

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

XXXXXXXXXXXX	)	
	)	
Petitioner/Student	)	
v.	)	Complaint filed May 1, 2009
	)	
State Schools For The Severely Disabled,	)	
	)	
Respondent	)	

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

The Hearing Panel, after conducting the due process hearing in this matter on December 14, 2009 through December 15, 2009 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 within the boundaries of the Festus R-VI School District (“District”), and attended Mapaville State School for the Severely Disabled in Mapaville, Missouri (“Respondent”) or was home schooled.
2. District is located in Festus, Jefferson County, Missouri and during school year 2008-09 had an enrollment of approximately 3,100 students. (Missouri School District Directory).
3. The Mapaville State School for the Severely Disabled is one of thirty-five (35) state schools for the severely disabled operated by the Missouri Department of Elementary and Secondary Education (“DESE”). During all times material to this proceeding, the Superintendent for the State Schools for the Severely Disabled has been Charlie Taylor. The Mapaville facility is one of eleven (11) State Schools for the Severely Disabled which is in DESE’s Region III. (*State Plan*, Regulation X, p. 144; Tr. pp. 671-672). During all times material to this proceeding the Director of Region III has been Clark Powell. (Tr. pp. 671-672).

4. During this proceeding, the Student and Parent were represented by Thomas E. Kennedy, III and Anne M. Hillyer, Law Offices of Thomas E. Kennedy, III, LC, 230 S. Bemiston, Suite 800, St. Louis, MO 63105.

5. During this proceeding Respondent was represented by Denise Thomas, Assistant Attorney General and Rex Fennessey, Assistant Attorney General, Office of the Missouri Attorney General, Suite 200, 815 Olive Street, St. Louis, MO, 63101.

6. During this proceeding, the Festus R-IV School District (“District”) was represented by Ernest G. Trakas, Tueth, Keeney, Cooper, Mohan & Jackstadt, P.C., 34 North Meramec Avenue, Suite 600, St. Louis, MO 63105.

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

Ransom A Ellis, III	Hearing Chairperson
Dr. Gale Rice	Panel Member
Christine Montgomery	Panel Member

8. During all times relevant to this proceeding the following persons were employed by Respondent, contracted with Respondent, or were employed by District and have provided educational services to the Student:

Charlie Taylor	Superintendent for Respondent
Clark Powell	Director, Area III, for Respondent
Mary Schilling	Principal
Darin Siefert	Principal (District)
John Palmer	Supervisor of Instruction
Melissa Coahuilas	Representative of LEA (District)
Joyce Courtois	Representative of LEA (District)
John Palmer	Supervisor for Instruction
Debbie Sanderson	SPED Classroom Teacher/Administrative Representative
Karen Shepherd	SPED Classroom Teacher
Sally Shang	SPED Classroom Teacher
Alecia Glore	SPED Classroom Teacher
Lynn Suiter	Physical Therapist (Contractor)
Cindy Riley	Physical Therapist (District)
Ann Poisson	Speech-Language Pathologist
Linda Haislup	Speech-Language Pathologist
Peggy Seltzer	Speech-Language Pathologist
Debbie Lever	Speech-Language Pathologist (District)
Laurie Bohn	Occupational Therapist
Krista Green	Occupational Therapist (Contractor)
Margaret Jansen	Occupational Therapist

Sheila Foster	Occupational Therapist (District)
Rob Self	P.E. Teacher
Russ Deal	P.E. Teacher
Sherri Crowe	SPED Classroom Aide
Marsha Adams	SPED Classroom Aide
Angie Ames	SPED Classroom Aide
Sheila Scott	SPED Classroom Aide
Barbara Poposky	SPED Classroom Aide
Sally Zhang	Nurse
Nancy Simpson	Home School Coordinator
Jane Dycus	School Psychologist (District)
Pamela Howard	Educational Diagnostician (Cooperative)

## **B. Procedural Background**

9. This proceeding is the second due process complaint decided by this Hearing Panel which deals with the Student, District and Respondent. The first due process complaint (“First Complaint”) was filed by the Parent with the Department of Elementary and Secondary Education (“DESE”) on October 21, 2008, (HP Exh 1), and a decision was issued by the Hearing Panel on June 30, 2009.

10. The Student’s Mother filed the Second Due Process Complaint (“Second Complaint”) with the Department of Elementary and Secondary Education (“DESE”) on May 1, 2009. (HP-2 Exh 1). The Second Complaint was originally brought against Respondent and District.

11. On May 1, 2009, Ms. Jackie Bruner notified the Hearing Chairperson (HP-2 Exh 2) that he had been selected to serve on the hearing panel for the due process filed by the Parent.

12. On May 11, 2009, the District filed its Motion To Dismiss Due Process Complaint. (HP-2 Exh 6). On May 12, 2009, Respondent filed its Motion To Dismiss The Second Due Process Complaint (HP-2 Exh 8) and its Notice of Insufficiency. (HP-2 Exh. 9). On June 10, 2009, Petitioner filed its Memorandum in Opposition to District’s Motion To Dismiss (HP-2 Exh 11) and its Memorandum in Opposition To Respondent’s Motion To Dismiss (HP-2 Exh 12).

13. Following the issuance of the decision by this Hearing Panel in the First Complaint, on June 30, 2009, Petitioner filed its Amended Second Due Process Complaint on July 6, 2009. (HP-2 Exh 16).

14. On July 14, 2009, the Hearing Chairperson issued Order Number 1 (Petitioner’s Motion For Leave To File Amended Complaint). (HP-2 Exh 17). Order Number 1 granted Petitioner’s Motion for Leave to File its Amended Complaint.

15. On July 22, 2009, District filed its Motion To Dismiss Amended Second Due Process Complaint. (HP-2 Exh 18). On July 29, 2009, Respondent filed its Notice of Insufficiency (HP-2 Exh 19) and its Motion To Dismiss the Amended Second Due Process Complaint. (HP-2 Exh 20). On August 12, 2009, Petitioner filed its Memorandum in Opposition to Respondents' Motions To Dismiss the Second Due Process Complaint. (HP-2 Exh 22).
16. On August 14, 2009, the Hearing Chairperson issued Order Number 2 (Respondent's Motion To Dismiss Amended Second Due process Complaint) (HP-2 Exh 23), which granted Respondent's motion in part and denied it in part.
17. On August 14, 2009, the Hearing Chairperson issued Order Number 3 (District's Motion To Dismiss) (HP-2 Exh 24), which granted District's motion to dismiss. As of August 14, 2009, District was dismissed from the case.
18. On August 19, 2009, the Hearing Chairperson issued Order Number 4 (Order Setting Pre-Hearing Conference) (HP-2 Exh 26), which set the pre-hearing conference for September 1, 2009. The Pre-Hearing Telephone Conference was held on September 1, 2009.
19. On September 3, 2009, Petitioner requested by letter that the time lines in the case be extended through January 31, 2010. On September 9, 2009, the Hearing Chairperson issued Order Number 5 (Order Extending Time Lines) (HP-2 Exh 30), which extended the time lines in the case through January 31, 2010.
20. On September 22, 2009, the Hearing Chairperson issued Order Number 6 (Order Following Pre-Hearing Conference and Notice of Hearing). (HP-2 Exh 32) which set the hearing for December 14-18, 2009 in Festus, Missouri and established the issues to be heard by the Hearing Panel at the hearing.
21. The due process hearing was held in Festus, Missouri on December 14, 2009 and December 15, 2009. The record was closed at the end of the hearing on December 15, 2009, except to receive post-hearing briefs from the parties.
22. The parties stipulated to admit the "record" from the hearing on Complaint 1. The "record" of the First Due Process proceeding includes the following documents which were received into evidence:

Petitioner's Exhibits ("PEX-1") – 1-20, 21 (except page 199), 22-39 and 41.

Respondent's Exhibits ("REX-1") – 1 through 64.

District's Exhibits ("DEX-1") – 1 through 51.

Hearing Panel Exhibits ("HP Exh-1") – 1 through 48.

Transcript of Hearing April 13 through April 16, 2009.

Petitioner and Respondent also exchanged exhibits prior to the hearing on the Second Complaint 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 additional exhibits were admitted into evidence:

Respondent's Exhibits ("REX-2") – 1 through 28.

Hearing Panel Exhibits ("HP-2 Exh") – 1 through 35.

**C. Time Line Information**

23. The Second Complaint was filed by the Parent with the Department of Elementary and Secondary Education ("DESE") on May 1, 2009. (HP-2 Exh 1).

24. On May 11, 2009, District filed its Motion To Dismiss Due Process Complaint. (HP-2 Exh 6). On May 12, 2009, Respondent filed its Motion To Dismiss The Second Due Process Complaint (HP-2 Exh 8) and its Notice of Insufficiency. (HP-2 Exh. 9). On June 10, 2009, Petitioner filed its Memorandum in Opposition to District's Motion To Dismiss (HP-2 Exh 11) and its Memorandum in Opposition To Respondent's Motion To Dismiss (HP-2 Exh 12).

25. Following the issuance of the decision by this Hearing Panel in the First Complaint, on June 30, 2009, Petitioner filed its Amended Second Due Process Complaint on July 6, 2009. (HP-2 Exh 16).

26. On July 14, 2009, the Hearing Chairperson issued Order Number 1 (Petitioner's Motion For Leave To File Amended Complaint). (HP-2 Exh 17). Order Number 1 granted Petitioner's Motion for Leave to File its Amended Complaint.

27. On July 22, 2009, District filed its Motion To Dismiss Amended Second Due Process Complaint. (HP-2 Exh 18). On July 29, 2009, Respondent filed its Notice of Insufficiency (HP-2 Exh 19) and its Motion To Dismiss the Amended Second Due Process Complaint. (HP-2 Exh 20). On August 12, 2009, Petitioner filed its Memorandum in Opposition to Respondents' Motions To Dismiss the Second Due Process Complaint. (HP-2 Exh 22).

28. On August 14, 2009, the Hearing Chairperson issued Order Number 2 (Respondent's Motion To Dismiss Amended Second Due process Complaint) (HP-2 Exh 23), which granted Respondent's motion in part and denied it in part.

29. On August 14, 2009, the Hearing Chairperson issued Order Number 3 (District's Motion To Dismiss) (HP-2 Exh 24), which granted District's motion to dismiss. As of August 14, 2009, District was dismissed from the case.

30. On September 3, 2009, Petitioner requested by letter that the time lines in the case be extended through January 31, 2010. On September 9, 2009, the Hearing Chairperson issued Order Number 5 (Order Extending Time Lines) (HP-2 Exh 30), which extended the time lines in the case through January 31, 2010.

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

31. The following issues were presented to the Hearing Panel:

**Issue No. 1.** Whether the Student's May 11, 2007, IEP, and its amendments, which were developed on October 5, 2007, and January 31, 2008, met the requirements of 34 C.F.R. § 300.320. If not, did the failure to meet these requirements result in a failure to provide the Student with a free appropriate public education?

**Issue No. 2.** Whether the IEP Team that developed the Student's May 11, 2007, IEP, and its amendments, which were developed on October 5, 2007, and January 31, 2008, met the requirements of 34 C.F.R. § 300.321. If not, did the failure to meet these requirements result in a failure to provide the Student with a free appropriate public education?

**Issue No. 3.** Whether the Student's May 11, 2007, IEP, and its amendments, which were developed on October 5, 2007, and January 31, 2008, met the requirements of 34 C.F.R. § 300.324, and in particular: (a) the communication needs of the Student, as required by 34 C.F.R. § 300.324(a)(2)(iv); and, (b) the assistive technology needs of the Student, as required by 34 C.F.R. § 300.324(a)(2)(v). If not, did the failure to meet these requirements result in a failure to provide the Student with a free appropriate public education?

32. The Petitioner proposed the following remedy:

“Without waiving the Parent's right to any available relief for her son which is appropriate under the Act, the Parent seeks an augmentative communication evaluation consistent with paragraph 109(B)(3) of the hearing panel's previous order, development of appropriate communication goals consistent with the foregoing evaluation, and an appropriate award of compensatory educational services because of the Respondent's denial of FAPE to [the Student].

The award of compensatory education should equal at least the period of time when [the Student's] IEPs were improperly developed.”

The Parent seeks such compensatory services for [the Student] in a homebound setting consistent with his current IEP and recommendations of his physician.”

## **E. Background Facts -- Prior To The Relevant Period**

33. The Student was initially evaluated by the Cape Girardeau Public Schools on or around November 12, 2002. (REX-1 24, p. 108). At that time, the Student had medical diagnoses of spastic Quadriplegia secondary to hypoglycemia and Medium-Chain Acyl-Coenzyme A Dehydrogenase Deficiency (“MCAD”). The educational evaluation conducted by the Cape Girardeau Public Schools resulted in an educational diagnosis for the Student of Young Child With A Developmental Disability, based upon significant delays in the areas of cognitive/adaptive, communication and fine/gross motor functioning. (PEX-1 4). In January, 2003, the Student and his family moved to the DeSoto 73 School District in Jefferson, County, Missouri, where the Student continued to receive Early Childhood Special Education (“ECSE”) services. (REX-1 24, p. 108). On May 24, 2004, the DeSoto 73 School District referred the Student to DESE, which determined that the Student was a “severely handicapped child” and was eligible to receive services provided by the State Schools for the Severely Handicapped.<sup>1</sup> (REX-1 24, p.108). During the Summer of 2004, the Student and his family moved into the District. The Student began attending the Mapaville State School in August, 2004. (REX-1 24, p. 108; Tr. Vol. 1, pp. 136, 194-195).

34. The Student was enrolled as a full-time Student in the State School for the Severely Disabled at Mapaville, Missouri, from August, 2004, to May 6, 2008. The Student’s last attendance day at Mapaville was February 28, 2008. (Tr. Vol. 1, pp. 91, 104, 187, 231). Since May 6, 2008, the Student has been home schooled by the Parent. (REX-1 19-20; 24; Tr. Vol. 1, pp. 106-107, 187).

35. On December 15, 2005, a reevaluation was completed on the Student by the Special Services Cooperative of Jefferson County.<sup>2</sup> (REX-1 24, p. 108). The reevaluation was completed when the Student was six years, six months old. The reevaluation revealed that, at that time, the Student was at the 0-3 month level in cognitive, personal and social skills, language skills and motor skills, and that the Student’s overall developmental age equivalence was at the 0-3 month level, indicating that he was severely delayed for a child of his chronological age. On December 15, 2005, the Student’s Team determined that the Student continued to be eligible for special education under the educational diagnosis of Mental Retardation. (PEX-1 4).<sup>3</sup> The Student’s medical conditions cause him to have seizures lasting 3 to 4 minutes 2 to 3 times per day. These seizures are not predictable and may be brought on by startling or physical handling. (PEX-1 2).

36. In the Fall of 2005, the Student’s Reassessment Team met to conduct a reevaluation of him. On September 29, 2005, the Team conducted a Review of Existing Data meeting during

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<sup>1</sup> Subsequently, DESE changed the name of the State Schools for the Severely Handicapped to the State Schools for the Severely Disabled.

<sup>2</sup> At that time, District was a member of the Special Services Cooperative of Jefferson County.

<sup>3</sup> The Missouri State Plan for Special Education (2007) has now changed the terminology for an educational diagnosis of "mental retardation" to "mental retardation/intellectual disability".

which the Team determined that further data was needed in the areas of cognitive, adaptive, academic, language and fine/gross motor functioning in order to consider and/or provide appropriate programming for the Student. (PEX-1 4, p. 30). On December 15, 2005, the Team met to finalize the Student's reevaluation. The Student's Team determined that the Student continued to be eligible for special education and related services in the area of Mental Retardation. (PEX-1 4, p. 35).

37. On December 15, 2005, due to medical treatment for his physical disabilities, the Student began receiving intermittent homebound services of five (5) hours per week. (PEX-1 6, p. 43). During the period from November 7, 2005 through March 24, 2006, the Student missed thirty-four (34) days of school.<sup>4</sup> (PEX-1 6, p. 43).

38. On or around April 24, 2006, the Student began intermittent homebound services again. (PEX-1 15, p. 100).

39. On May 12, 2006, the Student's IEP Team met to review and/or revise his IEP. Present at this meeting were: the Student's Mother, Debbie Sanderson, Mary Schilling and Krista Green. The following decisions were made during this IEP meeting:

A. An educational program was developed for the Student that provided 1,800 minutes per week of special education and related services during the regular school year (school year 2006-07) to be provided at the Mapaville facility.

B. The Student would receive sixty minutes per week of direct Physical Therapy, Occupational Therapy and Speech/Language Therapy at the Mapaville facility.

C. The Student's placement for school year 2006-07 was "Public Separate (Day) Facility."

D. The Student was eligible for Extended School Year services for the Summer of 2006 and would receive three hundred sixty minutes per week of direct Physical Therapy, Occupational Therapy and Speech/Language Therapy and one thousand eighty minutes per week of Special Education instruction in a Homebound setting.

(PEX-1 12; REX-1 4).

40. The Present Level of Academic Achievement and Functional Performance section of the Student's May 12, 2006, IEP indicates that the Student had the following changes in current functioning since the prior IEP:

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<sup>4</sup> During this period, but prior to December 15, 2005, the Student missed the following school days: September 30; October 7, 24-28, 31; November 4, 7, 15-18, 21, 28-30; and, December 1-2, 5-7, 12-15. (PEX-1 4, p. 35).

“[The Student] has a seizure disorder in which he has been observed to have seizures lasting 3-4 minutes, 2-3 times per day. The seizures are not predictable and may be brought on by startling or physical handling. He began intermittent homebound services in December 2005 receiving special education instruction of 5 hours per week. When being placed in different positions [the Student] has held his head upright for up to seven (7) seconds but not on a consistent basis. He tolerates positioning of weight bearing on upper extremities with physical assist to maintain.”

( PEX-1 12, p. 76; REX-1 4, p. 13).

41. The Student’s May 12, 2006, IEP (PEX-1 12; REX-1 4) established the following goals and benchmarks for the Student:

Goal 1            The Student will hold head in upright position for 7 seconds.

Goal 2            The Student will partially participate in a variety of sensory motor activities.

Goal 3            The Student will complete the steps of a visual schedule.

(PEX-1 12; REX-1 4).

42. On May 12, 2006, the Student’s IEP Team determined that the appropriate placement for the Student was Public Separate (Day) Facility.

43. On May 18, 2006, a Notice of Action was provided to the Parent. (PEX-1 20; REX-1 5; REX 6). The Notice of Action indicates that the Student’s IEP Team was recommending an increase of Occupational Therapy, Physical Therapy and Speech Therapy from forty-five minutes a week to one hour a week “to address motor/sensory goals as a homebound student.” (PEX-1 20, p. 193; REX-1 19).

44. During school year 2006-07, the Student’s special education classroom teacher charted the Student’s progress on his goals and benchmarks as follows:

A.    Goal 1 – The Student will hold head in upright position for 7 seconds -- The progress report on the Student’s May 12, 2006, IEP indicates that the Student “Mastered” Goal 1 on his IEP on July 27, 2006. (PEX-1 15 p. 108).

(1)    Benchmark 1.1 – The Student will hold head in upright position for 5 seconds -- During the period between May 17, 2006, and June 14, 2006, the Student was only able to hold his head up for three seconds. By the end of the

extended school year program, around August 11, 2006, the Student had mastered the benchmark and the goal and continued to improve including the ability to keep his head in an upright position during core balance activities and pulling his head up from a forward position while in his stander. (PEX-1 15, pp. 108-109).

B. Goal 2 – The Student will partially participate in a variety of sensory motor activities -- The progress report on the Student's May 12, 2006, IEP indicates that Goal 2 was “discontinued to revise goal on May 11, 2007.” (PEX-1 15, p. 111).

(1) Benchmark 2.1 – The Student will maintain touch of an object when using tactile stimulation for 10 seconds – During the period between May 17, 2006, and June 14, 2006, the Student was able to “participate” in maintaining touch of an object for up to 10 seconds. By the end of the extended school year program, August 11, 2006, the Student had mastered this benchmark and continued to exhibit this progress through the end of the data collection period on May 11, 2007. (PEX-1 15, pp. 110-111).

(2) Benchmark 2.2 – The Student will maintain grasp of an object placed in hand for 2 minutes – During the period between May 17, 2006, and June 14, 2006, the Student “inconsistently maintained grasp on objects placed in [his] hands.” By March 16, 2007, the Student was holding items for longer lengths of time with his right hand over his left. At the end of the reporting period, May 11, 2007, the Student was maintaining his grasp of objects placed in his hands, but not for the full two minutes. (PEX-1 15, pp. 110-111).

(3) Benchmark 2.3 – The Student will maintain loosened muscle tension when placed in a variety of therapeutic positions for 3 of 4 opportunities – During the period between May 17, 2006, and June 14, 2006, the Student was able to maintain loosened muscle tension 75% of the time. The Student continued to exhibit progress on this benchmark. When he dislocated his hip, the lower extremity range of motion exercises were stopped. However, the Student was determined to have mastered the loosened muscle tension benchmark on his upper extremities by the end of the reporting period on May 11, 2007. (PEX-1 15, pp. 110-111).

(4) Benchmark 2.4 – The Student will interact with different people and peers in various environments within 10 seconds – During the reporting period, the Student inconsistently interacted with other students and staff in the school environment due in part to the Student’s vision problems and seizure activity. (PEX-1 15, pp. 110-111).

C. Goal 3 – The Student will complete the steps of a visual schedule – The progress report on the Student’s May 12, 2006, IEP indicates that Goal 3 was “discontinued to revise goal on May 11, 2007.” (PEX-1 15, p. 113).

(1) Benchmark 3.1 – The Student will look at an object presented to the right visual field on 4 of 5 opportunities – During the period between May 17, 2006, and June 14, 2006, the Student “looked at items presented in right field of vision from 50-100% of trials.” During the school year, his performance varied from making progress to being inconsistent on this benchmark. By the end of the reporting period on May 11, 2007, Ms. Sanderson reported that the Student “inconsistently [made] eye gaze with items representing scheduled activities,” and further indicated that the Student had just been diagnosed with double vision. (PEX-1 15, pp. 112-113).

**F. Facts That Occurred During The Relevant Time Period --  
May 1, 2007 Through May 8, 2008**

45. On May 11, 2007, the Student’s IEP Team met to review and/or revise his IEP. Present at this meeting were: the Student’s Mother, Debbie Sanderson and Karen Shepherd. Karen Shepherd was the Student’s special education classroom teacher. Ms. Sanderson, who had been the Student’s special education classroom teacher, was present at the meeting as the representative of Respondent. Ms. Sanderson was: (1) qualified to provide the provision of specially designed instruction to meet the unique needs of the Student; (2) knowledgeable about the general education curriculum; and, (3) knowledgeable about the availability of resources of Respondent. (Tr. p. 744).

46. The following decisions were made during the May 11, 2007, IEP meeting:

A. An educational program was developed for the Student that provided 1,800 minutes per week of special education and related services during the regular school year (school year 2006-07) to be provided at the Mapaville facility.

B. The Student would receive sixty minutes per week of direct Physical Therapy, Occupational Therapy and Speech/Language Therapy at the Mapaville facility.

C. The Student’s placement for school year 2006-07 was “Public Separate (Day) Facility.”

D. The Student was eligible for Extended School Year services for the Summer of 2006 and would receive thirty minutes per week of direct Physical Therapy, Occupational Therapy and Speech/Language Therapy and nine hundred minutes per week of Special Education instruction at the Mapaville facility.

(PEX-1 24; REX-1 9).

47. The Present Level of Academic Achievement and Functional Performance section of the Student's May 11, 2007, IEP indicates that the Student had the following changes in current functioning since the prior IEP:

“[The Student] has a seizure disorder. The seizures are not predictable and may be brought on by startling or physical handling. *A recent eye exam showed [the Student] is having double vision. He will have surgery to correct this.* When being placed in different positions [the Student] has held his head upright for up to seven (7) seconds but not on a consistent basis. He tolerates positioning of weight bearing on upper extremities with physical assist to maintain. *[The Student] participates in a variety of sensory motor activities by maintaining touch of various tactile stimuli and maintaining loosened muscle tension when placed in therapeutic positions. [The Student] displays eye contact to items used throughout the day during the routine.*” [additions from previous IEP are noted in italics].

(PEX-1 24, p. 229).

48. The Student's May 11, 2007, IEP (PEX-1 24; REX-1 9) established the following goals and benchmarks for the Student:

- Goal 1            The Student will turn head to both sides while in sitting position through partial participation.
- Benchmark 1.1            The Student will turn head toward sensory stimulation activity without dropping head forward or to the side on 2 of 3 opportunities.
- Goal 2            The Student will identify the relationship between force and motion through partial participation.
- Benchmark 2.1            The Student will push switch to interact with computer software through partial participation.
- Benchmark 2.2            The Student will cut with scissors for the duration of the activity.
- Benchmark 2.3            The Student will wipe clean and dry table surfaces through partial participation.
- Benchmark 2.4            The Student will engage in pattern-related activities

in the every day environment during manipulative activities.

Goal 3 The Student will explore physical properties of objects using one or more of the five senses through partial participation.

Benchmark 3.1 The Student will lean at different angles while sitting without increased muscle tone.

Goal 4 The Student will use small body movements to communicate a message (eye movement, eye gaze, finger/hand/arm movement, facial expressions, head movement) with a variety of people.

Benchmark 4.1 The Student will use body movements or vocalizations to start or stop co-active movement 2 of 3 opportunities.

(PEX-1 24; REX-1 9).

49. The Student's May 11, 2007 IEP contains the following:

- A. A statement of the Student's present level of academic achievement and functional performance which includes a statement of how the Student's disability affects his involvement and progress in the general education curriculum.
- B. A statement of measurable annual goals, including academic and functional goals.
- C. A description of how the Student's progress toward meetings the annual goals will be measured.
- D. A statement of the special education and related services and supplementary aids and services will be provided to the Student.
- E. An explanation of the extent to which the Student will or will not participate with non-disabled children in the regular class and other activities.
- F. A statement of any individual appropriate accommodations that are necessary to measure the academic performance of the child on State and district-wide assessments.
- G. The projected date for the beginning of the services and modifications.

The Student's May 11, 2007 IEP does not contain a statement of annual goals, including academic and functional goals that are designed to meet the Student's communication needs.

50. The Student attended only five (5) days of the Extended School Year services in the Summer of 2007. The Student withdrew from those services on July 10, 2007. (PEX-1 24, p. 246; REX-1 15, p. 102).

51. On September 22, 2007, the Student had hip surgery. (Tr. Vol. 1, p. 183). The Student was in a cast for approximately six weeks (Tr. Vol. 1, pp. 219-220). During the recovery from his hip surgery, the Student received Homebound special education and related services.

52. On October 5, 2007, the Student's IEP Team met to amend his IEP. Present at this meeting were: the Student's Mother, Debbie Sanderson and Mary Schilling. No representatives from District were invited to attend the meeting or attended the meeting. During this meeting the Student's Team determined that his appropriate educational placement should be changed to Homebound. No changes were made to the Student's Goals and Benchmarks. (REX-1 9A).

53. On November 20, 2007, the Student was released by his doctor to return to school and begin some limited range of motion activities. (REX-1 57, p. 408). It is unclear from the record when the Student actually returned to school although the Student did receive Homebound educational services until he was able to return to school.

54. On January 31, 2008, the Student's IEP Team met by telephone to review and/or revise his IEP. Present at this meeting were: the Student's Mother, Karen Shepard and Debbie Sanderson. During this meeting, the Student's May 11, 2007, IEP was amended. (REX-1 10). The Present Level of Academic Achievement and Functional Performance section of the Student's January 11, 2008, IEP amendment indicates that the Student had the following changes in current functioning since the prior IEP:

“[The Student] has a seizure disorder. The seizures are not predictable and may be brought on by startling or physical handling. A recent eye exam showed [the Student] is having double vision. He will have surgery to correct this. When being placed in different positions [the Student] has held his head upright for up to seven (7) seconds but not on a consistent basis. He tolerates positioning of weight bearing on upper extremities with physical assist to maintain. *[The Student] has recently had hip surgery; therefore is being serviced through homebound instruction until the doctor releases him to return to school.* [The Student] participates in a variety of sensory motor activities by maintaining touch of various tactile stimuli and maintaining loosened muscle tension when placed in therapeutic positions. [The Student] displays eye contact to items used throughout the day during the routine.” [additions from previous IEP are noted in italics].

(REX-1 10). The Student's IEP Team also determined that his educational placement should be changed to Public Separate (Day) Facility. (REX-1 10, p. 57). No changes were made to the Goals and Objectives and educational Benchmarks in his May 11, 2007, IEP even though the

Student had been reported to have "mastered" Goal 4 and Benchmark 4.1 on January 4, 2008. (PEX-1 26, p. 248).

55. On February 4, 2008, Respondent issued a Notice of Action to the Parent indicating a proposed change in the Student's educational placement from Homebound to Public Separate (Day) Facility. (PEX-1 33, p. 361; REX-1 11, p. 58).

56. During school year 2007-08, the Student made the following progress on his goals and benchmarks, during the time he was receiving special education and related services from Respondent:

A. Goal 1 – The Student will turn head to both sides while in sitting position through partial participation – Between May 15, 2007, and June 15, 2007, the Student turned his head to the midline while having his left eye covered on 3 of 3 trials for 1 of 5 days. During school year 2007-08, the Student was only able to turn his head “slightly” 33% of the time except during feeding when he turned his head 75% of the time. After January 4, 2008, the Student’s progress report indicates that there was no sufficient data to determine whether the Student progressed on this goal. (PEX-1 26, p. 246).

(1) Benchmark 1.1 – The Student will turn head toward sensory stimulation activity without dropping head forward or to the side on 2 of 3 opportunities – The Student’s progress report does not indicate whether progress was made on this Benchmark. (PEX-1 26, p. 246).

B. Goal 2 – The Student will identify the relationship between force and motion through partial participation – The Student’s Progress Report indicates that the Student continued to make progress on this goal through January 4, 2008. After that date, the Progress Report indicates that not enough data existed to determine progress. (PEX-1 26, p. 247).

(1) Benchmark 2.1 – The Student will push switch to interact with computer software through partial participation – The Student’s Progress Report indicates that the Student made progress between May 15, 2007 and January 4, 2008 from initially only being able to “slightly” move his arm to activate a touch window in May, 2007 to being able to activate a touch switch 63% of opportunities in 4 data days by January 4, 2008. (PEX-1 26, p. 247).

(2) Benchmark 2.2 – The Student will cut with scissors for the duration of the activity – The Student’s Progress Report does not indicate that the Student worked on this Benchmark. (PEX-1 26, p. 247).

(3) Benchmark 2.3 – The Student will wipe clean and dry table surfaces through partial participation – The Student’s Progress Report states that

the Student mastered cleaning his chair tray with assistance by not pulling away. (PEX-1 26, p. 247).

(4) Benchmark 2.4 – The Student will engage in pattern-related activities in the every day environment during manipulative activities – The Student’s Progress Report does not indicate that the Student worked on this Benchmark. (PEX-1 26, p. 247).

C. Goal 3 – The Student will explore physical properties of objects using one or more of the five senses through partial participation – The Student’s Progress Report indicates that the Student made progress on this goal through the end of school year 2006-07, but no work was done on the goal, and the goal was not modified, from the beginning of school year 2007-08 until January 4, 2008, because the Student had hip surgery and was unable to work on the goal. The Progress Report further indicates that there was “not enough data” to determine whether progress had been made during the period beginning January 7, 2008 through the end of the school year. (PEX-1 26, p. 248).

(1) Benchmark 3.1 – The Student will lean at different angles while sitting without increased muscle tone – The Student’s Progress Report indicates that the Student made some progress on this Benchmark during May and June, 2007, but did not work on this Benchmark after that period due to his hip surgery. (PEX-1 26, p. 248).

D. Goal 4 – The Student will use small body movements to communicate a message (eye movement, eye gaze, finger/hand/arm movement, facial expressions, head movement) with a variety of people – The Student's Progress Report indicates that the Student mastered this goal on January 4, 2008. (PEX-1 26, p. 248).

(1) Benchmark 4.1 – The Student will use body movements or vocalizations to start or stop co-active movement 2 of 3 opportunities – The Student’s Progress Report indicates that the Student mastered this goal on January 4, 2008. (PEX-1 26, p. 248).

57. In March, 2008, allegations were made by a number of persons that inappropriate actions were occurring at the Mapaville State School. With these allegations, a number of meetings took place between Clark Powell, State School Director, Charlie Taylor, Superintendent for the State Schools and parents of children at the Mapaville facility. (REX-1 15-16 and 18).

58. On or around February 28, 2008, the Student’s Mother ceased taking him to school at the Mapaville State School facility due to the allegations made concerning the conduct of persons at the facility. (Tr. Vol. 1, pp. 91, 104, 187, 231).

59. On March 14, 2008, Respondent sent a letter to District's Superintendent concerning the Student. This letter states as follows:

“[The Student] is a student in your district who is enrolled but not attending Mapaville State School. Based on repeated contacts and attempts to secure attendance, [the Student] is truant in attending school. To date, [the Student] has missed 10 consecutive days without a valid reason for absence. We currently have an IEP with separate day school placement. [The Student] is mandatory school age.

As the referring district, we hereby request your assistance in securing school attendance. If you are able to contact the parent/guardian or have information regarding a change of placement, or regarding student attendance, please contact the State School building administrator.”

(REX-1 18, p. 57).

60. On April 22, 2008, Respondent sent a letter to the Student's Mother concerning the Student. This letter states as follows:

“Your child resides in the Festus R-VI School District and is enrolled in, but not attending the Mapaville State School. [The Student] is truant from school. To date, he has missed at least 30 consecutive days without a valid reason for absence. The investigation by the Department of Social Services, Children's Division found no abuse or neglect at the Mapaville State School.

[The Student] is of mandatory school age and the law requires that he attend school. To avoid a report of truancy he should be attending school. Mapaville has a current Individual Education Plan (IEP) for him and is ready to implement the provisions of the IEP. If you are home schooling [the Student], please inform us so we can remove him from the enrollment.”

(REX-1 19, p. 58).

61. On May 6, 2008, the Student's Parent notified Respondent that the Student was being home schooled. The Parent's note provided to the Respondent states as follows:

“This notice is to inform you that I am currently home-schooling my son [the Student], and have no plans at this time to return him as a full-time student to Mapaville State School.”

(REX-1 19, p. 85). This information was confirmed by Respondent during the IEP meeting on May 7, 2008. REX-1 20, p. 86). The Student's Parent testified she withdrew the Student from

Mapaville due to the threat of being reported for truancy, including the March and April letters and a telephone call from representatives of District and SSSD. (Tr. Vol. I, pp. 104-106).

62. The Student currently has an IEP and is receiving services at home from Respondent. (Tr. p. 690).

## **II. CONCLUSIONS OF LAW**

63. The Mapaville State School for the Severely Disabled is a part of the State's system of day school services in separate school setting which is operated by DESE. (State Plan – Regulation X, *State Operated Programs*, p. 144).

64. The Student is now and has been a resident of 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 and a “severely handicapped child” as defined by Section 162.675(3) RSMo, which states as follows:

“(3) “Severely handicapped children”, handicapped children under the age of twenty-one years who meet the eligibility criteria for Missouri schools for the severely disabled, identified in state regulations that implement the Individuals with Disabilities Education Act.”

65. The IDEA, its regulations and the *State Plan for Part B of the Individuals With Disabilities Education Act (2007)*, (“State Plan”) which constitutes regulations of the State of Missouri, further define the rights of students with disabilities and their parents and regulate the responsibilities of educational agencies, such as District and Respondent, in providing special education and related services to students with disabilities.

66. 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.

67. 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.

68. 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.

69. 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 Respondent 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 Respondent “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 Respondent 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).

70. 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).

71. 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).

72. 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 Second Complaint and she therefore bears the burden of proof on issues presented to the Hearing Panel.

73. The Regulations of the IDEA, 34 C.F.R. § 300.507(b) and § 300.511(e) establish a two year statute of limitations for due process proceedings, unless certain exceptions are present. (34 C.F.R. § 300.511(f)). In this case, no exceptions exist to deviate from the two year statute of limitations. Therefore, the appropriate time period for review in this case begins on May 1, 2007, and ends on May 1, 2009, the day the Student's Parent filed the Second Complaint. The review of the Hearing Panel is further limited by the scope and extent of the allegations contained in the Second Complaint. Consistent with the State Plan, Regulation V, *Procedural Safeguards/Discipline*, pages 71-72, the Hearing Chairperson conducted a pre-hearing conference in this case during which the allegations contained in the due process complaint were formed into issues for the hearing. The decision of the Hearing Panel is restricted to the issues set forth herein.

74. On or around May 24, 2004, when Respondent determined that the Student was a “Severely Handicapped Child,” it became responsible to provide direct special education and related services to the Student pursuant to 34 C.F.R. § 300.227(a). *Missouri Department of Elementary and Secondary Education v. Springfield R-12 School District*, 358 F.3d 992, 999 (8th Cir. 2004). In *Missouri Department of Elementary and Secondary Education, supra.*, 358 F.3d, 999, the Eighth Circuit stated:

“If a child requires special education, the entity responsible for that child’s education must form a team to formulate an individualized education program in light of the child's abilities and parental views about the child’s education. 34 C.F.R. §§ 300.343(b)(2), 300.346(a)(1). The parents, the child’s teacher, and a school official knowledgeable about special education must be included on the team that devises and reviews the individualized education program, and parents are free to invite other individuals with expertise to participate.” [citation omitted].

75. Between October 21, 2006, and May 11, 2007, the Student's placement was Public Separate (Day) Facility, as determined by his IEP Team in his May 12, 2006, IEP. This placement was an appropriate placement for the Student in the least restrictive environment because during this time period, "the nature or severity of the disability of [the Student was] such that education in regular classes with the use of supplementary aids and services [could not] be achieved satisfactorily." See: Section 162.680.2 RSMo.

76. The Student's May 11, 2007, IEP does not contain a statement of annual goals, including academic and functional goals that are designed to meet the Student's communication needs as required by the IDEA Regulations, 34 C.F.R. § 300.320(a)(2) and the State Plan, in that:

A. The regulations of the IDEA, 34 C.F.R. § 300.324(a)(2) requires each IEP Team to consider the communication needs of the child. In this case, the Student's Parent had, for a number of years, included communication as her top priorities for inclusion in the Student's program of special education and related services (Tr. Vol. 1, pp. 110-111).

B. There are no appropriate communication goals in the IEP.

77. The composition of the IEP Team at the Student's May 11, 2007, IEP meeting met the requirements of the IDEA Regulations, 34, C.F.R. § 300.321 and the State Plan in that the following persons were present at the meeting:

A. The Parent of the Student.

B. The Student's Special Education Teacher.

C. A Representative of Respondent who was: (1) qualified to provide the provision of specially designed instruction to meet the unique needs of the Student; (2) knowledgeable about the general education curriculum; and, (3) knowledgeable about the availability of resources of Respondent.

D. An individual who is qualified to interpret the results of the Student's evaluation.

78. Respondent was not required by the IDEA or the State Plan to require the attendance of the Student's Speech Pathologist or other related services providers. Such individuals may attend an IEP meeting by request of the Parent or at the discretion of the educational entity. 34 C.F.R. § 300.321(a)(6). The Comments to the Amendments to the IDEA contained in the Federal Register further explain this issue:

"Many comments were received recommending that the IEP Team include additional members beyond those required by § 300.321(a). Several commenters stated that occupational therapists should be part of the IEP Team because of their unique training in assisting children to learn in changing environments. . . .

Several commenters recommended that the IEP Team include individuals with knowledge or special expertise regarding the related services needs of a child. . .

*Discussion:* It would be inappropriate to require that individuals with specific professional knowledge or qualifications attend all IEP Team meetings. These decisions should be made on a case-by-case basis in light of the needs of a particular child. Section 300.321(a)(6), consistent with Section 614(d)(1)(B)(vi) of the Act, already allows other individuals who have knowledge or special expertise regarding the child, including related services personnel, as appropriate, to be included as members of a child's IEP Team at the discretion of the parent or the agency.”

Federal Register, Vol 71, No. 156, August 14, 2006, p. 46669. While the discretion to invite appropriate related services providers rests within the discretion of the educational entity or Parent, it is the educational entity that bears the burden of providing an appropriate IEP for the child that is reasonably calculated to provide some benefit to him.

79. The Student's IEP Team that attended his October 5, 2008, and January 31, 2008 IEP meetings met the requirements of the IDEA Regulations, 34 C.F.R. § 300.320 and 34 C.F.R. §300.321 and the State Plan, in that these meetings were for the sole purpose of changing the Student's placement which was occasioned by medical treatment he had received and the recovery period that kept him from attending school. Nonetheless, these amendments continued to fail to appropriately deal with the communications needs of the Student.

80. The IEP Team at the Student's May 11, 2007, IEP Meeting did not properly or appropriately consider the communications needs of the Student as required by the IDEA Regulations, 34 C.F.R. § 300.324(a)(2)(iv) and the State Plan. The regulations of the IDEA, 34 C.F.R. § 300.324(a)(2) requires each IEP Team to consider the communication needs of the child. In this case, the Student's Parent had, for a number of years, included communication as her top priorities for inclusion in the Student's program of special education and related services (Tr. Vol. 1, pp. 110-111). There are no appropriate communication goals in the IEP.

81. The Student's May 11, 2007, IEP was not reasonably calculated to provide the Student with educational benefit because it failed to appropriately address his communication needs.

82. On May 7, 2008, the Student's Mother officially notified Respondent and District that the Student was being home schooled. At that time, the Student became a “parentally-placed private school child with disabilities” (34 C.F.R. § 300.130) in that:

A. On May 7, 2008, the Student was removed from enrollment in Respondent, was not enrolled at District or any other public or private school and was being home schooled by his Parent.

B. There is no evidence on the record that there was a disagreement between the Student's Parent and Respondent or District regarding the availability of an appropriate program of special education and related services for the Student (See: 34 C.F.R. §300.148(b)).

C. There is no evidence on the record that the Student's Parent provided District or Respondent with notice concerning her concerns, if any, about the Student's program of special education and related services, including his educational placement as required by the IDEA and its regulations.

### **III. DECISION**

**Issue No. 1. Whether the Student's May 11, 2007, IEP, and its amendments, which were developed on October 5, 2007, and January 31, 2008, met the requirements of 34 C.F.R. §300.320. If not, did the failure to meet these requirements result in a failure to provide the Student with a free appropriate public education?**

**Decision:** The Hearing Panel finds that Student's May 11, 2007, IEP did not meet the requirements 34 C.F.R. § 300.320, in that it does not contain a statement of appropriate annual goals, including academic and functional goals that are designed to meet the Student's communication needs. Likewise, the amendments to this IEP which were developed on October 5, 2007 and January 31, 2008, were not amended to address the Student's communication goals. The failure to the Student's IEP to appropriately consider the Student's communication needs constitutes a failure to provide the Student with a free appropriate public education.

**Issue No. 2. Whether the IEP Team that developed the Student's May 11, 2007, IEP, and its amendments, which were developed on October 5, 2007, and January 31, 2008, met the requirements of 34 C.F.R. §300.321. If not, did the failure to meet these requirements result in a failure to provide the Student with a free appropriate public education?**

**Decision:** The Hearing Panel finds that Respondent did not violate 34 C.F.R. §300.321 in the composition of the Student's IEP Team in the May 11, 2007, October 5, 2007 and January 31, 2008, IEP Meetings for the reasons set forth above. However, the lack of appropriate related services personnel at the IEP meeting certainly contributed to the Hearing Panel's finding that Respondent failed to appropriately consider the communication needs of the Student. The only reason the Hearing Panel found no violation of 34 C.F.R. § 300.321 is because the IDEA Regulations leave the decision to invite related services personnel to the discretion of the educational entity.

**Issue No. 3. Whether the Student's May 11, 2007, IEP, and its amendments, which were developed on October 5, 2007, and January 31, 2008, met the requirements of 34 C.F.R. § 300.324, and in particular: (a) the communication needs of the Student, as**

**required by 34 C.F.R. §300.324(a)(2)(iv); and, (b) the assistive technology needs of the Student, as required by 34 C.F.R. §300.324(a)(2)(v). If not, did the failure to meet these requirements result in a failure to provide the Student with a free appropriate public education?**

**Decision:** The Hearing Panel finds that Respondent violated 34 C.F.R. §300.324(a)(2)(iv) in that the Student's May 11, 2007, IEP Team did not appropriately consider the Student's communication needs for the reasons set forth above. The failure of the Student's IEP Team to appropriately consider the Student's communication needs created an IEP that failed to provide the Student with a free appropriate public education.

#### **IV. ORDER**

83. The Hearing Panel issues the following Order:

A. The Hearing Panel finds for Petitioner on Issue 1 and Issue 3. Respondent is hereby directed to do the following:

(1) Convene an IEP meeting with appropriate personnel present, which includes but is not limited to persons who are qualified to provide speech services to the Student. During this IEP meeting make arrangements to have an augmentative communication evaluation performed on the Student, by appropriate outside providers and within a reasonable period of time;

(2) The augmentative communication evaluation should: (a) consider the Student's functional communication needs, including but not limited to reliable choice-making, initiating, protesting and turn-taking; and if needed, (b) make recommendations concerning an appropriate multi-modal augmentative communication system to provide the Student with multiple opportunities to use these modes throughout the school day and in his entire curriculum; and, (c) make appropriate recommendations for goals for the Student's IEP.

(3) Once the report of the augmentative communication evaluation is received, Respondent shall convene an IEP meeting to: (a) consider the communication needs of the Student as revealed in the augmentative communication evaluation; (b) consider modification of the Student's IEP consistent with any recommendations made by the augmentative communication evaluation; and, (c) consider whether compensatory Speech/Language and/or communication services are warranted, consistent with the recommendations of the augmentative communication evaluation and the IEP developed by his IEP Team.

B. The Hearing Panel finds for Respondent on Issue 2 and dismisses that issue.

## **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.

/s/ Ransom A Ellis, III  
Ransom A Ellis, III  
Hearing Chairperson

Dated: January 29, 2010

/s/ Dr. Gale Rice  
Dr. Gale Rice  
Hearing Panel Member

Dated: January 28, 2010

/s/Christine Montgomery        
Christine Montgomery  
Hearing Panel Member

Dated: January 29, 2010

**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 29<sup>th</sup> day of January, 2010:

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