

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

██████████)
)
Petitioner,)
)
vs.) Case No. 11-4503E
)
MIAMI-DADE COUNTY SCHOOL BOARD,)
)
Respondent.)
_____)

FINAL ORDER

Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings, conducted the final hearing in Miami, Florida, on October 17-21 and November 1-4, 2011.

APPEARANCES

For Petitioner: Stephanie Langer, Esquire
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For Respondent: Mary C. Lawson, Esquire
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STATEMENT OF THE ISSUES

In general, the issues are whether Respondent has appropriately identified, evaluated, and placed Petitioner in an educational program and provided Petitioner with a free appropriate public education (FAPE) within the least restrictive

environment (LRE). At the hearing, over the objection of Respondent, the Administrative Law Judge bifurcated these issues from the issue of Petitioner's entitlement to reimbursement of the cost of private school enrollment (i.e., the issues of the adequacy of the notice of withdrawal from Respondent's school system and the appropriateness of the private-school placement). The Administrative Law Judge agreed to conduct another evidentiary hearing on the reserved issue, if Petitioner prevailed on the issues addressed below. Because the Administrative Law Judge is dismissing Petitioner's due process hearing request in all respects, another evidentiary hearing is unnecessary, and this Final Order closes the file.

PRELIMINARY STATEMENT

On September 6, 2011, Petitioner filed a due process hearing request. After an extensive recitation of alleged facts, the due process hearing request states that Petitioner is entitled to determinations that:

- a. Respondent has failed to provide Petitioner with FAPE in the least restrictive environment (LRE);
- b. Respondent failed to identify and recognize a known disability (autism) and provide services for this disability, so as to provide Petitioner with FAPE in the LRE;
- c. Respondent unlawfully changed Petitioner's educational program;

- d. Respondent failed to implement Petitioner's IEPs from 2009 through 2011;
- e. Respondent failed to provide Petitioner with the appropriate educational supports, including academic and educational materials and equipment, sensory equipment, occupational therapy (OT), and speech language therapy;
- f. Respondent's teachers were not qualified to educate or restrain Petitioner;
- g. Respondent failed to place Petitioner in an appropriate educational setting or program;
- h. Respondent repeatedly predetermined placement and programs without input from Petitioner's parents;
- i. Without proper notice or evidence, Respondent changed Petitioner's program or placement;
- j. Respondent excluded Petitioner's parents from the educational planning process so as to deprive FAPE;
- k. Respondent's employees failed to protect Petitioner from abuse, neglect, and seclusion and failed to enable [REDACTED] to access [REDACTED] education;
- l. Respondent allowed Petitioner to regress without providing proper placement and supports;
- m. Respondent's employees failed to communicate with Petitioner's mother in her native language, Spanish;
- n. Respondent repeatedly failed to communicate, including by documentation, with Petitioner's family in their native language, Spanish;

- o. Respondent's employees illegally and improperly restrained Petitioner and removed *** from the classroom;
- p. Respondent fabricated behavior reports;
- q. Respondent retaliated against Petitioner and *** parents;
- r. Respondent violated Petitioner's civil rights by subjecting *** to unreasonable restraint;
- s. Respondent failed to protect Petitioner from abuse;
- t. Respondent failed to investigate reports of abuse and restraint of Petitioner;
- u. Respondent's actions and inactions were intentional;
- v. Petitioner's parents are the prevailing party;
- w. Respondent owes Petitioner compensatory education from 2009 to present;
- x. Respondent owes Petitioner reimbursement for the cost of private education, therapy, and transportation for the 2011-12 school year;
- y. Respondent is required to pay for Petitioner's private school placement, transportation, and therapies until Respondent provides Petitioner with an appropriate program and placement that are safe and meet the student's individual needs;
- z. Respondent owes Petitioner damages for violation of *** civil rights;
- aa. Respondent owes Petitioner's parents reimbursement for advocate fees and costs; and

bb. Respondent owes Petitioner's parents reasonable attorneys' fees and costs.

By Order entered September 16, 2011, the Administrative Law Judge struck the following paragraphs of the due process hearing request: f, k, m and n (except for any failure to provide an interpreter at any IEP meeting), o-w, x and y (except for cost of enrollment), and z-bb.

By Notice of Hearing issued on September 8, 2011, the Administrative Law Judge set the hearing for October 17-21, 2011. The final hearing took place from October 17-21, but was not completed at that time. The Administrative Law Judge reset the final hearing for November 1-4, 2011, and specifically extended the deadline to issue the final order by 14 days. The final hearing resumed on November 1 and was completed on November 4, 2011.

On November 4, 2011, the Administrative Law Judge issued an Order Setting Deadline for Filing Proposed Final Orders and Granting Specific Extension for Issuing Final Order. This Order acknowledges the two-week extension necessitated by the conclusion of the final hearing on November 4, not October 21. This Order notes that the parties, wanting additional time to obtain a transcript and filed proposed final orders, had asked for an additional extension of 20 days, and the Administrative Law Judge had granted their request; therefore, the final order

would be due on December 19, 2011, and the proposed final orders would be due on December 12, 2011. This was an extension of 34 days.

Following a communication with the Administrative Law Judge's administrative assistant, in which both attorneys sought an additional extension to the filing deadline due to a delay in obtaining the transcript, on December 12, 2011, the Administrative Law Judge issued the Second Order Setting Deadline for Filing Proposed Final Orders and Granting Specific Extension for Issuing Final Order. After correction by an amendment, this Order extended the filing deadline to January 10, 2012, and the issuance deadline to January 24, 2012, which represented an additional extension of 36 days.

On January 3, 2012, Petitioner filed a Motion for Extension of Time for the filing of the proposed final orders and issuing of the final order on the ground that counsel still had not received the entire transcript. The motion states that Respondent did not object to an extension of the filing date to February 3. On January 4, 2012, the Administrative Law Judge issued the Third Order Setting Deadline for Filing Proposed Final Orders and Granting Specific Extension for Issuing Final Order. The Order set a filing deadline of February 3 and an issuance deadline of February 17, which represented an extension of 24 days.

On January 23, 2012, the parties filed a Joint Motion for Extension of Time, citing another delay in obtaining the complete transcript from the court reporter. The motion requests an extension by one week of the filing and issuance deadlines. On January 24, 2012, the Administrative Law Judge issued the Fourth Order Setting Deadline for Filing Proposed Final Orders and Granting Specific Extension for Issuing Final Order. The Order set a filing deadline of February 10 and an issuance deadline of February 24, which represented an extension of seven days.

On February 7, 2012, Petitioner filed a Motion for Extension of Time. This motion sought an extension of two weeks for filing the proposed final orders, and Respondent objected to the motion. On February 8, 2012, the Administrative Law Judge issued an Order Denying Motion for Extension of Time. On February 8, 2012, Petitioner filed a Motion to Reconsider Motion for Extension of Time, requesting an extension of one business day--or three calendar days--for the filing of the proposed final orders. On February 9, 2012, the Administrative Law Judge issued the Fifth Order Setting Deadline for Filing Proposed Final Orders and Granting Specific Extension for Issuing Final Order. The Order set a filing deadline of February 13 and an issuance deadline of February 27, which represented an extension of three days.

These multiple extensions of time caused unanticipated conflicts with the Administrative Law Judge's preexisting schedule, so it is necessary for the Administrative Law Judge to grant one more specific extension of two weeks for the issuance of this Final Order. This extends the deadline to March 12, 2012.

The court reporter filed the Transcript on February 1, 2012. The witnesses and admitted exhibits are as set forth in the Transcript. The parties filed Proposed Final Orders on February 13, 2012.

FINDINGS OF FACT

1. [REDACTED] was born on [REDACTED] in Dade County. [REDACTED] is presently eligible to receive specialized instruction and related services in exceptional student education (ESE) under the following eligibilities: deaf or hard-of-hearing (DHH), intellectual disability (ID), language impaired, and autism spectrum disorder (ASD). [REDACTED] takes the Florida Alternate Assessment, instead of the general statewide assessment Florida Comprehensive Assessment Test (FCAT), so [REDACTED] will not receive a standard diploma, even if [REDACTED] completes high school.

2. As an infant and toddler, [REDACTED] did not reach typical developmental milestones within the appropriate timeframes. As a baby, [REDACTED] did not cry when hurt or sick. By the time that [REDACTED] was eight months old, [REDACTED] was diagnosed as hard of

hearing. ■■■ did not walk until ■■■ was three and one-half years old. After being uninterested in toys, at age four, ■■■ suddenly showed strong interest in particular toys. ■■■ did not speak, and, besides vocalizing some vowel sounds, ■■■ still does not speak.

3. ■■■ is a difficult test subject. Even audiology tests, which require less cooperation from the test subject than, say, intelligence and achievement tests, are not highly reliable, given ■■■'s inability to focus, among other things. Thus, there is some question as to whether ■■■ may have limited hearing, as when ■■■ mother has demonstrated that the child can hear a loud whistle. An audiology test also revealed some hearing in ■■■ right ear. But ■■■ clearly qualifies for ■■■ DHH eligibility, and, to date, ■■■ has been unable to tolerate hearing aids.

4. Although introduced to American Sign Language (ASL) when ■■■ hearing loss was discovered, ■■■ did not imitate ASL until age four. Until then, and even now, ■■■'s form of manual communication relies heavily on pointing and indicating. By June 2009, ■■■ could imitate about 40 ASL signs, but ■■■ ability to sign spontaneously was much more limited. On ■■■ own initiative, ■■■ could sign only some basic-needs vocabulary-- mostly, "no," "stop," "bathroom," "water," preferred foods,

persons' names, and "absent" (as to a teacher or fellow student).

5. Tests of cognition administered when ██████ was nearly ten years old confirm that ██████ also qualifies for ██████ ID eligibility. A test of complex memory and reasoning abilities placed ██████ in the "very delayed range." A test of intellectual functioning placed ██████ in the "very low range," as ██████ was more than two standard deviations below the mean. A test of visual-motor integration also placed ██████ in the "very low range"

6. Tests of academic achievement administered at the same time placed ██████ in the "low extreme range." As noted in more detail below, at the age of nearly ten, when ██████ was classified in fourth grade, ██████ scored at about the start of first grade in word recognition and reading comprehension and the seventh month of kindergarten in math computation.

7. Again, due to the difficulty of testing ██████ these test scores are, at best, rough approximations of ██████ cognition and achievement. But nothing in the record suggests that more accurate scores are obtainable or, if somehow obtainable, more accurate scores would eliminate ██████'s ID eligibility.

8. In conjunction with ██████ hearing and intellectual deficits, ██████ also suffers from language impairment. This eligibility often accompanies the DHH eligibility, at least during the first few years of school.

9. Additionally, █████ displays neuroatypicalities, which are only partly accounted for by █████ ASD diagnosis. ASD accounts for █████'s low levels of adaptability, inattentiveness, sensory integration difficulties, impaired executive functioning, and better performance in academics requiring rote, mechanical, or procedural abilities. Most of █████'s ASD-qualifying behaviors, especially sensory integration, are at the milder end of the spectrum, though. Somewhat inconsistent with ASD is █████'s typical eagerness to engage with people.

10. █████ has also displayed marked, neuroatypical behavior that is not explained by ASD, including Asperger's Syndrome. These behaviors are described in more detail below, but, in this record, are best described as provocative of a rule-out diagnosis of intermittent explosive disorder.

11. Underlying many of the issues dividing Petitioner and Respondent is Petitioner's belief that, in educational planning, Respondent has unduly emphasized Petitioner's DHH at the expense of her ASD. Respondent has countered with two arguments: 1) █████'s DHH is a threshold issue that any educational plan must address in order to be successful, and 2) the symptoms of █████'s ASD are not so severe as to preempt primary focus on █████'s DHH. Respondent is correct on both counts.

12. Obviously, the interrelationship of █████'s ESE disabilities adds to the challenge of designing and implementing an effective education plan for █████. █████'s multiple disabilities are not unusual. For example, 70 percent of students eligible under ASD are also eligible under ID. Also, DHH students who are not exposed to signing from birth to age three are likely to suffer delays in acquiring language, which are especially difficult to remediate if the child is ID too. Although █████'s DHH was detected relatively early, no one in █████ family was able to sign during this critical period, although now, █████ mother, brother, and sister have some signing ability.

13. In Dade County, DHH students with no other disabilities often must invest over a dozen years' work to achieve a fifth-grade reading level. Partly this is due, in some cases, to the absence of exposure to signing during the first three years of life. However, all children who are DHH from birth cannot hear the language to develop language skills. Regardless whether such students acquire signing skills at an early age, they must engage in an extra level of deciphering to decode the printed word. Because these students cannot learn to read phonetically, they must read by sight, memorizing word by word what they are looking at on the printed page.

14. The cornerstone of all specialized instruction, related services, and accommodations provided an ESE student is

communication. Simpler forms of manual communication, such as pointing and indicating, may suffice for simpler concepts and the social relationships of children at the start of primary school. With time, though, more complex concepts and the more elaborate social relationships of older, more mature students place increasing demands on the child's mode of communication. By focusing on ██████'s DHH in the design and delivery of specialized instruction and related services, Respondent was better able to address ██████'s other eligibilities of ID, language impaired, and ASD.

15. In December 2007, ██████ was assigned to Meka Fong's DHH classroom at Gulfstream Elementary School. DHH classrooms at Gulfstream are divided by grade with only two or three such classrooms in the entire school. ██████ was assigned to Ms. Fong's classroom because ██████ was in second grade, and Ms. Fong's classroom was for the younger DHH students attending Gulfstream.

16. Gulfstream has 32 classrooms with ESE students. Many of the ESE teachers at Gulfstream are trained to teach varying exceptionalities classrooms, which means that students in the same classroom have different ESE eligibilities. However, Ms. Fong had never previously taught an ASD student.

17. Ms. Fong has a master's degree in the education of the deaf and is certified in DHH education. All of the students in

Ms. Fong's class were language impaired and received instruction through a modified curriculum. As used in this Final Order, a modified curriculum is a reduction in the scope and difficulty of the classroom material--typically, if not invariably, below grade level, as specified by the standard-diploma standards--so as to allow the student to access the material.

18. Ms. Fong signed with [REDACTED] Using her native language of Spanish, Ms. Fong spoke, when necessary, with [REDACTED]'s mother, who speaks only Spanish. However, while in Ms. Fong's class, [REDACTED]'s behavior was not a problem. When [REDACTED] was unable to remain seated at [REDACTED] table during class, for instance, Ms. Fong allowed [REDACTED] to walk around the table.

19. The mother was dissatisfied with [REDACTED]'s education in Ms. Fong's classroom due to a perceived lack of academic instruction and sensory-integration activities. When the mother voiced her concerns to Ms. Fong, Ms. Fong assured her that [REDACTED] was merely adapting to [REDACTED] new school and classroom. Because winter break was approaching, the mother did not persist.

20. Shortly before or during winter break, the mother learned of a "total communications" class that was available at Belair Elementary School. A "total communications" class uses multiple communication modalities, including verbal, visual, and signs, for teacher-student communications. The mother asked for [REDACTED] to be reassigned to this class. After 17 school days in

Ms. Fong's class, [REDACTED] was reassigned to the total communications class at Belair.

21. At the time of the reassignment of [REDACTED], on January 14, 2008, [REDACTED]'s mother and Respondent's employees participated in the preparation an individual educational plan (IEP) for [REDACTED]. The January 2008 IEP identifies [REDACTED]'s eligibilities as DHH and language impaired. Relying largely on an IEP from New Jersey, the January 2008 IEP describes [REDACTED]'s present level of performance:

Signed colors, family names, some letters, most numbers thru 10. [REDACTED] signs animals as well as body parts and food. [REDACTED] was also able to label some objects and actions. [REDACTED] is able to do three word signs, and often accompanies with vocalization. [REDACTED] follows simple directions. [REDACTED] also recognizes a few sight words.

22. Describing how [REDACTED]'s disabilities affect [REDACTED] access to the regular curriculum, the January 2008 IEP continues:

Due to [REDACTED]'s hearing loss, [REDACTED] will have difficulty accessing the general education curriculum. [REDACTED] often has difficulty with communication and requires assistance be given in sign and total communication. [REDACTED] requires assistance with reading skills, written language, math computation. [REDACTED] requires assistance with receptive language skills.

23. The sole related service in the January 2008 IEP is occupational therapy (OT), which is provided at 60 minutes per

week. However, the IEP provides a speech/language therapist (SLT) for 60 minutes per week for receptive language skills.

24. The January 2008 IEP states that [REDACTED] does not need the supplementary aid and service of a sign language interpreter. The January 2008 IEP notes that [REDACTED] takes Risperdal® and does not require an extended school year, although [REDACTED] was receiving this service in New Jersey.

25. The January 2008 IEP chooses a separate class (0-40 percent of time with nondisabled students) due to [REDACTED] distractibility, time required to master educational objectives, social skills, and other factors. The IEP placed [REDACTED] with ESE students in all academics, including science, social studies, art, music, and physical education, leaving [REDACTED] with regular-education students for only lunch, field trips, recess, and assemblies.

26. As to educational services in general, the January 2008 IEP states:

[REDACTED] requires specialized instruction in all areas of instruction, to be delivered in a smaller class setting, with a lower student teacher ratio. [REDACTED] also requires a teacher who uses [ASL]. [REDACTED] would benefit from a total communication class.

27. The January 2008 IEP concludes by placing [REDACTED] in a "total communications" classroom at Belair. [REDACTED]'s new teacher was Elisa Rodriguez, who has an autism endorsement on her

teacher certificate. She is also competent in sign language. Her classroom aide knew basic sign language, but lacked fluency and vocabulary.

28. ■■■ attended Ms. Rodriguez's class for the remainder of the 2007-08 school year and the following school year. During that time, Ms. Rodriguez's class consisted of four students. All of the students had ID eligibilities, were receiving a modified curriculum, and were subject to the Florida Alternate Assessment, rather than standard state assessment. Only one child was not DHH. One student functioned at a higher level academically than ■■■; the other two students functioned at lower levels. But, when compared to other DHH students not otherwise disabled, ■■■ was at a lower level of intellectual functioning.

29. ■■■ performed well in Ms. Rodriguez's class, and ■■■'s mother was generally pleased with this teacher. Teaching ■■■ and ■■■ classmates, Ms. Rodriguez emphasized prompting, redirection, and repetition. Because most of the class bore ASD eligibilities, Ms. Rodriguez used visual schedules, so each student could anticipate new activities; social stories, so each student could learn appropriate social behavior in typical social settings; and sensory devices, so each student could address his or her over- or under-stimulation.

30. Ms. Rodriguez did not find ██████ to possess particularly strong ASD characteristics. ██████ preferred to use the regular schedule. More importantly, ██████'s use of sensory devices was not driven by ██████ ASD. The sensory devices included chewy necklaces, squishy balls, ball pits, weighted blankets, and various items with different textures. ██████ initially ignored these items, but began using them only after seeing *** classmates use them.

31. ██████'s favorite device was the ball pit, into which ██████ could walk and throw the balls. ██████ next favorite device was a tricycle, which ██████ rode around the classroom. ██████ third favorite device was a large exercise ball, which ██████ wrapped ██████ body around as Ms. Rodriguez stroked ██████ back. But it seemed to Ms. Rodriguez that ██████ used these and other devices mostly to play with them, not to dampen or intensify ██████ sensory inputs.

32. ██████ was also able to function independently in Ms. Rodriguez's class. ██████ walked from area to area with the group and could follow directions. ██████ fed ██████ and cleaned up after eating. In general, ██████ followed the structure and routine of the classroom quite well.

33. Despite ██████ level of independent functioning, ██████ displayed numerous challenging behaviors, but they were not typical of ASD. These behaviors, which worsened during the first few months of 2009, included scratching a bus aide,

spitting in someone's hair, hitting the bus driver, retreating to the bathroom and masturbating or digitally removing stool from ■■■ rectum, unconsciously chewing the cuticle off ■■■ fingers, and hysterical, uncontrollable laughter or crying.

34. A number of these behaviors, such as the hysterical laughter or crying, caused Ms. Rodriguez to suggest to ■■■'s mother that ■■■ obtain psychiatric help for ■■■. Episodes of hysterical laughter or crying did not appear volitional and were unrelated to the child's activity immediately preceding the episode. ■■■ might be happily engaged in an activity, suddenly display hysterical laughter or crying for a few seconds, and then return to ■■■ activity. As Ms. Rodriguez noted, this behavior did not appear to serve a purpose, such as seeking attention or avoiding a nonpreferred task.

35. Another behavior that did not seem volitional to Ms. Rodriguez was spitting. Without warning, ■■■ would suddenly spit onto the floor, again without provocation or purpose. The spitting, which took place over the entire year and one-half that Ms. Rodriguez taught ■■■, seemed just to happen and served no apparent function.

36. Another pair of inexplicable behaviors were the chewing of cuticles, noted above, and snapping of hair, sometimes so hard as to break strands of hair. Somewhat related was ■■■'s habit of grabbing scissors and snipping off locks of

■■ hair, although, if Ms. Rodriguez could see from ■■ manner of holding the scissors that ■■ was about to cut ■■ hair, Ms. Rodriguez could stop ■■ with a signed command, "no," which ■■ would repeat by sign as ■■ stopped the activity.

37. These puzzling behaviors came and went for no apparent reason. For the year and one-half that Ms. Rodriguez taught ■■, there was no change in the frequency or intensity of these behaviors.

38. But the puzzling behaviors did not prevent ■■ from progressing academically while in Ms. Rodriguez's class. In reading, ■■ used Reading Milestones[®], which is a series for language- or hearing-impaired students. Reading Milestones[®] contains multiple levels with ten books per level. Each book contains 6-9 stories of about six pages each. Each page is a picture on the top and text at the bottom. The first book has one sentence of text. Later books have two sentences. The final three or four books in Level One have three or four sentences under the picture.

39. By patiently working with ■■ one word at a time, often having to teach ■■ the sign for an unfamiliar word, Ms. Rodriguez guided ■■, after one and one-half school years, from the first or second book of Level One, where ■■ started with Ms. Rodriguez, to the start of the third book of Level One.

Even at this pace, ██████'s retention of vocabulary was sketchy and required some prompting for words that ██████ had forgotten.

40. For math, over the same period of time, Ms. Rodriguez covered addition and subtraction with ██████, but had to use manipulatives, like popsicle sticks or colored construction paper, because ██████ could not grasp the concepts. Over one and one-half years, ██████ could add using manipulatives, with some prompting and cueing, but could not subtract very well.

41. Neither reading nor math lent itself to testing--a concept that ██████ did not understand. Using repetition and, for math, manipulatives, Ms. Rodriguez "tested" ██████ as best ██████ could, as testing was contemplated in ██████ modified curriculum.

42. Ms. Rodriguez taught science and social studies with a similar focus on ██████'s strengths and weaknesses. For example, in science, Ms. Rodriguez stressed hands-on activities, such as covering the life cycle of a butterfly. While covering butterflies, Ms. Rodriguez would incorporate appropriate reading and math material. But ██████ never was able to get to the level of writing a one-page essay on the life of a butterfly; instead, she focused on basic concrete elements, such as identifying a butterfly egg, a leaf, or a butterfly, or identifying a butterfly eating or sleeping. Without paperwork or lectures for ██████ and ██████ classmates, Ms. Rodriguez taught science with lots of repetition, prompting, visuals, and hands-on activities.

43. As described by Ms. Rodriguez, the prominent academic benefit for █████ in much of this instruction in reading, math, science, and social studies was to be able sit down beside a peer with whom █████ could communicate by signing and, while doing so, to focus, follow directions, and behave appropriately. These achievements are important for █████, whether the activity is reading or carving pumpkins, because they help █████ achieve long-range, post-school goals that, while within reach, will require work to achieve.

44. During the summer of 2009, Respondent terminated Ms. Rodriguez's class at Belair. Respondent's intent had been to enroll at least twice the number of students served by the class, but, for whatever reason, the hoped-for enrollment had never been realized.

45. While █████ still was in Ms. Rodriguez's class, on January 14, 2009, Respondent and Petitioner prepared another IEP. As with all IEP meetings, Respondent provided the mother with notices in Spanish and a Spanish interpreter for the IEP meeting itself.

46. For the January 2009 IEP, █████'s two eligibilities remain DHH and language impaired. Among strengths, the January 2009 IEP claims that █████ could spontaneously use 50-75 words. With greater accuracy, the January 2009 IEP states that █████ can identify, write, and sign numbers from 1-20, count from 1-20,

tell time by the hour and half-hour, and identify, write, and sign the letters of the alphabet. However, the IEP warns:

Due to a severe to profound hearing loss and behaviors exhibited due to autism spectrum characteristics, [REDACTED] has great difficulty with communication skills and academic skills targeting all areas . . . [REDACTED] has great difficulties with receptive and expressive language skills, as well as social functioning skills.

47. The January 2009 IEP adds a sign language interpreter at an unstated frequency and continues the OT and SLT at the former frequencies of 60 minutes per week. The IEP notes that [REDACTED]'s medicine has changed to Abilify[®]. The IEP continues educating [REDACTED] in a separate class with 0-40 percent nondisabled students. The IEP justifies the placement after considering the need for "all areas of instruction to be presented in total communication (voice and sign), delivery in a smaller class setting, low pupil to teacher ratio with the use of visual daily schedules."

48. The January 2009 IEP contains several goals:

1. [U]se multiple strategies to develop grade appropriate vocabulary in total communication using ESOL [English for Speakers of Other Languages] strategies every nine weeks.

2. [E]xpress needs and wants as well as functional vocabulary as demonstrated by making choices, requesting and answering questions using total communication . . . using ESOL strategies every nine weeks.

3. [W]ill increase comprehension of simple basic "wh" questions presented in a signed story using total communication . . . and using ESOL strategies every nine weeks.
4. [W]ill add and subtract numbers without regrouping in total communication using ESOL strategies every nine weeks.
5. [W]ill request attention and interact appropriately with peers and adults while involved in academic tasks, turn-taking activities and throughout social interaction opportunities using total comm[unication] and ESOL strategies every nine weeks.
6. [W]ill copy (write) words and numbers correctly in form and direction from board and independently using a variety of writing instruments and ESOL strategies every nine weeks.
7. [W]ill tell the hour, half hour and minute intervals in total communication and using ESOL strategies every nine weeks.

49. The January 2009 IEP notes that [REDACTED] will participate in the Florida Alternate Assessment, rather than the state standard assessment. The IEP also provides extended school year services for the summer of 2009.

50. The abrupt termination of Ms. Rodriguez's class, coupled with Respondent's decision to return [REDACTED] to Ms. Fong's class at Gulfstream, led [REDACTED]'s mother to keep the child at home at the start of the 2009-10 school year. Respondent prepared an interim IEP on September 2, 2009. The September 2009 interim IEP assigns [REDACTED] to the DHH class of Ms. Fong at Gulfstream. Now assisted by a parent advocate, the mother and her advocate

argued that Ms. Fong had failed to address ██████'s behavioral and sensory issues, which Ms. Rodriguez, they claimed, had addressed. The mother and advocate also complained that Respondent had not reevaluated ██████. In response to the latter complaint, Respondent's employees offered to expedite a reevaluation and conduct a functional assessment of behavior (FAB) to determine if ██████ needed a behavioral intervention plan (BIP).

51. The mother eventually agreed to allow ██████ to return to Ms. Fong's classroom. Ms. Fong's class consisted generally of nine students and one classroom aide. All but one of the students was on modified curriculum. Because the students worked on different grade levels, Ms. Fong addressed each student individually. Although Ms. Fong did not attend special-area classes with her students, a sign-language interpreter did.

52. The transition from Ms. Rodriguez to Ms. Fong appears to have been smooth. For instance, by June 2010, Ms. Fong had guided ██████ through four more books of Level One of Reading Master[®], which documents the addition of 25 words to ██████ vocabulary. In September 2009, ██████ could sign spontaneously about 25 words, but ██████ steadily added to this vocabulary during the 2009-10 school year. In math, ██████ progressed from manipulatives to tallies, which are harder to use and one step short of using fingers for addition and subtraction.

53. In Ms. Fong's class, ██████'s use of sensory devices lessened. ██████ would sometimes ask for the weighted blanket, a special seat cushion, or a weighted collar, and Ms. Fong would always let ██████ use the requested item. But, after a few moments, ██████ would return the device to Ms. Fong.

54. Focusing mainly on ██████'s DHH eligibility, Ms. Fong consulted with Respondent's ASD specialists, as needed. During the first semester, Ms. Fong did not consult with any behavioral specialists because there was no need to do so. In Ms. Rodriguez's class and during the first semester of the 2009-10 school year, ██████ had sometimes displayed ██████ middle finger, spit, kicked and pinched the other students, and engaged in inappropriate sexual behavior in the bathroom, as noted above. During the first semester of the 2009-10 school year, ██████ displayed these behaviors at a manageable rate with the frequency ranging from once or twice weekly to once every two weeks, except for the inappropriate bathroom behavior, which was almost daily. Adding to the difficulty of managing the bathroom behavior was the need to allow ██████ to use the restroom liberally during the day: during the first semester, even though Ms. Fong allowed ██████ to go to the bathroom during class as often as five times daily, ██████ still had several accidents in which ██████ wet ██████.

55. For the most part, though, redirection and counseling managed [REDACTED]'s problem behaviors. If [REDACTED] displayed [REDACTED] middle finger to Ms. Fong, the teacher would wave back and thus get [REDACTED] to wave. When [REDACTED] kicked a fellow student, Ms. Fong talked to [REDACTED] about the importance of making and keeping friends. If [REDACTED] wet herself, Ms. Fong ensured that [REDACTED] changed into dry, clean clothes.

56. Unfortunately, [REDACTED]'s behavior deteriorated immediately after [REDACTED] return to school following winter break. The frequency and intensity of hitting, spitting, hair pulling, and throwing items increased significantly. [REDACTED] also began to rip up [REDACTED] school papers--something [REDACTED] had done only once in the first semester. The frequency and duration of independent work decreased, as the frequency of disrobing and inappropriate touching of [REDACTED] increased. Ms. Fong began to write up disciplinary reports when [REDACTED] directed potentially injurious behavior toward [REDACTED] classmates.

57. The record provides no basis to assign a cause for this deterioration in behavior. Respondent suggests that the child's behavior deteriorated because the mother failed to administer the child's medicine properly and because of the disruptive influence of parent advocate, evidently during a single school observation of one hour in January 2010. The mother and advocate attribute the deterioration of behavior to

an incident involving a bus aide, who was found to have spit water upon [REDACTED], and, more generally, to the failure of Ms. Fong to address [REDACTED]'s sensory needs arising out of [REDACTED] ASD eligibility.

58. None of these explanations is persuasive. The incident with the bus aide occurred in June 2010--long after the deterioration in behavior had taken place and ended. The involvement of the parent advocate does not appear to have been extensive. No evidence establishes that the mother failed to administer prescribed medicine to her [REDACTED]. And little evidence supports the claim that [REDACTED] needed to use sensory devices.

59. As noted below, more likely, [REDACTED]'s behaviors are due to the condition for which Ms. Rodriguez recommended that the mother take the child to a psychiatrist--perhaps the rule-out diagnosis of intermittent explosive disorder, as offered by one of Petitioner's experts--and [REDACTED]'s cognitive impairment.

60. On January 7, 2010, Ms. Fong administered a CIBS-R test, which is also known as the Brigance test. This is an assessment given to students in first- through sixth-grade, which measures the student's present level of performance in reading, reading comprehension, math, written expression, and listening comprehension. The Brigance test produces raw scores and grade equivalents.

61. Midway through fourth grade, █████ scored 13 raw points on word recognition, one raw point on computational skills, and four raw points on spelling; for the rest of the tests, █████ answered no questions correctly. █████ grade equivalencies were 1.0 for word recognition, spelling, and sentence-writing, and less than 1.0 for reading vocabulary, comprehending passages, and problem solving. For computational skills, █████'s grade equivalence was less than 1.1, and, for learning comprehension, █████ grade equivalent was pre-kindergarten.

62. Respondent prepared an IEP on January 20, 2010. The January 2010 IEP identifies █████'s present levels of performance as follows:

[████] is able to identify upper and lower case letters of the alphabet independently. █████ is able to sign and recognize printed first names of all of █████ classmates. █████ is able to identify familiar characters or objects pictured in signed stories. █████ is able to write on regular lined paper with adaptations such as highlighting. [████] is able to rote count numbers one through twenty. █████ is able to cut with regular scissors with adaptations. [████] is able to color with regular sized crayons with signed cues for accuracy. █████ enjoys being a classroom helper.

63. The January 2010 IEP reports the scores from the Brigance test administered by Ms. Fong on January 7, 2010. The January 2010 IEP states that █████'s disabilities affect █████ progress "in the general education curriculum":

Due to [REDACTED]'s severe hearing loss and language delay, [REDACTED] requires assistance with all areas of instruction. [REDACTED] has difficulty writing sentences. [REDACTED] needs assistance with letter formation and spacing. [REDACTED] requires verbal cues to initiate and complete tasks. [REDACTED] requires prompts to follow class room tasks. [REDACTED] has difficulty interacting appropriately with both peers and adults. [REDACTED] continues to need support with basic addition and subtraction. [REDACTED] needs assistance with communicating [REDACTED] wants and needs.

64. The IEP team nonetheless replaced the goals of the January 2009 IEP with new goals that [REDACTED]:

1. [W]ill locate, interpret and use sign language to answer reading questions, using ESOL strategies with 75% accuracy as measured by student work product and graded work samples.
2. [W]ill alphabetize words by the first letter using sign language and ESOL strategies with 75% accuracy as measured by student work product and graded work samples.
3. [W]ill select vocabulary, symbols or signs to express desired information and ideas in writing using ESOL strategies with 75% accuracy as measured by student work product and graded work samples.
4. [W]ill write a complete simple sentence using noun/verb agreement using ESOL strategies with 75% accuracy as measured by student work product and graded work samples.
5. [W]ill add and subtract numbers without regrouping using sign language with 75% accuracy as measured by student work product and graded work samples.

6. [W]ill solve simple patterns [and] designs with the use of signs, 75% accuracy as measured by student work product and graded work samples.

7. [W]ill express desire, feelings or physical needs in sign language with 75% accuracy as measured by student work product and graded work samples.

8. [W]ill use legible handwriting with 75% accuracy as measured by student work product and graded work samples.

9. [W]ill demonstrate conduct that complies with social and environmental expectations in 3 of 5 opportunities as measured by interview with student and observations.

10. [W]ill work on a given task for ten minutes without distracting others given three out of five opportunities based on teacher checklist.

65. The mother had been unable to attend the January 2010 IEP meeting, although she had agreed to the IEP team's proceeding in [REDACTED] absence. Respondent scheduled another IEP meeting, so the mother could participate.

66. On February 18, 2010, the IEP team, including the mother and advocate, met to discuss [REDACTED]'s educational plan. Discussions were extensive, and the IEP team had to meet on four different days over the next month, before completing a new IEP on March 17, 2010. This IEP will be identified as the February 2010 IEP.

67. At the February 18 meeting, Respondent presented to the mother and advocate the results of evaluations its employees

had recently completed. On December 16, 2009, two of Respondent's school psychologists, Naylet LaRochelle and Zenia Talavera, had completed a psycho-educational evaluation of [REDACTED]. Ms. LaRochelle worked mostly with students with autism, and Ms. Talavera worked mostly with students who are DHH.

68. As noted above, a nonverbal intelligence test suggested that [REDACTED] was in the "very delayed range." [REDACTED] tested in the "very low range" on a general intelligence test based on abstract concepts, including conceptualization, inductive reasoning, and visualization. Scores revealed relative strengths in visual spatial abilities combined with inductive and deductive mental manipulation and relative weaknesses in rule generation to develop a hypothesis and tasks requiring sequential thinking and analysis of cause and effect.

69. Tests of [REDACTED]'s academic achievement, which was generally in the "lower extreme range," revealed grade-equivalents of K.10 in letter/word recognition, 1.2 in reading comprehension, and K.7 in math computation. A test of early reading ability for DHH students reported that [REDACTED] was in the "poor range."

70. Based on ratings provided by the mother and Ms. Fong, the school psychologists noted that these reporters saw about the same difficulties, although the mother reported a higher intensity in behaviors. Both sources reported problems with

aggression and, in general, socializing, communication, and stereotypical behaviors. Based on the mother's input, the school psychologists found a "very likely probability of autism"; based on Ms. Fong's input, they found a "possibl[e] probability of autism." The school psychologists concluded that ██████'s behavior was consistent with ASD.

71. The psycho-educational report concludes with a series of recommendations for the mother and IEP team. The classroom routine should be consistent and predictable, offer visual cues, and modify language to facilitate comprehension and appropriate behavior. If pre-taught new concepts and content vocabulary, ██████ will enjoy more success in group instruction. To aid in retention, the teacher should post permanent visual reminders of instructional concepts. Before changing topics, the teacher should check ██████'s understanding, preferably by asking open-ended questions. To improve socialization skills, the teacher should support ██████'s engagement in group activities with visual cues, teach ██████ to associate different facial features with emotions, teach specific skills to improve social skills in activities of daily living, and rehearse the skills needed for appropriate social interaction. To improve independent functioning, the teacher should condition preferred activity on the completion of an activity such as dressing, break down

complex skills into small pieces, and teach new skills in relaxed settings.

72. An occupational therapist attended two of the four February and March 2010 IEP meetings to report on [REDACTED] evaluation, which had begun after receiving a referral in September 2009. The therapist advised the IEP team to continue the 60 minutes weekly of OT for fine motor skills, which [REDACTED] needed for forming letters, visual motor, and copying. The therapist stated that [REDACTED] needed no OT for gross motor skills.

73. Based on regular observations of [REDACTED] at Belair and Gulfstream, the occupational therapist found that [REDACTED]'s tolerance of a variety of sensory stimulation was functional. During OT sessions at Gulfstream, the therapist had offered sensory devices to [REDACTED], but [REDACTED] had barely used them.

74. The February 2010 IEP identifies [REDACTED]'s ESE eligibilities as DHH, ID, and language impaired. Acknowledging the academic achievement scores noted above, the February 2010 IEP describes [REDACTED]'s present level of performance as:

[REDACTED] is an active child who is able to read some simple words, match some words with their pictures, follow simple written directions, identify numbers 1-20, identify a picture based on meaning or use, identify all upper and lower case letters of the alphabet from memory, print and sign the first names of [REDACTED] classmates, identify familiar characters or objects pictured in signed stores, write on regular lined paper with adaptations and assistance

(highlighting), rote count one to twenty, perform basic addition of single digits with manipulatives, and color with crayons with signed cues for accuracy.

She can play a game with assistance outside (ball), sit at [REDACTED] desk, complete a writing activity on a dry erase marker board for about 5 minutes. [REDACTED] demonstrates an interest in learning signed names of peers and adults, and remembers the names of those individuals. [REDACTED] has demonstrated communicating using sign language with peers. [REDACTED] can sign "stop," "good girl," and "sorry" after [REDACTED] has exhibited an inappropriate behavior at school (kicking, spitting, pulling hair). [REDACTED] can feed [REDACTED], dress and undress [REDACTED] independently. [REDACTED] can wash [REDACTED] hands, use a pencil, follow one step directions, and stay on task for 5 minutes on a preferred task. Per parent, *** can set the table members, pick up dishes, enjoys swimming, and can sweep the floor with a broom. [REDACTED] uses sign language as [REDACTED] primary mode of communication. Per parent [REDACTED] can count up to 50 and uses [ASL] to communicate with family. Per parent and teacher, [REDACTED] demonstrates basic expressive and receptive sign language, can write a simple sentence and a more complicated sentence with assistance, and knows all colors and shapes.

75. The February 2010 IEP describes how [REDACTED]'s disabilities affect [REDACTED] progress in the general education curriculum as follows:

[REDACTED]'s involvement and progress in the general education curriculum is affected by [REDACTED] bilateral hearing loss . . . and deficits in the following areas: processing, cognitive, expressive and receptive language, and social skills. [REDACTED] is still in the process of acquiring the English language. [REDACTED] exhibits

distractibility, impulsivity, poor eye contact, physical aggression (kicking, spitting, pinching, throwing objects), inappropriate behaviors (removing clothes, wetting/toileting [illegible], and difficulty with transitions and changes in routines. [REDACTED] has difficulty with all academic areas including reading, writing, and mathematics.

[REDACTED] needs continuous assistance completing classroom assignments, review and repetition for retention and assessments, and continuous cues and prompting throughout the entire school day for redirection, participation in large and small group classroom activities, communicating (wants, needs, ideas, emotions), and lack of impulse control. [REDACTED] needs direct and specialized instruction in writing letters and words, adding and subtracting single digit numbers without regrouping independently, solving one-step math application problems (patterns, time, mostly), impulse control, on-task behavior, following a picture schedule, participating in social and/or physical needs, answering comprehension questions, alphabetizing, and learning and using new vocabulary. Per parent, [REDACTED] is wetting [REDACTED] bed at home and continues to need support in areas of sensory needs throughout the school day, to optimize performance (e.g., regularly scheduled opportunities to address movement needs).

76. For supplementary aids and services, the February 2010 IEP provides weekly ASD and ID consultation, twice weekly SLT collaboration, daily paraprofessional assistance, and monthly DHH consultation. Although it is not clear from the IEP, daily paraprofessional assistance meant a 1:1 aide. The February 2010 IEP also provides ASD and ID training, once each per nine weeks,

for the ESE teacher. For related services, the February 2010 IEP provides weekly DHH counseling, a visual schedule, and OT for 60 minutes weekly.

77. The February 2010 IEP notes that [REDACTED] is taking Risperdal® and is on a gluten- and casein-free diet. The IEP adds that [REDACTED] is not to receive extended school year services.

78. Placing [REDACTED] in a separate class, so that [REDACTED] would be educated with typical peers only 0-40 percent of the time, the February 2010 IEP justifies this restrictive placement based on a number of factors, including [REDACTED]'s communication and sensory needs. Finding that [REDACTED] requires specialized instruction in all areas except physical education, the IEP notes [REDACTED]'s need for:

Direct and specialized instruction for the majority of the learning activities, lower pupil to teacher ratio, assistance with language and communication, instruction delivered with the usage of sign language and visual cues ([REDACTED]'s primary mode of communication), continuous supervision to ensure physical safety, individualized behavior plan throughout the school day.

79. Among the accommodations and modifications, the February 2010 IEP lists notifying [REDACTED] a few minutes before a transition, allowing [REDACTED] a chance to move during extended or stressful activities, breaking long assignments into several pieces, cueing expected behavior and ignoring bad behaviors that are not seriously disruptive, presenting information by

multisensory means, shortening assignments based on mastery of key concepts, and supervising [REDACTED] during structured activities to ensure [REDACTED] physical safety. The IEP incorporates the recommendations of the psycho-educational report and adds many more accommodations and modifications to the presentation of [REDACTED]'s modified curriculum. The February 2010 IEP states that [REDACTED] will be assessed by the Florida Alternate Assessment.

80. The February 2010 IEP contains 13 goals:

1. In language arts, [REDACTED], when presented with a written assignment, will use legible handwriting (including size, shape, spacing) with 75% accuracy as measured by student work product, graded work samples, and teacher made assessments.
2. In a variety of school settings, [REDACTED] will refrain from exhibiting physical aggression toward staff and peers, in 3 out of 5 occurrences, as measured by teacher observations.
3. In all classes, [REDACTED] will demonstrate conduct that complies with social and environmental expectations, after given direct explanation prior to activity, in 3 out of 5 opportunities as measured by teacher observation and daily behavior checklist.
4. In all classes, [REDACTED] will express desire, feelings or physical needs in sign language, with 75% accuracy as measured by student interview and observation.
5. Given sensory strategies throughout the school day across all educational settings, [REDACTED] will complete a given task without exhibiting problematic behavior (hitting,

wetting [REDACTED], spitting) for 3 out of 5 opportunities.

6. In reading class [REDACTED] will locate, interpret and use gestures, sign language, and picture cues to answer reading questions using ESOL strategies with 75% accuracy as measured by teacher tests, student work product and graded work samples.

7. In math class, when presented with single digit number problems, [REDACTED] will add and subtract numbers without regrouping, using manipulatives and picture cues with 75% accuracy as measured by teacher assessments, student work product, and graded work samples.

8. During the school day, [REDACTED] will exhibit conforming behaviors, by refraining from removing [REDACTED] clothing spontaneously and decrease wetting [REDACTED] clothes in 5 out of 7 occurrences, as measured by teacher observation.

9. Throughout the school day, [REDACTED] will exhibit positive appropriate peer interactions (classroom activity or game) for 3 out of 5 opportunities, as measured by daily behavior checklist, teacher observation and interview with student.

10. In reading class [REDACTED] will alphabetize words by the first letter using sign language and ESOL strategies with 75% accuracy as measured by teacher tests, student work product, and graded work samples.

11. In math class, [REDACTED] will solve one-step math application problems involving patterns, time, and money, with manipulatives and picture cues, with 75% accuracy as measured by teacher made assessments, student work product and graded work samples.

12. In all classes, [REDACTED] will work on a non-preferred given task for ten minutes, without distracting peers, in 3 out of 5 opportunities based on teacher observation.

13. In language arts, [REDACTED] will select vocabulary, symbols or signs to express desired info and ideas in writing using ESOL strategies with 75% accuracy as measured by teacher tests, student work product and graded work samples.

81. A few months earlier, Respondent's employees had attempted to initiate a FAB, as requested by the mother, but had been unable to schedule meetings with the mother and the advocate due to medical issues. The mother told the IEP team that [REDACTED]'s behavior had been deteriorating for several weeks, as [REDACTED] had increasingly been engaging in self-mutilating behavior, such as ripping off [REDACTED] nails.

82. Concerned about [REDACTED] child's deteriorating behavior and assisted by the advocate, the mother participated fully in the IEP meetings that culminated in the preparation of the February 2010 IEP. At the initial IEP meeting, for instance, Respondent's employees stated that [REDACTED] no longer met the criteria for the language-impaired program, but, at the insistence of the mother and advocate, the IEP team eventually added this eligibility to the February 2010 IEP. At the same meeting, one of Respondent's employees stated that [REDACTED] did not meet the ASD-eligibility criteria, but the other employees, who were more familiar with [REDACTED], disagreed. The OT made an oral

presentation, but had no report, notes, or data, so [REDACTED] was rescheduled for a later IEP team meeting.

83. During an IEP meeting, Ms. Fong admitted that she used the Reading Milestones® program, which Respondent uses for DHH students, on Mondays, Wednesdays, and Fridays and, on the remaining days, Ms. Fong used a regular-education reading program. However, for math, Ms. Fong always taught [REDACTED] using first-grade materials.

84. Respondent's employees considered closely the ASD-eligibility issue and, in particular, the nature of [REDACTED]'s ASD. On March 12, the IEP team heard again from the occupational therapist, who brought with [REDACTED] a summary report. More importantly, the IEP team discussed in detail [REDACTED]'s present levels of performance and specific goals.

85. The final IEP team meeting on the February 2010 IEP took place on March 17. In this meeting, both sides contended for what they thought was appropriate for [REDACTED] and compromised with each other in several respects. After refusing the request of the mother to record the IEP meeting, the IEP team considered the draft IEP, which had been faxed to the parent advocate the preceding day. It was at this meeting that the IEP team agreed to restore the eligibility of language impaired. The parent advocate asked for the inclusion of ASL, but the IEP team rejected the request. After agreeing to a trial of some sensory

devices, the IEP team deferred to the team working on the BIP the ultimate decision on the use of sensory devices.

86. At the end of the March 17 meeting, the IEP team discussed several settings at which ██████'s educational program could be implemented, including the ASD program at South Dade Middle School, and decided that the LRE at which ██████ could receive FAPE was the DHH program at Gulfstream. From the first meeting, Respondent's employees had insisted that ██████ could obtain an appropriate education at Gulfstream. In addition to the DHH classroom, they offered the ASD classroom and the ID classroom; however, the teachers and classroom aides in these classrooms did not sign, although an itinerant DHH teacher would be available for all but two and one-half hours in the ASD classroom.

87. At some prior to the March 17 IEP team meeting, the mother asked for her child to be removed from Ms. Fong's classroom due to safety concerns. Respondent transferred ██████ to Ms. Sookram's autism classroom at Gulfstream. This class had seven students who were either autistic or ID, but none of them signed, nor did Ms. Sookram. Ms. Sookram taught ██████ using schoolwork provided by Ms. Fong, but, after two weeks, Respondent returned ██████ to Ms. Fong's classroom.

88. Having started work in March on the FAB, a multidisciplinary team (MDT) met on April 8, 2010, with the

mother to discuss the FAB and a BIP and, perhaps in the capacity of an IEP team, to prepare an interim IEP. The mother reported that [REDACTED] had seen a "drastic improvement" in [REDACTED]'s behavior at home. The teacher reported that [REDACTED] had seen "some improvement" at school.

89. The April 8 FAB includes two hypotheses statements. They are: when peers and adults are in close proximity, [REDACTED] will hit, spit, and make inappropriate gestures to gain attention from peers and adults; and, when tasks are near [REDACTED] frustration tolerance, [REDACTED] will demonstrate physical aggression and sensory stimulation to escape frustration and gain sensory feedback.

90. Relatively few of [REDACTED]'s problem behaviors serve the function of attracting attention. Some of [REDACTED] problem behaviors serve the function of escaping frustration, but very little evidence supports the claim that [REDACTED] requires the use of sensory devices due to [REDACTED] ASD. The professionals with far more familiarity with [REDACTED]--primarily Ms. Rodriguez and the occupational therapist--have found that [REDACTED] does not have much need to use sensory equipment for sensory stimulation or sensory modulation.

91. It is difficult to understand why the FAB would not build upon the sound behavioral analysis of Respondent's employees just a couple of months earlier. On February 17,

2010, IEP team members, including Ms. Fong and at least one school psychologist, prepared an ID Eligibility Team Analysis of Data that states:

[REDACTED]'s behaviors are commensurate with cognitive levels, though presence of atypical behaviors are evident of comorbid conditions/disabilities.

Respondent Exhibit 3, p. 123.

92. On April 10, 2010, the MDT created a BIP. Based on what was known of the sources of [REDACTED]'s behavior, the BIP provides a reasonable set of strategies for helping educators and therapists manage the child's problem behaviors and help her access her curriculum.

93. The proactive interventions are "environmental adjustments," which are useful for a wide range of problem behaviors. Although these interventions are "to make the problem behavior unnecessary"--which may prove impossible for those behaviors that are a function of low cognition or a psychiatric illness--this purpose does not deprive the environmental adjustments of their potential effectiveness. The specific proactive interventions include establishing a teacher/parent communication system, helping [REDACTED] with making choices, and providing guidance prior to independent work--all of which are very useful for managing most of [REDACTED]'s behaviors. For instance, the help with choices involves giving [REDACTED] breaks

within which to make choices, so as to provide [REDACTED] with a greater sense of control.

94. The educative interventions are to teach "behaviors" or "skills" to "replace" the "problem behavior" by "meet[ing] the same function." As with the proactive interventions, the purpose of replacing functions is misplaced for some of [REDACTED]'s behaviors, but teaching replacement behaviors or skills for many problem behaviors is important and useful. Here, the specific educative interventions include providing chances to practice communication and social skills, breaking down and concretizing steps for success, and teaching alternative means of obtaining sensory feedback.

95. The functional interventions are to manage "consequences . . . to insure the student receives reinforcers for positive, not problem behavior." These interventions are to use preferred activities as reinforcers and use positive peer interactions as reinforcers. Again, for most of [REDACTED]'s problem behaviors, these interventions will be effective.

96. The BIP also provides for the use of Respondent-approved safe crisis management procedures, meaning some form of physical restraint, when necessary. The BIP calls for daily monitoring.

97. The IEP team updated the February 2010 IEP with a interim IEP dated September 10, 2010. At the meeting, the

mother reported that [REDACTED]'s home behavior had regressed--i.e., hitting, kicking, spitting, and wetting [REDACTED] bed--just three days after returning to Ms. Fong's classroom at the start of the 2010-11 school year. The mother identifies the common denominator as Ms. Fong, but it may be the transition back to school after long breaks.

98. At the September 10 meeting, the IEP team agreed to break down daily reports to show the time or location of problem behaviors--e.g., the bus, lunch, morning, or afternoon. The IEP team confirmed that Ms. Fong had been receiving the assistance of ASD and ID teachers. The mother questioned the justification of promoting [REDACTED] to the fifth grade and Ms. Fong's use of general-education reading curriculum (Unique Learning[®]) two days weekly and specialized reading curriculum (Reading Milestones[®]) three days weekly. The mother questioned more generally the qualifications of Ms. Fong to teach [REDACTED]. Declining to discuss this issue, the IEP team reviewed the BIP, and the mother agreed to its continuation.

99. Shortly after the September 10 IEP meeting, the Gulfstream principal added another DHH class due to the large enrollment in Ms. Fong's class. The new class was composed of seven fifth-grade students from Ms. Fong's class. The principal reassigned [REDACTED] to the new class, which was taught by Darlene

Crum. Ms. Crum has taught 28 years and is qualified to teach a DHH class; of course, [REDACTED] signs.

100. Prior to assuming responsibility for her own class, Ms. Crum observed Ms. Fong about ten times before receiving students in early October. Ms. Crum also received copies of Ms. Fong's lesson plans. Ms. Fong explained to Ms. Crum how a visual schedule worked and told [REDACTED] that [REDACTED] sometimes used a weighted blanket. Ms. Crum also read the February 2010 IEP, so she could implement it.

101. Ms. Crum does not speak Spanish, so her communications with the mother were restricted to occasions when she could find an interpreter. On the three or four occasions on which [REDACTED]'s behavior hurt another child, Ms. Crum prepared disciplinary reports and informed the mother. While [REDACTED] was in Ms. Crum's class, Ms. Crum removed [REDACTED] for disciplinary reasons only three or four times.

102. While in Ms. Crum's class, [REDACTED] made little use of the sensory devices that were available to [REDACTED]. [REDACTED] put on the weighted blanket only a couple of times. Many times, [REDACTED] pushed aside the visual schedule; [REDACTED] classmates did not use one, and it appeared that [REDACTED] did want to stand out by using one. [REDACTED] used the slant board. During the first semester, [REDACTED] laid down on the mat two or three times weekly; during the second semester, [REDACTED] laid down on it only once.

103. As for academics, █████ required extra time and lots of repetition to absorb █████ instruction. For instance, █████ would learn new vocabulary, but, unlike █████ DHH classmates, █████ would forget it three days later. Ms. Crum attributed these learning issues to █████'s cognitive impairment.

104. As for behavior, █████ initially spit, and Ms. Crum could find no reason for █████ doing so. But, toward the end of the year, spitting incidents were rare. Transitions within the classroom were not a problem once █████ learned the routine. During external transitions, such as to lunch and physical education, █████ was apt to kick or poke █████ classmates, but, suggesting that this behavioral was volitional, not the ones who were likely to react negatively to such provocations. Over time, █████ kicked less often. Weeks would pass without a kick, and then █████ would kick again. █████ sometimes pulled out █████ own hair. Toward the end of the school year, █████'s parents had █████ hair cut short enough to discourage pulling. For her part, Ms. Crum used the behavioral strategies in the BIP. She invited █████ to make choices, and she implemented a behavior reward system.

105. On January 10, 2011, Ms. Crum administered a Brigance test to █████. On this test, █████ earned raw scores of 18 on word recognition, 2 on reading vocabulary comprehension, 8 on comprehending passages, 1 on computational skills, 0 on problem

solving, 4 on spelling, and 0 on sentence writing. The respective grade equivalencies are 1.5, over 1.0, 1.3, 1.3, under 1.0, 1.0 and 1.1 (not, as incorrectly reported in Respondent Exhibit 8, p. 270, under "1.0").

106. According to the Brigance tests administered one year apart, ██████ made one-half year's progress in word recognition, some progress in reading vocabulary comprehension, at least one-third year's progress in comprehending passages, probably about one-quarter year's progress in computational skills, no progress in problem solving and spelling, and little, if any, progress in sentence writing. Listening comprehension was not tested in 2011. For ██████, this is substantial progress--all while being taught by Ms. Fong and Ms. Crum.

107. On February 18, 2011, the IEP team met to prepare another IEP. Ms. Crum reported that ██████ was making academic progress. The February 2011 IEP maintains ██████'s eligibilities in DHH, ID, ASD, and language impaired. The IEP notes the recent Brigance scores, as well as 2010 Florida Alternate Assessment scores, which are discussed below in comparison with the 2011 Florida Alternate Assessment scores resulting from a test given in April 2011.

108. The first area of the February 2011 IEP is Curriculum and Learning Environment. For strengths, this area of the February 2011 IEP states:

[REDACTED] is able to read content vocabulary and simple sentences with assistance at [REDACTED] functioning level. [REDACTED] is able to write and sign [REDACTED] vocabulary words and sentences with assistance. [REDACTED] is able to write and sign in correct order the alphabet. [REDACTED] is able to view a simple picture noun and action verbs and sign what [REDACTED] sees. [REDACTED] is able to identify word functions for items with assistance and repetition. [REDACTED] can write on lined and raised paper. [REDACTED] is able to add numbers and objects up to ten without regrouping. Using sign language [REDACTED] is able to express [REDACTED] basic wants and needs[---]i.e., bathroom, lunch, go classroom, go PE. With assistance and redirection [REDACTED] is able to briefly sign and retell content.

109. For the impact of [REDACTED] disabilities, the Curriculum and Learning Environment area of the February 2011 IEP states:

[REDACTED]'s involvement in the general curriculum is affected by [REDACTED] delays due to [REDACTED] multiple disabilities. [REDACTED] deficits lie in attaining, retaining and processing information. [REDACTED] has difficulty with formation of letters and discriminating between upper case and lower case and proper spacing. [REDACTED] is unable to write simple grammatically correct sentences. [REDACTED] has difficulty with solving an array of operations. [REDACTED] has difficulty answering comprehension questions. [REDACTED] needs a modified curriculum and needs assistance for the majority of all of [REDACTED] learning needs, including repetition of directions.

110. The area of Curriculum and Learning Environment in the February 2011 IEP identifies three priority educational needs--math, reading, and written communication--and contains eight goals.

111. The first goal is:

In [] academic classes [] will write using legible handwriting including spacing and letter size when presented with an assignment as measured by student work product, graded work samples, and teacher made tests.

The teacher and OT are to measure []'s progress weekly.

112. The second goal is:

When presented with one step mathematical problems [] will apply the appropriate operation of addition with numbers up to 20 with the use of manipulatives [with] 90% accuracy evaluated by graded work product and teacher made tests.

The teacher is to measure []'s progress weekly. The lone benchmark for this goal set for the 2010-11 school year is that, by June 2011, [] will be able to "[a]dd single digit numbers using manipulatives, pictures, with prompting and assistance."

113. The third goal is:

In all academic areas at []'s functional level [] will read the given materials with the use of sign language at 95% accuracy evaluated by documented teacher observation.

The teacher and SLT are to measure []'s progress weekly.

114. The fourth goal is:

Throughout all academic classes, when [] is presented a written assignment at [] level [] will write sentences using the proper syntax and following the grammatical rules 3 out of 5 occurrences evaluated by graded work product.

The teacher and OT are to measure []'s progress weekly.

115. The fifth goal is:

During math class, when presented with one step mathematical problems [] will apply the appropriate operation of subtraction with numbers up to 10 with the use of manipulatives [with] 90% accuracy evaluated by graded work product and teacher made test.

The teacher is to measure []'s progress weekly.

116. The sixth goal is:

During math class, when presented with basic/simple word problems with addition and subtraction, [] will apply the appropriate operation of addition or subtraction to solve the problems [with] 80% accuracy evaluated [by] student work product and assessments.

The teacher is to measure []'s progress weekly.

117. The seventh goal is:

Throughout the day when [] is presented reading material at [] functional level [] will answer basic "wh" questions in sign language given 85% accuracy evaluated [by] student work sample and assessments.

The teacher and SLT are to measure []'s progress weekly.

118. The eighth goal is:

Throughout the day [] will identify and increase [] sign vocabulary by 50 words [with] 80% accuracy evaluated by graded work samples and documented teacher observation.

The teacher and SLT are to measure []'s progress weekly.

119. The second area of the February 2011 IEP is Social/Emotional Behavior. For strengths, this area of the February 2011 IEP states:

[REDACTED] is able to communicate using basic sign language. [REDACTED] is able to express [REDACTED] basic wants and needs. With close supervision [REDACTED] is able to join [REDACTED] peers in [REDACTED] academic and elective classes. [REDACTED] is able to participate in group activities with one on one assistance.

120. For the impact of [REDACTED] disabilities, the Social/Emotional Behavior area of the February 2011 IEP states:

[REDACTED]'s disabilities affect [REDACTED] involvement in the general curriculum due to [REDACTED] impulsive, disruptive, inappropriate behaviors. [REDACTED] demonstrates aggressive/harmful behaviors towards self and others. [REDACTED] throws objects hitting others, [REDACTED] pinches, spits, slaps, grabs/pulls others' hair, pulls [REDACTED] own hair out, and removes [REDACTED] clothing exposing [REDACTED]. [REDACTED] has show difficulty when changes occur in the daily routine. [REDACTED] lacks impulse control and has difficulty with self regulatory skills. [REDACTED] also displays avoidance behavior and seeks negative and positive attention.

121. The area of Social/Emotional Behavior in the February 2011 IEP identifies two priority educational needs--conforming behavior skills and social skills--and contains two goals. The first goal is:

Throughout the day, [REDACTED] will follow school rules in all areas of the educational environment given 2 out of 3 occurrences evaluated by documented teacher observation and performance demonstration.

The teacher, DHH counselor, and "other" are to measure [REDACTED]'s progress weekly.

122. The second goal is:

Throughout the educational environment [REDACTED] will use age appropriate social skills behavior to replace the negative behaviors given 2 out of 3 occurrences evaluated by documented teacher observation.

The teacher, DHH counselor, and "other" are to measure [REDACTED]'s progress weekly.

123. The third area of the February 2011 IEP is Independent Functioning. For strengths, this area of the February 2011 IEP states:

[REDACTED] is able to dress and undress herself. [REDACTED] is able to carry [REDACTED] lunch tray and manually eat independently with close supervision of staff. [REDACTED] is able to pass out papers in class. [REDACTED] is able to get [REDACTED] class notebook and required materials from the shelf with prompting.

124. For the impact of [REDACTED] disabilities, the Independent Functioning area of the February 2011 IEP states:

[REDACTED] requires continuous close supervision to ensure [REDACTED] physical safety throughout the school day including while in the restroom and walking to the restroom. [REDACTED] requires constant cueing, prompting, redirection, of all tasks given independently and in small group settings. [REDACTED] requires assistance with on task skills. [REDACTED] needs sensory motor integration infused throughout [REDACTED] school day to assist with on task and self stimulating behaviors.

125. The area of Independent Functioning in the February 2011 IEP identifies two priority educational needs--sensory motor skills and on-task behavioral skills--and contains two goals. The first goal is:

Given sensory strategies throughout the school day [REDACTED] will exhibit appropriate behaviors without interfering/disrupting others in 3 out [of] 5 occurrences as measured by student performance [and] teacher observation.

The teacher, DHH counselor, and "other" are to measure [REDACTED]'s progress weekly. The lone benchmark for this goal set for the 2010-11 school year is, by April 2011, [REDACTED] will "attend to teacher/staff when given tasks are being instructed by." [sic]

126. The second goal is:

Throughout the school day, given a teacher directed task, [REDACTED] will remain on task for up to 5 minutes evaluated by documented teacher observation and completed work samples.

The teacher, OT, SLT, DHH counselor, and "other" are to measure [REDACTED]'s progress weekly.

127. The fourth area of the February 2011 IEP is Communication. For strengths, this area of the February 2011 IEP states:

[REDACTED] is able to communicate using basic sign language. [REDACTED] is able to express [REDACTED] basic wants and needs. [REDACTED] is able to sign and identify vocabulary picture cards at [REDACTED] functioning level. [REDACTED] is able to respond by sign and or by pointing to the location

of areas in the school or in the classroom. [REDACTED] is able to string multiple signs together when asked a specific question in a content area at [REDACTED] functioning level.

128. For the impact of [REDACTED] disabilities, the Social/Emotional Behavior area of the February 2011 IEP states:

[REDACTED]'s involvement in the area of communication is affected by [REDACTED] bilateral hearing loss, [REDACTED] delays in pragmatic, expressive/receptive language and comprehension skills. [REDACTED] has severe deficits in speech and language skills. [REDACTED] requires continuous repetition, redirection, prompting, cueing for all tasks. [REDACTED] does not initiate conversation or have reciprocal conversations using sign language. [REDACTED] displays echolalic behavior in sign language. [REDACTED] is unable to communicate personal information for safety concerns.

129. The area of Communication in the February 2011 IEP identifies two priority educational needs--pragmatic skills and communication skills--and contains three goals. The first goal is:

In all educational settings, [REDACTED] will express desires or feeling using sign language with 75% accuracy evaluated by clinician tallies and documented teacher observation.

The teacher and SLT are to measure [REDACTED]'s progress weekly.

130. The second goal is:

In all educational settings, when [REDACTED] is asked, [REDACTED] will present [REDACTED] personal information such as telephone number, address, parents names using sign language and written communication with 95% accuracy evaluated by documented teacher and

therapist observation and performance demonstration.

The teacher, OT, and SLT are to measure [REDACTED]'s progress weekly.

131. The third goal is:

[REDACTED] will engage in reciprocal conversations, using sign language, with peers and adults with two exchanges given 95% accuracy evaluated by documented teacher observation.

The teacher and SLT are to measure [REDACTED]'s progress weekly.

132. Addressing the criteria for exemption from taking the FCAT, the February 2011 IEP states that [REDACTED] has a significant cognitive disability and is unable to master the grade-level state content standards with appropriate accommodations, assistive technology, and instruction. The February 2011 IEP notes that [REDACTED] is participating in a curriculum based on Sunshine State Standards Access Points and requires extensive direct academic instruction, based on the access points, to acquire, generalize, and transfer skills across settings.

133. Among the accommodations are daily reports to the parent, access to sensory equipment, extended time to finish assignments, freedom to move during extended or stressful activities, access to manipulatives, cued expected behaviors and disregard of problem behaviors that are not seriously disruptive, direct specialized instruction, forgiveness in grading from poor handwriting, flexible scheduling and a visual

schedule, frequent visual cueing to assist with on-task behavior, simple directions, presentation of information in a multisensory format (written, oral, hands-on, gestural), shortened assignments based on mastery of key concepts, a sign language dictionary, and supervised structured activities to ensure safety.

134. Explaining why █████ could not be educated in a general education program, the February 2011 IEP states that █████ must receive small-group training in social skills, self-regulatory behavior, self-advocacy, conflict resolution, dealing with authority and socialization; direct specialized instruction and curriculum for the majority of learning activities; ongoing assistance to participate in learning activities; highly structured behavioral management throughout the day; and continuous supervision to ensure safety.

135. The February 2011 IEP provides specialized instruction as follows: 60 minutes weekly in receptive/expressive language skill in ESE class, 90 minutes daily of reading skills in general education class, 60 minutes daily of written communication skills in ESE class, 60 minutes daily of math skills in ESE class, 180 minutes daily of social skills in ESE class, and 60 minutes daily of pragmatic skills in ESE class. Among supplementary aids and services, █████ is also to receive 320 minutes daily of paraprofessional assistance in

ESE class (again, a 1:1 aide), 120 minutes weekly of sign language interpreter services in ESE class, and 150 minutes weekly of sign language interpreter services in general education class. The February 2011 IEP provides two related services: counseling 60 minutes weekly in ESE class and OT 60 minutes weekly in ESE class.

136. The February 2011 IEP notes that [REDACTED] takes Risperdal[®] and Intuniv[®]. Noting the April 4, 2010 BIP, the IEP states that staff may use physical restraint if [REDACTED] poses a danger to herself or others. The February 2011 IEP does not provide [REDACTED] with an extended school year. The IEP states that [REDACTED] has hearing aids in the classroom, but refuses to use them, and has available to [REDACTED] sensory materials that [REDACTED] may use as needed.

137. In April 2011, [REDACTED] took the Florida Alternate Assessment. The reported results show [REDACTED] performance in reading and mathematics for 2011 and 2010. Otherwise, the 2010 assessment is not in the record, and there is no indication of pre-2010 scores. For math, [REDACTED] scored a 3 both years. For reading, [REDACTED] scored a 5 in 2010 and a 3 in 2011. Scores of 1-3 are in the participatory range, which indicates the development of "rudimentary knowledge" of the subject matter. Scores of 4-6 are in the supported range, which indicates the acquisition of specific academic skills with "moderate success." Scores of 7-10 are in the independent range, which indicates mastery of

specific academic skills from instruction and practice. Notwithstanding ██████'s supported-range score in reading in 2010, Ms. Rodriguez recalled administering the Florida Alternate Assessment while ██████ was in ██████ class and thought that the results had placed ██████ in the participatory range.

138. The range of the scores--participatory, supported, or independent--are used to identify the statewide access points that may be used for the student, based on his or her grade level. Access points and the corresponding benchmarks are aligned to the general curriculum, but simplified based on the cognitive level of the student, so they serve as standardized criteria in the student's acquisition of functional academics. For instance, a student may never read above a first-grade level, but the objective of functional academics is to equip him to be able at least to read the symbols for a rest room or a police station.

139. ██████ finished fifth grade in Ms. Crum's class. During this school year, ██████ progressed in Reading Milestones® from 1.7 to 1.9 (tenth book); ██████ was about to start the next level when the school year ended. ██████ also progressed in ██████ ability to write. By the end of the year, ██████ writing was neater with more spacing between words and sentences, and ██████ was writing sentences of more than three words. For socialization, ██████ acted out faces for good and bad behaviors,

and [REDACTED] learned to earn poker chips by doing this exercise correctly.

140. On March 30, 2011, the IEP team met to prepare an interim IEP, which would allow the team members to discuss whether [REDACTED] should be promoted and attend middle school the 2011-12 school year, or continue attending Gulfstream. The mother and advocate resisted the principal's inclination to promote [REDACTED], who had earned average grades in [REDACTED] modified curriculum in fifth grade. The IEP team decided on promotion over the objections of the mother and advocate.

141. The only changes in the February 2011 IEP are the conference notes, which indicate that the IEP team "met to articulate the child to Mandarin Lakes (K-8) for middle school," and the mother's report to the IEP team that [REDACTED] had recently been started on Clonidine®.

142. Prior to the March 30 IEP team meeting, Gulfstream ESE program specialist, Jo Anne Bowers, had contacted Campbell Middle School, which was [REDACTED]'s home school, to see what kind of classroom settings they could offer. Ms. Bowers had decided, justifiably, that the most important requirement was that a classroom had a sign language program. She also considered South Dade Middle School, which had an autism classroom. Ms. Bowers learned that the DHH classroom at Mandarin Lakes was projected to have ten students. Ms. Bowers reported [REDACTED]

findings to the IEP team, but, as always, the mother and parent advocate wanted the total communication classroom at Belair, which was no longer in existence.

143. During the summer of 2011, [REDACTED] received psychiatric services at Jackson Memorial Hospital. The record is not well-developed concerning [REDACTED] diagnoses and treatment, but [REDACTED] medication history includes psychotropic drugs. Also, during the summer, Respondent discontinued the DHH program at Mandarin Lakes and reassigned [REDACTED] to attend the DHH program at Centennial Middle School.

144. By the start of the 2011-12 school year, the mother had withdrawn [REDACTED] from Respondent's school system and enrolled [REDACTED] in a private school. On September 6, 2011, [REDACTED] filed [REDACTED] due process hearing request.

145. At all relevant times, [REDACTED] has made educational progress while in Respondent's schools. Except for one or two components of the 2011 Florida Alternate Assessment, the progress has been slow and the gains in knowledge small, but the progress and gains have been meaningful, given [REDACTED]'s cognitive impairment. During the same period, [REDACTED] has made meaningful social and behavioral gains. These educational, social, and behavioral gains have been earned primarily through the hard work of [REDACTED] and [REDACTED] classroom teachers, Ms. Rodriguez, Ms. Fong, and Ms. Crum, as well as [REDACTED] therapists.

146. The mother and, later, mother and advocate have played important roles in the planning of [REDACTED]'s education. Always providing the mother with notice of meetings in Spanish and a Spanish interpreter for IEP meetings, Respondent's employees have demonstrated a receptiveness to ideas, suggestions, and criticisms from these important representatives of [REDACTED]

147. Given the lack of material differences between the class of Ms. Rodriguez and the classes of Ms. Fong and Ms. Crum, the mother's dissatisfaction with Respondent's efforts at educating her child stems from the loss of Ms. Rodriguez as a teacher, not the loss of the total communication class and certainly not a change in educational program or placement, as this concept is defined in the Conclusions of Law. Ms. Rodriguez exhibits a confidence and even charisma that command attention and respect. But the mother and advocate have ignored the crucial fact that [REDACTED] made at least as much academic progress working with Ms. Fong and Ms. Crum, as she did with Ms. Rodriguez.

148. The unknown in this case is the cause or causes of [REDACTED]'s nonvolitional problem behaviors. Attributing them to comorbid conditions or cognitive impairment is more plausible than attributing them to the search for attention or sensory stimulation, but doing so does not unlock the secrets to

managing █████'s many difficult behaviors. Without knowing what may be unknowable, Respondent's employees have nonetheless prepared an effective BIP, based perhaps more on a pragmatic, than theoretical, understanding of █████ in the educational setting.

149. The IEPs contain detailed descriptions of █████'s present levels of performance and the impacts of █████ disabilities in each of the four major areas into which the IEPs are divided. The IEPs identify specialized instruction, related services, and accommodations in detail. The IEPs amply justify the reasons for educating █████ in a relatively restrictive setting. Goals are detailed and, for the most part, measurable. The major shortcomings in the IEP exercise are that Respondent's employees did a poor job preserving the documentation, mainly in the form of classwork and teacher-made tests, showing mastery of goals and benchmarks and, more importantly, █████ does not appear to have mastered many of the goals. Normally looming large, these deficiencies do not preclude findings, based on other evidence, of █████'s meaningful academic and social achievement.

150. Thus, the IEPs--especially the specialized instruction, related services, and accommodations--were reasonably calculated to provide educational benefit to █████, █████'s teachers and therapists implemented █████ IEPs, and █████

obtained meaningful educational benefit during the period in dispute.

CONCLUSIONS OF LAW

151. DOAH has jurisdiction has jurisdiction over the subject matter. §§ 120.569, 120.57(1), and 1003.57(1), Fla. Stat., and Florida Administrative Code rule 6A-6.03311(9)(u).

152. Petitioner has the burden of proving by a preponderance of the evidence its claims in this case. Schaffer v. Weast, 546 U.S. 49 (2005).

153. A parent may file a due process hearing request on any matter "related to the identification, evaluation, or educational placement of a student or the provision of FAPE to the student." Fla. Admin. Code R. A-6.03311(9)(a).

154. "FAPE" is:

- . . . special education or specially designed instruction and related services for students . . . that:
 - 1. Are provided at public expense, under public supervision and direction, and without charge to the parent;
 - 2. Meet the . . . requirements of Rules 6A-6.03011 through 6A-6.0361, F.A.C.; [and]
 - 3. Include an appropriate preschool, elementary school, or secondary school education in the State; and
 - 4. Are provided in conformity with an individual educational plan (IEP) that meets the requirements of Rule 6A-6.03028, F.A.C.,
-

Fla. Admin. Code R. 6A-6.03411(1)(p).

155. "Specially designed instruction" (also referred to as "specialized instruction") is:

Specially designed instruction. Specially designed instruction means adapting, as appropriate to the needs of an eligible exceptional student, the content, methodology, or delivery of instruction to address the unique needs of the student that result from the student's disability or giftedness and to ensure access of the student to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the school district that apply to all students.

Fla. Admin. Code R. 6A-6.03411(1)(jj).

156. "Related services" are:

General. Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a student with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in students, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.

Fla. Admin. Code R. 6A-6.03411(1)(dd)1.

157. There is no dispute concerning [REDACTED]'s ESE eligibilities. Petitioner claims, though, that Respondent

initially failed to identify the eligibility of ASD and thus deprived █████ of FAPE. Disregarding the fact dispute concerning when Respondent was notified of the ASD diagnosis, Petitioner has failed to prove this claim.

158. █████'s ASD symptoms are not especially pronounced. Even if there were a failure to timely identify the child as ASD, such a failure would have been immaterial, as long as the child is receiving FAPE due to other recognized eligibilities. Ft. Osage R-1 Sch. Dist. v. Sims, 641 F.3d 996, 1004 (8th Cir. 2011) (autism omitted); Heather S. v. Wisconsin, 125 F.3d 1045, 1055 (7th Cir. 1997). The important fact is that Respondent never failed to provide FAPE to █████, given all of █████ disabilities.

159. Petitioner also claims that Respondent did not timely perform the FAB and, thus, prepare the BIP. But any delay was mostly due to the unavailability of the mother and parent advocate, who were unable to attend interviews for medical reasons. In any event, the interventions included in the BIP that was eventually prepared are not materially different from what █████'s classroom teachers and therapists were already doing, so, even if the delay were attributable to Respondent's employees, it would have been harmless.

160. Petitioner has also failed to prove the claims of procedural violations. Most of these claims arise out of

Petitioner's misunderstanding of what is a change in educational placement or program. Such changes require notice and an IEP meeting. But changes in teachers, classrooms, or schools are not changes in placement or program that trigger the procedural protections of section 1003.57(1) and rule 6A-6.03311. See, e.g., L. M. v. Pinellas Cty. Sch. Brd., 2010 U.S. Dist. LEXIS 46796 (M.D. Fla. 2010).

161. Thus, the changes from Belair to Gulfstream and Mandarin to Centennial were not changes in educational placements or programs, only in schools. These changes of schools did not necessitate any change in educational placement or program, such as with respect to the amount or location of specialized instruction and related services, specific accommodations, curriculum modifications, behavioral interventions, and restrictiveness of educational environment.

162. The sole change in educational placement or program in this case that was not preceded by notice and an IEP meeting was the assignment of ██████ to the ASD classroom of Ms. Sookram. However, this assignment was very brief and at the demand of the mother, so the change in placement or program was immaterial.

163. Petitioner has failed to prove that the mother was deprived of meaningful participation in IEP meetings. The February 2010 IEP was the product of four meetings. If Respondent were merely dictating IEP provisions to the mother

and advocate, the IEP meeting would have been finished in less than one day. The record reflects considerable discussions between Respondent's employees and the mother and her advocate, who vigorously presented the mother's contentions. The IEP team freely discussed educational planning in the presence of the mother and advocate, at times disagreeing among themselves. The IEP team acceded to some of the mother's demands, such as including sensory equipment that Respondent's employees believed was largely unnecessary. It appears, as well, that the BIP may have been prepared mostly at the urging of the mother and her advocate.

164. Rule 6A-6.03311(1) (a) requires that Respondent provide the mother notice in Spanish as to any proposed change in educational placement. Petitioner has failed to prove that Respondent has violated this requirement. Rule 6A-6.03028(3) (b) 8. requires that Respondent provide the mother a Spanish interpreter for IEP meetings. Petitioner has failed to prove that Respondent has violated this requirement.

165. The main FAPE issues are whether the relevant IEPs were reasonably calculated to provide education benefit, whether Respondent's employees implemented the IEPs, and, in general, whether ██████ obtained educational benefit during the period in question. Determinations of educational benefit must take into account the individual circumstances of the student. Thus,

educational benefit is assessed relative to cognition. Lessard v. Wilton-Lyndeborough Coop. Sch. Dist., 592 F.3d 267, 270 (1st Cir. 2010) (per curiam).

166. ██████ presents a difficult challenge for ██████ mother and *** educators. ██████ presents with multiple disabilities, complex behaviors, and cognitive restrictions that demand patience on the part of ██████ mother and educators and typically permit only small gains in the educational process of trying to equip ██████ with the functional academics and socialization to enable ██████ to live an independent, productive life. Measured against this background, the IEPs were reasonably calculated to provide educational benefit. Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176 (1982).

167. Petitioner failed to prove that Respondent failed to implement any of the specialized instruction or related services provided in ██████'s IEPs.

168. Most importantly, ██████ made meaningful educational progress from the specialized instruction that ██████ received from all three of ██████ teachers--Ms. Rodriguez, Ms. Fong, and Ms. Crum--and the related services that ██████ received from ██████ therapists.

ORDER

It is

ORDERED that Petitioner's due process hearing request is denied in all respects.

DONE AND ORDERED this 13th day of March, 2012, in Tallahassee, Leon County, Florida.

S

ROBERT E. MEALE
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Filed with the Clerk of the
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this 13th day of March, 2012.

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NOTICE OF RIGHT TO JUDICIAL REVIEW

This decision is final unless, within 90 days after the date of this decision, an adversely affected party:

- a) brings a civil action in the appropriate state circuit court pursuant to section 1003.57(1)(b), Florida Statutes (2009), and Florida Administrative Code Rule 6A-6.03311(9)(w); or
- b) brings a civil action in the appropriate district court of the United States pursuant to 20 U.S.C. § 1415(i)(2), 34 C.F.R. § 300.516 and Florida Administrative Code Rule 6A-6.03311(9)(w).