

BEFORE THE THREE PERSON DUE PROCESS HEARING PANEL

EMPOWERED BY THE STATE BOARD OF EDUCATION

PURSUANT TO SECTION 162.961 RSMo.

In the Matter of ___, a student with a disability, by and through his parents, __

Petitioners

and

Camdenton R-III School District,

Respondent

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Request for Due Process Received November 10, 1997

Due Process Hearing Held May 12, 13, 14 & July 20, 21, 22, 1998

Decision Issued August 14, 1998

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STATEMENT OF ISSUES

The issues raised by Parent in the request for due process are:

1. The District's failure to provide a free appropriate public education to [Student], consisting of special education and related services provided pursuant to an Individual Education Program ("IEP"), in that the District failed to provide an appropriate educational program to [Student] including a course of systematic, direct, multisensory instruction daily by an instructor trained in that method in order to educate [Student] in the sound structure of the American English language. In so doing, the District ignored or disregarded expert professional advice regarding teaching methods and adjustments to [Student's] educational program.
2. The District unlawfully failed and refused to follow important terms of the IEP dated March 22, 1996, as well as all subsequent revisions.
3. The District unlawfully failed and refused to pay [parent] for her expenses of placing [Student] in an appropriate educational program at the Churchill School during the summer of 1996.
4. The District unlawfully failed and refused to pay [parent] reimbursement for her expenses from necessary counseling, testing and tutoring that [Student] received following his inappropriate educational program at the District and his improper treatment by the District in disregard of his IEP.
5. The District has unlawfully discriminated against [Student], solely on the basis of his handicaps, in violation of § 504 of the Rehabilitation Act of 1973, as amended, and its implementing regulations, in that:
 - a. The District has failed to provide an appropriate educational program to [Student], consisting of special education and related services pursuant to an IEP, as required by Part 104, Title 34, Code of Federal Regulations:
 - b. The District has refused to make reasonable accommodations as requested for [Student], thereby depriving him of access to services and programs receiving federal funding;
 - c. The District imposed discriminatory discipline that exploited [Student's] disability and caused [Student] humiliation, anguish and suffering;
 - d. The District unlawfully failed and refused to pay [Parent] reimbursement for her expenses of placing [Student] in an appropriate educational program at the Churchill School during the summer of 1996;

e. The District unlawfully failed and refused to pay [Parent] reimbursement for her expenses from necessary counseling, testing and tutoring that [Student] received following his inappropriate educational program at the District and his improper treatment by the District in disregard of his IEP.

During the preheating conference on November 25, 1997, Petitioners' attorney declined to further define the issues stated in the request for a due process hearing. In his letter dated November 24, counsel for the Parents states "[w]e believe that the issues for decision are succinctly and adequately stated in our letter requesting a due process hearing. Presently, we have no interest in limiting or changing that statement of issues."

Counsel never modified his position and the Panel will limit its consideration to those issues.

FINDINGS OF FACT

1. Student is a ___ year-old boy who lives with his parents and two younger brothers. He attended school in the Camdenton R-III School District ("District") from 1992 until his removal by his mother ("Parent") on October 31, 1996. Petitioner's Vol. III, Exhibit 28 ("P.III,X28").
2. Student was home schooled from November 1, 1996, until November, 1997 when he began attending public school in the Macks Creek School District. He continued attending Macks Creek through the 1997-98 school year although he continues to live in the Camdenton R-III School District.
3. The parties stipulated that Student is a child with a disability within the meaning of the IDEA and was identified as such by District on November 13, 1995.
4. All of the events giving rise to the issues in this hearing occurred before June 4, 1997, the date that the 1997 amendments to the Individuals with Disabilities Education Act (IDEA) became effective.

1992-1993 (First Grade)

5. In August of Student's first grade year, Dr. David Fleischer, M.D. wrote Student's classroom teacher stating Student's need for free access to a bathroom due to a "condition which sometimes causes almost uncontrollable urgency.", P. I,X11@135.

6. The report from the teacher's conference with Parent in November, 1992, indicates Student was below grade level in reading. P.I,X4@103. Student's first grade report card reflects at least average achievement in all subjects except spelling and math. Student passed to second grade. *Id.* @102.

1993-1994 (Second Grade)

7. In September of his second grade year, Student was identified by the District as eligible for Chapter I reading instruction, a program offered in addition to instruction in the classroom that is designed to strengthen basic reading skills. P.III,X37@323. Student participated in this program for the next two years until Parent withdrew him on October 31, 1995.

8. Student's report card reflects at least average achievement in all subjects during all quarters of second grade. P.I,X4@105. The Missouri Mastery & Achievement Test ("MMAT",) results indicate low ratings in all but Numerical Concepts where he achieved a medium score. *Id.* @110. Student passed to third grade.

1994-1995 (Third Grade)

9. During third grade, the classroom teacher communicated with Parent several times regarding incidents involving Student's behavior. P.III,X36@258-263 & 269.

10. The Panel is persuaded that an incident that occurred on 4/12/94 involving Student urinating on the shoe and pant leg of another student in the bathroom was nothing more than a childhood prank and rejects the testimony attempting to establish that it resulted from a denial of Student's access to the bathroom.

11. The Students MEAT score reflects low ratings in all areas except Geometry & Measurement which fell in the medium range. P.I X4@115. Student's score in reading was in the 1st percentile while language arts was in the 17th percentile. The third grade report card notes progress in almost all areas and Student passed to fourth grade. P.I,X4@112-13.

1995-1996 (Fourth Grade)

12. In August, near the start of the fourth grade year, Parent expressed concern about Student's low test scores to Richard Hodits, Upper Elementary Principal. Mr. Hodits did not provide information to Parent about special education or the process for referral. Transcript ("Tr.") 845.

13. In September Parent took Student to Miller County Psychological Services for counseling. Dr. Willis, a psychologist, Dr. Jeanette A. Williams, licensed psychologist, and Lawrence Lent, a therapist (now Dr. Lent) were all associated with the clinic at that time. Tr. Lent @ 31. Student was evaluated by Dr. Williams who noted the existence of low self esteem and problems with control of urine & bowels. P III,X3 @9. She initially diagnosed him with Adjustment Disorder with Mixed Disturbance of Conduct & Emotion and Reading Disorder and recommended individual psychotherapy. *Id.*

14. On October 3, Dr. Williams administered the WISC-R and the reading portion of the Woodcock-Johnson Psycho-Educational Battery at Lent's request. P.I,X11@133. She concluded that Student's intellectual functioning was average and that he should be able to make average grades with average effort. *Id.* His reading achievement was "over a grade and about a year and nine months behind the average of others at his age and grade level." She concluded that "reading would very likely be too difficult for him in the regular fourth grade classroom., *Id.*

15. Commencing in October, Lent provided individual and family therapy to Student for the purpose of calming him down and helping him understand the situation. Tr. Lent Q 20-21. In Lent's opinion, the therapy was necessitated by pressure placed on Student at home, *id.* @ 13, 36-37, and at school. *Id.* @ 21. When he suspected that "more was going on" than just the reading problem, Lent and Dr. Willis administered more tests resulting in the diagnosis of generalized anxiety disorder by Dr. Willis. *Id.* @ 70.

16. Parent voiced her concerns about Student to Ms. Lakatos, the fourth grade teacher, on October 9. Tr.533, and requested that Student be tested. *Id.* @ 533-34. The teacher suggested that Parent talk to Anne Scott, the Chairperson of the Department of Special Services, about making a referral. *Id.* @ 534.

17. Parent also talked with Ms. Alexander about special education testing. Faced with competing accounts placed in different time periods, the Panel is persuaded that, although Parent and Ms. Alexander first met at a parent support meeting prior to the beginning of the 1995-96 school year, Ms. Alexander's conversation with Parent about special education most likely occurred on or after October 9. See, e.g. Tr. 936-37 and P.IV,X55 Q 469 (recording thirteen instances of contact between Parent and District, nine apparently initiated by Parent, three by District, and one unknown).

18. Parent signed the Initial Referral form on October 16. P.III,X40@409. Parent received notice for initial evaluation and consented to an evaluation on October 23. Appropriate procedural safeguards were given at that time. Respondent's ("R") 7, Tr. 809, 941.

19. An Evaluation Plan was completed by Ms. Scott and Ms. Lakatos on October 24. P.III, X42. Between October 23 and November 3, a battery of tests was administered by Anne Scott who also observed Student in the classroom. Tests included a Conners Rating Scale, Social Skills Rating System, Woodcock Johnson Achievement Revised, TOWL-2, a second Woodcock Johnson Achievement-Revised and the PIAT-R. P.III, X43.

20. Parent filed a complaint with the Office of Civil Rights ("OCR") on October 27 generally alleging discriminatory acts by District against Student. P.V,X20.

21. On November 6, Parent filed a complaint with the Office of Civil Rights alleging District discriminated against Student on the basis of sex when he was disciplined for an incident and a female student involved was not punished. The complaint also claimed the District retaliated against Student because of Parents actions. P.V, X16 @ 142.

22. On November 13, based on the results of the testing and observation referred to in #19 above, Student's written language writing samples, report from Dr. Fleischer dated 8/17/92, a WISC-R and the portion of the Woodcock Johnson by Jeannette Williams and concerns expressed by the parents, Student was diagnosed with a learning disability in Basic Reading Skills and Written Expression. This diagnosis was made even though Student's scores on both Woodcock Johnson-Revised tests administered by the classroom teacher were above the state mandated criterion levels and Student's grades were satisfactory. R. 10.

November 15,1995 IEP Conference

23. A meeting was scheduled for November 15 to consider an individual education program (STEP") for Student. Appropriate notice was given to Parents. The notice reflected that an initial IEP would be developed and extended school year programming would be considered. R. 11.

24. At Parents request, therapist Lawrence Lent attended the IEP meeting and suggested modifications that would help Student deal with an anxiety disorder, such as using a tape recorder for testing and having untimed tests. Tr. Lent @16. He also suggested appropriate methods of discipline. *Id.* @18. Work on developing an IEP was begun at this meeting, but, contrary to assertions by Parent, the conference ended without a completed IEP.

25. Lent attested to the hostility existing between the parties saying "[t]his was not a typical IEP [meeting] for a kid. . . [t]his is one of the biggest messes I've ever seen." Tr. Lent 39.
26. Lent wrote a letter dated November 19 to the IEP team that included a diagnosis of generalized anxiety disorder and a description of how it would affect Student's educational process. R-13. Lent indicates that "anxiety blocks him from doing his best."
27. Lent based this letter on a review of Student's chart. The diagnosis of generalized anxiety disorder was taken from Dr. Willis' report. Tr. Lent 12. Dr. Willis' report was not placed in evidence, nor did he testify. Lent testified that his reference to encopresis and enuresis was based directly on a conversation he had with Parent and not on a physician's report. Id @38. He also stated that he never assigned a diagnosis to Student. Tr. Lent 62.
28. On November 17, Parents requested an assistive technology evaluation in a letter to District. P. I, X8 @ 121. The record is silent as to whether procedural safeguards were given in response to this request.
29. On November 20, prior to the completion and implementation of Student's IEP, Parent wrote the classroom teacher to object to modifications the teacher proposed in her letter of the same date which can be found at R-14. The letter reflects that copies were sent to Missouri Protection & Advocacy, OCR, Department of Elementary & Secondary Education (DESE) and four individuals, including the principal. R-15.
30. On November 22, Student was involved in an incident in which he called a girl a pussycat and was required by a teacher to write an apology to her class. R-17, P.I,X 5 @ 117. Parent reported this incident to OCR by telephone on November 27. On November 28, Student was disciplined along with several other boys over a pushing incident on the playground. P. III, X 36 @ 272.
31. Panel concludes that the various incidents involving Student's behavior, those already referred to and those later described, do not indicate anything more than typical behavior of boys Student's age. Although there were occurrences where Student received consequences for his acts, credible testimony established that he was generally a cooperative and well-behaved child who was not a discipline Problem.

November 29, 1995 IEP Conference

32. The IEP conference was reconvened on November 29 and an IEP was completed. R-20. Although Parent placed in evidence several versions of IEPs with minor variations among them, and claimed that the District altered certain IEP'S and hid others from her, e.g. P.III,X14, the panel accepts the testimony of Ms. Alexander on this issue as credible. Tr. 975-76 ,1023-34 .

33. The IEP appearing at R-20 is a copy of the original completed IEP and all subsequent IEPs are modifications of that document. Any IEP'S prior to this date were working drafts utilized at the November 15 meeting that were never understood or intended to be implemented as final documents. Most were copies used as working drafts during and after IEP meetings. Many of the drafts contained in the exhibits were never developed into completed IEPs.

34. This initial IEP states Student is not eligible for Extended School Year, will participate in 1800 minutes per week of regular education and 150 minutes of a modified regular instructional program. He will also receive 100 minutes of consultation. Service will begin 11/30/95 and will end 11/30/96. The Present Level of Performance describes with particularity Students difficulties with reading skills and written expression.

35. In Student's case, modified regular instructional program referred to the time he would spend each week working one on one with Anne Scott on reading skills. Although contrary testimony was received, the Panel accepts the testimony of Anne Scott on this issue as reliable. Tr. 1243-44, 1265. Parent knew from the IEP meeting onward that Student would be working one on one with Scott.

36. The IEP states two goals with attendant objectives. The first is "[t]o improve basic reading skills,, and the second is "[t]o improve written expression." Appropriate evaluation criteria is stated as is the procedure for evaluation. Obtaining an Assistive Devices evaluation by 1/19/96 (apparently later revised to 4/5/96) was among the objectives for accomplishing the first goal. A Brigance, which is a criterion reference test, is listed as one procedure for evaluating word recognition skills together with teacher checklist. Review dates for evaluation results are stated as 11/29/97.

37. The following educational modifications were incorporated into the November 29 IEP at the meeting:

1). Student will be allowed to complete ... book reports worth 10 points each with the following modifications: on independent reading level, 30-40 pages in length, to be done at his own pace and in his preferred format (ex; reports orally, tape recorded, dictated to individual or typed/printed on computer.)

- 2). Use of Accelerated Reader will be explored. Test on Accelerated Reader may be turned in lieu of book report. If Student scores below 60%, he may report on book in other ways. (See #1 above.)
- 3). Basic Word List (18 words) will be Student's weekly spelling list. Student will be required to complete workbook pages directly related to his spelling words. 50% of each (illegible) skill covered will be completed when appropriate to reduce amount. Spelling pre-test will not be given. Student will copy word list to study at home in lieu of taking spelling pre-test.
- 4). Written stories and reports will be reduced 50% from normal requirement. Basic writing conventions (ex: spelling, punctuation, capitalization, grammar & complete sentences) will not be graded in other subject areas not related to spelling. Grade only for knowledge of concepts/skills.
- 5). Testing will be modified in all subject areas if written responses are required. Preferred format for testing will be: multiple choice, matching, fill in the blank w/word bank, use of recorder for Student to listen & second recorder for responding to questions, or answer orally to Special Educ. teacher.
- 6). Printed instructions will be clarified to Student by teacher: reading aloud, highlighting, underlining or circling clue words. If after completion of assignment, the teacher observes that Student has not followed directions, Student may have a chance to re-do assignment.
- 7). Student will receive taped teacher's review of material/concepts to be tested prior to taking test in all subject areas. Special Educ. teacher will determine reduction of reading worksheets.
- 8). "Teacher" written study guides will be provided prior to any major tests. (ex. Chapter Tests)
- 9). A copy of key words and taped basal reading stories will be sent home prior to beginning stories in class.
- 10). When Student is required to read orally, he will be required to read aloud 1 to 2 sentences.
- 11). Parents will be provided with the weeks (1) projected assignments to be sent home on Mondays of each week.
- 12). Daily assignment sheet for Student will be prepared for by the teacher and signed by parent at home. Written notices will be sent to teacher if assignment was not completed for any reason.

13). Parents will receive notification of any significant behavioral issues requiring discipline report from the teacher & parents or private counselor will deal w/consequences. Any written disciplinary report will be sent home w/Student in a sealed envelope.

14). Student will be spoken to in a private manner regarding behavioral issues. Confrontation will not be in front of a group.

15). Recess time will not be taken from Student due to noncompletion of work.

16). Student will be able to utilize the bathroom at any time including special events outside of school (ex: field trips.)

17). Math & English assignments will be photocopied and enlarged.

18). Math assignments will be reduced 50%. Student will complete even numbered items only.

19). Geography, Mo. History & science/health books will be highlighted (terms/definitions) & taped.

20). Student will not be retained in any school year.

38. The page entitled Least Restrictive Environment Considerations carries the date 11/15/95 and states that regular education and resource placement options were considered. The signature page, which is also dated 11/15/95, lists Richard Hodits as local educational agency representative, both parents, Anne Scott as special educator, Jeaneal Alexander and Larry Lent. Attendance and participation by these individuals satisfied the requirement of § 1401(a)(20) of the IDEA prior to reauthorization.

39. The diagnostic summary dated 11/13/95, R-10, was revised to include Lent's letter on November 29. R-19. Student was diagnosed with a learning disability in basic reading skills and written expression. *Id.* There was no mention of an anxiety disorder nor was there a behavior management plan as such. Services under the IEP were to be initiated on November 30.

40. Notice of Intent to Place and Consent to Place was furnished to Parent on November 29. R-21. Placement was described as regular education with modifications. The notice reflected that resource special education was considered but rejected because regular education with modifications is the least restrictive environment. *Id.* Parents signed acknowledging their understanding of the notice and of the procedural safeguards. *Id. see, also* Tr. 809.

January 29, 1996 IEP Conference

41. Notice of an IEP conference scheduled for 1/29/96 was given to Parents on 1/25. R-24. The purpose of this meeting was to consider review/revision of the IEP. *Id.* The initial IEP from November 29 was used as a draft. One minor adjustment to Student's program is noted: modification #3 was changed from 18 words to 20 words. An Assistive Devices evaluation had not been completed. Regular education and resource were considered as placement options. Principal Rich Hodits attended as LEA representative, both parents were present, as were Anne Scott and Jeaneal Alexander. There was no change in Student's placement and procedural safeguards were not triggered regarding this IEP.

42. In anticipation of an IEP meeting in March, the chairperson of the Special Services Department, Anne Scott, who worked individually with Student on a daily basis, prepared a draft of Students Present Levels of Performance. This summary provides specific information detailing improvements in Student' reading skills and written expression. R-29.

March 12, 1996 IEP Conference

43. A fourth IEP meeting was held March 12. Scott's notes reflect that Parents' attorney, who was present at the meeting as was Lawrence Lent, would draft a formal request for learning style and assistive device evaluations. P. IV,X53 @ 446. The meeting adjourned without a completed revised IEP.

44. Two days after this meeting, District sent Parents a Consent for Release/Mutual Exchange of Information form directed to Easter Seals for the purpose of obtaining an assistive technology evaluation. P.I,X14 @ 150. Parents declined to sign this release.

45. On March 18 & 19, Linn Suderman, Ph. D., a Registered Professional Counselor in Lawrence, Kansas, evaluated Student at Parents request. According to her report, she administered the following tests: Slingerland Screening Test; Diagnostic Evaluation for Scotopic Sensitivity Syndrome; Peabody Picture Vocabulary -Revised; Lindamood Auditory Conceptualization Test; and Spadafore Diagnostic Reading. P. I, X16. Dr. Suderman also relied on the testing of Dr. Williams and information from Lent's November 19th letter to the District. *Id.*

46. The characterization by Dr. Suderman of Lent's report as an additional evaluation diagnosing Student with Generalized Anxiety Disorder, Adjustment Disorder, Encopresis, etc. is erroneous. Lent was unequivocal in his testimony that he never assigned a diagnosis to Student. Tr. Lent 62. His report was based totally on Williams' and Willis' testing and diagnoses as reflected on

Student's chart and not on his own evaluation or diagnosis. His statement regarding encopresis and enuresis was based on a conversation with Parent.

47. ___ Dr. Suderman concluded on March 28 that Student has a specific language disability, dyslexia in the high moderate range of severity, scotopic sensitivity syndrome, possible dysgraphia, anxiety, and possible attention deficit hyperactivity disorder. P.I,X16 @ 161. She recommended further assessment for Attention Deficit Hyperactivity Disorder (ADHD), compensatory tools and strategies, classroom adaptations, educational remediation, and counseling. *Id.* @181-85. This was not an educational diagnosis. It supported the diagnosis of specific learning disability but did not add any additional information that affected Student's learning situation.

48. On March 21, Ms. Alexander admitted in a letter to Parents' attorney that a substitute teacher violated modification #15 of the IEP on March 4 by denying Student a recess for the noncompletion of school work. R-37. The District requested an IEP meeting to address the issue and consider compensatory services. *Id.* Similarly, Ms. Scott noted that some modifications in the IEP (highlighting, copying/enlarging pages) had not been followed on occasion. P.IV, X53 @ 447.

Proposed IEP Conference for March 22, 1996

49. Notice of another IEP conference is dated March 20. R35. The meeting was scheduled for March 22 to consider reviewing and revising the IEP and compensatory services related to IEP modification #15. A note on a copy of the notice indicates Parent called to reschedule. R-36. The cancellation of the meeting is confirmed in the notes of the classroom teacher. P.IV,X56@470. The IEP contained in the hearing exhibits is a copy of a draft and not a completed document.

50. In a letter from Ms. Alexander to Parents' attorney dated March 21, District states its willingness to consider suggestions for additional evaluations including an environmental assessment. R-37. The working draft of Student's present level of performance that had been prepared for use at the conference on March 22 was enclosed with this letter.

51. At a diagnostic staffing on April 3, which was attended by Principal Hodits, Ms. Alexander, Director of Special Programs, Ms. Lakatos, the classroom teacher, Anne Scott, Chairperson of Special Services, and Cindy Gum, Assistant Principal, Suderman's report was considered apparently at Parent's request. R-87. Notes were typed at the side of the pages reflecting the reaction and analysis. The group rejected Lent's discussion regarding Student's anxious behavior

and reaffirmed the Conners and Social Skills Rating in the current diagnostic summary as reflective of actual school behaviors. Tr. 1329- 31.

52. The participants rejected the diagnoses of dysgraphia and scotopic sensitivity syndrome, *id.*, and noted disagreement with Suderman's conclusion that Student is at risk for Attention Deficit Hyperactivity Disorder, which was based, at least in part, on an evaluation completed by the parents at home. P.I,X 16 @ 161 & X151; Tr. 990-93; 1011-12; 1287-88. The Panel considers that this assessment was dealt with sufficiently.

53. On April 18, a substitute teacher did not immediately allow Student to go to the bathroom, but stepped across the hall to ask regular classroom teacher if permission should be granted. R-39. Although access may have been delayed somewhat, it was not denied. Testimony as to whether Student had an "accident, as a result of the delay was inconclusive.

54. In a letter to District dated April 17, Parent's attorney suggests waiting to write an IEP for the 1996-97 school year until after Student attends summer school at the Churchill School. R-38. He also prospectively requests reimbursement for summer school tuition at the Churchill School and payment for glasses for Student. R-38. The glasses referred to are not for acuity. The forms completed by Lakatos and Scott for the Churchill School state that Student receives special services for learning disabilities thirty minutes a day one-on-one. R-40.

May 8, 1996 IEP Conference

55. On May 7, District sent and phoned notice of an IEP meeting to Parents. The meeting was scheduled for the next day and its purpose was to review and revise the IEP, consider compensatory services and outside evaluation information and requests. Apparently, a meeting did take place, but no agreement was reached as to Student's IEP except that the Parents, attorney advised the District that the request for an assistive technology evaluation was withdrawn. R-56.

56. The panel is not convinced of the reliability of various notes and memoranda in the exhibits that attempt to reconstruct past events, e.g. notes at R-47 (recalling happenings of more than a year before), discounts their usefulness, and places no reliance on them in making its decision.

57. Student was again disciplined for a behavior incident on May 21. This was a pushing incident where two boys were sent to the end of the line, but a girl was not. Once it was discovered that the girl had misbehaved too, she was disciplined. P. II, X42 @ 440. When Parent went to the superintendent's office to deliver a letter, R-55, and discuss this matter with him, a verbal

altercation ensued. Tr. 621-24; 1380-83. As a result, on May 23, Parent filed a child complaint with OCR claiming retaliation, violations of an IEP and discrimination. P. II, X39.

58. On May 30, Parent filed a child complaint with DESE alleging failure to implement Student's IEP by denying access to the restroom, not allowing Student to attend recess and not modifying textbooks or providing an assistive technology evaluation in violation of state and federal regulations implementing P.L. 94-142. P. V, X17 @ 164. These are essentially the issues raised in the case at hand.

59. DESE found Student had not been denied access to the restroom, the denial of five minutes of recess was an isolated incident that did not result in denial of services, inconsistent audiotaping of books was a violation and required assurance it would not continue, an assistive technology evaluation was no longer required since Parents notified District that they accepted the Suderman report as such. R-68.

60. In a letter dated September 12, OCR announced that it would not pursue the allegation that District failed to implement the IEP because DESE provided a resolution process and had already reached a decision comparable to that available through OCR. OCR concluded that the other incidents complained of did not constitute adverse actions within the meaning of the statutes enforced by OCR. R-82.

61. Student's fourth grade report card, which indicates adjusted material in every subject, reflects better than passing grades. R-61. Combining all grades from all quarters during the year reveals that Student made 3 C-'s, 5 C's, 2 C+' s, 4 B-'s, 4 B's, 2 B+'s, 3 A-'s, and 1 A. His effort was noted as satisfactory throughout. He passed to fifth grade. While testing was modified in the classroom, it was not when Student took the MMAT in May, 1996, except that he was allowed to take the test away from the group. R-98. Student's low scores on the MMAT reflect this variance.

Summer - 1996

62. For six weeks, Student attended the Churchill School, a school in St. Louis County whose mission is to remediate specific learning weaknesses of students with a high potential diagnosed learning disability and return them to the mainstream as quickly as possible. Tr. I @162. MS. Elfrink, Assistant Director at the Churchill School testified about the school. Churchill uses a linguistics approach to reading, a modified Orton-Gillingham. *Id.* @ 164. Typically, a student will spend forty-five minutes a day in a tutorial session which is one-fifth of the day. *Id.* @ 167. A tutorial is one-teacher, one-student with the emphasis on the primary skill breakdown. The instruction is specifically designed for the individual student. *Id.* Q 168.

63. At Parent's request, Churchill recommended effective techniques to the District for use with Student in a traditional setting. *Id.* @ 190; P. II, X 27 @ 359. Churchill assigns homework regularly, generally ten minutes for each grade level, e.g. 50 minutes for a fifth grader. Tr. 191-92. If students don't do their homework (parents are not supposed to help), they miss recess. Taking away recess is an effective technique. *Id.* @ 212. Books on tape mean that the textbook is recorded for the student to listen to and follow along. *Id.* @ 199. The computer keyboards are covered at Churchill. *Id.* @ 211.

64. Also during the summer of 1996, Student accompanied Parent to Michigan where Parent attended a two week workshop offered by the Michigan Dyslexia Institute. The workshop was an introduction to the Orton-Gillingham approach to teaching persons with dyslexia. John Howell, Ph. D. administered several tests to Student without charge. The data was not assessed or formally written up. The purpose of testing Student was to provide performance benchmarks of selected language skills possessed by him at that time. Student participated as a teaching subject. The instruction he received constituted the practice teaching requirements of workshop participants. P.II, X28.

65. On June 18, a Consent for Release/Mutual Exchange of Information was sent to Parent by the District in an effort to secure a re-evaluation of Student by the Assessment and Consultation Clinic at the University of Missouri- Columbia. Parent did not respond. P.II, X53. The Description of Areas to be Assessed reveals that District was seeking assessment in the areas of Language, Intellectual/Cognitive, Social/Emotional/Behavioral, and Academic Achievement. P.II, X54.

66. On the same date, Notice of Action for a proposed reevaluation was given by District. The notice stated that procedural safeguards were enclosed. P.II, X55. A letter from Ms. Alexander to Parent on the same day also stated that procedural safeguards were enclosed. District was seeking to have an independent agency review and reevaluate all areas of educational concern, including assistive technology. P.II, X56. On July 3, Parents attorney rejected the proposed re-evaluation and demanded that Churchill School staff conduct any evaluation. P.II, X50.

67. By letter to the District dated July 23, the attorney for Parent demanded adaptations and accommodations in the IEP, training to enable teachers to implement them, and reimbursement for costs and expenses of the Churchill summer school session. P.II, X51.

1996-1997 (Fifth Grade)

68. In August, Student's aunt Ms. began tutoring him. By undated letter, probably in late summer, Parent makes specific demands for Student's IEP, including instruction by teachers trained in the Orton-Gillingham approach. P. II, X 36.

August 23, 1996 IEP Conference

69. On August 21, Ms. Alexander notified Parent of an IEP meeting scheduled for August 23. The meeting was attended by Parent, MS. Alexander as LEA Representative, Cindy McKay, the regular classroom teacher, Deanna Harris, a special education teacher, Anne Scott, Chairperson of Special Services, and Rich Hodits, Upper Elementary Principal. R-71.

70. Once again the initial IEP was used as a draft, and minor revisions were made, mostly in the form of deletions. The modified regular instructional program was reduced to zero minutes ` 'per parent request." R-73. The Present Level of Performance remained the same as did the goals and objectives. The last phrase of Modification #5 stating "or answer orally to special education teacher,' was deleted. "Special Education teacher will determine reduction of reading worksheets (assignments)" was also deleted. The Least Restrictive Environment Considerations form listed the November, 1995, dates and a signature page reflected the same November dates listed previously. An additional signature page reflecting the August date and the identify of the participants was appended.

September 6, 1996 IEP Conference

71. The IEP begun in late August was finalized on September 6 and incorporated many of the accommodations and recommendations from Churchill School - twenty-two modifications in all as follows:

- 1). Student may complete 20 book reports on his independent reading level, 30-40 pages in length.
- 2). Student will utilize provided modified spelling list when possible or reduce regular classroom spelling list.
- 3). Student will be accountable for spelling from his weekly list, but not for words he uses on his own.

4). Basal reading, social studies, and science text (science text may have only a particular reference) will be recorded/highlighted by the school for use at home on school provided tape recorder.

Blank tapes will be provided for Student to use to record appropriate assignments. Teacher will tape classroom review of test and send tape home with Student.

5). Student will be provided with his own copies of textbooks so that he may highlight and make holes in the text. These will include basal reading, social studies, and science references from various texts. Study guides will be provided prior to any major test.

6). Student will have his own copies of novels on his independent reading level so that he may highlight and make notes.

7). Student will have shortened math assignment by 50%. Written language assignments requirements will be reduced by 50%.

8). Student will be able to use a calculator to check multi-step problems. Math problems will be copied if regular assignment requires copying from text/board to paper.

9). Student will have a review of concepts before applying them to his assignment.

10). Teacher will give 1 to 2 step directions at a time and check

for understanding by having Student paraphrase or repeat

directions in his own words.

11). Homework assignments may be review learning or noncompletion of modified classroom assignments. Homework time will be 15 min/night.

12). Teacher may reword directions on worksheets into simpler terms when appropriate. Student may complete an example before he begins the assignment independently.

13). Testing will be modified when appropriate (ex. untimed testing, tests read orally, modified format).

14). Teacher will use both visual and auditory presentation of information with examples.

15). 1 on 1/small group/individualized keyboarding instruction/practice will be done in conjunction with language/reading activities.

16). Student will read only 1 to 2 sentences when reading orally.

17). Student will keep his own daily assignment sheet and will be checked by teacher for accuracy. Written notices will be sent to the teacher from the parent if assignments are not completed for any reason. Notification of new concepts will be given to the parents as appropriate.

18). Parent will receive notification of any significant behavioral issues requiring discipline reports from the teacher.

Parents or private counselor will deal with the consequences. Any disciplinary report will be sent home with Student in a sealed envelope.

19). Student will be spoken to in a private manner regarding behavioral issues. Confrontation will not be in front of a group.

20). Recess time will not be taken from Student due to noncompletion of work.

21). Student will be able to utilize the bathroom at any time including special events outside of school (ex: field trips).

22). Student will not be retained in any school year.

72. The signature page, which is not dated, reflects that Jeaneal Alexander was present as the LEA Representative, Anne Scott attended as Teacher of Special Education, and Parent participated by telephone. R-80. The IEP did not call for a change of placement.

73. The social studies teacher testified that there was one instance when she violated these modifications by failing to tape a review of a test. Tr. 1362. There was no evidence of any other failure to implement these modifications.

74. A letter from Parent to classroom teacher dated October 14, asked the teacher to send a completed study guide home with Student. R-88. The fifth grade teachers response reflects hostility between the two adults. R-89.

75. On October 14, Student and his brother were involved in a fight with two other boys on the school bus. In an effort to find out what had happened, the principal recorded a conversation with the boys by tape recorder as an alternative to requiring the boys to write an account of what happened. Transcript at P.I, X25. When Parent confronted Principal Hodits about the

incident with a tape recorder to record their conversation, Hodits recorded that conversation too. Tr. 894-5. Transcript at P. II, X60 Q 54275.

October 25, 1996 IEP Conference

76. Another IEP meeting was scheduled for October 25 and in preparation for the conference, Parent sent a list of twenty-five demands to District for inclusion in the IEP. R-92. This meeting did not occur.

77. Parents withdrew child from school on October 31, his eleventh birthday, and notified District that he would be home schooled. P. III, X 30. At the time Student was withdrawn, he was achieving satisfactory grades. R-96. The IEP had not yet reached its one-year anniversary date.

78. On the day that Parents withdrew Student from school, they requested copies of records that District had accumulated on Student. P. III, X28. District provided Parents with copies of the contents of the permanent file including testing results, attendance records, grade cards, major discipline reports, if any, and health records, in accordance with their usual policy. Tr. 931. District did not provide copies of teacher logs at this time. Parent acknowledged in her letter dated November 11 that records were received. P. III, X 30.

79. In connection with the request for due process filed May 21, 1997, which was essentially based on the same issues as the present case, Tr. 835, R-99, Parents requested access to school records. Certain teacher logs and records of teacher observations were apparently furnished to Parents for the first time at depositions held in September, 1997. Tr.791,835. Subsequently, Parents examined records at District's offices. The request for due process leading to this decision was received by DESE on November 19, 1997, near the time when Parents viewed the records.

CONCLUSIONS OF LAW

80. The Three-Member Hearing Panel was validly constituted and has jurisdiction of Petitioners' claims of violations of the Individuals with Disabilities Education Act ("IDEA") pursuant to 20 U.S.C. § 1415(e)(1990) and § 162.961 RSMo. Panel Ex. 1.

81. The forty-five day statutory timeline was validly extended upon requests by one or both of the parties. This decision has been issued by August 14, 1998, in accordance with the forty-five day timeline, as extended. See below, Deviations from Forty-five Day Timeline.

82. The Hearing Panel does not have jurisdiction of any separate claims that District discriminated against Student in violation of §504 of the Rehabilitation Act of 1973. *Moubry v. Independent School District No. 696*, 951 F. Supp. 867 (D. Minn. 1996).

83. The, IDEA, 20 U.S.C. §1400, *et. seq.*, was amended effective June 4, 1997. However, the provisions of the reauthorized act relating to individualized education programs ("IEPs") did not take effect until July, 1998.

84. The IDEA requires that all children with disabilities be provided a free appropriate public education ("FAPE"). 20 U.S.C. §1400(c)(1990).

85. Student is a child with a disability for purposes of the IDEA. 20 U.S.C. §1401(a)(1)(1990). His identification as a student with a specific learning disability in basic reading skill and written expression comports with the specific learning disabilities delineated in Missouri law.

86. At the administrative level, the school district has the burden of proving that it complied with the IDEA. *E.S. v. Independent School District, No. 196*, 135 F.3d 566 (8th Cir. 1998).

87. FAPE is defined in the IDEA as special education and related services that: (1) are provided under public supervision and at public expense without cost to parents; (2) meet the standards of the state educational agency; (3) include an appropriate preschool, elementary, or secondary school education; and (4) are provided in conformity with the individualized education program required by §1414(a)(5) of the act. 20 U.S.C. §1401(a)(18)(1990).

88. The requirement that all students with disabilities be provided a FAPE is satisfied when the school district provides personalized instruction with sufficient support services to enable the disabled child to benefit educationally from the instruction. *Foley v. Special School District*, 927 F. Supp. 1214(E.D.Mo. 1996).

89. In order to receive funds for special education, local educational agencies must develop an IEP for each child with a disability at the beginning of each school year and review and, if appropriate, revise the IEPs provisions periodically and not less than annually. 20 U.S.C. §§ 1401(a)(20) and 1414(a)(5)(1990).

90. An IEP is a written statement for a child with a disability that is developed through the efforts of a representative of the local educational agency, the teacher, the parents or guardian of the child and, when appropriate, the child in a meeting. 20 U.S.C. 33 §1401(a)(20)(1990).

91. The IEP shall include a statement of the present levels of educational performance of the child, a statement of annual goals, including short-term instructional objectives, a statement of the specific educational services to be provided to the child, and the extent to which such child will participate in regular educational programs, a statement of needed transition services when appropriate, the projected date for initiation and anticipated duration of the services, and appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved. 20 U.S.C. 33 §1401(a)(20)(1990).

92. The school district "shall ensure that a reevaluation of each child with a disability is conducted . . . at least once every three years., 20 U.S.C. 1414(a)(2)(A)(1997).

93. In order for an IEP to be valid, the procedural safeguards established by the IDEA must be followed and the IEP must be substantively appropriate. *Evans v. District No. 17*, 841 F.2d 824 (8th Cir. 1988).

94. The IDEA requires a school district to provide parents with procedural safeguards including access to records pertaining to their child, the opportunity to participate in meetings regarding the identification, evaluation, and educational placement of the child, and the provision of a FAPE. 20 U.S.C. §1415(b)(1)(1997).

95. The procedural safeguards also assure parents of the opportunity to obtain an independent educational evaluation of the child and of the receipt of written prior notice whenever the District proposes or refuses to take certain actions, *id.* @ (b)(3), including initial referral/notice of intent to evaluate, initial placement, subsequent notice of intent to reevaluate, and notice of significant change in placement.

96. These procedural safeguards attempt to ensure that parents actively participate in their child's education. *Yankton School District v. Schramm*, 93 F.3d 1369 (8th Cir. 1996) (*citations omitted*).

97. An IEP should not be set aside unless the student's right to an appropriate education was compromised, the parents' opportunity to participate in the development of an IEP was seriously hampered, or the student was deprived of educational benefit as a result of the procedural violation. *Independent School District No. 283 v. S.D.*, 88 F.3d 556 (8th Cir. 1996).

98. Technical defects are not sufficient to render an IEP inappropriate if parents and the school district are aware of the relevant information. *Independent School District No. 283 v. S.D.*, 88 F.3d 556 (8th Cir. 1996).

99. The educational program offered by the District is appropriate if it is "reasonably calculated to enable the child to benefit educationally." *Peterson v. Hastings Public School.*, 31 F.3d 705, 707 (8th Cir. 1994) *quoting Board of Education v. Rowley*, 458 U.S. 176, 206-07 (1982).

100. In assessing whether educational benefit has occurred, a child's grades, test scores and advancement from grade to grade are important factors to consider. *Fort Zumwalt School District v. Clynes*, 119 F.3d 607 (8th Cir. 1997). 20 U.S.C. §1412(1)(1997).

101. The IDEA does not require that the educational program maximize a student's potential or provide the best education possible. *Board of Education v. Rowley*, 458 U.S. 176 (1981). The results need not be superior. *Id.*

102. As long as a student is benefiting from his education, the selection of methodology is left to the educators. *E.S. v. Independent School District, No. 196*, 135 F.3d 566 (8th Cir. 1998).

103. If parents do not believe the program provides educational benefit, they may enroll their child in another school and obtain reimbursement if (1) the district did not offer a free appropriate public education and (2) the placement at the other school complies with the IDEA. *Fort Zumwalt School District v. Clynes*, 119 F.3d 607 (8th Cir. 1997) (*citation omitted*).

104. Parents who place their disabled child in a private school without the consent of the school district assume the financial risk. *Evans v. District No. 17*, 841 F. 2d 824 (8th Cir. 1988).

105. Parents are not entitled to reimbursement for the costs of a unilateral placement when the district IEP provided a FAPE in the least restrictive environment. *Breen v. St. Charles*, 27 IDELR 1066 (8th Cir. 1998).

106. Equitable considerations are relevant in fashioning appropriate relief under the IDEA. *Moubry v. Independent School District NO. 696*, 951 F. Supp. 867 (D. Minn. 1996). Appropriate relief is designed to ensure the student is properly educated within the meaning of the IDEA. *Id.*

107. The quality of the relationship between the parties may be considered as a factor in determining proper relief. *Metropolitan Government v. Guest*, 28 IDELR 290 (M.D. Tenn, 1998); *see, also Leslie B. v. Winnacunnet Cooperative School*, 28 IDELR 271 (D.N.H. 1998).

DECISION

The Three Member Due Process Hearing Panel is unanimous in its decision, based upon the Findings of Fact and Conclusions of Law above, that although the District committed violations of the IDEA, the District provided Student with a free appropriate public education at all relevant times.

Issues Raised in Petitioners' Request for Hearing

I. The Panel finds that the District did not fail to provide, as asserted by Petitioners, a free appropriate public education to Student in not providing an appropriate educational program that included a course of systematic, direct, multisensory instruction daily by an instructor trained in that method in order to educate Student in the sound structure of the American English language.

The educational program developed for Student, which is contained in the IEP dated November 29, 1995, and carried forward into subsequent revisions, was carefully tailored to Student's specific needs, substantively adequate, and reasonably calculated to enable him to benefit educationally. Student's grades and his advancement from fourth to fifth grade are evidence of educational benefit that is more than trivial.

Parents participated fully in the development of Student's educational program which was delivered in the least restrictive environment. Petitioners failed to prove that Student required instruction in the Orton-Gillingham method in order to benefit educationally. As long as Student was benefiting from the education provided by the District, the District had the right to choose the methodology.

II. The Panel concludes that violations occurred when some modifications contained in the IEP revised and effective after March 22, 1996, were not consistently implemented. While these violations were of a minor nature and did not deprive Student of educational benefit, the Panel concludes that they require some limited remedial actions by the District.

The Panel infers from the testimony and actions of District personnel that school administrators and teachers lacked necessary knowledge and a sufficient understanding of the IDEA, the process of special education and their role in that process. Furthermore, District's appallingly casual practices regarding documentation of procedural aspects of IEP development, such as accurate dates and proper designation of working drafts, confused the Parents and contributed to misunderstanding and mistrust. While the District met its burden to show by a preponderance

of the evidence that it complied with the IDEA, the Panel strongly urges the adoption of more reliable and better business practices in this regard.

III. The District did not unlawfully fail and refuse to pay Parent for her expenses of placing Student in a summer school program at the Churchill School.

The District provided Student with a free appropriate public education and, therefore, Parents are not entitled to be reimbursed for the cost of the Churchill program.

IV. The District erred in refusing to reimburse Parent for the cost of the outside evaluation conducted by Jeanette A. Williams, Ph. D.

The District relied on parts of this evaluation and the battery of tests it administered to identify Student as eligible for special education services. Furthermore, when Parent first expressed concern about Student to Principal Hodits, Hodits had an obligation to inform Parent about special education. He did not and Parent sought help from an outside source which led to the evaluation by Dr. Williams.

V. The claim that District unlawfully discriminated against Student, solely on the basis of his handicaps, in violation of §504 of the Rehabilitation Act of 1973, is outside the jurisdiction of the Hearing Panel.

Remedy

1. To remedy the violations referred to above, ensure that Student will obtain a free appropriate public education when he returns to the District, and comply with the IDEA's requirement that evaluations be conducted at least every three years, District is ordered to obtain a full and complete evaluation of Student. This assessment shall be performed by individuals who have not been involved in this controversy and who will not benefit from Student's diagnosis. It should include educational, psychological, and assistive technology evaluations. The Panel suggests that individuals at the Child Study Center at the University of Missouri, Columbia, be utilized for this purpose. Any consent for release of information that is sought from Parents should be limited retrospectively to three years.

This evaluation shall be completed as soon as possible, so that the IEP team can be assembled and an appropriate IEP developed for implementation at least by the beginning of the second quarter of the 1998-99 school year.

Until the evaluations are completed, and in order to ensure that Student is not denied a free appropriate public education for any portion of the school year, and in view of the hostility that has developed between the parties referred to in Findings of Fact #25, #57 and #74 above, Parents may elect to continue Student's attendance in the Macks Creek School District (assuming the Macks Creek District agrees) or agree to participate with the Camdenton District in the development of an interim IEP.

If Parents elect Macks Creek, the District and Parents will be equally responsible for any tuition costs incurred from the beginning of school until the end of the first quarter. District will be responsible for transportation costs for the same period of time. If Student returns to school in Macks Creek, the Panel expects that district to develop an interim IEP based on current and relevant information.

If Parents elect instead to participate with District in developing an interim IEP for serving Student in the Camdenton RIII School District, the meeting will be facilitated by either Dr. George Yard or Dr. Vaughn George whose compensation shall be paid by the District. The facilitator will have binding authority to settle any disagreements that may arise. If the parties cannot agree on the choice of facilitator, Parents may select from the list of two. The interim IEP will remain in place until evaluations are completed and the newly developed IEP that will govern the remainder of the school year is in effect.

2. District is ordered to provide training for all District professional school staff in the special education process and their role(s) in that process, especially relating to identification, referral, reasonableness of modifications, placement and accurate record-keeping. Each professional staff member shall attend at least one training session.

3. District is ordered to reimburse Parents for the cost of the evaluation conducted by Jeanette A. Williams, Ph. D. All other requests for reimbursement are denied.

Other Allegations Not Raised in Petitioners,

Request for Hearing

As explained in Statement of Issues above, counsel for Petitioners specifically limited the issues in the present case to those expressed in the request for due process when he was asked to further define and delineate them and declined. This position was never modified and the Panel has limited its consideration to those issues.

Accordingly, certain Findings of Fact above are primarily for background and historical interest and are not material to the issues before us.

Although the Panel is limited to resolving the issues that were properly presented for its determination, the parties introduced extensive testimonial and documentary evidence beyond the scope of those issues. The Panel concludes after careful scrutiny of all of the evidence that, while there may have been additional violations of the provisions of the IDEA, none of those alleged violations deprived Student of a free appropriate public education.

1. The claim that Parents were denied access to school records was not raised in the request for due process. While Petitioners' opening statement may have discussed the issue, it was not specific and the evidence established that Parent received teachers, logs at her deposition conducted before or about the time the application for due process now before the panel was filed. This claim is denied.

2. The only hint at destruction of a record was testimony concerning a tape, the contents of which had been preserved by written transcript. If the allegation is intended to show a violation of FERPA, such a claim is outside the jurisdiction of this panel. Petitioners' claim that a discipline report was improperly retained in Student's file is likewise governed by FERPA and not within the purview of the Panel to decide. We find no merit in the argument that Parents' right of access to school records was denied.

3. With respect to Petitioners, claim of denial of their right to a fair hearing, Parents' counsel made only one objection to questioning by a panel member, which objection was sustained. Any claimed denial has not been preserved. Further, a perusal of the transcript demonstrates that the assertions of denial of a fair hearing are utterly lacking in merit.

4. Petitioners' claim that Missouri's standard for educating children with disabilities is higher than the standard imposed by the IDEA was raised for the first time in the post hearing brief and will not be considered by the Panel. Likewise, the allegation challenging the qualifications of certain teachers to perform evaluations, which was raised for the first time in Petitioners, Proposed Findings of Fact and Conclusions of Law and submitted to the Panel post hearing, was not timely raised and is outside the consideration of the Panel.

Finally, in the event that this matter is before a court for an award of attorneys fees and Petitioners are found to have prevailed, the Panel suggests that any award of attorney's fees be reduced under the authority of 20 U.S.C. 33 §1415(i)(3)(F) due to actions of Petitioners, counsel that unreasonably protracted the final resolution of the controversy. These include, but are not

limited to counsel's failure to meet with opposing counsel for the purpose of agreeing on exhibits and undisputed facts, his refusal to provide the Panel with a chronological factual summary of Student's educational history near the beginning of the hearing as requested, his failure to provide the Panel with a cross reference to Petitioners' and Respondents' exhibits as requested, and his complete obfuscation of the evidence by submitting seven volumes with documents in no apparent order and often with non-existent or illegible page numbers. After a challenge from the Panel, counsel elected to substitute six other volumes comprising more than nineteen hundred pages with numerous duplicate entries and many non-existent or illegible page numbers. These acts resulted in a prolonged hearing and multiplied the effort and time required for the Panel to render its decision.

DEVIATION FROM FORTY-FIVE DAY TIMELINE

Parents' request for due process was received by the Department of Elementary & Secondary Education November 19, 1997, which placed the statutory timeline originally at December 26, 1997. Upon a request for a continuance and extension of the statutory timeline by District, which was not opposed by Parents, the chairperson rescheduled the hearing for January 19, 1998 and extended the timeline to February 14. When Parents requested a continuance and extension of the timeline which the District did not oppose, the chairperson rescheduled the hearing for April 20 and extended the timeline to June 1. Upon further request by Parents that the hearing be continued and the timeline extended, the hearing was scheduled to commence May 12 and the timeline was extended to June 12.

The hearing began on May 12, and on May 14, during the afternoon of the third day of testimony, the attorney for the District received notice of a medical emergency involving his young child. The District asked for a continuance and the Parents agreed. The hearing was scheduled to reconvene on July 20 and the statutory timeline was extended to August 14, 1998.

The hearing panel heard the additional evidence July 20, 21, and 22. This decision was rendered and sent by certified mail on August 14, 1998. Correspondence documenting these procedures is contained in panel exhibits #2 and #3.

All concur.

Synda Douglas, Hearing Officer

Nikki Murdick, Ph.D., Hearing Officer

Diane A. Gibson, Chairperson

Dated this 14th day of August, 1998.