner's Motion For Order Requiring Respondent To Provide An Appropriate Response To Petitioners' Second Amended Complaint. (HP Exh 36). On April 1, 2009, the Hearing Chairperson issued Order Number 5 (Petitioners' Motion For Order Requiring Respondent To Provide An Appropriate Response To Second Amended Complaint). (HP Exh 44).

18. On April 1, 2009, the Hearing Chairperson issued Order Number 6 (Order Setting Pre-Hearing Conference), which set the Pre-Hearing conference in this matter for April 2, 2009. (HP Exh 45). On April 2, 2009, the Hearing Chairperson conducted a Pre-Hearing Telephonic Conference to discuss the Issues and Proposed Remedy, the deadlines for the case and other matters pertinent to the hearing in this case. On April 9, 2009, the Hearing Chairperson issued Order Number 7 (Order Following Pre-Hearing Conference And Notice of Hearing). (HP Exh 48). The dates of May 18 through May 21, 2009, were set for the hearing in this case and each party was given seven hundred twenty (720) minutes to present his/her case including opening statement, examination or cross-examination of witnesses and closing argument.

19. On April 3, 2009, Petitioners filed their Motion For Pre-Hearing Scheduling Order (HP Exh 46) and requested in that motion that the timelines in the case be extended through June 30, 2009. On April 9, 2009, the District filed its Motion For Extension Of The Statutory Deadlines (HP Exh 47) which requested that the timelines in the case be extended through June 30, 2009. On April 9, 2009, the Hearing Chairperson issued Order Number 9 (Extending Time Lines In Case) which extended the timelines in the case through June 30, 2009. (HP Exh 50)

20. The first portion of the due process hearing occurred on May 18-21, 2009, in Kansas City, Missouri. At the hearing Petitioners were represented by Deborah Johnson. Petitioners rested their case-in-chief after three and one-half (3½) hearing days and after totally exhausting all of the seven hundred twenty (720) minutes allotted to them for the hearing. On May 21, 2009, during the hearing, the Hearing Chairperson gave Petitioners an additional two hundred (200) minutes to present their case. The District was also advanced an additional two hundred (200) minutes at that time.

21. On June 2, 2009, the District filed its Motion To Extend Statutory Deadline For Decision (HP Exh 56) and requested that the time lines in the case be extended through October 31, 2009. On June 4, 2009, the Hearing Chairperson issued Order Number 10 (Extending Time Line In Case and Notice of Hearing) which extended the timelines in the case through October 31, 2009, and set the dates for the resumed hearing for September 10-11, 2009, in Kansas City, Missouri. (HP Exh 57).

22. On June 23, 2009, Petitioners' Counsel filed her Notice of Withdrawal which indicated that she was withdrawing from the case. (HP Exh 60). On June 24, 2009, the Hearing Chairperson issued Order Number 11 (Withdrawal of Counsel). (HP Exh 61).

23. On June 23, 2009, Petitioners sent an electronic mail message to the Hearing Chairperson which asked him to recuse himself from the remainder of the hearing and raised questions concerning the nature of the issues that were defined in Order Numbers 7 and 8. (HP Exh 62). On June 24, 2009, the Hearing Chairperson responded to Petitioners' letter, with copies to the District. (HP Exh 63). In this letter the Hearing Chairperson refused again to recuse himself and stated in pertinent part as follows:

"At the request of the parties, I modified Order Number 7 in Order Number 8 to set out the allegations in the due process complaint that met the specificity requirement of the IDEA regulations, so the parties could hone in on the factual issues that were relevant to the issues identified in Order Number 7."

24. On July 8, 2009, the District filed its Motion to Quash Subpoenas. (HP Exh 64). On July 8, 2009, Petitioners filed their Response to Motion To Quash Subpoenas -- Decker and Vann. (HP Exh 65). On July 14, 2009, the Hearing Chairperson issued Order Number 12 (Respondent's Motion To Quash Subpoenas). (HP Exh 66).

25. On July 22, 2009, Petitioners filed their Motion For Clarification Of Terms In Order 8. (HP Exh 67). On July 23, 2009, Petitioners filed their Motion To Relinquish Issues of the 2008-09 IEP to Mr. Ulrich. (HP Exh 68). On July 31, 2009, the District filed its Response to Petitioner's Motion For Clarification Of Term In Order 8, (HP Exh 69), and Suggestions In Opposition To Petitioners' Motion To Relinquish Issues To Mr. Ulrich. (HP Exh 70). On August 3, 2009, the Hearing Chairperson issued Order Number 13 (Petitioners' Motion For Clarification Of Term In Order Number 8 and Motion To Relinquish Issues Of the 2008-09 IEP To Mr. Ulrich. (HP Exh 71).

26. On August 7, 2009, Petitioners filed their Motion for Sanctions (HP Exh 72) which essentially requested that the Hearing Chairperson sanction the District for its alleged failure to produce all of the Student's educational records. On August 14, 2009, the District filed its Suggestions in Opposition To Petitioners' Motion For Sanctions. (HP Exh 75). On August 17, 2009, the Hearing Chairperson issued Order Number 14 (Petitioners' Motion For Sanctions) which denied Petitioners' Motion. (HP Exh 77). After August 17, 2009, Petitioners filed their Motion to Reconsider and Reply To KCMSD Response To Motion For Sanctions Aug 14, 2009.

(HP Exh 80). On August 28, 2009, the Hearing Chairperson issued Order Number 16 (Petitioners' Motion For Reconsideration of Order Number 14). (HP Exh 83).

27. On August 12, 2009, Petitioners filed their Motion To Introduce Teachers' Depositions of Ms. Vann and Mr. Decker Into Evidence. (HP Exh 74). On August 17, 2009, the Hearing Chairperson issued Order Number 15 (Petitioners' Motion To Introduce Teachers' Depositions). (HP Exh 78).

28. On September 10 and 11, 2009, the remainder of the hearing was held in Kansas City, Missouri. Petitioners proceeded as *pro se* litigants at this portion of the hearing. The District was represented by W. Joseph Hatley and Kristina V. Giddings, Spencer Fane Britt & Browne, L.L.P., 1000 Walnut, Suite 1400, Kansas City Missouri, 64106. The record in the hearing was closed at the conclusion of the hearing on September 11, 2009.

29. Petitioners and the District exchanged exhibits prior to the date of the initial hearing in compliance with the IDEA Regulations, 34 C.F.R. § 300.512. Formal exhibits were prepared by the Hearing Chairperson and presented to the parties at the due process hearing. During the due process hearing, the following exhibits were received into evidence:

A. Petitioner's Exhibits ("PEX") -- PEX 1-4; 6-7; 9-11; 14-15; 18; 43-44; 51; 56 (pp. 347-348); 57-58; 60 (pp. 370, 384, 389-398); 61; 68 (pp. 436-441, 444-446, 448); 72-74; 85; 90; 106; 109; 116 (pp. 1031-1033); 117 (pp. 1422-1429); 118 (pp. 4215-4256), 4259-4260, 4351, 4354, 4388-4413, 4457, 4459, 4592, 4608-4619, 4705, 4727-4728; and, 119 (pp. 1438-1440).

B. District Exhibits ("REX") -- REX 502 - 508; 509; 511; 513; 515; 520; 529; 534; 539 (pp. 132-133(a)); 540 (pp. 134-135); 546; 548; 550-552; 555-556; 558; 561-565; 567; 569; 571-572; 574-578; 580; 582-591; 594-596; 599-600; 602-603; 605; 608; 613-614; 619; 621-625; 645 and 659.

C. Hearing Panel Exhibits ("HP Exh") -- HP Exhs 1-83.

30. On October 6, 2009, the District requested that the timelines in this case be extended through December 4, 2009, because the record of the hearing had not been received by the parties. On October 12, 2009, the Hearing Chairperson issued Order Number 17 (Extending Time Lines In Case) and extended the time lines for mailing the decision in this case through December 4, 2009.

### **C. Time Line Information**

31. The due process complaint was filed by the Parent with the Department of Elementary and Secondary Education ("DESE") on October 24, 2008. (HP Exh 1).

32. On January 29, 2009, Petitioner filed Petitioners' First Amended Complaint. (HP Exh 12). On February 9, 2009, the District filed its Response to Due Process Complaint. (HP Exh 15). On February 13, 2009, the District filed Notice of Deficient Amended Due Process Complaint. (HP Exh 17). On February 18, 2009, Hearing Chairperson Samara Klein issued her Ruling Regarding the District's Notice of Deficient Amended Complaint and Order Requiring Complaint to be Amended (HP Exh 19) which found the Complaint was not sufficient and directed the Petitioner to file an amended complaint.
33. On February 28, 2009, Petitioners filed Petitioners' Second Amended Due Process Complaint (HP Exh 20). On March 10, 2009, the District filed its Response to Second Amended Due Process Complaint. (HP Exh 23). On or around that same date, the District filed its Notice of Deficient Second Amended Due Process Complaint. (HP Exh 28).
34. On March 13, 2009, the District filed its Unopposed Motion For Extension Of Statutory Deadline For Decision requesting that the timelines for this case be extended through May 18, 2009. (HP Exh 25).
35. On or around March 17, 2009, the District filed its Notice Of Deficient Second Amended Due Process Complaint. (HP Exh 28). On March 31, 2009, the Hearing Chairperson issued Order Number 4 (Notice Of Insufficiency). (HP Exh 41). Following the April 2, 2009, Pre-Hearing Conference, on April 9, 2009, the Hearing Chairperson issued Order Number 8 (Amendment To Order Number 4 Regarding Sufficiency of Second Amended Due Process Complaint). (HP Exh 49).
36. On April 3, 2009 Petitioners filed their Motion For Pre-Hearing Scheduling Order (HP Exh 46) and requested in that motion that the time lines in the case be extended through June 30, 2009. On April 9, 2009, the District filed its Motion For Extension Of The Statutory Deadlines (HP Exh 47) which requested that the timelines in the case be extended through June 30, 2009. On April 9, 2009, the Hearing Chairperson issued Order Number 9 (Extending Time Line In Case) which extended the timelines in the case through June 30, 2009. (HP Exh 50)
37. The first portion of the due process hearing occurred on May 18-21, 2009, in Kansas City, Missouri.
38. On June 2, 2009, the District filed its Motion To Extend Statutory Deadline For Decision (HP Exh 56) and requested that the timelines in the case be extended through October 31, 2009. On June 4, 2009, the Hearing Chairperson issued Order Number 10 (Extending Time Line In Case and Notice of Hearing) which extended the timelines in the case through October 31, 2009, and set the dates for the resumed hearing for September 10-11, 2009, in Kansas City, Missouri. (HP Exh 57).
39. On September 10 and 11, 2009, the remainder of the hearing was held in Kansas City, Missouri. The record in the hearing was closed at the conclusion of the hearing on September 11, 2009.

40. On October 6, 2009, the District requested that the timelines in this case be extended through December 4, 2009, because the record of the hearing had not been received by the parties. On October 12, 2009, the Hearing Chairperson issued Order Number 17 (Extending Time Lines In Case) and extended the timelines for mailing the decision in this case through December 4, 2009.

#### **D. The Issues and Proposed Remedy**

41. Prior to the Hearing, the Hearing Chairperson identified the issues and the factual allegations contained in the Complaint that met the IDEA specification requirements. (HP Exh 49). These issues and factual allegations are as follows:

Issue No. 1. Whether the District failed to enroll the Student in a timely manner in October, 2007? And, if so, whether that failure constituted a procedural inadequacy which: (1) impeded the Student's right to a free appropriate public education; (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 Student; or, (3) caused a deprivation of educational benefit to the Student, as set forth in 34 C.F.R. §300.513(a)(2)?

Issue No. 2. Whether the program of special education and related services provided in the Student's October 18, 2007, Individualized Education Plan ("IEP"), and any amendments to that IEP, provided him with a free appropriate public education? In particular:

(A) Whether the Student's October 18, 2007, IEP, and amendments, met the content requirements set forth in 34 C.F.R. §300.320?

(B) Whether the District failed to properly consider the use of positive behavioral interventions and supports, including the preparation and implementation of a behavior intervention plan, and other strategies to address the Student's behavior in compliance with 34 C.F.R. §300.324(a)(2)(i)?

(C) Whether the District failed to properly consider the use of appropriate assistive technology devices and services in compliance with 34 C.F.R. §300.324(a)(2)(v)?

(D) Whether the District failed to properly determine appropriate transition services for the Student in compliance with 34 C.F.R. §300.320(b)?

#### Factual Allegations In The Complaint Regarding Issue No. 2

(1) The Student has failed to progress in his program of special education and related services.

(2) The goals and objectives in the Student's October 18, 2007, IEP were not appropriate because the goals and objectives: (a) were not sufficiently measurable; (b) were not designed to meet the Student's needs; (c) were not designed to enable the Student to be involved in and make progress in the general education curriculum; and/or, (d) have already been accomplished.

(3) The minutes for special education services on the Student's October 16, 2008, IEP were not appropriate.

(4) The "related service" of Adaptive Physical Education was not appropriate for the Student in that it was not applied appropriately to allow the Student to gain reasonable benefit.

(5) The minutes for the "related service" of Adaptive Physical Education were not appropriate for the Student to gain reasonable benefit.

(6) The minutes for the "related service" of Occupational Therapy were not appropriate.

(7) The minutes for the "related service" of Occupational Therapy Consultation were not appropriate.

(8) The minutes for the "related service" of Speech/Language Therapy were not appropriate.

(9) The District failed to use alternative communication methods with the Student.

(10) The District tested the Student using the Kauffman Test of Educational Achievement without the knowledge of the Parent.

Factual Allegations In The Complaint Regarding Issue No. 2(A)

(1) The Present Levels of Educational Performance contained in the October 18, 2007, IEP do not accurately reflect the information possessed by the District regarding the Student's unique needs and present levels of performance.

Factual Allegations In The Complaint Regarding Issue No. 2(B)

(1) The Behavior Intervention Plan dated 07/16/08 failed to address all of the Student's behaviors that interfered with his learning and was not modified as needed to address new behaviors and failed to properly implement his Behavior Intervention Plan.

(2) The District failed to provide rewards for the Student to be used with his Behavior Intervention Plan.

(3) The District failed to allow the Student to use devices to listen to music, which were necessary for the Student to receive a free appropriate public education.

(4) The list of "accommodations, modifications and supports" identified in the Student's October 16, 2008, IEP does not sufficiently describe the frequency and areas where they would be provided.

Factual Allegations In The Complaint Regarding Issue No. 2(C)

(1) The District failed to identify or describe appropriate assistive technology to meet the Student's needs.

(2) The District failed to help the Student use or learn to use the assistive technology that was provided.

(3) The District failed to provide the following devices: (a) a clock in the classroom; or, (b) a microwave for a hot/warm lunch.

Factual Allegations In The Complaint Regarding Issue No. 2(D)

(1) The District failed to define a transition plan that was reasonably calculated to assist the Student to reach appropriate post-secondary goals and did not meet all of the Student's transition needs.

Issue No. 3. Whether the program of special education and related services provided in the Student's October 16, 2008, Individualized Education Plan was reasonably calculated to provide the Student with a free appropriate public education? In particular:

A. Whether the Student's October 16, 2008, IEP met the content requirements set forth in 34 C.F.R. §300.320?

B. Whether the District failed to properly consider the use of positive behavioral interventions and supports, including the preparation and implementation of a behavior intervention plan, and other strategies to address the Student's behavior in compliance with 34 C.F.R. §300.324(a)(2)(i)?

C. Whether the District failed to properly consider the use of appropriate assistive technology devices and services in compliance with 34 C.F.R. §300.324(a)(2)(v)?

D. Whether the District failed to properly determine appropriate transition services for the Student in compliance with 34 C.F.R. §300.320(b)?

Factual Allegations In The Complaint Issue No. 3

(1) Student has failed to progress in his program of special education and related services.

(2) The goals and objectives in the Student's October 16, 2008, IEP were not appropriate because they: (a) were not sufficiently measurable; (b) were not designed to meet the Student's needs; (c) were not designed to enable the Student to be involved in and make progress in the general education curriculum; (d) do not provide an "appropriate comprehensive curriculum;" and, (e) have already been accomplished.

(3) The minutes for special education services on the Student's October 16, 2008, IEP were not appropriate.

(4) The minutes for the "related service" of Adaptive Physical Education were not appropriate for the Student to gain reasonable benefit.

(5) The minutes for the "related service" of Occupational Therapy were not appropriate.

(6) The minutes for the "related service" of Occupational Therapy Consultation were not appropriate.

(7) The minutes for the "related service" of Speech/Language Therapy were not appropriate.

(8) The "related service" of Adaptive Physical Education was not appropriate for the Student in that it was not applied appropriately to allow the Student to gain reasonable benefit.

(9) The Student's "basic care needs" are not being met by the District, including: (a) use of the restroom; and, (b) taking water breaks.

(10) The District failed to use alternative communication methods with the Student.

(11) The District tested the Student using the Kauffman Test of Educational Achievement without the knowledge of the Parent.

Factual Allegations In The Complaint Issue No. 3(A)

(1) The Present Levels of Educational Performance contained in the October 16, 2008, IEP do not accurately reflect the information possessed by the District regarding the Student's unique needs and present levels of performance.

Factual Allegations In The Complaint Issue No. 3(B)

(1) The list of "accommodations, modifications and supports" identified in the Student's October 16, 2008, IEP does not sufficiently describe the frequency and areas where they would be provided.

(2) The Behavior Intervention Plan dated 07/16/08 failed to address all of the Student's behaviors that interfered with his learning and was not modified as needed to address new behaviors and failed to properly implement his Behavior Intervention Plan.

(3) The District failed to provide rewards for the Student to be used with his Behavior Intervention Plan.

Factual Allegations In The Complaint Issue No. 3(C)

(1) The Student's 10/18/08 IEP states that Assistive Technology is needed, but does not adequately identify the Student's Assistive Technology needs.

(2) The District failed to help the Student use or learn to use the assistive technology that was provided.

(3) The District failed to provide the following: (a) a clock in the classroom; (b) a calculator; or (c) scissors, which were necessary for the Student to receive a free appropriate public education.

(4) The District failed to provide the following "assistive technology": (a) a portable word processor; and, (b) "Start to Finish" software.

Factual Allegations In The Complaint Issue No. 3(D)

(1) The District failed to define a transition plan that was reasonably calculated to assist the Student to reach appropriate post-secondary goals and did not meet all of the Student's transition needs.

Issue No. 4. Whether the District failed to provide the Student's Parent with a right to participate in the IEP meeting(s) from October, 2007 through October 24, 2008 in violation of 34 C.F.R. §300.322? And, if so, whether that procedural inadequacy: (1) impeded the Student's right

to a free appropriate public education; (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 Student; or, (3) caused a deprivation of educational benefit to the Student, as set forth in 34 C.F.R. §300.513(a)(2)?

#### Factual Allegations In The Complaint Issue No. 4

(1) During school year 2007-08, the Parent was prevented from participating in IEP meetings.

(2) During school year 2008-09, through October 24, 2009, the Parent was prevented from participating in IEP meetings.

42. The Petitioner proposed the following remedy in the Second Amended Complaint (HP Exh 20, p. 60):

"Remedies proposed by Parent at this point include the following: Define and implement an IEP and BIP that are reasonably calculated to meet Student's unique needs. Provide compensatory and remedial services. Where this Panel finds violation of IDEA, provide declaratory and injunctive relief to prevent future violations of IDEA which may affect Student. Where this Panel finds the District has failed to appropriately implement IEPs or BIPs, order the District to define the IEP and or BIP with more specificity, provide specific orders related to IEP or BIP implementation, and or require the District to pay for neutral oversight of IEP and BIP implementation. Where this Panel finds the District has prevented Parent from meaningful participation in IDEA processes, order corrective measures to ensure Parent can meaningfully participate in the future. As another alternative, Parent believes private placement may be necessary and appropriate."

#### **E. Background Facts**

43. During school year 2006-07, the Student was enrolled as a full-time Student in Pleasanton Unified School District in Pleasanton, California ("Pleasanton School District"). (REX 506, p. 55; Tr. Vol. 5, pp. 956-957). During the time the Student was enrolled in the Pleasanton School District he received special education and related services from the Tri-Valley Special Education Local Plan Area, which provided such services for students in the Pleasanton School District and other public school districts in that area. On February 27, 2007, the Student's IEP Team in California conducted a Triennial Educational evaluation on the Student and determined that he qualified for special education and related services in that he had a primary educational disability of Autism and a secondary educational disability of mental retardation. (PEX 6, p. 7). On February 27, 2007, the Student's IEP Team in California prepared an

Individualized Education Plan ("IEP") for him which provided him with a program of special education and related services. (PEX 6).

44. During school year 2007-08, the Student and his Mother moved back to the District. On October 12, 2007, the Student's Mother telephoned Gayla Wampler and informed Ms. Wampler that she and the Student had moved back to the District. (REX 515; Tr. Vol. 5, p. 948). Ms. Wampler explained: (a) the process for enrolling a student who has transferred from out-of-state; (b) that the District needed copies of the Student's Evaluation and IEP; (c) that when those documents were received, the District would review them and determine whether they would accept or reject them; and, (d) that while the District was waiting to receive the Student's educational records from the Pleasanton School District, the Student could be enrolled and comparable services could be arranged for him. (Tr. Vol. 5, pp. 948-949). Ms. Wampler and the Student's Mother tentatively arranged an IEP meeting for the following Monday, October 15, 2007. (REX 515; Tr. Vol. 5, p. 949). On October 12, 2007, Ms. Wampler sent a Notification of Meeting form to the Student's Mother for the October 15, 2007 IEP meeting. (REX 503; Tr. Vol. 5, p. 949).

45. The Student and his Mother did not show up for the IEP meeting on October 15, 2007 and did not call prior to the meeting to reschedule the meeting. (REX 515; Tr. Vol. 5, p. 950). Ms. Wampler called the Student's Mother and left a message. The Student's Mother returned the call and the Student's IEP meeting was rescheduled for October 18, 2007 at 10:30 a.m. (REX 515; Tr. Vol. 5, p. 951). Ms. Wampler prepared a Notification of Meeting form for this meeting. (REX 504; Tr. Vol. 5, pp. 952). The form was provided to the Student's Mother. (Tr. Vol. 5, p. 953).

46. On Monday, October 15, 2007, at approximately noon, the District received copies of the Student's special education records from the Pleasanton School District. (REX 502; Tr. Vol. 5, p. 953).

47. On October 18, 2007, approximately forty minutes before the scheduled IEP meeting, the Student's Mother called Ms. Wampler and requested that the location for the meeting be changed. Ms. Wampler indicated that a change in the location would not be possible with such short notice. Ms. Wampler and the Student's Mother agreed to reschedule the meeting from 10:30 a.m. to 1:00 p.m. that same day. (REX 504, 515; Tr. Vol. 5, pp. 951-952).

48. On October 18, 2007, at 1:00 p.m., the Student's IEP Team met to discuss his enrollment and transfer back to the District. (REX 515; Tr. Vol. 5, pp. 955-956). Present at this meeting were the Student's Mother, the Student, Gayle Wampler, Leigh Ann Gruminger, LaShon Gant and Elisa Konzak. Prior to the meeting, Ms. Wampler had reviewed the Student's Educational Evaluation and IEP from the Pleasanton School District. (Tr. Vol. 5, pp. 955-956). During the meeting, the Student's Team determined that it would accept the Student's Educational Evaluation from the Pleasanton School District. (Tr. Vol. 5, p. 955). The Student's Mother did not object to using the California Evaluation. (Tr. Vol. 5, p. 956). The District did no additional testing on the Student and did not administer the Kaufman Test of Educational Achievement to

the Student prior to his enrollment and the development of his IEP on October 18, 2007. (Tr. Vol. 5, 1059-1060).

49. On October 18, 2007, after the Student's Team accepted his California Evaluation, the Team developed an IEP for him. ("2007 IEP"). A draft IEP was provided to the Student's IEP Team, including his Mother for discussion purposes. (Tr. Vol. 5, pp.1002-1003). The Student's 2007 IEP was prepared by going page-by-page through the IEP draft and the California IEP to provide the Student's Mother with an opportunity to discuss the educational plan for the Student. (Tr. Vol. 5, pp. 956-957; 1002-1003).

50. During the Student's IEP Meeting on October 18, 2007, the Student's IEP Team completed his IEP and discussed the following:

A. Present Levels Of Academic Achievement And Functional Performance. The Student's Team discussed and prepared a statement of the Student's present levels of academic achievement and functional performance. (REX 506, pp. 55-61). The present levels section of the 2007 IEP includes a description of how the Student's disability affects his involvement and progress in the general education curriculum. (REX 506, p. 55). The majority of the information for the present levels section in the Student's 2007 IEP came from his California IEP. (Tr. Vol. 5, p. 973). During the IEP meeting, the Student's IEP Team read through each portion of the present levels draft and the Student's Mother "offered some input in areas where she thought it was appropriate . . . and basically agreed with what was already there." (Tr. Vol. 5, p. 973, lns. 22-25).

B. Goals and Benchmarks. The Student's Team discussed twenty-four (24) measurable goals for the Student. These goals were developed using the Student's California Educational Evaluation and IEP. (Tr. Vol. 5, p. 960). The goals in the 2007 IEP were developed to assist the student with life skills (reading/understanding signs, writing email notes, use of money, telling time, etc.), to increase his ability to communicate and to help him with motor skills. The Student's Mother was given a meaningful opportunity to provide input on these goals during the meeting. (REX 506; Tr. Vol. 5, pp. 959-971). The goals in the Student's 2007, IEP were appropriate in that they were: (1) designed to, and did meet the Student's needs that result from his disability; (2) designed to, and did enable him to be involved in and make progress in the general education curriculum; (3) designed to, and did meet each of the Student's other educational needs that result from his disability; and, (4) sufficiently measurable.

C. Student Progress On Goals And Benchmarks. The Student's Team discussed, and the Student's 2007 IEP contains a description of how the Student's progress toward meeting the annual goals will be measured and a description of when periodic reports on the progress of the Student will be provided. (REX 506, pp. 62-78).

D. Statement Of Special Education And Related Services And Supplementary Aids And Services. The Student's Team discussed, and the Student's 2007 IEP contains a

statement of the special education and related services and supplementary aids and services that will be provided to the Student and the Service Minutes for each. In this case, the Student's Team determined that the Student should receive the following related services: Adaptive physical education (60 minutes quarterly); Occupational Therapy (240 minutes per month); Occupational Therapy consultation (60 minutes per month); and, Speech/Language Therapy (320 minutes per month). (REX 506, p. 77; Tr. Vol. 5, pp. 973-974). The minutes applied to these related services were substantially similar to the minutes provided for the same related services in the Student's IEP from California. (Tr. Vol. 5, pp. 973-974). The Service Minutes for the related services of Adaptive Physical Education, Occupational Therapy, Occupational Therapy Consultation and Speech/Language Therapy were appropriate

E. Assistive Technology Devices. The Student's Team discussed the Student's needs for Assistive Technology devices. The Team noted that the Student's California IEP did not mention the use of Assistive Technology devices, services or any special equipment. Ms. Wampler asked the Student's Mother if the Student was using any specific technology in California and she indicated that "there was no special equipment of any type that he was using." (Tr. Vol. 5, p. 476, lns. 8-21). The Student's IEP Team noted in the IEP that the Student did not require Assistive Technology devices or services. (REX 506, p. 61; Tr. Vol. 5, pp. 976-977). The Student's Mother did not state during this meeting that the Student needed a microwave in the classroom or any other assistive technology device. (Tr. Vol. 5, p. 977).

F. Participation With Non-Disabled Children. The Student's Team discussed, and the Student's 2007 IEP contains an explanation of the extent to which the Student will participate with non-disabled children in the regular class. (REX 506, pp. 78-79).

G. Appropriate Accommodations. The Student's Team discussed, and the Student's 2007 IEP contains a statement concerning the extent of appropriate accommodations that are necessary to measure the academic achievement and functional performance of the Student on State and district wide assessments. (REX 506, pp. 82-83).

H. Services And Modifications. The 2007 IEP contains the projected date for the beginning of the services and modifications described in it and the anticipated frequency, location and duration of those services and modifications. (REX 506, p. 52).

I. Transition. The Student's Team discussed the Student's transition from school by preparing a Student Transition Survey. (REX 505; Tr. Vol. 5, pp. 977-978). The information provided on the Student Transition Survey was provided primarily by the Student's Mother during the IEP meeting. (Tr. Vol. 5, pp. 978-981).

J. Student Behavior Intervention Plan. The Student's Team discussed the Student's behaviors. The Team discussed the information they had received from California which indicated that the Student's behaviors were "satisfactory" and the Student's Mother did

not indicate that the Student "had any behaviors at all." (Tr. Vol. 5, pp. 974-976). On the basis of this information the Student's IEP Team appropriately determined that the Student did not exhibit behaviors that impeded his learning or that of others. (REX 506, p. 61).

K. Educational Placement. The Student's Team considered three separate placements for the Student but determined that the appropriate placement for the Student was "Inside regular class less than 40% of the time." (REX 506, p. 79).

51. At the conclusion of the October 18, 2007, IEP meeting, a Notice of Action was prepared which requested that the Student's Mother consent to: (a) accept the educational evaluation prepared by the Pleasanton School District; (b) reject the Student's IEP prepared by the Pleasanton School District because the service minutes needed to be modified; (c) accept the IEP prepared by the Student's IEP Team; (d) accept the placement determined by the Student's IEP Team of "inside regular class less than 40% of the time;" and, (e) provide the program of special education and related services set forth in the Student's 2007 IEP. (REX 508). The Student's Mother signed the Notice of Action on October 18, 2007 and indicated she was consenting to the placement of the Student and further agreed to waive the ten day time requirement. (REX 508, p. 90).

52. On October 23, 2007, Ms. Washam sent the Student's Mother a copy of the Student's 2007 IEP that had been developed at the October 18, 2007, meeting. (REX 515; Tr. Vol. 5, pp. 957-958).

53. The Student's 2007 IEP was first implemented on or about Friday, October 19, 2007. Between October, 2007, and July, 2008, the Student's classroom teacher was Douglas Decker. (Tr. Vol. 4, p. 1070). During the time the Student was in his class, Mr. Decker worked with him on all of the goals in his 2007 IEP. (Tr. Vol. 5, p. 1073).

54. When the Student first came to Mr. Decker's classroom, he administered the Kaufman Test of Educational Achievement to the Student to determine "where to start with each of [his] goals. (Tr. Vol. 5, pp. 1074-1075). The administration of the test took approximately twenty (20) minutes. (Tr. Vol. 5, pp. 1075). The results of the test indicated that the Student was a pre-Kindergarten level in reading, math and spelling. (Tr. Vol. 5, pp. 1075). Mr. Decker had previously administered the Kaufman Test to the other members of the Student's class in September, prior to the Student transferring into the class. (Tr. Vol. 5, pp. 1075-1076).

55. Mr. Decker testified as follows concerning the progress made by the Student on the goals in the 2007 IEP for which he was primarily responsible:

Goal Number 1. When given 20 common signs/survival signs on word cards to identify [the Student] will increase his ability to read the words with 80% accuracy on three consecutive trials. -- Mr. Decker testified that at first, the Student was only able to

identify three to five signs. By the end of the school year he was able to identify fifteen to nineteen signs. (Tr. Vol. 5, pp. 1090-1091).

Goal Number 2. When shown a month of the year written on a flash card or calendar, [the Student] will increase his ability to read all 12 months with 80% accuracy on 3 of 4 trials. -- Mr. Decker testified that the Student knew three or four months at the beginning of the year and could get all twelve months by the end of the year, but not with any consistency. (Tr. Vol. 5, p. 1091).

Goal Number 3. When given 100 functional words or high frequency words on word cards to identify, [the Student] will increase his ability to read the words with 80% accuracy on three consecutive trials. -- Mr. Decker testified that the Student could read three to five of the functional or high frequency words from the Dolch list at the beginning of the year and had learned thirty words by the end of the year. (Tr. Vol. 5, pp. 1091-1092).

Goal Number 4. [The Student] will increase his ability to identify the four coins (penny, nickel, dime and quarter when shown and state the monetary value of the coins with 80% accuracy on three consecutive trials. -- Mr. Decker testified that at the beginning of the year the Student could only identify the penny and dime, but by the end of the year he could recognize and state the value of all four coins with consistency. (Tr. Vol. 5, pp. 1092-1093).

Goal Number 5. When given 10 random single digit addition problems (sums to 10) or 10 other basic math problems, [the Student] will write sums or answers with 80% accuracy on three consecutive trials using a calculator. -- Mr. Decker testified that at the beginning of the year the Student could solve two or three math problems and by the end of the year he was able to do all of the math problems with a calculator. (Tr. Vol. 5, p. 1093).

Goal Number 6. When shown random numerals for 1-31, [the Student] will increase his ability to verbally identify the numerals with 90% accuracy on three consecutive trials. -- At the beginning of the year, the Student was only able to verbally identify the numbers one through three. By the end of the third quarter, the Student was able to verbally identify the numbers one through thirty-one, and Mr. Decker made up additional flash cards to go up to one hundred. By the end of the year, the Student was able to identify to approximately sixty or seventy of the numbers. (Tr. Vol. 5, pp. 1093-1094).

Goal Number 7. When shown an analog clock, such as a Judy clock, and shown times to the half hour and quarter hour, [the Student will increase his ability to identify the times with 80% accuracy on three consecutive trials. -- Mr. Decker testified that at the first of the year when he attempted to work with the Student on this goal, the Student would just look at him and smile. By the end of the year, the Student "pretty much knew

half past, but the quarter 'til and the quarter after kept throwing him off." (Tr. Vol. 5, pp. 1094-1095).

Goal Number 14. [The Student] will increase his ability to independently greet a peer appropriately in three out of five trials. -- Mr. Decker testified that at the first of the year, the Student was "shy" about talking with the boys in the class, but he soon willingly greeted the boys in the class "and they went around doing things that boys do before school starts." However, Mr. Decker also testified that he had to consistently remind the Student that there was a girl in the room "and he would completely ignore [Mr. Decker] and the girl" so he was unable to rate the Student as having completely met the goal. (Tr. Vol. 5, pp. 1081-1083).

56. Courtney Ng, the Student's Occupational Therapist, testified that pursuant to the Student's 2007 IEP, she provided sixty (60) minutes a week in Occupational Therapy services to him. (Tr. Vol. 6, p. 1215). At times around the Winter Break in school year 2007-08, the Student became non-compliant with Ms. Ng and would not work with her. The Student exhibited his non-compliance by shaking his head and refusing to look at Ms. Ng. (Tr. Vol. 6, pp. 1230-1232). She testified as follows concerning the progress made by the Student on the goals in the 2007 IEP for which she was primarily responsible:

Goal Number 8. [The Student] will increase his ability to independently write a note in email format during structured activities with 80% accuracy in three of four trials. -- Ms. Ng testified that during the year, the Student made progress on the goal by demonstrating that he was able to use an email system and copy communications that were prepared by Ms. Ng into an email format. However, Ms. Ng rated him as not making sufficient progress because he was unable to "independently" compose an email message. (Tr. Vol. 6, pp. 1242-1243).

Goal Number 9. Given an application or paper, [the Student] will increase his ability to write his name (first and last) in cursive on the signature line of the various documents (classroom papers, banking documents, library forms, etc.) with 80% accuracy in four of five trials. -- Ms. Ng testified that during the year, the Student "did very well on this goal" and made sufficient progress on all benchmarks during all four quarters. (Tr. Vol. 6, pp. 1243-1244).

Goal Number 10. [The Student] will increase his ability to write a note or letter on paper or via the computer with 80% accuracy on three consecutive trials. -- Ms. Ng testified that during the year, the Student made progress on the benchmarks dealing with copying from a model and by the end of the year he was able to accurately copy from the model with 60% to 70% accuracy, consistently. However, the Student was not able to independently compose a note or letter. (Tr. Vol. 6, pp 1244-1245).

Goal Number 11. [The Student] will increase his ability to write or type simple sentences using the correct capitalization, punctuation, and spacing with 80% accuracy

on three consecutive trials. -- Ms. Ng testified that the Student was not able to "attend well" to capitalization, punctuation or spacing on the work he copied. Since his performance in these areas did not improve, even with practice, he did not make progress on this goal. (Tr. Vol. 6, pp. 1245-1246).

Goal Number 12. [The Student] will increase his ability to produce his address and/or targeted vocabulary or sentences created out of the vocabulary with 80% accuracy when given pencil and paper, or keyboard on three consecutive trials. -- Ms. Ng testified that during the year, the Student was consistently and accurately able to write his address when he had a model, but he could not do it independently. Accordingly, Ms. Ng rated the Student as not making sufficient progress. (Tr. Vol. 6, pp. 1246-1247).

Goal Number 13. [The Student] will increase his ability to write his cell phone number including area code when requested without a model with 80% accuracy of three consecutive trials. -- Ms. Ng testified that during the year, the Student could accurately write his cell phone number from a model, but could not do it independently. Accordingly, Ms. Ng rated him as not making sufficient progress because he was unable to "independently" perform the function. (Tr. Vol. 6, pp. 1247-1248).

Goal Number 15. [The Student] will increase functional daily living skills in food preparation by cutting meat into bite-sized pieces, cutting sandwiches in half, using a knife to spread various spreads on bread or crackers with minimal assistance on three of four trials. -- Ms. Ng testified that she and others worked with the Student to use a knife to spread butter on bread independently and cut bread independently with a knife with encouragement. (REX 583, p. 392; Tr. Vol. 6, pp. 1234-1238). By May, 2008, the Student was able to "spread butter independently [with a] knife with encouragement, cut bread in half, quarters repeatedly, independently with knife . . . seals ziplock independently after prompts. (REX 583, p. 396; Tr. pp. 1238-1239).

Goal Number 16. To increase functional living skills involving oral hygiene, [the Student] will be able to brush his teeth in all four quadrants with minimal assistance on two of four trials. -- Ms. Ng testified that she did not implement this goal because she was focused on the other nine (9) occupational therapy goals and she did not observe that the Student had poor oral hygiene or that his oral hygiene affected his ability to perform in the classroom. (Tr. Vol. 6, pp. 1230-1231).

Goal Number 17. To increase general functional living skills, [the Student] will perform various tasks (opening packages, buttoning buttons, tying shoes) with 80% accuracy on three of four trials. -- Ms. Ng testified that she worked with the Student to take twist ties on and off bags (REX 583, p. 392; Tr. Vol. 6, pp 1236-1237); on opening packages (REX 583, p. 393; Tr. Vol. 6, p. 1237); on buttoning his shirt (which he was able to do independently)(REX 583, p. 395; Tr. Vol. 6, 1238); tying his shoes (REX 583, p. 396; Tr. Vol. 6, p. 1238); and, folding his shirt. (REX 583, p. 396; Tr. Vol. 6, p. 1239).

57. Jane Ann Leis, the Student's Speech/Language Pathologist, testified she was scheduled to provide three hundred twenty (320) minutes a month in Speech/Language services to the Student, though she had difficulty at times providing that amount of services due to the Student absences. (Tr. Vol. 6, pp. 1396-1397). Ms. Leis testified as follows concerning the progress made by the Student on the goals in the 2007 IEP for which she was primarily responsible:

Goal Number 19. [The Student] will increase his expressive language skills by producing three to five word phrases 80% of trials with minimal cues during structured language activities. -- Ms. Leis testified that from the beginning of the year, the Student progressed through benchmarks 1 and 2 of the goal. By the end of the year, the Student "was actually above [60%] but he hadn't reached 70 yet." (Tr. Vol. 6, pp. 1405-1406).

Goal Number 20. [The Student] will increase his functional language skills by demonstrating the ability to understand, perform and describe a set of directions for three activities with minimal cues (verbal modeling and pictures) in two of four opportunities. -- Ms. Leis testified that from the beginning of the year, the Student was able to understand and perform activities, but he was unable to describe the activities so he did not progress beyond Benchmark 1 of this Goal. (Tr. Vol. 6, pp. 1407-1408).

Goal Number 21. [The Student] will increase his pragmatic language skills by using communication repairs (repeat words clearly, rephrase, gestural support) to keep a conversation going on three of four opportunities. -- Ms. Leis testified that the Student made sufficient progress on Benchmark 1 by repeating whole words clearly and supporting with gestures. During the third and fourth quarters, Ms. Leis worked with the Student on Benchmark 2, which he did not complete. (Tr. Vol. 6, pp. 1407-1408).

58. During school year 2007-08, the Mr. Decker prepared progress reports for the Student which were provided to the Student's Mother. (REX 564; Tr. Vol. 5, pp. 1086-1087). Mr. Decker used a grading scale to determine the progress the Student made on each of the goals he primarily administered and received information from the Occupational Therapist, Courtney Ng and the Speech/Language Pathologist, Jane Ann Leis, concerning the goals for which they shared responsibility. (Tr. Vol. 5, pp. 1086, 1088-1090). These Progress Reports indicated that during the period October 23, 2007, through May 27, 2008, the Student made the following progress on the goals and benchmarks in his 2007 IEP:

Goal Number 1            Marking Periods 2-4: Overall Goal--Making sufficient progress -  
Expect Goal to be met.  
Benchmarks 1-4: Making sufficient progress.

Goal Number 2            Marking Periods 2-4: Overall Goal--Making sufficient progress -  
Expect Goal to be met.  
Benchmarks 1-4: Making sufficient progress.

- Goal Number 3      Marking Periods 2-4: Overall Goal--Making sufficient progress -  
Expect Goal to be met.  
Benchmarks 1-4: Making sufficient progress.
- Goal Number 4      Marking Period 2-3: Overall Goal--Making sufficient progress -  
Expect Goal to be met.  
Benchmarks 1-4: Making sufficient progress.
- Marking Period 4: Overall Goal--Goal Met.  
Benchmarks 1-4: Benchmarks met.
- Goal Number 5      Marking Period 2-3: Overall Goal--Making sufficient progress -  
Expect Goal to be met.  
Benchmarks 1-4: Making sufficient progress.
- Marking Period 4: Overall Goal--Goal Met.  
Benchmarks 1-4: Benchmarks met.
- Goal Number 6      Marking Period 2-3: Overall Goal--Making sufficient progress -  
Expect Goal to be met.  
Benchmarks 1-4: Making sufficient progress.
- Marking Period 4: Overall Goal--Goal Met.  
Benchmarks 1-4: Benchmarks met.
- Goal Number 7      Marking Period 2-4: Overall Goal--Making sufficient progress -  
Expect Goal to be met.  
Benchmarks 1-4: Making sufficient progress.
- Goal Number 8      Marking Period 2-3: Overall Goal--Not making sufficient progress -  
do not anticipate meeting Goal.  
Benchmarks 1-4: Not making sufficient progress.
- Marking Period 4: Making sufficient progress--Expect Goal to be  
met.  
Benchmarks 1-4: Making sufficient progress.
- Goal Number 9      Marking Periods 2-4: Overall Goal--Making sufficient progress -  
Expect Goal to be met.  
Benchmarks 1-4: Making sufficient progress.
- Goal Number 10      Marking Period 2: Overall Goal--Not making sufficient progress -  
do not anticipate meeting Goal.  
Benchmarks 1-4: Not making sufficient progress.

Marking Period 3: Overall Goal--Not making sufficient progress - do not anticipate meeting Goal.

Benchmarks 1-2: Making sufficient progress.

Benchmarks 3-4: Not making sufficient progress.

Marking Period 4: Overall Goal--Making sufficient progress - Expect goal to be met.

Benchmarks 1-4: Making sufficient progress--Expect goal to be met.

Goal Number 11

Marking Period 2-4: Overall Goal--Not making sufficient progress - do not anticipate meeting Goal.

Benchmarks 1-4: Not making sufficient progress.

Goal Number 12

Marking Period 2-4: Overall Goal--Not making sufficient progress - do not anticipate meeting Goal.

Benchmarks 1-2: Making sufficient progress.

Benchmarks 3-4: Not making sufficient progress.

Goal Number 13

Marking Period 2-4: Overall Goal--Not making sufficient progress - do not anticipate meeting Goal.

Benchmarks 1-2: Making sufficient progress.

Benchmarks 3-4: Not making sufficient progress.

Goal Number 14

Marking Period 2-4: Overall Goal--Not making sufficient progress - do not anticipate meeting Goal.

Benchmark 1: Making sufficient progress.

Benchmarks 2-4: Not making sufficient progress.

Goal Number 15

Marking Period 2-4: Overall Goal--Goal not introduced.

Benchmarks 1-4: Benchmarks not introduced.<sup>2</sup>

Goal Number 16

Marking Period 2-4: Overall Goal: Goal not introduced.

Benchmarks 1-4: Benchmarks not introduced.

Goal Number 17

Marking Period 2-4: Overall Goal: Not making sufficient progress - do not anticipate meeting Goal.

Benchmark 1: Not making sufficient progress.

Benchmarks 2-3: Benchmarks not introduced.

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<sup>2</sup> Courtney Ng testified that she worked on this goal and its benchmarks with the Student, but the data was not saved in the computer program. Ms. Ng, did however reference work she did with the Student involving the preparation of food in her service logs and in her testimony. (REX 583, p. 392; Tr. Vol. 6, pp. 1234-1237).

Benchmark 4: Not making sufficient progress.

Goal Number 18 Marking Period 2-4: Overall Goal--Not making sufficient progress - do not anticipate meeting Goal.  
Benchmark 1: Benchmark not introduced.  
Benchmark 2: Making sufficient progress.  
Benchmarks 3-5: Not making sufficient progress.

Goal Number 19 Marking Period 2-4: Overall Goal--Making sufficient progress - Expect goal to be met.  
Benchmarks 2-3: Making sufficient progress.  
Benchmarks 4-5: Benchmarks not introduced.

Goal Number 20 Marking Period 2-4: Overall Goal--Making sufficient progress - Expect goal to be met.  
Benchmark 1: Making sufficient progress.  
Benchmarks 2-4: Benchmarks not introduced.

Goal Number 21 Marking Period 2: Overall Goal--Making sufficient progress - Expect goal to be met.  
Benchmark 1: Making sufficient progress.  
Benchmarks 2-4: Benchmarks not introduced.

Marking Periods 3-4: Overall Goal--Making sufficient progress - Expect goal to be met.  
Benchmarks 1-2: Making sufficient progress.  
Benchmarks 3-4: Benchmarks not introduced.

Goal Number 22 Marking Periods 2-4: Overall Goal--Making sufficient progress - Expect Goal to be met.  
Benchmarks 1-4: Making sufficient progress.

Goal Number 23 Marking Periods 2-4: Overall Goal--Making sufficient progress - Expect Goal to be met.  
Benchmarks 1-4: Making sufficient progress.

Goal Number 24 Marking Periods 2-4: Overall Goal--Making sufficient progress - Expect Goal to be met.  
Benchmarks 1-4: Making sufficient progress.

59. During the relevant period of time, the Student's behaviors did not impede his learning or the learning of others. The Hearing Panel credits the testimony of the following teachers and District personnel who had frequent contact with the Student during this period and made the following observations of the Student's behaviors in school:

A. Gayla Wampler indicated that her observations of the Student indicated that his "behavior seemed to have really improved once he hit middle school age and [she] was getting really good reports on his behaviors." (Tr. Vol. 5, p. 976, lns. 5-7).

B. David Decker testified that the Student's "behaviors never really got out of hand for anybody, and if they did, we'd take [a] walk. Other than that, we just stayed in the classroom and did the work." (Tr. Vol. 5, p. 1103, lns. 12-15). Mr. Decker did not consider the Student's behavior to be "significant" and he attributed some of the Student's behavior to the fact that he was a teenager. (Tr. Vol. 5, pp. 1172-1173). Mr. Decker also testified that he never observed physical aggression displays, verbal defiance or profanity from the Student. (Tr. Vol. 5, p. 1109).

C. Courtney Ng testified that the only behavioral problems she witnessed centered on the Student "passively not wanting to comply, not wanting to go with me, just kind of turning his head and not getting up." She further testified that she never observed "any kind of outburst or violent behavior" from the Student (Tr. Vol. 6, p. 1252; 1253, lns. 1-6).

D. Jane Ann Leis testified that the only behavior issues she had with the Student were about two occasions when he did not want to go with her for Speech/Language services and she never observed the Student engage in any kind of aggressive or violent behavior. (Tr. Vol. 6, pp. 1414-1415).

E. Marlene Vann testified that she observed some "defiance" behavior problems with the Student that she did not feel were significant. She also testified that she never saw any violent behavior or yelling from the Student. (Tr. Vol. 6, pp. 1350-1351).

60. On May 13, 2008, the Student's Mother requested that a Behavior Intervention Plan be prepared for the Student. (REX 558). On May 29, 2008, the Student's IEP Team met to discuss the preparation of a Functional Assessment Interview and a Behavior Intervention Plan for the Student. (REX 565, 567). This meeting was precipitated by difficulties the Student had outside of the classroom in the school cafeteria. (Tr. Vol. 3, pp. 741-742). During the meeting on May 29, 2008, the Student's Mother was accompanied by Rand Hodgson, a Parent/Child advocate. (Tr. Vol. 3, pp. 738-740). The Student's Team determined that the classroom teacher would work with the Student in the morning to determine if the Student had brought prohibited items to school. When the Behavior Intervention Plan was written, the Student's Mother agreed with it and it was acceptable to her. (Tr. Vol. 3, pp. 739-740). Mr. Decker testified that after the behavior plan was implemented in May, 2008, the Student did not exhibit any of the targeted behaviors. (Tr. Vol. 5, pp. 1110-1111).

61. The District used an appropriate reward system with the Student which allowed him to earn breaks, listen to music, leave the classroom with supervision or have free time on the computer. (Tr. Vol. 5, pp. 1115, 1119-1120). Mr. Decker testified that the District provided him

with small items like poker chips to use as rewards for the Student. (Tr. Vol. 5, pp. 1119, 1161). Ms. Ng testified that she determined that the Student liked going to a neighboring classroom because he liked the teacher, Ms. DaDonna, "so we moved over to that classroom and we worked on a lot of the goals." (Tr. Vol. 6, pp. 1217-1218).

62. The District used a variety of appropriate, alternative communication methods with the Student including oral and written communication.

63. The Student did not need Assistive Technology devices. The Student's 2007 IEP states that he does not need assistive technology devices. (REX 506, p. 61). Notwithstanding, the District did provide assistive technology devices to assist the Student on the goals and benchmarks in his IEP, including:

A. Mr. Decker provided the Student with a calculator and taught him how to use it. (Tr. Vol. 5, pp. 1078, 1093).

B. Mr. Decker testified that he provided the Student with a "small keyboard" which had a small one inch by six inch screen that the Student used to type in sentences and paragraphs, which allowed Mr. Decker and the Student to keep track of his progress. (Tr. Vol. 5, pp. 1118-1119).

C. Mr. Decker testified that he used poker chips as math manipulatives to help the Student understand the addition and subtraction they were doing in class. (Tr. Vol. 5, p. 1120).

D. Mr. Decker testified that he used the microwave that was in his room to heat the Student's food, (Tr. Vol. 5, pp. 1121-1122), and there were two clocks in his room which were used by the Student on his time goals. (Tr. Vol. 5, p. 1122).

E. Mr. Smith testified that he used a Microsoft program with the Student that "would say what you're typing after you type it." (Tr. Vol. 6, p. 1367).

64. On July 9, 2008, the Student brought fireworks and matches to school which were intercepted by the District's Security officers. (REX 574; Tr. Vol. 5, pp. 1112-1113). As a result of this incident, the Student's Team revised the Student's Behavior Intervention Plan on July 16, 2008. (REX 577; Tr. Vol. 5, pp. 1111-1112).

65. On October 16, 2008, the Student's IEP Team met to discuss the development of the Student's Individualized Educational Program for 2008-09. ("2008 IEP"). (REX 613; Tr. Vol. 6, p. 1332). Present at this meeting were the Student's Mother; Rand Hodgson, an advocate for the Parent/Student; Thomas Shelton, Principal; Betty Hartwig, Exceptional Education Facilitator; Marlene Vann, Case Manager and Special Education Teacher; Jane Leis, Speech/Language Pathologist; Courtney Ng, Occupational Therapist; Jennifer Cramer, Exceptional Education Coordinator; and, Karen Cobb, Special Education Teacher. (REX 613, p. 474).

66. During the Student's IEP Meeting on October 16, 2008, the Student's IEP Team completed his IEP and discussed the following:

A. Present Levels Of Academic Achievement And Functional Performance. The Student's Team discussed and prepared a statement of the Student's present levels of academic achievement and functional performance. (REX 613, pp. 456-461). The present levels section of the 2008 IEP includes updated performance information for the Student and incorporates the Student's progress on the goals and benchmarks contained in his 2007 IEP. The concerns of the Student's Mother are set out in the present levels as follows:

"[The Student's] mother indicates that she still has concerns for his functional learning. She anticipates he will live with her after graduation. She anticipates he will have competitive employment with long term support. [The Student's Mother] has concerns toward [the Student] eating lunch in the cafeteria. According to [the Student's Mother], [the Student] has thyroid problem and is continuing to lose weight and wants to sleep all the time. She would like daily communication from his teacher and Ms. Vann will continue sending emails. [The Student's Mother] is concerned about [the Student] going in P.E. if he doesn't eat lunch. [The Student's Mother] would like for [the Student] to have more assistive technology. She would like [the Student] to verbalize his emotions on paper in a journal and continue working on emailing her."

(REX 613, p. 456). The present levels section of the Student's 2008 IEP provide an appropriate description of how the Student's disability affects his involvement and progress in the general education curriculum. (REX 613).

B. Goals and Benchmarks. The Student's Team discussed fourteen (14) measurable goals for the Student. These goals were developed using the goals and benchmarks in the Student's 2007 IEP that had not been completely mastered, with wording changes to accommodate the Student's abilities. (REX 613, pp. 463-466; Tr. Vol. 6, pp. 1333-1350). Like the 2007 IEP, the goals in the 2008 IEP were developed to assist the student with life skills (reading/understanding signs, writing email notes, use of money, telling time, etc.), to increase his ability to communicate and to help him with motor skills. The Student's Mother and Rand Hodgson, the Student's Advocate, were given a meaningful opportunity to provide input on these goals during the meeting. (REX 613; Tr. Vol. 6, pp. 1349-1350). The goals in the Student's 2008, IEP were appropriate in that they were: (1) designed to, and were reasonably calculated to meet the Student's needs that result from his disability; (2) designed to, and were reasonably calculated to enable him to be involved in and make progress in the general education curriculum; (3) designed to, and were reasonably calculated to meet each of the Student's other educational needs that result from his disability; and, (4) sufficiently measurable.

C. Statement Of Special Education And Related Services And Supplementary Aids And Services. The Student's Team discussed, and the Student's 2008 IEP contains a statement of the special education and related services and supplementary aids and services that were to be provided to the Student and the Service Minutes for each. In this case, the Student's Team determined that the Student should receive the following related services: Adaptive physical education (60 minutes quarterly); Occupational Therapy (240 minutes per month); Occupational Therapy consultation (60 minutes per month); and, Speech/Language Therapy (320 minutes per month). (REX 613, p. 467). The minutes applied to these related services were the same as the minutes provided for the same related services in the Student's 2007 IEP. (REX 506, 613). The Service Minutes for the related services of Adaptive Physical Education, Occupational Therapy, Occupational Therapy Consultation and Speech/Language Therapy were appropriate

D. Assistive Technology Devices. The Student's Team discussed the Student's needs for Assistive Technology devices. The Student's Mother stated that she felt the Student needed more Assistive Technology devices. (REX 613, p. 456). The Student's Team noted in the 2008 IEP that the Student required Assistive Technology and his needs were addressed in the IEP. (REX 613, p. 462). As noted here, during the previous school year the District had provided a number of Assistive Technology devices to assist the Student including: a calculator, (Tr. Vol. 5, pp. 1078, 1093); a "small keyboard" computer, (Tr. Vol. 5, pp. 1118-1119); math manipulatives, (Tr. Vol. 5, p. 1120); a microwave, (Tr. Vol. 5, p. 1122); and a Microsoft computer program that "would say what you're typing after you type it." (Tr. Vol. 6, p. 1367). The Student was "always allowed to bring a radio or various electronic devices" (Tr Vol. 6, p. 1350, lns. 11-13), and his 2008 IEP also indicates that he was to be provided: a computer (REX 613, p. 464; and, an analog clock (REX 613, p. 465).

E. Participation With Non-Disabled Children. The Student's Team discussed, and the Student's 2008 IEP contains an explanation of the extent to which the Student will participate with non-disabled children in the regular class. (REX 613, p. 467).

F. Appropriate Accommodations. The Student's Team discussed, and the Student's 2008 IEP contains a statement concerning the extent of appropriate accommodations that are necessary to measure the academic achievement and functional performance of the Student on State and district wide assessments. (REX 613, pp. 479-480).

G. Services And Modifications. The 2008 IEP contains the projected date for the beginning of the services and modifications described in it and the anticipated frequency, location and duration of those services and modifications. (REX 613, p. 455).

H. Transition. The Student's Team discussed the Student's transition from school by preparing a Transition Plan and an Independent Living Postsecondary Goal Worksheet. (REX 613 pp. 472-473; 475-476). The parties also developed goals for the Student that were applicable to the Student's Transition plan in the areas of employment and/or

independent living, including but not limited to goals 1-4 and 6-14. (REX 613, pp. 463-466).

I. Student Behavior Intervention Plan. The Student's Team discussed the Student's behaviors during the preceding school year. The Student's Behavior Intervention Plan from the 2007 IEP was continued.

J. Educational Placement. The Student's Team considered three separate placements for the Student but determined that the appropriate placement for the Student was "Inside regular class less than 40% of the time." (REX 613, p. 469).

67. During the period of time between the enrollment of the Student in the District in October, 2007 and the filing of the due process complaint on October 24, 2008, the Student's Mother was given the right to attend and participate in IEP meetings concerning the Student and did attend and participate in those meetings. In particular:

A. Gayla Wampler testified that on October 12, 2007, she set up an IEP meeting with the Student's Mother for Monday, October 15, 2007. (REX 515; Tr. Vol. 5, p. 949) and Ms. Wampler sent a Notification of Meeting form to the Student's Mother for the October 15, 2007 IEP meeting. (REX 503; Tr. Vol. 5, p. 949). The Student and his Mother did not show up for the IEP meeting or call prior to the meeting to reschedule the meeting. (REX 515; Tr. Vol. 5, p. 950). Ms. Wampler called the Student's Mother and rescheduled the IEP meeting for October 18, 2007 at 10:30 a.m. (REX 515; Tr. Vol. 5, p. 951) and provided a Notification of Meeting form to the Student's Mother. (REX 504; Tr. Vol. 5, p. 953). On October 18, 2007, approximately forty minutes before the scheduled IEP meeting, the Student's Mother called Ms. Wampler and requested that the location for the meeting be changed. Ms. Wampler and the Student's Mother agreed to reschedule the meeting from 10:30 a.m. to 1:00 p.m. that same day. (REX 504, 515; Tr. Vol. 5, pp. 951-952). During the IEP meeting on October 18, 2007, the Student's Mother provided information and was not restrained from participation in the meeting. (Tr. Vol. 5, pp. 955-958).

B. Marlene Vann testified that the Student's Mother attended the Student's IEP on October 16, 2008 and was also represented by Rand Hodgson, an Advocate. (Tr. Vol. 6, pp. 1347-1349). Both the Student's Mother and Mr. Hodgson contributed to the meeting. (Tr. Vol. 6, p. 1349).

C. Courtney Ng testified that she attended the October 16, 2008, IEP meeting for the Student and that the Student's Mother and Rand Hodgson were there and participated freely in the discussion concerning the development of the Student's IEP. (Tr. Vol. 6, pp. 1253-1256).

D. David Decker testified that the Student's Mother would call him during the school day between one, to as many as five times per day, to tell him that "she was bringing his

lunch, or his lunch was there and needed to be heated up or he didn't go to the bathroom; I needed to take him; he didn't drink any water; I need to take him to the fountain." (Tr. Vol. 5, p. 1123; 1124, lns. 9-13).

68. The Student's Mother participated in all IEP meeting(s) concerning the Student which were scheduled from October, 2007 through October 24, 2008. The District took all reasonable steps to ensure that the Student's Mother was present for these IEP meetings, including but not limited to: (1) notifying the Student's Mother of the meeting early enough to ensure that she would be available to attend the meeting; and, (2) scheduling the meeting at a mutually agreed on time and place.

69. The Hearing Panel credits the testimony of Gayla Wampler, David Decker, Courtney Ng, Jane Ann Leis and Marlene Vann, where their testimony is specifically referenced in this Decision and to the extent that their testimony differs from other witnesses. The testimony of these witnesses was forthright, candid and insightful.

## **II. CONCLUSIONS OF LAW**

### **A. General Conclusions**

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

71. 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. The Student is now and has been during all times relevant to this proceeding, a "child with a disability" as that term is defined by the IDEA Regulations, 34 C.F.R. § 300.8 and Section 162.675 (1) RSMo.

72. The IDEA, its regulations and the *State Plan for Part B of the Individuals With Disabilities Education Act (2007)*, ("State Plan") constitutes regulations of the State of Missouri which further define 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.

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

74. The IDEA requires that a disabled child be provided with access to a "free appropriate public education." ("FAPE") *Board of Education of the Hendrick Hudson Central School District, Board Of Education, Westchester County v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034,

3049, 73 L.Ed.2d 690 (1982). The term "free appropriate public education" is defined by 34 C.F.R. § 300.17 as follows:

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

- (a) Are provided at public expense, under public supervision and direction, and without charge;
- (b) Meet the standards of the SEA, including the requirements of this part;
- (c) Include preschool, elementary school, or secondary school education in the State involved; and,
- (d) Are provided in conformity with an IEP that meets the requirements of §§300.340--300.350."

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

75. The FAPE requirement is satisfied if the child with a disability is provided with "personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." Likewise, the educational program must be provided at public expense and in the least restrictive environment. *Rowley, supra.*, 458 U.S. 176 at 203-204, 102 S.Ct. 3034.

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

77. If parents believe that the educational program provided for their child fails to meet this standard, they may obtain a state administrative due process hearing. 34 C.F.R. § 300.506;

*Thompson v. Board of the Special School District No. 1*, 144 F.3d 574, 578 (8<sup>th</sup> Cir. 1998); *Fort Zumwalt School District v. Clynes*, 119 F.3d 607, 610 (8<sup>th</sup> Cir. 1997), *cert. denied* 523 U.S. 1137, 118 S.Ct. 1840, 140 L.Ed 2d 1090 (1998).

78. Article IX § 2(a) of the Missouri Constitution states in pertinent part that "[t]he supervision of instruction in the public schools shall be vested in a state board of education. . . ." The State Board of Education for the State of Missouri is the "State Educational Agency" ("SEA") for the State of Missouri, as that term is defined in the IDEA, 20 U.S.C. § 1401(28).

79. The burden of proof in an administrative due process hearing pursuant to the IDEA is placed on the party seeking relief. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S.Ct. 528 (2005). Here the Parent filed the due process complaint and she therefore bears the burden of proof.

### **B. Enrollment Of The Student In The District**

80. The Regulations of the IDEA, 34 C.F.R. § 300.323(f) state as follows:

"(f) *IEPs for children who transfer from another State.* If a child with a disability (who had an IEP that was in effect in a previous public agency in another State) transfers to a public agency in a new State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from previous public agency), until the new public agency --

(1) Conducts an evaluation pursuant to §§ 300.304 through 300.306 (if determined to be necessary by the new public agency); and

(2) Develops, adopts and implements a new IEP, if appropriate, that meets the applicable requirements in §§ 300.320 through 300.324."

81. The District enrolled the Student in a timely manner in October, 2007, and met the requirements of the IDEA, its Regulations including 34 C.F.R. § 300.323(f), and the State Plan, in that:

A. On Friday, October 12, 2007, the Student's Mother first informed the District that she and the Student had moved back to the District. The District's representative explained: (1) the process for enrolling a student who has transferred from out-of-state; (2) that the District needed copies of the Student's Evaluation and IEP; (3) that when those documents were received, the District would review them and determine whether they would accept or reject them; and, (4) that while the District was waiting to receive the Student's educational records from the Pleasanton School District, the Student could be enrolled and comparable services could be arranged for him. (Tr. Vol. 5, pp. 948-949).

An IEP meeting was scheduled for the following Monday, October 15, 2007. (REX 515; Tr. Vol. 5, p. 949).

B. On October 15, 2007, neither the Student nor his Mother showed up for the IEP meeting and did not call prior to the meeting to reschedule the meeting. (REX 515; Tr. Vol. 5, p. 950). The District's representative called the Student Mother and was able to reschedule the IEP meeting for Thursday, October 18, 2007. (REX 515; Tr. Vol. 5, p. 951).

C. On October 15, 2007, at approximately noon, the District received copies of the Student's special education records from the Pleasanton, California School District. (REX 502; Tr. Vol. 5, p. 953).

D. On October 18, 2007, the Student's IEP Team, including the Student and his Mother, met and discussed the Student's Evaluation and prepared an IEP for the Student. The IEP was implemented on or about October 19, 2007.

The Hearing Panel finds that: (1) the Student was immediately offered educational services which were comparable to those which he had been receiving in California; (2) the Student would have had a completed Evaluation and IEP on Monday, October 15, 2007 (the second full school day following the notification by the Student's Mother that they had transferred into the District) if the Student and his Mother had presented themselves at the IEP meeting scheduled that day; and (3) the District developed, adopted and implemented a new IEP for the Student on October 18, 2007 (four school days following the notification by the Student's Mother that they had transferred into the District). Furthermore, the District's conduct described in this paragraph did not: (1) impede the Student's right to a free appropriate public education; (2) significantly impede the Parent's opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the Student; or, (3) caused a deprivation of educational benefit to the Student, as set forth in 34 C.F.R. §300.513(a)(2).

### **C. The Student's 2007 IEP**

82. The Student's 2007 IEP was appropriate and met the requirements of the IDEA, its Regulations and the State Plan, in that:

A. The program of special education and related services provided in the Student's 2007, IEP provided him with a free appropriate public education in the least restrictive environment in compliance with the IDEA, its Regulations including 34 C.F.R. § 300.17 and the State Plan.

B. The Student's 2007 IEP, met the content requirements in compliance with the IDEA, its Regulations including 34 C.F.R. §300.320, and the State Plan.

C. The Present Levels of Educational Performance contained in the Student's 2007 IEP accurately reflected the information possessed by the District regarding the Student's unique needs, his present levels of performance and included a description of how the Student's disability affected his involvement and progress in the general education curriculum in compliance with the IDEA, its Regulations, 34 C.F.R. § 300.320(a)(1)(i), and the State Plan.

D. The goals and benchmarks contained in the Student's 2007 IEP were appropriate and provided him with a free appropriate public education.

E. The District properly considered the use of positive behavioral interventions and supports, including the preparation and implementation of a behavior intervention plan, and other strategies to address the Student's behavior in compliance with the IDEA and its Regulations including 34 C.F.R. § 300.324(a)(2)(i), and the State Plan.

F. The District properly considered the use of appropriate assistive technology devices and services in compliance with the IDEA, its Regulations including 34 C.F.R. § 300.324(a)(2)(v) and the State Plan

G. The District properly considered appropriate transition services for the Student in compliance with the IDEA, its Regulations including 34 C.F.R. § 300.320(b), and the State Plan.

H. The Service Minutes for special education and related services in the Student's 2007, IEP were appropriate. The service minutes for the related services of Adaptive Physical Education, Occupational Therapy, Occupational Therapy Consultation and Speech/Language Therapy were appropriate and sufficient and were the amount required to assist the Student to benefit from his program of special education and related services, in compliance with the IDEA, its Regulations including 34 C.F.R. § 300.34(a) and the State Plan and provided the Student with a free, appropriate public education.

83. The District did not violate the IDEA, its Regulations or the State Plan when it did not notify the Student's Mother or get her prior consent to allow Mr. Decker to administer the Kauffman Test of Educational Achievement to the Student on or around October, 2007. The administration of the test took approximately twenty minutes, the test had previously been administered by Mr. Decker to the other students in the Student's classroom and the stated reason for the administration of the test was to determine a baseline for instructional purposes. See: 34 C.F.R. § 300.300(d)(1) and 34 C.F.R. § 300.302 which states in pertinent part as follows:

"The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services."

(34 C.F.R. § 300.302).

84. The program of special education and related services provided in the Student's 2007, IEP, provided him with a free appropriate public education in the least restrictive environment as required by the IDEA and its Regulations, 34 C.F.R. § 300.17.

85. The Student did not require the use of Assistive Technology devices in order to benefit from his program of special education and related services. The District did provide the Student with Assistive Technology devices and teach him to use the devices. The District's decisions concerning the Student's need for Assistive Technology devices and the District's use of such devices with the Student were consistent with the requirements of the IDEA, its regulations, including 34 C.F.R. § 300.105, and the State Plan.

#### **D. The Student's 2008 IEP**

86. The program of special education and related services provided in the Student's 2008 IEP was reasonably calculated to provide him with educational benefit and a free appropriate public education in the least restrictive environment in compliance with the IDEA, its Regulations including 34 C.F.R. § 300.17 and the State Plan, in that:

A. The program of special education and related services provided in the Student's 2008, IEP, provided him with a free appropriate public education in the least restrictive environment in compliance with the IDEA, its Regulations including 34 C.F.R. § 300.17 and the State Plan.

B. The Student's 2008 IEP, met the content requirements in compliance with the IDEA, its Regulations including 34 C.F.R. §300.320 and the State Plan.

C. The Present Levels of Educational Performance contained in the Student's 2008 IEP accurately reflected the information possessed by the District regarding the Student's unique needs and present levels of performance and included a description of how the Student's disability affected his involvement and progress in the general education curriculum in compliance with the IDEA, its Regulations including 34 C.F.R. §300.320(a)(1)(i) and the State Plan.

D. The fourteen (14) goals developed by the Student's IEP Team are appropriate for the Student and are reasonably calculated to provide him with educational benefit and a free appropriate public education in the least restrictive environment.

E. The District properly considered the use of positive behavioral interventions and supports, including the preparation and implementation of a behavior intervention plan, and other strategies to address the Student's behavior in compliance with the IDEA, its Regulations including 34 C.F.R. §300.324(a)(2)(i) and the State Plan and included a Behavior Intervention Plan that was appropriate.

F. The District properly considered the use of appropriate assistive technology devices and services in compliance with the IDEA, its Regulations including 34 C.F.R. §300.324(a)(2)(v) and the State Plan, and incorporated assistive technology devices into the Student's program of special education and related services.

G. The District properly considered appropriate transition services for the Student in compliance with the IDEA, its Regulations including 34 C.F.R. § 300.320(b) and prepared an appropriate transition plan into the 2008 IEP which also included thirteen goals covering independent living and/or employment.

H. The Service Minutes for special education and related services in the Student's 2008 IEP for the related services of Adaptive Physical Education, Occupational Therapy, Occupational Therapy Consultation and Speech/Language Therapy were appropriate and sufficient and were the amount required to assist the Student to benefit from his program of special education and related services, in compliance with the IDEA, its Regulations including 34 C.F.R. § 300.34(a) and was reasonably calculated to provide the Student with education benefit and a free, appropriate public education in the least restrictive environment.

87. The program of special education and related services provided in the Student's 2008 IEP was reasonably calculated to provide him with educational benefit and a free appropriate public education in the least restrictive environment in compliance with the IDEA, its Regulations including 34 C.F.R. § 300.17 and the State Plan.

#### **E. The Participation of the Student's Mother in IEP Meetings**

88. The Student's Mother participated in all IEP meeting(s) concerning the Student which were scheduled from October, 2007 through October 24, 2008. The District took all reasonable steps to ensure that the Student's Mother was present for these IEP meetings, including but not limited to: (1) notifying the Student's Mother of the meeting early enough to ensure that she would be available to attend the meeting; and, (2) scheduling the meeting at a mutually agreed on time and place. The actions of the District met the requirements of the IDEA, its regulations, including 34 C.F.R. §300.322, and the State Plan.

#### **F. Summary Conclusions**

89. The Petitioner has failed to carry her burden of proof to show that: (1) the District failed to enroll the Student in a timely manner in October, 2007; (2) the District failed to provide the Student with a free appropriate public education through the program of special education and related services contained in his October 18, 2007, IEP; (3) the program of special education and related services contained in the Student's October 16, 2008, IEP was not reasonably calculated to provide the Student with educational benefit and a free appropriate public education in the

least restrictive environment; and, (4) the District failed to provide the Student's Parent with a right to participate in his IEP meeting(s) from October, 2007 through October 24, 2008.

90. To the extent that it is required by the facts in this case and the issues presented to the Hearing Panel, during all times relevant to this proceeding, the actions of the District with respect to the Student and his Mother have met the procedural requirements of the IDEA and State Plan. To the extent that a question arises with respect to any procedural due process requirement relevant to this proceeding, there is no competent evidence on the record that any such alleged procedural violation or inadequacy: (a) impeded the Student's right to a free appropriate public education; or, (b) significantly impeded the opportunity of the Student's Mother to participate in the decision-making process regarding the provision of a free appropriate public education for the Student; or, (c) caused a deprivation of an educational benefit for the Student. (See: 34 C.F.R. §300.513 and State Plan – Regulation V – Procedural Safeguards/Discipline, p. 68).

### **III. DECISION**

91. **Issue No. 1.** Whether the District failed to enroll the Student in a timely manner in October, 2007? And, if so, whether that failure constituted a procedural inadequacy which: (1) impeded the Student's right to a free appropriate public education; (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 Student; or, (3) caused a deprivation of educational benefit to the Student, as set forth in 34 C.F.R. §300.513(a)(2)?

**Decision:** As more completely set out above, the Hearing Panel finds that the District enrolled the Student in a timely manner in October, 2007, and met the requirements of the IDEA, its Regulations including 34 C.F.R. § 300.323(f), and the State Plan, in that:

A. On Friday, October 12, 2007, the Student's Mother first informed the District that she and the Student had moved back to the District. During that conversation, the District's representative explained: (1) the process for enrolling a student who has transferred from out-of-state; (2) that the District needed copies of the Student's Evaluation and IEP; (3) that when those documents were received, the District would review them and determine whether they would accept or reject them; and, (4) that while the District was waiting to receive the Student's educational records from the Pleasanton School District, the Student could be enrolled and comparable services could be arranged for him. An IEP meeting was scheduled for the following Monday, October 15, 2007.

B. On October 15, 2007, neither the Student nor his Mother showed up for the IEP meeting and did not call prior to the meeting to reschedule the meeting. The District's representative called the Student Mother and was able to reschedule the IEP meeting for Thursday, October 18, 2007.

C. On October 15, 2007, at approximately noon, the District received copies of the Student's special education records from the Pleasanton, California School District.

D. On October 18, 2007, the Student's IEP Team, including the Student and his Mother, met and discussed the Student's Evaluation and prepared an IEP for the Student. The IEP was implemented on or about Friday, October 19, 2007.

The Hearing Panel finds that: (1) the Student was immediately offered educational services which were comparable to those which he had been receiving in California; (2) the Student would have had a completed Evaluation and IEP on Monday, October 15, 2007 (the second full school day following the notification by the Student's Mother that they had transferred into the District) if the Student and his Mother had presented themselves at the IEP meeting scheduled that day; and (3) the District developed, adopted and implemented a new IEP for the Student on October 18, 2007 (four school days following the oral notification by the Student's Mother that they had transferred into the District).

The Hearing Panel further finds that the District's conduct described in this paragraph did not: (1) impede the Student's right to a free appropriate public education; (2) significantly impede the Parent's opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the Student; or, (3) caused a deprivation of educational benefit to the Student, as set forth in 34 C.F.R. §300.513(a)(2).

Finally, the Hearing Panel finds that the Petitioner has failed to carry her burden of proof to show that the District failed to enroll the Student in a timely manner in October, 2007.

92. **Issue No. 2.** Whether the program of special education and related services provided in the Student's October 18, 2007, Individualized Education Plan ("IEP"), and any amendments to that IEP, provided him with a free appropriate public education? In particular:

(A) Whether the Student's October 18, 2007, IEP, and amendments, met the content requirements set forth in 34 C.F.R. §300.320?

(B) Whether the District failed to properly consider the use of positive behavioral interventions and supports, including the preparation and implementation of a behavior intervention plan, and other strategies to address the Student's behavior in compliance with 34 C.F.R. §300.324(a)(2)(i)?

(C) Whether the District failed to properly consider the use of appropriate assistive technology devices and services in compliance with 34 C.F.R. §300.324(a)(2)(v)?

(D) Whether the District failed to properly determine appropriate transition services for the Student in compliance with 34 C.F.R. §300.320(b)?

**Decision:** As more completely set out above, the Hearing Panel finds that the program of special education and related services provided in the Student's 2007, IEP, provided him with a free appropriate public education in the least restrictive environment as required by the IDEA and its Regulations, 34 C.F.R. § 300.17. In particular, the Hearing Panel finds that:

A. The program of special education and related services provided in the Student's 2007, IEP provided him with a free appropriate public education in the least restrictive environment in compliance with the IDEA, its Regulations including 34 C.F.R. § 300.17 and the State Plan.

B. The Student's 2007 IEP, met the content requirements in compliance with the IDEA, its Regulations including 34 C.F.R. §300.320, and the State Plan.

C. The Present Levels of Educational Performance contained in the Student's 2007 IEP accurately reflected the information possessed by the District regarding the Student's unique needs, his present levels of performance and included a description of how the Student's disability affected his involvement and progress in the general education curriculum in compliance with the IDEA, its Regulations, 34 C.F.R. § 300.320(a)(1)(i), and the State Plan.

D. The goals and benchmarks contained in the Student's 2007 IEP were appropriate and provided him with a free appropriate public education.

E. The District properly considered the use of positive behavioral interventions and supports, including the preparation and implementation of a behavior intervention plan, and other strategies to address the Student's behavior in compliance with the IDEA and its Regulations including 34 C.F.R. § 300.324(a)(2)(i), and the State Plan.

F. The District properly considered the use of appropriate assistive technology devices and services in compliance with the IDEA, its Regulations including 34 C.F.R. § 300.324(a)(2)(v) and the State Plan

G. The District properly considered appropriate transition services for the Student in compliance with the IDEA, its Regulations including 34 C.F.R. § 300.320(b), and the State Plan.

H. The Service Minutes for special education and related services in the Student's 2007, IEP were appropriate. The service minutes for the related services of Adaptive Physical Education, Occupational Therapy, Occupational Therapy Consultation and Speech/Language Therapy were appropriate and sufficient and were the amount required to assist the Student to benefit from his program of special education and related services, in compliance with the IDEA, its Regulations including 34 C.F.R. § 300.34(a) and the State Plan and provided the Student with a free, appropriate public education.

The Hearing Panel further finds that the District did not violate the IDEA, its Regulations or the State Plan when it did not notify the Student's Mother or get her prior consent to allow Mr. Decker to administer the Kauffman Test of Educational Achievement to the Student on or around October, 2007. The administration of the test took approximately twenty minutes, the test had previously been administered by Mr. Decker to the other students in the Student's classroom and the stated reason for the administration of the test was to determine a baseline for instructional purposes. See: 34 C.F.R. § 300.300(d)(1) and 34 C.F.R. § 300.302 which states in pertinent part as follows:

"The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services."

(34 C.F.R. § 300.302).

The Hearing Panel further finds that the Student did not require the use of Assistive Technology devices in order to benefit from his program of special education and related services. The District did provide the Student with Assistive Technology devices and teach him to use the devices. The District's decisions concerning the Student's need for Assistive Technology devices and the District's use of such devices with the Student were consistent with the requirements of the IDEA, its regulations, including 34 C.F.R. § 300.105, and the State Plan.

Finally, the Hearing Panel finds that the Petitioner has failed to carry her burden of proof to show that the District failed to provide the Student with a free appropriate public education through the program of special education and related services contained in his October 18, 2007, IEP.

93. **Issue No. 3.** Whether the program of special education and related services provided in the Student's October 16, 2008, Individualized Education Plan was reasonably calculated to provide the Student with a free appropriate public education? In particular:

A. Whether the Student's October 16, 2008, IEP met the content requirements set forth in 34 C.F.R. §300.320?

B. Whether the District failed to properly consider the use of positive behavioral interventions and supports, including the preparation and implementation of a behavior intervention plan, and other strategies to address the Student's behavior in compliance with 34 C.F.R. §300.324(a)(2)(i)?

C. Whether the District failed to properly consider the use of appropriate assistive technology devices and services in compliance with 34 C.F.R. §300.324(a)(2)(v)?

D. Whether the District failed to properly determine appropriate transition services for the Student in compliance with 34 C.F.R. §300.320(b)?

**Decision:** As more completely set out above, the Hearing Panel finds that the program of special education and related services provided in the Student's 2008 IEP was reasonably calculated to provide him with educational benefit and a free appropriate public education in the least restrictive environment in compliance with the IDEA, its Regulations including 34 C.F.R. § 300.17 and the State Plan, in that:

A.. The Student's 2008 IEP, met the content requirements in compliance with the IDEA, its Regulations including 34 C.F.R. §300.320 and the State Plan.

B. The Present Levels of Educational Performance contained in the Student's 2008 IEP accurately reflected the information possessed by the District regarding the Student's unique needs and present levels of performance and included a description of how the Student's disability affected his involvement and progress in the general education curriculum in compliance with the IDEA, its Regulations including 34 C.F.R. §300.320(a)(1)(i) and the State Plan.

C. The fourteen (14) goals developed by the Student's IEP Team are appropriate for the Student and are reasonably calculated to provide him with educational benefit and a free appropriate public education in the least restrictive environment.

D. The District properly considered the use of positive behavioral interventions and supports, including the preparation and implementation of a behavior intervention plan, and other strategies to address the Student's behavior in compliance with the IDEA, its Regulations including 34 C.F.R. §300.324(a)(2)(i) and the State Plan and included a Behavior Intervention Plan that was appropriate.

E. The District properly considered the use of appropriate assistive technology devices and services in compliance with the IDEA, its Regulations including 34 C.F.R. §300.324(a)(2)(v) and the State Plan, and incorporated assistive technology devices into the Student's program of special education and related services.

F. The District properly considered appropriate transition services for the Student in compliance with the IDEA, its Regulations including 34 C.F.R. § 300.320(b) and prepared an appropriate transition plan into the 2008 IEP which also included thirteen goals covering independent living and/or employment.

G. The Service Minutes for special education and related services in the Student's 2008 IEP for the related services of Adaptive Physical Education, Occupational Therapy, Occupational Therapy Consultation and Speech/Language Therapy were appropriate and sufficient and were the amount required to assist the Student to benefit from his program of special education and related services, in compliance with the IDEA, its Regulations including 34 C.F.R. § 300.34(a) and was reasonably calculated to provide the Student

with education benefit and a free, appropriate public education in the least restrictive environment.

Finally, the Hearing Panel finds that the Petitioner has failed to carry her burden of proof to show that the program of special education and related services contained in the Student's October 16, 2008, IEP was not reasonably calculated to provide the Student with educational benefit and a free appropriate public education in the least restrictive environment.

94. **Issue No. 4.** Whether the District failed to provide the Student's Parent with a right to participate in the IEP meeting(s) from October, 2007 through October 24, 2008 in violation of 34 C.F.R. §300.322? And, if so, whether that procedural inadequacy: (1) impeded the Student's right to a free appropriate public education; (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 Student; or, (3) caused a deprivation of educational benefit to the Student, as set forth in 34 C.F.R. §300.513(a)(2)?

**Decision:** As more completely set out above, the Hearing Panel finds that the Student's Mother participated in all IEP meeting(s) concerning the Student which were scheduled from October, 2007 through October 24, 2008. The District took all reasonable steps to ensure that the Student's Mother was present for these IEP meetings, including but not limited to: (1) notifying the Student's Mother of the meeting early enough to ensure that she would be available to attend the meeting; and, (2) scheduling the meeting at a mutually agreed on time and place. The actions of the District met the requirements of the IDEA, its regulations, including 34 C.F.R. §300.322, and the State Plan.

The Hearing Panel further finds that there is no competent evidence on the record that the District committed any procedural violation of the IDEA, its Regulations or the State Plan or that any act of the District: (a) impeded the Student's right to a free appropriate public education; or, (b) significantly impeded the opportunity of the Student's Mother to participate in the decision-making process regarding the provision of a free appropriate public education for the Student; or, (c) caused a deprivation of an educational benefit for the Student. (See: 34 C.F.R. §300.513 and State Plan – Regulation V – Procedural Safeguards/Discipline, p. 68).

Finally, the Hearing Panel finds that the Petitioner has failed to carry her burden of proof to show that the District failed to provide the Student's Parent with a right to participate in the Student's IEP meeting(s) from October, 2007 through October 24, 2008.

#### **IV. ORDER**

Petitioner's due process complaint, as amended, is dismissed for the reasons set forth in this Findings of Fact, Conclusions of Law, Decision and Order.

#### **V. APPEAL PROCEDURE**

**PLEASE TAKE NOTICE** that these Findings of Fact, Conclusions of Law, Decision and Order constitute the final decision of the Department of Elementary and Secondary Education in this matter and you have a right to request review of this decision pursuant to Section 162.962 RSMo. Specifically, you may request review by filing a petition in a state or federal court of competent jurisdiction within forty-five days after the receipt of this final decision. Your right to appeal this final decision is also set forth in the Regulations to the IDEA, 34 C.F.R. §300.512, and in the Procedural Safeguards which were provided to you at the beginning of this matter.

\_\_\_\_\_  
Ransom A Ellis, III  
Hearing Chairperson

Dated: December 4, 2009

\_\_\_\_\_  
Dr. Patty Smith  
Hearing Panel Member

Dated: \_\_\_\_\_, 2009

\_\_\_\_\_  
Pam Walls  
Hearing Panel Member

Dated: \_\_\_\_\_, 2009

**CERTIFICATE OF SERVICE**

This Order has been served by regular United States Mail, with courtesy copies sent by facsimile or email (where facsimile numbers or email addresses were provided to the Hearing Chairperson) on the following persons on this 4th day of December, 2009:

Ms.

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Ransom A Ellis, III