

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

█ ,)
)
Petitioner,)
)
vs.) Case No. 08-1461E
)
BROWARD COUNTY SCHOOL BOARD,)
)
Respondent.)
_____)

FINAL ORDER

Pursuant to notice, a formal hearing was held in this case on April 23 through 25, 2008, in Fort Lauderdale, Florida, before Errol H. Powell, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: █
(Address of Record)

For Respondent: Barbara J. Myrick, Esquire
Edward J. Marko, Esquire
Broward County School Board
600 Southeast Third Avenue, 11th Floor
Fort Lauderdale, Florida 33301

STATEMENT OF THE ISSUE

The issue for determination is whether the School Board failed to provide █ with a free appropriate public education (FAPE) by refusing to provide █ with accommodations for an English honors class and refusing to comply with █'s request

to be placed in an English honors class and by discriminating against [REDACTED] through its refusals.

PRELIMINARY STATEMENT

On March 24, 2008, this matter was referred to the Division of Administrative Hearings as a result of the Parent of [REDACTED] filing a due process hearing request (DPH Request) on March 20, 2008, with the School Board. Subsequently, the School Board filed a motion to dismiss to which the Parent of [REDACTED] filed a response; the School Board filed a response to the Parent's response; and the Parent of [REDACTED] filed a response to the School Board's response. On April 11, 2008, a telephone conference was held, during which the parties agreed, among other things, to a date for the due process hearing. By Order dated April 11, 2008, the motion to dismiss was denied. Thereafter, on April 16, 2008, the School Board filed a motion to dismiss the DPH Request based upon mootness; that motion was also denied.

At hearing, the Parent of [REDACTED] presented the testimony of six witnesses, including [REDACTED] and entered 16 exhibits (Petitioner's Exhibits numbered 1-1; 1-2; 1-4; 1-5; 2-1; 2-2; 2-3; 2-4; 3-2; 3-3; 3-5; 3-6; 3-7; 3-8; 3-9; and 5-3) into evidence.¹ The School Board presented the testimony of six witness and entered 33 exhibits (Respondent's Exhibits numbered 2 through 8; 9, page 83; 9, pages 96-109; 9, pages 113-114; 10, page 116; 10, page 118; 10, page 120; 10, pages 121-122; 12,

page 145; 12, pages 150-151; 13, page 162; 13, pages 164-165; 13, page 170; 13, pages 175-176; 13, pages 177-178; 13, page 182; 13, page 189; 13, page 192; 14, page 206;² 14, page 233;³ 15, pages 242-244; 16, pages 283-285; 16, pages 286-289 and 291; 16, page 304; 17, pages 309-316 and 319-320; 18, pages 333-334; and 19) into evidence.⁴

A transcript of the hearing was ordered. At the request of the parties, the time for filing post-hearing submissions was extended and set for 19 days following the filing of the transcript, thereby, extending the 45-day decision requirement. The Transcript, consisting of six volumes, was filed on May 14, 2008, 19 days following the conclusion of the due process hearing.

The parties' post-hearing submissions were due to be filed on or before June 2, 2008. The School Board timely filed its post-hearing submission. Subsequently, the Parent of [REDACTED] requested an extension of time until July 1, 2008, to file [REDACTED]'s post-hearing submission, to which the School Board objected; the request was granted, with leave granted to the School Board to file an amended post-hearing submission, in response, on or before July 15, 2008, to [REDACTED]'s post-hearing submission. The granting of the extension of time again extended the 45-day decision requirement. The Parent of [REDACTED] timely filed an amended post-hearing submission to which the School Board timely filed a

response. The 45-day decision requirement was again extended with the final day of the 45-day decision requirement being September 5, 2008.

The parties' post-hearing submissions were considered in the preparation of this Final Order.

FINDINGS OF FACT

1. For the 9th, 10th, 11th, and 12th grades, ■■■ attended a high school in Broward County, Florida (High School).
2. ■■■ has never been a discipline problem.
3. ■■■ has always performed on an above average level.
4. On or about January 14, 2008, ■■■ was determined to be an exceptional education student, eligible for Exceptional Student Education (ESE). At that time, ■■■'s education became governed by the Individuals with Disabilities Education Act (IDEA). ■■■ was found eligible for the ESE program based on the following area of eligibility: Emotional/Behavioral Disability.

Prior to Being Found Eligible for ESE

5. As a junior at the High School and as did all ■■■ at the High School, ■■■ pre-registered for ■■■ year classes in the following year, during the Spring of the ■■■ year, i.e., Spring 2007. ■■■'s teachers had recommended and ■■■ had pre-registered for advanced placement (AP) classes. Even though students at the High School pre-register for their classes, no guarantee is given that the students will be assigned the classes for which

they register.

6. In the Spring 2007, the School Board determined that the Parents of [REDACTED] had provided the School Board a false address in order for [REDACTED] and [REDACTED]'s sibling to attend the High School through reassignment.⁵ As a result, the reassignment was denied and the classes for which [REDACTED] had pre-registered were nullified.

7. Subsequently, [REDACTED]'s Mother rented an apartment within the boundaries of the High School and requested a reassignment for the 2007-2008 school year. When the School Board investigated the new address, one of its methods of verification was highly questionable. After verifying the address and the lease agreement, a sworn officer of the School Board, together with local law enforcement, went to the new address around 12 Midnight to verify occupancy of the apartment. The lateness of the hour and the officers identifying themselves frightened [REDACTED]'s Mother. No reasonable explanation was presented at hearing for the School Board's officer to use such a method in verifying occupancy of the apartment.

8. Having verified that the new address was within the boundaries of the High School and that the apartment was occupied, [REDACTED] was granted reassignment, but was required to register in September 2007 at the High School. [REDACTED]'s Parents had attempted to register [REDACTED] at the High School in August 2007, but were escorted from the school by a sworn officer of the

School Board and a local law enforcement officer.

9. ■■■ was assigned the classes that were available at the time of the registration in September 2007 and which met graduation requirements, not the classes for which pre-registration had been made. Some of the classes chosen at pre-registration were no longer available, e.g., no AP classes were available.

10. The High School's core academic classes include English, Math, Science, Social Studies, and World Languages. The High School maintains a maximum of 25 students in its core academic classes. Approval to exceed the maximum limit is only given when a student requires a specific course for graduation.

11. ■■■ has some medical and biological problems and symptoms. ■■■ suffers from asthma and allergies. ■■■ has headaches often; has trouble sleeping; has stomach pains and remains in the bathroom for about an hour; and is unable to go to the bathroom at school and must be checked out of school so that the bathroom at home can be used by ■■■ (using the bathroom at school causes ■■■ to become very anxious due to a feeling of being very rushed). Medical examinations have provided no medical cause for the stomach pains, the inability

to use the bathroom outside of the home, and the anxious feeling; all believed to be symptoms of anxiety.

12. Prior to the reassignment being denied, at any time that ■■■'s Father wanted to switch classes, due to ■■■'s symptoms of anxiety, ■■■'s Father contacted the High School's assistant principal, and the change was made. However, in September 2007, most of the classes had reached the maximum average class size, and the assistant principal was unable to place ■■■ in the classes that ■■■ wanted.

13. ■■■ was becoming very frustrated and was exhibiting symptoms of stress, depression, and anxiety. The guidance counselor for the High School was reviewing the performance of all graduating seniors and realized that ■■■ was not attending school and was at risk of not graduating. A determination was made that ■■■ would have to register for Broward Virtual School (Virtual School) in order to successfully complete Fall 2007.

14. A student is unable to be registered for Virtual School and regular school simultaneously. Therefore, the student must be registered in either Virtual School or regular school.

15. Reluctantly, ■■■ registered for the Virtual School and took four academic classes. ■■■ successfully completed the classes.

16. Prior to the beginning of the second semester in

January 2008, Jeffrey Williams, the North Area Office Assistant Director to the Superintendent, met with ■■■■■ ■■■■■'s Father, and ■■■■■'s advocate in order to resolve any outstanding issues to facilitate a smooth transition for ■■■■■'s return to the High School. Some of the concerns discussed were ■■■■■'s need to take Economics and English IV in order for ■■■■■ to graduate in May 2008 with ■■■■■'s classmates; ■■■■■'s desire to take Integrated Math as a forgiveness class due to failing the class the previous year; ■■■■■'s inability to have a core academic course during the first period due to ■■■■■'s difficulty in arriving timely at school; and ■■■■■'s desire to take French IV, which was only offered once per day.

ESE Eligible

17. In December 2007, a psychosocial assessment of ■■■■■ was performed by Zulema Bond, MSW, in preparation for an evaluation to be completed by the school psychologist, Beth Pomerantz, Ph.D. ■■■■■ is being seen by a psychologist, Stuart Langenthal, Ed.D., for the stomach, bathroom and anxious factors affecting ■■■■■ life and anxiety and panic attacks, but not on a regular basis due to non-insurance and, therefore, ■■■■■ visits the psychologist when the symptoms become severe or unmanageable. Ms. Bond considered ■■■■■'s stomach, bathroom, and anxious symptoms to be symptoms associated with anxiety. During the psychosocial assessment, ■■■■■ did not report experiencing any

difficulty in breathing or any symptoms which Ms. Bond could associate with panic attack while taking any classes.

18. During Dr. Pomerantz's evaluation, [REDACTED] did not report any breathing problems. Dr. Pomerantz determined, among other things, that [REDACTED] "displaye[d] a pervasive mood of unhappiness, depression and anxiety. . . seems to have developed numerous physical symptoms associated with [REDACTED]'s] emotional problems and school difficulties. . . ." She made several recommendations, including the following:

1. Due to emotional and social concerns, [REDACTED] would benefit from the support of special education staff to assist with [REDACTED]'s] transition back to regular classroom environment.

2. [REDACTED] would benefit from a schedule that takes into account [REDACTED]'s] level of stress and anxiety. A course load with too many high level classes involving a substantial amount of work may exacerbate [REDACTED]'s] level of anxiety.

3. The eligibility committee may wish to discuss any accommodations that [REDACTED] might find helpful toward making [REDACTED] academically successful within the classroom.

* * *

5. [REDACTED] can be given extended time to use the bathroom facilities, as necessary, without the need for [REDACTED] to leave the

school campus. [REDACTED] 's] teachers should be made aware of [REDACTED] 's] needs.

19. As indicated earlier, [REDACTED] was determined eligible for ESE services, meeting the criteria of Emotional/Behavioral Disability.

20. An individual education plan (IEP) meeting was held and an IEP was developed on January 14, 2008. Among the attendees at the IEP meeting were the Parents of [REDACTED]

21. Several draft class schedules were presented at the end of the IEP meeting by the guidance counselor. The class schedules were drafted at the request of Mr. Williams. At hearing, some of the members of the IEP committee testified that copies of the different class schedules were shown to the Parents of [REDACTED] at the IEP meeting; however, the guidance counselor and Mr. Williams testified that only the guidance counselor had the drafts and no copies were distributed at the IEP meeting, but were orally discussed. The Parents of [REDACTED] consistently maintained and testified that they did not receive or review any copies of the draft class schedules. The testimony of the guidance counselor and Mr. Williams is found credible and a finding of fact is made that no copies of the draft class schedules were shown or distributed at the IEP meeting, but were orally discussed.

22. The class schedules were drafted, taking into consideration the concerns expressed to Mr. Williams by ██████████'s Father and ██████████'s advocate during a meeting that took place prior to January 2008. An option of a half-day at school was offered, since ██████████ needed only two courses, Economics and English IV, to graduate in May 2008, but the Parents of ██████████ wanted ██████████ to have a full day at school, as did the other children at the school, so they rejected any option that included a half-day at school. Finally, a class schedule that was discussed was agreed upon at the IEP meeting; the schedule included an English IV Honors class.

23. Neither the composition of the IEP committee nor the goals and objectives developed at the IEP meeting nor any item provided in the IEP nor the implementation of the IEP is at issue in these proceedings.

24. ██████████ attended the English IV Honors class, which was held at sixth period, three times. Each time, ██████████ felt dizzy and could not breathe. The classroom was very small and had approximately 24 students in it. ██████████ was unable to return to the class and informed the ESE Specialist at the High School.

25. The High School determined that the room at which the English IV Honors class was being held was too small for the number of students attending the class. The class was relocated to a portable on the campus of the High School.

26. After the English IV Honors class was relocated to the portable, ■■■ was still unable to attend the class, but was unable to explain why. For example, the reason for the inability to attend the class was unknown to ■■■ According to Dr. Pomerantz, ■■■'s inability to explain the non-attendance is consistent with anxiety and panic attacks.

27. Even though ■■■ was unable to attend the sixth period English IV Honors class and even though the High School was aware of ■■■'s inability to attend, the High School recorded ■■■'s absence as unexcused. ■■■'s Father has attempted to have the attendance records corrected. No reasonable explanation was presented at hearing as to why the High School's attendance records continued to reflect unexcused absences in light of Dr. Pomerantz indicating that ■■■'s symptoms and conduct were consistent with anxiety and panic attacks.

28. Dr. Pomerantz wanted to begin therapy with ■■■ which was not a band-aid, short-term therapy. The therapy that she wanted to use was for long-term and may have been helpful to ■■■ within a week or six months or a year. ■■■ wanted to graduate in May 2008. ■■■ and ■■■'s Parents did not believe that ■■■ had six months or a year to experiment, so they rejected the suggested therapy. Instead, ■■■ and ■■■'s Parents requested a change in the class schedule—for ■■■ to be assigned to another English IV Honors class since ■■■ was unable to attend the sixth

period English IV Honors class.

29. In order to comply with ■■■'s request, the High School would have to add ■■■ to another English IV Honors class that had already reached its maximum class size limit of 25. Furthermore, restrictions were placed on ■■■'s class schedule in the discussion with Mr. Williams prior to January 2008. Those limitations resulted in the High School not being able to offer ■■■ a different class schedule at the High School.

30. The evidence was insufficient to demonstrate that the High School changed the class schedule of an exceptional student or a non-exceptional student to place the student in a class that had reached the maximum class size limit.

31. With no English IV Honor classes being available, an appropriate accommodation would be to offer a regular English IV class. As a result, ■■■ was offered a regular English IV class at fourth period, instead of study hall at fourth period. The offer was rejected because ■■■ had never had a regular English course before, only Honors English.

32. The High School determined that the only available remaining option to ■■■ was Virtual School. Through Virtual School, ■■■ could take a regular English IV class, which was needed to graduate. ■■■ was eventually offered and accepted English IV at Virtual School and, at ■■■'s request, was permitted to use a computer in the Guidance Office to complete

the virtual class assignments. Finally, █████ accepted.

33. █████ feels that the █████ year was the worst year, instead of the most exciting and best year. There is nothing that █████ wants to remember about the █████ year.

34. █████ believes that not having taken AP classes damaged the opportunity for acceptance to a top-notch university.

35. █████ and █████'s Parents believe that the High School could have accommodated █████ and placed █████ into an English IV Honors class.

CONCLUSIONS OF LAW

36. The Division of Administrative Hearings has jurisdiction of these proceedings and the parties thereto pursuant to Sections 1001.42(4)(1) and 1003.57(1), Florida Statutes (2008).

37. █████ has the burden of proof in these proceedings. Schaffer v. Weast, 546 U.S. 49, 126 S. Ct. 528, 163 L. Ed. 2d 387 (2005). The standard of proof is a preponderance of the evidence. DeVine v. Indian River County School Board, 249 F.3d 1289, 1292 (11th Cir. 2001).

38. Section 1001.42(4)(1), Florida Statutes (2007), provides, among other things, that the School Board shall "Provide for an appropriate program of special instruction, facilities, and services for exceptional students"

39. States must comply with the Individuals with

Disabilities Education Act (IDEA) in order to receive federal funding for the education of handicapped children. The IDEA requires states to establish policy which ensures that children with disabilities will receive a FAPE. Through an IEP, the educational program accounts for the needs of each disabled child.

40. Definitions applicable to the IDEA are set forth at 20 U.S.C.S. Section 1401. FAPE is defined as follows:

- (9) . . . The term 'free appropriate public education' means special education and related services that—
 - (A) have been provided at public expense, under public supervision and direction, and without charge;
 - (B) meet the standards of the State educational agency;
 - (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and
 - (D) are provided in conformity with the individualized education program

IEP is defined as follows:

- (14) . . . The term 'individualized education program' or 'IEP' means a written statement for each child with a disability that is developed, reviewed, and revised

Special education is defined as follows:

- (29) . . . The term 'special education' means specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including—
- (A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and
 - (B) instruction in physical education.

41. The Code of Federal Regulations (C.F.R.) implements the federal statutes. The C.F.R. applicable to the pertinent sections of the IDEA is 34 C.F.R. Section 300 (2006).⁶ FAPE is found at 34 C.F.R. Section 300.17 and is defined as follows:

- Free appropriate public education or FAPE means special education related services that—
- (a) Are provided at public expense, under public supervision and direction, and without charge;
 - (b) Meet the standards of the SEA [State educational agency], including the requirements of this part;
 - (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and
 - (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§ 300.320 through 300.324.

IEP is found at 34 C.F.R. Section 300.22 and is defined as follows:

- Individualized education program or IEP means a written statement that is developed, reviewed and revised in accordance with §§ 300.320 through 300.324.

Special education is found at 34 C.F.R. Section 300.39 and is defined as follows:

- (a) General. (1) Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including—
 - (i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and
 - (ii) Instruction in physical education.
- (2) Special education includes each of the following, if the services otherwise meet the requirements of paragraph (a)(1) of this section—
 - (i) Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards;
 - (ii) Travel training; and
 - (iii) Vocational education.

* * *

- (3) Specially designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction—
 - (i) To address the unique needs of the child that result from the child's disability; and
 - (ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards with the jurisdiction of the public agency that apply to all children.

* * *

- (5) Vocational education means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.

42. In general, a FAPE must be available to all children residing in a state between the ages of 3 and 21, inclusive. 34 C.F.R. § 300.101(a).

43. A state meets the IDEA's requirement of a FAPE when it provides personalized instruction with sufficient support services to permit the disabled child to benefit educationally from that instruction. The instruction and services must be provided at public expense, meet the state's educational standards, approximate grade levels used in the state's regular education, and correspond to the disabled child's IEP. Board of Education of Hendrick Hudson Central School District v. Rowley, 102 S. Ct. 3034 (1982).

44. Inquiry in cases involving compliance with the IDEA, which is a de novo inquiry, is twofold: (1) whether there has been compliance with the procedural requirements of the IDEA, including the creation of the IEP, and (2) whether the IEP developed is reasonably calculated to enable the child to receive educational benefits. Rowley, at 3051.

45. A state is not required to maximize the potential of a disabled child commensurate with the opportunity provided to a non-disabled child. Rather, the IEP developed for a disabled child must be reasonably calculated to enable the child to receive some educational benefit. Rowley, at 3048-3049. The

disabled child must be making measurable and adequate gains in the classroom, but more than de minimus gains. J.S.K. v. Hendry County School Board, 941 F.2d 1563 (11th Cir. 1991); Doe v. Alabama State Department of Education, 915 F.2d 651 (11th Cir. 1990). The unique educational needs of the particular child in question must be met by the IEP. Todd D. v. Andrews, 933 F.2d 1576 (11th Cir. 1991) "The importance of the development of the IEP to meet the individualized needs of the handicapped child cannot be underestimated." Greer v. Rome City School District, 950 F.2d 668, 695 (11th Cir. 1991).

46. In examining an IEP, great deference is given to the educators who develop the IEP. Todd, at 1581.

47. The disabled child's education must be provided in the least restrictive environment (LRE) available. A determination of such environment requires consideration of whether there has been compliance with the procedural requirements of the IDEA and whether the IEP is reasonably calculated to enable the child to receive educational benefits. DeVries v. Fairfax County School Board, 882 F.2d 876 (4th Cir. 1989).

48. Furthermore, regarding the LRE in the placement of the child, generally, to the maximum extent appropriate, children with disabilities are to be educated with children who are non-disabled; and special classes, separate schooling, or other removal of children with disabilities from the regular

educational environment are to occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 20 U.S.C.S. § 1412(a)(5); 34 C.F.R. § 300.114(a). Further, in selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services he or she needs. 34 C.F.R. § 300.116(d). An IEP must be examined as to whether it provides a meaningful education in the LRE. Pachl v. School Board of Anoka-Hennepin Independent School District No. 11, 453 F.3d 1064, 1068 (8th Cir. 2006).

49. The undersigned's decision, as to whether the IEP provides ■■■ with a FAPE, must be based on "substantive grounds." 20 U.S.C.S. § 1415(f)(3)(E); 34 C.F.R. § 300.513(a)(1). However, in matters regarding a procedural violation, the undersigned may find that ■■■ did not receive a FAPE "only if the procedural inadequacies impeded" ■■■'s "right to a FAPE" or "caused a deprivation of educational benefit." 20 U.S.C.S. § 1415(f)(3)(E); 34 C.F.R. § 300.513(a)(2)(i) and (iii).

50. The evidence fails to demonstrate that the School Board refused to provide ■■■ with accommodations for the English IV Honors class. The accommodation that the Parents of ■■■ wanted was for the High School to change ■■■'s class schedule,

as the High School had done in the past, and place ██████ in an English Honors class at the High School.

51. The evidence demonstrates that the IDEA was not applicable to ██████ until the process began for ██████ to be considered as an exceptional student, which was in December 2007. As a result, the accommodation issue is applicable for the beginning of the second semester of the 2007-2008 school year in January 2008.

52. ██████'s graduation was in May 2008. ██████ needed only two core academic courses to graduate, with one of them being English IV, not English IV Honors. ██████ wanted, but was not required, to take English IV Honors. At the IEP meeting in January 2008, ██████ was assigned an English IV Honors class at the sixth period. ██████'s anxiety and panic attack symptoms presented, which resulted in ██████ being unable to continue taking the class. Attempts were made by the High School to place ██████ into another English IV Honors class but, due to the restrictions placed on ██████'s schedule together with English IV Honor classes being full, the attempts were unsuccessful. As an reasonable accommodation, the High School offered ██████ an English IV class at fourth period, instead of study hall; ██████ refused the class.

53. The IDEA did not require the High School to maximize ██████'s potential but did require the High School to provide

educational assistance that was reasonably calculated to provide some educational benefit to ■■■ beyond a de minimus benefit. Consequently, the High School was not required to provide ■■■ with an English IV Honors class, only an English IV class. The High School provided ■■■ with an English IV class, but ■■■ refused the class. The only option remaining for ■■■ to take an English IV Honors class was by Virtual School. ■■■ registered for Virtual School.

54. The evidence fails to demonstrate that the School Board refused to comply with ■■■'s request to be placed in an English honors class.

55. The evidence fails to demonstrate that the School Board discriminated against ■■■

56. Further, the evidence demonstrates that ■■■'s IEP provides ■■■ with a FAPE in the LRE and that ■■■ was provided a FAPE in the LRE.

CONCLUSION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

ORDERED that:

1. ■■■'s IEP provides ■■■ with a FAPE in the LRE.
2. ■■■ was provided a FAPE in the LRE.
3. The School Board did not refuse to provide ■■■ with accommodations for the English IV Honors class and did not

refuse to comply with ■■■'s request to be placed in the English IV Honors class.

4. The School Board did not discriminate against ■■■

DONE AND ORDERED this 5th day of September, 2008, in Tallahassee, Leon County, Florida.

S

ERROL H. POWELL
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 5th day of September, 2008.

ENDNOTES

^{1/} Petitioner's Exhibit numbered 1-3 was rejected.

^{2/} Respondent's Exhibit numbered 15, page 279 was rejected.

^{3/} ■■■ offered Respondent's Exhibit numbered 14, page 206 into evidence, which was admitted. For convenience of the parties and to keep the record clear, the Exhibit kept its exhibit number.

^{4/} ■■■ offered Respondent's Exhibit numbered 14, page 233 into evidence, which was admitted. For convenience of the parties and to keep the record clear, the Exhibit kept its exhibit number.

^{5/} No decision is made in these proceedings as to whether the

School Board's determination was correct.

^{6/} Unless indicated otherwise, 34 C.F.R. Section 300 refers to the 2006 Code of Federal Regulations.

COPIES FURNISHED:



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NOTICE OF RIGHT TO JUDICIAL REVIEW

This decision is final unless an adversely affected party:

- a) brings a civil action within 30 days in the appropriate federal district court pursuant to Section 1415(i)(2)(A) of the Individuals with Disabilities Education Act (IDEA); [Federal court relief is not available under IDEA for students whose only exceptionality is "gifted"] or
- b) brings a civil action within 30 days in the appropriate state circuit court pursuant to Section 1415(i)(2)(A) of the IDEA and Section 1003.57(1)(e), Florida Statutes; or
- c) files an appeal within 30 days in the appropriate state district court of appeal pursuant to Sections 1003.57(1)(e) and 120.68, Florida Statutes.