

BEFORE THE HEARING PANEL

DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION

IN THE MATTER OF

_____, Petitioner

and

THE SCHOOL DISTRICT OF SPRINGFIELD, R-12,

Respondent

Dated: June 18, 1998

FINDINGS OF FACT, CONCLUSIONS OF LAW,

DECISION AND ORDER

The Hearing Panel, after hearing the evidence in this matter makes the following Findings of Fact and Conclusions of Law and issues the following Decision and Order:

FINDINGS OF FACT

The Hearing Panel, after hearing the evidence in this matter makes the following Findings of Fact:

I. THE PARTIES

1. ___ (herein "the Student"), at all times relevant to this due process proceeding, resided with her Parents within the boundaries of the School District of Springfield, R-12 (herein "School District"). (JEX 1-001, para. 2)

2. The School District is an urban school district organized pursuant to Section 162.461 RSMo. (JEX 1-001, para. 3; TR p. 482, Ins. 3-5)

3. During all times relevant to this action, the following persons were employed by the School District:

Dr. Arnold Greve, Superintendent

Dr. Janice Duncan, Assistant Superintendent for Instructional Support

George Wilson, Director of Special Education

Phyllis Wolfram, Coordinator

Donna Prouty, Supervisor of Special Education

Pamela Smith, Special Education Process Coordinator

Dr. Anne Gardner, School Psychologist

John Utne, Principal, Jeffries Elementary School, beginning with School Year 1996-97

Debbie Ellingsworth, Special Education Teacher

Rebecca J. Robinson, Special Education Teacher

Alice Rush, Special Education Teacher

Janet Mhire, Registered Occupational Therapist

Kay Roberts, Speech and Language Pathologist

Patti Scott, Speech and Language Pathologist

Nancy Stephens, Speech and Language Pathologist

Lynn Hollaway, School Counselor

Marcella Harper, Classroom Teacher

Debbie Lightle, Classroom Teacher

Judith Brock, Classroom Teacher

Sigrid Silsby, Registered Nurse, School Nurse

Mary Bowden, Special Education Paraprofessional

(JEX 1-1001, para. 4)

4. The Hearing Panel members in this due process proceeding are as follows:

C.E. "Sketch" Rendlen, III, Hearing Chairperson

Audrey Yarbrough, Hearing Panel Member

Dr. David Willard, Hearing Panel Member

5. Counsel for Parents is:

Jason N. Shaffer

Hulston, Jones, Gammon & Marsh

2060 East Sunshine

Springfield, MO 65804

6. Counsel for the School District is:

Ransom A. Ellis, III

Ellis, Ellis, Hammons & Johnson, P.C.

901 St. Louis St., Suite 600

Springfield, MO 65806-2505

II. PROCEDURAL BACKGROUND

7. On November 3, 1997, Jason Chaffer wrote a letter, to George Wilson requesting a Due Process Hearing (REX 30), pursuant to the Individuals with Disabilities Education Act (herein "IDEA") and Section 504 on the following issues:

A) should [the Student] be placed in a self-contained special education classroom?

B) should [the Student], while in a regular education setting, be assisted by a personal aide?

8. On November 5, 1997, Heidi Atkins-Lieberman, Legal Counsel for the Department of Elementary and Secondary Education (herein "DESE") wrote a letter (*JEX31*), to Jason

Shaffer and a letter (*JEX 32*), to Dr. Arnold Greve. The letters indicate receipt of the request for due process. The letter encloses a copy of the Procedural Safeguards for Children and Parents (herein "Procedural Safeguards"). (*JEX1-006, paras. 25-26*)

9. On November 5, 1997, Heidi Atkins Lieberman, Legal Counsel for DESE wrote a letter, to the Parents and Dr. Arnold Greve offering the parties the opportunity to mediate the issues in the request for due process (*JEX1-006, para. 27; JEX33*).

10. On November 18, 1997, Heidi Atkins Lieberman, Legal Counsel for DESE wrote letters to Mr. Charles Rendlen, III (herein "Hearing Chairperson") and to Ms. Audrey Yarbrough and Dr. David Willard, the Hearing Panel Members (*JEX 1-006, para. 29; JEX 1-007, para. 30; JEX 35 and 36*).

11. On December 4, 1997, Jason Shaffer wrote a letter to the Hearing Chairperson requesting that the due process hearing be rescheduled after the first of January, 1998 (*JEX1-010, para. 44; JEX47*).

12. On December 5, 1997, the Hearing Chairperson issued an Order which postponed the due process hearing and extended the time lines until February 3, 1998 (*JEX 1-010, para. 46; JEX 49*).

13. On December 12, 1997, Ransom Ellis entered an appearance on behalf the School District (*JEX 1-011, para. 49; JEX 51*).

14. On December 18, 1997, Jason Shaffer wrote a letter to School District (*JEX 55*) responding to the letter marked *JEX 53*.

15. On or about December 29, 1997, the Chief Hearing Officer issued an "Order For Trial Setting", which set the hearing in this matter for February 11, 1998 (*JEX 1-012, para. 59; JEX 61*).

16. The due process hearing was held in this matter on February 11, 12 and April 10, 1998, in Springfield, Missouri. At the hearing the parties stipulated on the record that the time lines for the hearing could be extended to and until June 1, 1998 and waived any delays in the

processing of the matter. (TR p. 408, Ins. 16-25; p. 409, Ins. 1-12) The hearing chair notified the parties of a family illness and had no objection to the extension of time for the Decision and Order beyond June 1, 1998.

17. The Parents requested that the hearing be open and waived the right to privacy for the Student. (TR p. 10, Ins. 7-14)

III. ISSUES

18. At the hearing the parties agreed that the issues to be decided by the due process panel were as follows:

A) Issue Number 1: Should the Student be placed in a self-contained special education classroom for one thousand six hundred ninety five (1695) minutes per week, with

1) .an additional ninety (90) minutes per week of special education services in occupational therapy and speech/language pathology; and,

2) an additional ninety (90) minutes per week in the regular education classroom for art, physical education and music without a one-on-one personal aide, but with appropriate modifications such as preferential classroom seating, repeating of instructions and modified classroom instructions as determined by the Student's IEP team? (TR p. 6, Ins. 24-25; p. 7; p. 8, Ins. 1-8)

B) Issue Number 2: In the alternative, should the Student, while in the regular educational classroom, be assisted by a one-on-one personal aide as follows:

1) one thousand five hundred twenty (1,520) minutes per week in a self-contained special education classroom for math, reading, spelling, writing and language course work;

2) two hundred sixty five (265) minutes per week in the regular educational

classroom for health, social studies, science and computer course work with a one-on-one personal aide; and,

3) ninety (90) minutes per week in the regular educational classroom for art, music and physical education without a one-on-one personal aide. (*TR p. 8, Ins. 9-25; p. 9, Ins. 1-20*)

C) Issue Number 3: Should the Parents be reimbursed for the cost of the independent educational evaluation of the Student conducted by Becky Standley in December, 1997? (*TR p. 9, Ins. 21-25; p. 10, In. 1*)

D) Issue Number 4: Does the 97-98 IEP constitute a free and appropriate education?

19. The parties stipulated that the term "self-contained special education classroom" is defined as it is in the State Plan for Part B of the Individuals With Disabilities Education Act (herein "State Plan"). (*TR pp. 6-8*) The State Plan defines the term "self-contained classroom" as:

"...a classroom for students whose disabilities are so sever as to require special education instruction for the majority of academic instruction. Depending on the variation in the functioning level of the students, some may benefit from interaction with peers who do not have disabilities during nonacademic activities (i.e., art, music, physical education, recess, and lunch.)" (*State Plan, p. A-77*)

20. The parties stipulated that the term "one-on-one personal aide" is defined to be a competent adult who had some training in special education for students with learning disabilities. (*TR p. 8, Ins. 18-21*)

21. The Parents submitted an additional issue which was:

"...whether or not the September, 1997 IEP, which was modified in October of 1997, constitutes a free and appropriate public education for [the Student]?" (*TR p. 10, Ins. 18-21*)

The School District did not agree that this was an issue to be decided by the Hearing Panel.

IV. FACTS

School Year 1995-96 -- The Student's Kindergarten Year

22. The Student first enrolled in the School District on June 5, 1995. During school year 1995-96, The Student was a Kindergarten student at Jeffries Elementary School Herein "Jeffries"). (*TR pp. 483-484*)

23. On September 12, 1995, the Parents filled out and signed a Student Health Inventory and provided it to the School District. (*JEX 2 - JEX 1-002, para. 6*). On October 25, 1995, the Parents provided information and signed a Student Health Screening form which was provided to the School District. (*JEX 1-002, para. F; JEX 3*).

Diagnostic Staffing—December, 1995

24. On December 7, 1995, the School District conducted a Diagnostic Staffing the Student. The Diagnostic team determined that the Student did not meet the criteria to be considered a student with a disability. In particular, the team stated:

"[The Student's] language scores were within the criterion level for her cognitive abilities. According to the WIPPSI, her full scale score is 85, which makes her language criterion level 70. Her TOLD-P:2 scores ranged from 79-105 with nothing falling below the 70 level. Her PPVT test score was 79 and her TAPS scores ranged from 75 to 95." (*PEX 12, pp. 5455*)

Parents' Request for Reevaluation—February, 1996

25. Around February 23, 1996, the Parents requested that the School District re-evaluate the Student. (*PEX 13, p. 60; TR p. 486, Ins. 47*)

Diagnostic Staffing And IEP Conference March, 1996

26. Thereafter, on March 11, 1996, the School District conducted a diagnostic staffing for the Student. (*PEX 14*) The Diagnostic team determined that the Student met the eligibility criteria to be diagnosed as learning disabled in the areas of basic reading skills and listening comprehension. (*PEX 14, p. 71*) An IEP was developed by the Student's IEP team on March 13, 1996. (*PEX 7, pp. 9-13; TR p. 486*) The IEP provided the Student with three hundred (300) minutes per week in the Resource Room and six hundred (600) minutes in the regular education classroom. (*PEX 7, p. 9*)

Parents' Request for Reevaluation—April, 1996

27. Around April 1, 1996, the Parents requested that the School District re-evaluate the Student. (PEX 15, p. 78)

Diagnostic Staffing And IEP Conference-April, 1996

28. Thereafter, on April 22, 1996, the School District conducted a diagnostic staffing for the Student based upon the re-evaluation. (JEX 1-003, papa. 8; JEX 4; TR 486) The Diagnostic team determined that the Student met the eligibility criteria to be diagnosed as learning disabled in the areas of basic reading skills, listening comprehension and oral expression. (JEX 4-002; TR pp. 486-487) An IEP was developed by the Student's IEP team on April 29, 1996. (PEX 8) The IEP provided the Student with three hundred eighty (380) minutes per week in the "self-contained" classroom; sixty (60) minutes per week of special education language services; thirty (30) minutes per week of occupational therapy; and, four hundred ninety (490) minutes per week in the regular education classroom. (PEX 8, p. 15) The term self-contained was used on this IEP consistent with the way in which the Department of Elementary and Secondary Education calculates the minutes of special education instruction. (TR pp. 627-629) Because the general education placement was a half-day kindergarten program the calculation indicated a self-contained placement.

School Year 1996-97 - The Student's First Grade Year

29. During school year 1996-97, the Student was a First Grade student at Jeffries. During her first grade year, special education and related services were initially provided to the Student pursuant to the April, 1996 IEP. (PEX 8; TR p. 487) Subsequently, on September 27, 1996, the Student's IEP team prepared a new IEP for the Student. (PEX 10) This IEP provided the Student with six hundred (600) minutes per week in the Resource room; sixty (60) minutes per week of special education language services; thirty (30) minutes per week of occupational therapy; and, one thousand one hundred eighty-five (1185) minutes per week in the regular education classroom. (PEX 10, p. 27)

School Year 1997-98 - The Student's Second Grade Year

30. During school year 1997-98, the Student was a Second Grade student at Jeffries. During her second grade year, the Student's teachers were Judith Brock (regular education classroom teacher); Debbie Ellingsworth (Cross categorical teacher); and, Patty Scott (Speech/Language Pathologist). (TR pp. 487-488) Mrs. Brock was also assigned a Student teacher during the fall semester. (TR p. 46)

Parents' Request for Additional Testing - September, 1997

31. On September 9, 1997, the Parents sent a letter to the School District which requested that the School District conduct additional testing on the Student prior to the development of her IEP for School Year 1997-98. (JEX 1-003, para. 11; JEX 5) The letter also requested that the current IEP remain in force until after the testing was completed. (TR p. 488, Ins. 4-12)

32. On September 22, 1997, the School District prepared a Notice of Conference form, for an IEP conference scheduled for September 25, 1997. The Notice of Conference was provided to the Parents with a copy of the Procedural Safeguards. (JEX 1-003, para. 12; JEX 6; TR p. 488, Ins. 21-25)

The Student's IEP - September, 1997

33. On September 25, 1997, the School District conducted an annual review meeting of the Student's IEP. Present at the IEP annual review were the Parents, Karen Gurley, Gloria Brown, Debbie Ellingsworth, Judith Brock, Patti Scott and John Utne. An IEP was developed for the Student at this annual review. (JEX 1-003, para. 13; JEX 7).

34. The IEP was developed: :

A) in meetings by representatives of the School District who were qualified to provide or supervise provision of special education services in the School District; (TR p. 510, Ins. 7-10)

B) in meetings where the Student's Parents and the Student's classroom teacher were present; (TR p. 510, Ins. 7-10)

C) in meetings for which the School District gave the Student's Parents reasonable advance notice and which were scheduled at mutually agreeable times and places; (TR p. 510, Ins. 11-19)

35. The School District is qualified to provide the special education services which were specially designed for the Student and which are set forth in the IEP marked JEX 7. (TR p. 510, Ins. 20-25)

The IEP (JEX 7) contains:

a statement of present level of educational performance of the Student; (TR p. 511, Ins. 1-3)

a statement of annual goals including short-term instructional objectives; (TR p. 511, Ins. 4-6)

a statement of specific educational services and related services to be provided to the Student; (TR p. 511, Ins. 7-10)

D) a projected date for the initiation of the services and an anticipated duration of the services contained within it; (TR p. 511, Ins. 11-14)

E) appropriate objective criteria and evaluation procedures and scheduling for determining, at least on an annual basis, whether those objectives are being achieved. (TR p. 511, Ins. 15-25; p. 512, Ins. 1-2)

37. Prior to the September 25, 1997, IEP meeting, the School District received and considered the following documents:

- A) JEX 8 Letter from Dr. Marsha Salmon to Lynn Hollaway dated February 19, 1996
- B) JEX 9 Report from the Motor Development Clinic at Southwest Missouri State University, dated April 25, 1996
- C) JEX 10 Medical record and prescription from Dr. Arie Ashkenasi, dated May 3, 1996
- D) JEX 11 Letter from dr. Arie Ashkenasi to Dr. Eileen Bartow-Rives dated May 5, 1996
- E) JEX 12 Notes from Dr. Arie Ashkenasi dated between May 16, 1996 and September 5, 1996
- F) JEX 13 Report form Delene McAnarney, OTR, Rehabilitative Therapy Services, St. John's Regional Health Center dated July, 1996
- G) JEX 14 Handwritten note dated September 5, 1996 from Dr. Arie Ashkenasi
- H) JEX 15 Pediatric Neuromotor Evaluation from Dr. Daniel McKinney and Delene McAnarney, OTR dated April 25, 1997
- I) JEX 16 Progress Report from Alice Rush, dated July 23, 1997
- J) JEX 17 Handwritten note dated September 4, 1997, from Dr. Arie Ashkenasi

(JEX 1-003, para. 14; TR p. 489)

38. At the September 25, 1997, IEP meeting, the School District received from the Parent the following documents:

- A) JEX
18 Letter from Dr. Barbara A. Bumberry, dated September 22, 1997

(JEX 1-004, para. 15; TR p. 490)

39. Dr. Barbara Bumberry testified that she "just pretty much went along with" the Student's Mother's request that she write a letter to the School District requesting a one-on-one aide and a self-contained classroom for the Student. (DEX C, p. 17, Ins. 10-25; p. 18, Ins. 1-18) At the time that Dr. Bumberry wrote the letter (JEX 18) she had not spoken with Dr. Ashkenasi, the Student's physician; had not reviewed any of the Student's medical records; had received no reports from the School District; had run no medical tests on the Student; and, had only seen the Student on two prior occasions, for vaginal adhesions and a weight gain problem. (DEX C, pp. 14-17; p. 18, Ins. 19-25; p. 19, Ins. 1-15) The Student's Mother stated that she provided the "terminology" in the letter to Dr. Bumberry. (TR p. 163, Ins. 12-18)

40. Dr. Arie Ashkenasi, in his letter dated September 4, 1997, (JEX 17) states that "[f]or a better education, [the Student] needs one-on-one teacher or a self-contained class." Dr. Ashkenasi testified that he wrote the letter at the request of the Student's Mother. (DEX D, p. 48, Ins. 19-24) Dr. Ashkenasi also indicated that at the time he wrote the letter he did not know what the Student's program of special education and related services was with the School District (DEX D, p. 49, Ins. 15-18) and that the Student did not need a one-on-one person to be with her because of her seizures. (DEX D, p. 51, Ins. 10-13) The Student's Mother stated that she provided Dr. Ashkenasi with the recommendations made in this letter. (TR p. 162, Ins. 4-9)

Parents' Request for Reevaluation - September, 1997

41. At or around the September 25, 1997 IEP meeting, the Parents requested that the School District re-evaluate the Student. (TR p. 489, Ins. 24-25; p. 490, Ins. 1-4) Following the September 25, 1997, IEP meeting, on September 29, 1997, the School District prepared a Notice of Action informed the Parents that the School District had agreed to reevaluate the Student pursuant to their request. (JEX 1-004, para. 16; JEX 19; TR ;. 490, Ins. 10-13)

42. At or around the September 25, 1997 IEP meeting, the School District received the following documents:

- A) JEX
20 Physical Therapy Evaluation by Jean C. Knapp, P.T., dated September 22, 1997
- B) JEX Letter from Carol L. Scott, O.D., dated October 25, 1997

- C) JEX 22 Letter from Dr. Barbara A. Bumberry dated November 13, 1997
- D) JEX 23 Speech and Language Evaluation by Tracie M. Peck, M.A., CCC-SLP, Therapy Associates of the Ozarks, dated July 29, 1997
- E) JEX 24 Amended Speech and Language Evaluation by Tracie M. Peck, M.A., CCC-SLP, Therapy Associates of the Ozarks, received November 17, 1997

(JEX 1-004, para. 17; TR p. 490, Ins. 22-25)

43. When the School District received the Speech and Language Evaluation by Tracie Peck dated July 29, 1997, JEX 23, Patti Scott found that there had been a scoring error in the information provided and communicated this fact back to Ms. Peck who provided an amended evaluation which was received on November 17, 1997. (JEX 24; TR p. 491; p. 492, Ins. 1-6) The corrected score is the only score which falls below the criterion level set forth in the State Plan. (TR p. 491, Ins. 16-25; p. 492, Ins. 1-6)

Parent's Request for One-On-One Aide - September, 1997

44. Around the September 25, 1997 IEP conference the Parents also requested that the School District provide the Student with a one-on-one aide. (TR p. 492, Ins. 7-11) On October 6, 1997, the School District prepared a Notice of Action form which responded to the Parent's request and transmitted it to the Parents. (JEX 25; TR p. 492, Ins. 12-21) The Notice of Action rejected the request of the Parents "due to the ability [of the School District] to meet [the Student's] needs currently." (JEX 1-005, para. 18; JEX 25)

Parent's Request for Placement in a Self-Contained Classroom - September, 1997

45. On October 17, 1997, Jason Shaffer wrote a letter to Pam Smith stating, in part, that he represented the Student and her Parents and requesting that:

- A) The Student be placed in a full-day, self-contained classroom setting;
- B) The Student be provided additional speech and language therapy sessions as well as additional therapy. (JEX 1-005, para. 19; JEX 26; TR pp. 492-493)

46. On October 21, 1997, the School District provided the Parents with a Notice of Conference setting the IEP Conference for October 28, 1997. (JEX 1-005, para. 20; JEX 27; TR p. 494).

The Student's IEP Conference - October, 1997

47. On October 28, 1997, the School District conducted a meeting to further review the Student's IEP. Present at the IEP review were the Parents, Jason Shaffer, Wendy Jackson, Lynn Hollaway, Donna Prouty, Pamela Smith, Debbie Ellingsworth, Judith Brock, Sigrid Silsby and John Utne. During the meeting:

A) the participants reviewed the Student's IEP (JEX 7);

B) the participants changed the Student's special education service time from six hundred (600) to seven hundred (700) minutes per week and reduced the minutes per week in the regular education classroom from one thousand one hundred eighty five (1185) to one thousand eighty five (1085) per week; (TR pp. 495-496)

C) the Parents and School District agreed to extend the current IEP, (JEX 7) to November 26, 1997, so as to allow time to complete the student's re-evaluation.

(JEX 1-005, para. 21)

48. The ___ had requested the additional minutes and the staff had agreed to add them in an attempt to work with the parents. (TR p. 587, Ins. 11-15) The additional minutes per week agreed to by the School District in the October 28, 1997, IEP meeting were not necessary in order to provide the Student with an appropriate education in that at the time the Student was doing fine in the regular education classroom and otherwise showing progress in her educational program. (TR p. 587, Ins. 20-25; p. 588, Ins. 108)

49. On October 29, 1997, Jason Shaffer wrote a letter to Pam Smith stating, in part, that:

A) his signature and the signature of ___ and Gloria Brown on the IEP, (JEX 7) do not constitute "a ratification, affirmation, or agreement with the position of the School District on the current placement of the Student...or the minutes per week of special education that she receives";

B) the Parents "steadfastly maintain that [the Student] belongs in a self-contained classroom setting for her to receive a free appropriate public education".

Parents' Request for Due Process - November, 1997

50. On November 3, 1997, Jason Shaffer wrote a letter to George Wilson which separately enclosed the Parent's Request for Due Process, and stated, in part, that:

A) "[t]he parents steadfastly maintain that [a lab-resource/pull-out] placement will not be successful for [the Student] and that anything short of a self-contained classroom setting will be unacceptable";

B) [the Parents request] "an aide be provided for [the Student] in the regular education classroom setting "beginning November 10, 1997.

(JEX 1-006, para. 23; JEX 29)

Parents' Request for a One-On-One Aide - November, 1997

On November 12, 1997, Jason Shaffer wrote a letter to George Wilson (JEX 34) which requested in part, that an aide be provided for the Student in the regular education classroom. (JEX 1-006, para. 28)

52. On November 19, 1997, Jason Shaffer wrote a letter to George Wilson, which requested in part, that in lieu of the one-on-one aide, the Student should be allowed to spend the periods for science and social studies in the lab/resource room. (JEX 37; TR p. 498, Ins. 10-18) On November 21, 1997, George Wilson wrote a letter to Jason Shaffer (JEX 40) responding to Mr. Shaffer's letter dated November 19, 1997. (JEX 37) Mr. Wilson's letter indicates that "[f]ollowing consideration of this option, it has been determined that the Student will continue to attend regular education classroom as currently indicated in her IEP." (JEX 1-007, para. 31)

53. On November 20, 1997, George Wilson wrote a letter to Jason Shaffer (JEX 38; TR pp. 498-499) responding to Mr. Shaffer's letter dated November 12, 1997. (JEX 34)

Diagnostic Conferences - November-December, 1997

54. On November 20, 1997 the School District prepared a Notice of Conference form, (JEX 39) for the November 24, 1997 Diagnostic Staffing and IEP/Placement Conference. A copy of the Notice was provided to the Parents. (JEX 1-007, para. 33; TR p. 499, Ins. 12-17)

55. On November 24, 1997, the School District conducted a meeting to review the Student's evaluation results, complete the diagnostic summary and review the Student's IEP. Present at the meeting were the Parents, Jason Shaffer, Gloria Brown, Wendy Jackson, George Wilson, Donna Prouty, Ransom Ellis (School District Attorney), Pamela Smith, Julie Engelhart and John Utne. During the meeting:

A) the Parents were provided with a copy of the Procedural Safeguards;

B) the parties began the process of reviewing the Student's evaluation results but were unable to complete the review or complete the diagnostic summary;

the parties agreed to reconvene the meeting on December 2, 1997 to complete the process;

D) the parties agreed that the stay-put IEP was the Student's IEP for School Year 1997-98, (JEX 7) as amended during the IEP meeting on October 28, 1997.

(JEX 1-007, para. 35; TR p. 499, Ins. 18-25; p. 500, Ins. 1-11)

56. Prior to the November 24, 1997, meeting, the School District received and considered the following documents:

- A) JEX 8 Letter from Dr. Marsha Salman to Lynn Hollaway dated February 19, 1996
- B) JEX 9 Report from the Motor Development Clinic at Southwest Missouri State University, dated April 25, 1996
- C) JEX 10 Medical record and prescription from Dr. Arie Ashkenasi, dated May 3, 1996
- D) JEX 11 Letter from Dr. Arie Ashkenasi to Dr. Eileen Bartow-Rives dated May 5, 1996
- E) JEX 12 Notes from Dr. Arie Ashkenasi dated between May 16, 1996 and September 5, 1996
- F) JEX 13 Report from Delene McAnarney, OTR, Rehabilitative Therapy Services, St. John's Regional Health Center dated July 11, 1996
- G) JEX 14 Handwritten note dated September 5, 1996 from Dr. Arie Ashkenasi
- H) JEX 15 Pediatric Neuromotor Evaluation from Dr. Daniel McKinney and Delene McAnarney, OTR dated April 25, 1997
- I) JEX 16 Progress Report from Alice Rush, dated July 23, 1997
- J) JEX 17 Handwritten note dated September 4, 1997, from Dr. Arie Ashkenasi
- K) JEX 18 Letter from Dr. Barbara A. Bumberry, dated September 22, 1997
- L) JEX 20 Physical Therapy Evaluation by Jean C. Knapp, P.T., dated September 22, 1997
- M) JEX 21 Letter from Carol L. Scott, O.D., dated October 25, 1997
- N) JEX Letter from Dr. Barbara A. Bumberry dated November 13, 1997

- O) JEX 23 Speech and Language Evaluation by Tracie M. Peck, M.A., CCC-SLP, Therapy Associates of the Ozarks, dated July 29, 1997
- P) JEX 24 Amended Speech and Language Evaluation by Tracie M. Peck, M.A., CCC-SLP, Therapy Associates of the Ozarks, received November 17, 1997

(JEX 1-007, para. 36; TR p. 500, Ins. 12-16)

57. On November 25, 1997, George Wilson wrote a letter to the Parents which states in pertinent part:

"I requested an agreement to continue with the current IEP until after completion of the diagnostic summary. Your response was to request either that [the Student] have a personal aide assigned to her while in regular classes or that she be sent to the special education classroom for science and for social studies. (These were the same requests to which I had responded in writing last week.)

When the District did not agree to either of these modifications, you elected not to agree to a continuation of the current IEP. I then indicated that the IEP would become the 'stay-put' IEP, pending resolution of the current issues. Both Mr. Shaffer and Mr. Ellis agreed that the current IEP is now the 'stay-put' IEP.

[The Student's] current IEP (dated 9/25/97) will continue to be implemented until the issues have been resolved, unless mutually agreeable changes are made in the interim."

(JEX 1-009, para. 37; JEX 41; TR pp. 500-501)

58. On November 25, 1997, the School District prepared a Notice of Conference form (JEX 42), for the December 2, 1997 Diagnostic Staffing and IEP/Placement Conference. A copy of the Notice was provided to the Parents. (JEX 1-009, para. 38; TR p. 501, Ins. 13-18)

59. On December 2, 1997, the School District reconvened the meeting to review the Student's evaluation results, complete the diagnostic summary and review the Student's IEP. Present at the meeting were the Parents, Jason Shaffer, Gloria Brown, Wendy Jackson, George Wilson, Donna Prouty, Ransom Ellis (School District Attorney), Pamela Smith, Debbie Ellingsworth, Judith Brock, Lynn Hollaway, Dr. Anne Gardner, Patti Scott, Julie Engelhart and John Unte. During this meeting:

the parties completed the initial review of the Student's evaluation results and her diagnostic summary;

B) the Parents indicated that they intended to provide a written dissent to the diagnostic summary;

the parties agreed to reconvene the meeting to discuss the Parent's written dissent, make changes in the Student's diagnostic summary, if necessary, review the Student's IEP and make a placement decision.

(JEX 1-009, para. 41; TR p. 501, Ins. 19-25; p. 502, Ins. 1-8)

On December 2, 1997, the School District prepared a Notice of Conference form (JEX 45) for the December 8, 1997 Diagnostic Staffing and IEP/Placement Conference. A copy of the Notice was provided to the Parents. (JEX 1-010, para. 42; TR p. 502, Ins. 9-14)

On December 3, 1997, Jason Shaffer wrote a letter to the School District. (JEX 46) The letter contains the Parents' "Objections to Diagnostic Summary of [the Student]." The letter was received by the School District's Counsel on December 5, 1997. (JEX 1-010, para 43; TR p. 502, Ins 15-20)

62. On December 5, 1997, the School District provided Jason Shaffer with a copy of the School District's Independent Educational Evaluation Policy pursuant to his request. (JEX 1-010, para. 45; JEX 48)

63. On December 8, 1997, the School District reconvened the meeting to review any additional information provided by the Parents, including their written dissent, complete the diagnostic summary, review the Student's IEP and make a placement decision. Present at the meeting were the Parents, Jason Shaffer, Gloria Brown, Dr. Eileen Bartow-Rives, Wendy Jackson, George Wilson, Phyllis Wolfram, Ransom Ellis (School District Attorney), Pamela Smith, Debbie Ellingsworth, Judith Brock, Lynn Hollaway, Dr. Anne Gardner, Patti Scott, Christy Ostrosky and John Utne. During the meeting the participants:

A) reviewed the "Objections to Diagnostic Summary of [the Student]", which was presented by the Parents (JEX 46) and made amendments where appropriate; (TR p. 504, Ins 18-25; p. 505, Ins. 1-5)

B) completed a review of the District's evaluation results; and,

C) were informed that the Parents intended to conduct an outside evaluation on the Student utilizing personnel from Rivendale Institute of Learning.

(JEX 1-010, para. 47; TR p. 502, Ins. 15-25; p. 503, Ins. 1-18)

64. On December 11, 1997, George Wilson wrote a letter to Jason Shaffer responding to the Parent's Objections to the Diagnostic Summary, dated December 3, 1997 (JEX 46) and confirming the actions of the participants in the December 8, 1997 diagnostic staffing conference. (JEX 1-011, para. 48; JEX 50)

Independent Educational Evaluation by Rivendale Institute - December, 1997

65. In December, 1997, the Parents contacted Becky Standley to conduct an independent educational evaluation on the Student. (TR pp. 277-278) Ms. Standley testified that her independent evaluation was "problematic" because the School District had already administered the tests she wanted to give and "Springfield's Diagnostic Summary was incredibly complete and done very well." (TR p. 279, Ins. 15-25; p. 280, Ins. 1-4) Ms. Standley further testified that the test scores she got from testing the Student were "consistent with" the scores obtained by the School District; (TR p. 280, Ins. 21-25) and she was "very impressed with the language sample" in the School District's Diagnostic Summary and that she had learned a lot from the report. (TR p. 329, Ins. 7-11)

66. Becky Standley stated during her testimony that the Diagnostic Summary prepared by the School District:

A) was "complete and valid to date;" (TR p. 309, Ins. 22-25)

B) evaluated all the Student's possible disabilities; (TR p. 310, Ins. 1-5)

C) after an individual evaluation of the Student which was administered in the Student's native language; (TR p. 310, Ins. 6-12)

D) used tests which were validated for the specific purposes for which they were used; were administered by trained personnel; and, were selected and administered to the Student so that the test results accurately reflected aptitude or other achievement level rather than the Student's impaired sensory, manual or speaking skills; (TR p. 310, Ins. 13-25; p. 311, Ins. 1-4)

E) used more than one evaluation procedure to determine an appropriate educational program for the Student; (TR p. 311, Ins. 6-9)

F) was done by a multi-disciplinary team or group of persons including at least one teacher or other specialist who had knowledge of the Student's suspected disabilities; (TR p. 311, Ins. 10-16)

G) assessed the Student in all areas related to her suspected disability; (TR p. 311, Ins. 17-20)

H) includes statements of:

1) whether the Student has a disability;

2) the basis for making the determinations of disability;

3) the relevant behavior noted during the observation of the Student;

4) the relationship of relevant behavior noting the observation of the Student to her academic functioning;

5) educationally relevant medical findings;

6) whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services;

7) the determination of the multi-disciplinary team concerning the effects of environmental, cultural or economic disadvantage. (TR p. 311, Ins. 21-25; p. 312)

66. Becky Standley further testified as follows about the independent evaluation conducted by Rivendale Institute:

A) that the Student was administered the Stanford-Binet Intelligence Scale because the School District had already administered the WISC-III and the scores Rivendale obtained were "essentially the same" as those obtained by the School District; (TR pp. 313-317)

B) used the old PIAT test which she did not prefer and felt "was not a good test"; (TR pp. 322-323; p. 327, Ins. 20-25)

C) that the reading scores obtained on the Rivendale evaluation were consistent with the scores obtained by the School District. (TR p. 328, Ins. 1-6)

67. On December 19, 1997, Jason Shaffer provided the School District with a copy of the "Full Educational Evaluation For [the Student]" prepared by Rivendale Institute of Learning and Rebecca S. Standley. (JEX 1-001, para. 54; JEX 56)

68. The independent educational evaluation performed by Rivendale Institutes is substantially similar to the results received by the School District which are set forth in the Diagnostic Summary marked JEX 67.

The Evaluation By Dr. Sylvia Buse and Dr. Virgil McCall - December, 1997

69. The Parent also had the Student tested by Dr. Sylvia Buse and Dr. Virgil McCall. Dr. McCall administered a WISC-III test to the Student on or about December 14, 1997. (TR p. 209, Ins. 8-18) This was the same test administered to the Student by the School District on October 20, 1997. (TR p. 210, Ins. 9-11)

70. The WISC-III test administered to the Student by Dr. McCall produced a four (4) point higher verbal IQ score, a fourteen (14) point higher performance IQ score and a nine (9) point higher full-scale IQ score than the WISC-III test administered by the School District approximately seven weeks earlier. (TR pp. 211-212) The difference in the scores was due primarily to the "practice effect". (TR pp. 213-227)

71. When Dr. McCall's WISC-III test scores are corrected for the "practice effect" described in the "*WISC-III, Wechsler Intelligence Scale for Children - Third Edition, Manual*", pages 1690170, the verbal score of 87 becomes 85.3; the performance score of 103 becomes 91.5; and, the full-scale score of 93 becomes an 86. These corrected scores further substantiate the scores on the WISC-III obtained by the School District. (TR p. 507, Ins. 20-25; p. 508, Ins. 1-9)

72. On or about December 22, 1997, Jason Shaffer provided the School District with a copy of a document titled "Teaching Suggestions and Academic Accommodations" prepared by Dr. Sylvia T. Buse. (JEX 1-011, para. 55; JEX 57)

Parents' Request to Amend Stay-Put IEP - December, 1997

73. On December 24, 1997, Jason Shaffer wrote a letter to the School District (JEX 58). In the letter, the Parents:

"...request, again, that the [School District] voluntarily amend the Stay-Put IEP to increase the amount of minutes that [the Student] receives in the special education lab/resource room. This

is a compromise between the parent's request of a 'self-contained or, in the alternative, aide in the regular education classroom' in the current, existing IEP. The parents would request an additional 100 to 150 minutes in the lab/resource room per week."

74. On December 24, 1997, Jason Shaffer wrote a letter to the School District (JEX 59) advising the School District that the Student's medications had been changed. (JEX 1-001, para. 56)

75. On December 29, 1997, George Wilson wrote a letter to Jason Shaffer (JEX 60) responding to his letters dated December 24, 1997 (JEX 58 and JEX 59). (JEX 1-012, para. 58; TR p. 506, Ins. 10-19)

Diagnostic Conferences - January, 1998

76. On January 2, 1998, the School District prepared a Notice of Conference form, (JEX 62), for the January 7, 1998 Diagnostic Staffing and IEP/Placement Conference. A copy of the Notice was provided to the Parents. (JEX 1-012, para 60; TR p. 506, Ins. 20-25)

77. On January 7, 1998, the School District reconvened the meeting to review the Student's evaluation results, review the results of the Parent's independent evaluation of the Student, complete the diagnostic summary and review the Student's IEP. Present at the meeting were the Parents, Jason Shaffer (Parent's Attorney), Gloria Brown, Rebecca Standley, Wendy Jackson, George Wilson, Phyllis Wolfram, Ransom Ellis (School District Attorney), Pamela Smith, Debbie Ellingsworth, Judith Brock, Lynn Hollaway, Dr. Anne Gardner, Patti Scott, Janet Mhire and John Utne. During the meeting:

A) the participants reviewed the outside report completed by Rivendale Institute of Learning; (JEX 56)

B) the participants reviewed the outside report completed by Dr. Sylvia T. Buse; (JEX 57)

C) a "Review of Outside Evaluation Information" was prepared; (JEX 63)

the participants agreed to postpone discussion of revisions to the Student's IEP and any discussion of her placement;

the Parents stated that they were looking at a private placement at the Rivendale Institute of Learning for the Student.

(JEX 1-012, para. 61; TR p. 507, Ins. 1-15)

78. On January 8, 1998, Jason Shaffer wrote a letter to the School District (JEX 65) advising the School District that the Student would be unilaterally placed in Rivendale Institute of Higher Learning by her Parents on or about January 20, 1998. This letter was received by the School District's counsel on January 15, 1998. (JEX 1-012, para. 62)

79. On January 9, 1998, Jason Shaffer and the Parents wrote a letter to the School District. (JEX 66) The letter is titled "*Diagnostic Evaluation of [the Student], Revised Objections to Diagnostic Summary of [the Student]*". The letter was received by the School District's counsel on or about January 14, 1998, (JEX 1-013, para. 64) and was attached to the Diagnostic Summary. (TR pp. 508-509)

80. A copy of the completed Diagnostic Staffing Summary for the Student is marked JEX 67. (JEX 1-013, para. 65) It contains the Parents' *Revised Objections* and was provided to the Parents. (TR pp. 508-509)

81. On January 14, 1998, the Parents wrote a note to the Student's teacher advising her that the Student would no longer attend school at Jeffries Elementary School after January 14, 1998 (JEX 68). (JEX 1-013, para. 66)

Unilateral Placement at Rivendale - January, 1998

82. The Student was removed from the School District by her Parents on January 14, 1998 and thereafter unilaterally enrolled in the Rivendale Institute of Higher Learning on or about January 20, 1998. The Student was enrolled in the Rivendale Institute of Higher Learning without consent or referral of the School District. (JEX 1-013, para. 67)

The Student's Progress During School Year 1997-98

Academic Progress - Prior to January 15, 1998

83. Prior to January 15, 1998, when the Student was unilaterally withdrawn from the School District, the Student made significant and meaningful progress in the educational program provided by the School District (JEX 73-004; DEX A; TR p. 546, Ins. 15-25; pp. 547-548; pp. 555-557; p. 603, Ins. 21-24) as follows:

A) Debbie Ellingsworth, the Student's special education teacher testified that the Student benefited from the special education services provided by the School District during the School Years 1996-97 and 1997-98; (TR p. 586, Ins. 5-14; p. 591, Ins. 9-12)

B) the Student's grades for the first and second quarters of the 1997-98 school year demonstrate both that she was achieving passing grades and that her performance was improving - both in the regular classroom and in the special education classroom; (DEX A)

C) Judith Brock, the Student's regular education classroom teacher, verified the Student's academic progress; (TR p. 41, In. 25, p. 42, Ins. 1-23; TR pp. 537-544; TR p. 555, In. 25, p. 556, p. 557, Ins. 1-18)

D) Debbie Ellingsworth verified the Student's academic progress; (TR p. 587, Ins. 20-25, p. 588, Ins. 1-8; TR p. 594, Ins. 10-25, p. 595, Ins. 1-22; TR p. 602, Ins. 17-25, pp. 603-606, p. 607, Ins. 1-20; TR p. 610, Ins. 11-25, p. 611-619, p. 620, Ins. 1-4; TR p. 620, Ins. 14-25, p. 621, Ins. 1-22; TR p. 624, Ins. 12-25, p. 625, p. 626, Ins. 1-9)

E) Patti Scott, the Student's Speech-Language Pathologist, verified the Student's progress; (TR p. 362, In. 25, pp. 363-364, p. 365, In. 1)

F). the Student's work samples demonstrated that the Student was achieving and progressing appropriately in her program; (DEX F and G)

G). the Diagnostic Staffing Summary verified that the Student was achieving appropriately, within expectancy ranges of her cognitive ability, except in the area of her disability (oral expression); (JEX 7)

H) the test results reported in the Parent's independent evaluation of the Student from Rivendale Institutes, verified that the Student was achieving appropriately, within expectancy ranges of her cognitive ability; (JEX 56)

I) the test results reported in the Parent's evaluation from Southwest Missouri State University verified that the Student was achieving appropriately, within expectancy ranges of her cognitive ability. (JEX 57)

Social-Emotional Progress - Prior to January 15, 1998

84. In addition to her academic progress, the Student further realized meaningful social and emotional benefit from the educational program provided to her by the School District as follows:

A) Dr. Aire Ashkenasi testified that he had observed that the Student had progressed during the last year; (DEX D, p. 34, Ins. 21-22; p. 50, Ins. 22-24)

B) Judith Brock testified to the social and emotional progress made by the Student; (TR p. 543, Ins. 8-25, p. 544, Ins. 1-8; TR p. 551, Ins. 21-25, p. 552, p. 553, Ins. 1-22, TR p. 556, In. 25, p. 557, p. 558, In. 1; TR p. 575, Ins. 2-19)

C) Debbie Ellingsworth testified to the social and emotional progress made by the Student; (TR p. 592, Ins. 3-20; TR p. 594, Ins. 10-25, p. 595, Ins. 1-8; TR p. 599, Ins. 18-25, p. 600, Ins. 1-21)

D) the Diagnostic Staffing Summary verified the Student's social and emotional progress in the school setting; (JEX 7)

There Is No Need For A One-On-One Aide

85. Judith Brock testified that it was her opinion that the Student did not need a one-on-one aide while the Student was in the regular education classroom; (TR p. 66, Ins. 19-25, p. 67, Ins. 1-13; TR p. 558, Ins. 2-22)

86. Debbie Ellingsworth testified that that it was her opinion that the Student did not need a one-on-one aide while the Student was in her regular education classroom; (TR p. 592, Ins. 21-25, p. 593, Ins. 1-24; TR p. 595, Ins. 9-22; TR p. 622, Ins. 20-23)

There Is No Need For A Self-Contained Classroom

87. Judith Brock testified that it was her opinion that the Student did not need to be placed in a self-contained classroom; (TR p. 558, Ins. 23-25, p. 559; p. 560, Ins. 1-11)

88. Debbie Ellingsworth testified that it was her opinion that the Student did not need to be placed in a self-contained classroom; (TR p. 622, Ins. 24-25, p. 623, Ins. 1-18)

The Student's Reported Health Conditions Had No Significant Impact Upon Her Ability To Achieve And Or Progress Appropriately In A School Setting

89. While the Student has been medically diagnosed with a seizure disorder, the Student's regular and special education teachers observed no incidents which they believed to be a seizure and neither believed that the Student's seizure disorder had any significant impact upon the Student's ability to achieve in school. (TR p. 365, Ins. 19-25, p. 366, Ins. 1-13; TR p. 548, Ins. 24-25; p. 549, Ins. 1-22, p. 588, Ins. 9-25)

90. While the Student has been medically diagnosed with ADHD, the Student's regular and special education teachers observed no ADHD characteristics which they believed had any significant impact upon the Student's ability to achieve in school. (TR p. 365, Ins. 19-25, p. 366, Ins. 1-13; TR p. 550, Ins. 1-14; p. 589, Ins. 1-14)

91. While the Student has been medically diagnosed with asthma, the Student's regular and special education teachers observed no asthma attacks or that the Student's asthma had any significant impact upon the Student's ability to achieve in school. (TR p. 365, Ins. 19-25, p. 366, Ins. 1-13; TR p. 550, Ins. 15-25; p. 550, Ins. 1-2; TR p. 589, Ins. 15-25; p. 590, Ins. 1-9)

CONCLUSIONS OF LAW

The Hearing Panel, after hearing the evidence in this matter makes the following Conclusions of Law:

1. Parents and Students have been residents of and domiciled within the Springfield Public School District, as required by § 160.261 RSMo., since on or about June 5, 1995. The Student is a child with a disability, as that term is defined in the Individuals With Disabilities Education Act ("IDEA") regulations, 34 C.F.R. §300.7. The Student also meets the criteria in the State Plan for Part B of the Individuals With Disabilities Education Act ("State Plan") for the receipt of special education and related services.
2. The School District is an urban district organized pursuant to Section 162.461 RSMo.
3. The Springfield Public School District's obligation to provide ___ with a "free and appropriate public education" is defined by the IDEA as follows:

The term "free and appropriate public education" means special education or related services that...(A) have been provided at public expense, under public supervision and direction, without charge; (B) meet the standards of the State educational agencies; (C) include an appropriate preschool, elementary, or secondary school education in the state involved; and (D) are provided in conformity with the individualized education program required under §614 (d). 20 U.S.C. §1401 (8) (Supp. 1998)

The IDEA defines the term "special education" as follows:

[S]pecially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including...(A) instruction conducted in the classroom, in the home, in hospitals and

institutions, and in other settings; and (B) instruction in physical education. 20 U.S.C. §1401 (26) (Supp. 1998)

4. The standard for FAPE is set out in...Board of Education v. Rowley, 458 U.S. 176, 102 S. Ct. 3034, 73 L.Ed. 2d 690 (1982), the United States Supreme Court discussed the meaning of a "free and appropriate public education." The court identified the following two-part test in determining whether a school district is meeting its obligation to provide a disabled student a free appropriate public education:

Therefore, a court's inquiry in suits brought under §1415 (e) (2) is two fold. First, has the state complied with the procedures set forth in the Act? And second, is the individualized education program developed through the Act's procedures reasonable calculated to enable a child to receive educational benefits?

5. The School District's IEP conferences, which were held in September and October, 1997, met the procedural and substantive requirements of the IDEA, its regulations and the State Plan in that:

A) the meeting was initiated and conducted by the School District and was for the purpose of developing, reviewing and revising the Student's IEP in compliance with 34 C.F.R. §300.343(a);

B) the meeting included a representative of the School District who was qualified to supervise the provision of special education services; the Student's teacher; the Parents and other members of the Student's multi-disciplinary team in compliance with 34 C.F.R. §300.344(a) and (b);

C) it otherwise met the requirements for Individualized Education Programs required by the State Plan pages 24-32.

6. The School District's IEP, JEX 7, which was developed for the Student by her IEP team, is appropriate for the Student and meets procedural and substantive requirements of the IDEA, its regulations and the State Plan in that:

A) it contains "[a] statement of the Student's present levels of educational performance" in compliance with 34 C.F.R. §300.346(a)(a);

B) it contains "[a] statement of annual goals, including short-term instructional objectives" in compliance with 34 C.F.R. §300.346(a)(2);

C) it contains "[a] statement of the specific special education and related services to be provided to the Student and the extent that the Student will be able to participate in regular educational programs" in compliance with 34 C.F.R. §300.346(a)(3);

D) it contains "a statement of the projected dates for initiation of services and the anticipated duration of the services" in compliance with 34 C.F.R. .§300.346(a)(4);

E) it contains "[a]ppropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short term instructional objectives are being achieved" in compliance with 34 C.F.R. .§300.346(a)(5);

F) the School District's multi-disciplinary team gave "complete consideration to all of the evaluation data gathered for the Student" when it developed her IEP in compliance with the State Plan page 64;

G) it otherwise meets the requirement for Individualized Education Programs required by the State Plan pages 24-32.

7. The School District's IEP developed for the Student by her IEP team, JEX 7, was provided to the Parents in compliance with 34 C.F.R. .§300.345(f);

8. The placement recommendation made by School District's multi-disciplinary team was appropriate for the Student and meets the procedural and substantive requirements of the IDEA, its regulations and the State Plan in that:

A) it was made by the same multi-disciplinary team that prepared the Student's Diagnostic Summary in compliance with the State Plan page 64:

B) it was "made following the development of the Student's IEP in compliance with the State Plan page 64;

C) it "[drew] upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior" in compliance with 34 C.F.R. .§300.533(a)(1);

D) it "ensured that information obtained from all...sources [was] documented and carefully considered" in compliance with 34 C.F.R. §300.533(a)(2);

E) it was made "by a group of persons, including persons knowledgeable about the [Student], the meaning of the evaluation data, and the placement options" in compliance with 34 C.F.R. §300.533(a)(3);

F) it was made, to the maximum extent possible, so that the Student could be educated with children who are nondisabled in compliance with 34 C.F.R. §300.550(b)(1);

9. The program of special education and related services which was developed for the Student by the School District in JEX 7, was reasonably calculated to, and did provide the Student with a free, appropriate public education in that:

A) the program was to be provided by the School District "at public expense, under public supervision and direction and without charge" to the Parents and the Student in compliance with 34 C.F.R. §300.8(a);

B) the program meets the standards of the State Educational Agency set forth in the State Plan in compliance with 34 C.F.R. §300.8(a);

C) the program meets the IDEA regulations including the requirements of 34 C.F.R. Part 300 in compliance with 34 C.F.R. §300.8(b);

D) the program includes preschool education in compliance with 34 C.F.R. §300.8(c);

E) the School District special education program offered by the School District includes preschool, elementary school, or secondary school education in compliance with 34 C.F.R. §300.8(c);

F) the program was proposed to be provided in conformity with an individualized educational program in compliance with 34 C.F.R. §300.8(d).

10. The testimony and evidence presented at the hearing conclusively established that the Student made meaningful progress in the educational program, including the placement, provided by the School District pursuant JEX 7.

11. The School District's re-evaluation of the Student between September, October and December, 1997, met the procedural and substantive requirements of the IDEA, in that:

A) it reviewed, prior to the re-evaluation, the existing evaluation data, including evaluations and information provided by the Parents, current classroom-based assessments and observations,

and teacher and related services provider's observations to determine what additional information was needed;

B) it provided notice to the Parents reasonably in advance of the beginning of the evaluation process and obtained their consent;

C) it provided a full explanation of all of the procedural safeguards available to the parents;

D) it provided a description of the proposed evaluation and the evaluation procedures the School District intended to use to assess the Student;

E) it provided a description of any other factors that were relevant to the School District's proposed evaluation;

F) it was written in the English language, which is understandable to the general public and the native language of the Parents;

G) it provided a copy of the Diagnostic Summary, JEX 67, to the Parents.

12. The School District's re-evaluation of the Student was appropriate and met the procedural and substantive requirements of the IDEA in that:

A) it was a full and individual evaluation of [the Student's] educational needs;

B) the tests and other evaluation materials used by the School District to evaluate the Student:

1) were provided and administered in English, the Student's native language;

have been validated for the specific purpose for which they are used;

3) were administered by trained and knowledgeable personnel in conformance with the instructions provided by their producer;

4) were tailored to assess specific areas of the Student's educational need;

5) were selected and administered so as to ensure that when the tests were administered to the Student, the test results accurately reflect the Student's aptitude, achievement level and educational needs;

6) contained more than one evaluation procedure; and,

7) assessed the Student in all areas related to her suspected disability.

C) the multi-disciplinary team observed the Student's academic performance in an environment appropriate for her age;

D) it otherwise met the procedural and substantive requirements for evaluations set forth in the IDEA.

13. The School District's Diagnostic Summary of the Student, JEX 67, is appropriate for the Student and meets the procedural and substantive requirements of the IDEA in that:

it constituted a written report of the results of the evaluation;

B) it included a statement of whether the Student has a specific disability;

C) it included a statement of the basis for making the determination, including the utilization of approved eligibility criteria;

D) it included a statement of the relevant behavior noted during the observation of the student;

E) it included a statement of the relationship of the relevant observed behavior to the Student's academic functioning;

F) it included a statement of the educationally relevant medical findings, if any;

G) a statement of whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services;

H) a statement of the determination of the multi-disciplinary team concerning the effects of environmental, cultural or economic disadvantages;

I) a synthesis from each member of the multi-disciplinary team that the report reflected her conclusions;

J) a certification from each member of the multi-disciplinary team that the report reflected her conclusions;

K) information that indicates that the multi-disciplinary team considered all areas of the Student's functioning;

L) it otherwise met the requirements of the IDEA.

14. The independent evaluation of the Student conducted by Rivendale Institute obtained results which were substantially similar to the results obtained by the School District in its re-evaluation of the Student as set forth in the diagnostic summary marked JEX 67. The opinion expressed by the institute witnesses recommended more one on one resource instruction but at no time showed the school district's IEP failed to give some educational benefit.

15. The Parents presented evidence regarding whether the Student should have also been diagnosed as learning disabled in the areas of reading, math and written expression in addition to the oral expression area identified by the School District. No identification issue was submitted to the Hearing Panel for decision. Consequently, the Hearing Panel does not decide this issue.

16. The Panel unanimously finds that the IEP is appropriate and provides education benefit as set out in Rowley, Id, Fort Zumwalt School District v. Missouri State Board of Education, 119 F3d 607 (8th Cir 1997). Further finding the District has met its burden of complying with IDEA.

17. The law does not require the District to provide ___ with the best possible education or to achieve outstanding results. The test is as long as the student is benefiting from her education, it is up to the educators to determine the appropriate methodology. Fort Zumwalt School District vs. Clymes, 119 F. 3d 607 (8th Cir 1997), E.S. vs. IND. School District offers the least restricting environment and a balanced program of education and social benefit for ___ best benefit for long term educational benefit.

DECISION AND ORDER

The Hearing Panel makes the following **DECISION** and **ORDER** in this case to the issues set out in Paragraph 18:

ISSUE Number 1: Finds for the Respondent and Orders no change in the IEP because the Student does not need to be placed in a self-contained special education classroom for the extra hours requested due to the educational benefit of LRE.

ISSUE Number 2: Finds for the Respondent and Orders no change in the IEP because of educational benefit derived from the classroom modifications.

ISSUE Number 3: Finds for the Respondent, because:

1. the Respondent has demonstrated that its evaluation is appropriate,
2. the Petitioner failed to request the independent evaluation prior to the evaluation.

ISSUE Number 4: Finds the 97-98 IEP constitutes a free and appropriate education for ____.

C.E. "Sketch" Rendlen, III, Hearing Chairperson

Dated: June 18, 1998

Audrey Yarbrough, Panel Member

Dr. David Willard, Panel Member

Attachment I

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.

PLEASE TAKE NOTICE that you have a right to request review of this decision pursuant to the Missouri Administrative Procedures Act, Section 536.010 et seq. RSMo. Specifically, Section 536.110 RSMo. provides in pertinent part as follows:

1. Proceedings for review may be instituted by filing a petition in the circuit court of the county of proper venue within thirty days after the mailing or delivery of the notice of the agency's final decision...
2. The venue of such cases shall, at the option of the plaintiff, be in the circuit court of Cole County or in the county of the plaintiff or of one of the plaintiff's residence...