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HEARING OFFICERS:

Kenneth M. Chackes
Marilyn McClure
Terry Allee

Hearing Chair
Panel Member selected by parents
Panel Member selected by school district

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

	,)
by his parent,)	
	,)
)	
	Petitioners,)
)	
vs.)	
)	
LATHROP R-II SCHOOL DISTRICT,)	
)	
	Respondent.)

DECISION ON REMAND

This is the decision of the hearing panel on remand from the United States District Court for the Western District of Missouri, pursuant to the Order of that Court dated September 11, 2009.

The original proceeding in this case was an impartial due process hearing pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1415(f) (1997), and Missouri law, §162.961.3 RSMo. When the hearing panel originally decided this case, in 2005, it followed the law in the United States Court of Appeals for the Eighth Circuit, and placed the burden of proving compliance with the IDEA on the school district. “At the administrative level, the District clearly had the burden of proving that it had complied with the IDEA.” *E.S. v. Independent Sch. Dist. No. 196*, 135 F.3d 566, 569 (8th Cir. 1998). Subsequent to that decision, however, the United States Supreme Court held that in an administrative hearing under the IDEA, “the burden of persuasion lies where it usually falls, upon the party seeking relief.” *Schaffer v. Weast*, 126 S. Ct. 528, 535 (2005). As a result, the United States District Court

remanded the case to the hearing panel for reconsideration of the 2005 decision in light of the Supreme Court's decision on the burden of proof. *Lathrop R-II School Dist. v. Gray*, No. 05-6102-CV-SJ-GAF (W.D. Mo. 2007). The hearing panel reconsidered its decision and in 2008 issued a new decision, upholding its original decision in all respects. On September 11, 2009, the United States District Court, upon review of the panel's 2008 decision, issued its Order remanding the case to the hearing panel for entry of a decision in conformity with the Court Order. *Lathrop R-II School Dist. v. Gray*, No. 08-6040-CV-SJ-GAF (W.D. Mo. 2009).

As pertinent here, the District Court reversed those portions of the hearing panel's decision in favor of the parents and affirmed those portions of the hearing panel's decision in favor of the school district. Therefore, in conformity with the Court Order of September 11, 2009, the hearing panel now enters this decision on the issues that were before it at the hearing.

I. Did the district deny the student a free appropriate public education (FAPE) by excluding and limiting parent participation in the development of goals and objectives and in making placement decisions?

As a panel majority ruled, and as affirmed by the District Court, the district did not exclude or limit the parents' right of participation in any way that led to inappropriately drafted IEPs for the student, and, therefore, did not thereby deny the student a FAPE.

II. Were the IEPs for the school years 2002-03 and 2003-04 deficient in the following respects?

A. Did the IEPs include an adequate statement of present levels of educational performance and baseline data, measurable goals and

objectives, and appropriate objective criteria and evaluation procedures for determining progress?

B. Did the IEPs address the student's particular needs arising from his disability (particularly in the area of behaviors)?

Based on the decision of the District Court, reversing the panel majority on these issues, the student's IEPs did not violate the IDEA.

III. Are the parents are entitled to reimbursement?

As a panel majority ruled, and as affirmed by the District Court, the parents are not entitled to reimbursement.

IV. Did the district fail to provide proper prior written notice and did the district make decisions without including key people with knowledge, including the parents?

As a panel majority ruled, and as affirmed by the District Court, the school district did not deny the a free appropriate public education on these issues.

V. Remedy of change of the student's placement to a full time state approved private educational agency authorized to serve children diagnosed with autism.

Based on the decision of the District Court, reversing the panel majority on this issue, the student is not entitled to a change of placement.

APPEAL PROCEDURE

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

Dated: November 6, 2009

Kenneth M. Chackes
Chairperson

Terry Allee
Panel Member

Marilyn McClure
Panel Member

Copies of this decision will be delivered to the parties on November 5, 2009, by email and on November 6, 2009, by certified mail, return receipt requested:

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Parent

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