Broward County School District
No. 05-2951E
Initiated by: Parent
Hearing Officer: Patricia M. Hart
Date of Final Order: July 18, 2006

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

[redacted] ,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 05-2951E
	)	
BROWARD COUNTY SCHOOL BOARD,	)	
	)	
Respondent.	)	
_____	)	

FINAL ORDER

Pursuant to notice, a formal hearing was held in this case on February 22 through 24, 2006, in Fort Lauderdale, Florida, before Patricia M. Hart, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

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STATEMENT OF THE ISSUE

Whether the Petitioner is entitled to reimbursement for tuition paid for [redacted] to attend the [redacted] ("[redacted]"), a residential treatment facility.

PRELIMINARY STATEMENT

History of the case

On August 16, 2005, [redacted] filed a request for a due process hearing on behalf of [redacted], [redacted], in which they asserted that the Broward County School Board ("School Board") failed to offer [redacted] a free appropriate public education in the "recent" Individualized Educational Program ("IEP") because, according to [redacted], [redacted] needed residential placement, which the IEP failed to offer.[1] [redacted] further stated that they were seeking reimbursement for the costs and expenses associated with [redacted]'s then-current residential placement at [redacted], as well as attorneys' fees, costs, and expenses. The School Board forwarded the due process hearing request to the Division of Administrative Hearings for assignment of an administrative law judge. This case was originally assigned to Administrative Law Judge Errol H. Powell but was transferred to the undersigned on or about February 18, 2006, shortly before the final hearing scheduled for February 22 through 24, 2006.

At the hearing, [redacted] presented the testimony of the following witnesses: Laura M. Artiles; Lisa Friedman; Andrew Levinson; Kori Mayeski; [redacted]; [redacted]; Jason Adams; Nora Urbanelli; and Amy Jeppesen. Petitioner's Exhibits 1 through 9, 9a through 9e, and 10 through 12 were offered and received into evidence. The School Board presented the testimony of the following witnesses: Alyson B. Laureano; Joseph Tamburino; Catherine S. Joiner; Michael Guevara; and Bruce Seplowe. Respondent's Exhibits 1 through 12 were offered and received into evidence.

On February 14, 2006, a week before the due process hearing was scheduled to convene, the Petitioner filed [redacted] witness list, which included several individuals associated with "[redacted]." At the commencement of the due process hearing, the Petitioner's counsel explained that, in early February 2006, [redacted] had been enrolled in [redacted], a residential transitional treatment facility and that [redacted] parents were seeking reimbursement for tuition paid to this facility, as well as an IEP that identified this facility as [redacted] 's placement for exceptional student education ("ESE") services. The School Board moved to exclude any evidence relating to [redacted] 's February 2006 unilateral placement in [redacted] Grades on the grounds that it had not been notified until February 14, 2006, that [redacted] was enrolled in the private residential treatment facility or that the Petitioner would be seeking reimbursement for tuition for that school. The School

Board based its motion on two grounds: that it had not received notice of the Petitioner's claim relating to the placement in February 2006 and an opportunity to respond, as required by the Individuals with Disabilities Education Improvement Act of 2004, Title 20, Section 1400 et seq., United States Code ("IDEA"), and that it would be prejudiced if it were required to defend against this claim without having had the opportunity to engage in discovery and formulate its defense. The Petitioner requested that the late notice be excused because [redacted] 's placement in [redacted] was done on an emergency basis. After hearing argument from counsel, the School Board's motion was granted, and the Petitioner was advised to submit a separate request for due process hearing related to the [redacted] placement.

The three-volume, 730-page transcript of the proceedings was filed with the Division of Administrative Hearings on March 27, 2006. The parties timely filed their proposed final orders on May 3, 2006, which have been considered in the preparation of this Final Order.

Calculation of due date of final order

As noted above, this case was assigned to Administrative Law Judge Errol H. Powell on August 18, 2005. The 30-day resolution period ended on September 15, 2005; the 45-day time period for service of the final order, therefore, ended on November 1, 2005. After a telephone conference with the

parties, Administrative Law Judge Powell issued a Notice of Hearing scheduling the due process hearing for November 2 through 4, 2005; the hearing was scheduled to commence after the expiration of the 45-day time period because of the parties' scheduling conflicts. The 45-day time period for service of the final order was, therefore, specifically extended to December 19, 2005.

Hurricane Wilma hit Southeast Florida, including Fort Lauderdale, Broward County, Florida, on October 24, 2005. Because of the wide-spread devastation and general chaos following the storm, the hearing scheduled for November 2, 2005, was cancelled at the request of the parties, but without a written motion. On November 9, 2005, the parties filed a Joint Motion for Continuance in which they requested that the due process hearing be rescheduled for January 18 through 20, 2006, because both parties had been delayed in preparing for the due process hearing as a result of the destruction caused by Hurricane Wilma. Administrative Law Judge Powell granted the motion and rescheduled the hearing for January 18 through 20, 2006. The 45-day time period for service of the final order was, therefore, specifically extended until March 6, 2006.

On January 6, 2006, the School Board filed a motion for continuance of the due process hearing scheduled to begin January 18, 2006, on the grounds that [redacted] had not provided

complete responses to discovery requests. Administrative Law Judge Powell granted the motion and rescheduled the due process hearing for February 22 through 24, 2006. The 45-day time period for service of the final order was, therefore, specifically extended to April 10, 2006.

This case was transferred to the undersigned on or about February 18, 2006, and the hearing was completed on February 24, 2006. The School Board indicated that it intended to file the transcript of the proceedings with the Division of Administrative Hearings, and the parties requested 30 days from the date the transcript was filed to submit their proposed final orders to the Division of Administrative Hearings. The 730-page transcript of the proceedings was filed on March 27, 2006, and the proposed final orders were due to be filed on April 26, 2006. On April 25, 2006, the Petitioner filed a request for an extension of time until May 3, 2006, for filing the proposed final orders; the motion was granted. The 45-day time period for service of the final order was, therefore, specifically extended until June 19, 2006. The factual and legal issues in this case were complex and the testimony and exhibits were voluminous; a specific extension of 30 days was, therefore, granted, and the 45-day time period for service of the final order was specifically extended to July 19, 2006.

It is noted that the parties "waived" the 45-day time period for service of the final order in this case because of the need for extensive discovery and development of the facts of the case. In addition, the issues presented did not involve a question of the appropriate current placement for [redacted] but involved only the issue of the parents' entitlement to reimbursement for tuition paid as a result of a unilateral private placement from which [redacted] was discharged home in mid-December 2005.

FINDINGS OF FACT

Based on the agreed statement of facts filed by the parties, the oral and documentary evidence presented at the final hearing, and on the entire record of this proceeding, the following findings of fact are made:

Background

1. [redacted] is one of three children of [redacted]. [redacted] was born on [redacted], and was [redacted] and [redacted] years of age at the times material to this proceeding.

2. At the time of the hearing, [redacted] 's family had resided in Broward County for 14 years. [redacted] attended kindergarten at [redacted], a private school; [redacted] attended first and second grades at [redacted] School, a Broward County public school; [redacted] attended the third through seventh grades at the [redacted] School ("[redacted]"), a private school; [redacted] began eighth grade at [redacted] School, a Broward

County public school, but was withdrawn on or about February 4, 2004; [redacted] completed the eighth grade at the [redacted] School, a private school.

3. When [redacted] withdrew [redacted] from [redacted] School on February 9, 2004, they noted on the withdrawal form that the reason for withdrawing [redacted] was "private school." [redacted] completed the eighth grade at the [redacted] School, a private school.

4. [redacted] enrolled [redacted] in [redacted] for the ninth grade, but withdrew [redacted] in or about February 2005.

5. In March 2005, [redacted] enrolled [redacted] in [redacted] ("[redacted]"), a private residential treatment facility located in Utah, where she remained until December 2005. [redacted] are seeking reimbursement for tuition and related expenses from July 2005 through December 14, 2005.

[redacted] 's behavioral, psychological, and educational history

6. [redacted] first became concerned about [redacted]'s behavior and conduct in school when [redacted] was in pre-school. [redacted] was tested at Nova University when [redacted] was four years old, but the tests revealed nothing significant. Nonetheless, [redacted] had problems focusing and completing [redacted] work throughout [redacted] school years.

7. When [redacted] was in the fifth grade, [redacted] was treated for a short time by Randy Heller, a psychologist, for behavior problems, which consisted primarily of "not listening or always losing things . . . talking back and things like that."[2]

8. [redacted] became sexually active in the sixth grade and attended five or six sessions with a sex therapist at that time, but [redacted] did not think the therapy helped [redacted]. [redacted] was also exhibiting the same behaviors [redacted] had exhibited in the fifth grade, and [redacted] was "always grounded."[3]

9. [redacted]'s grades were poor when [redacted] was in the seventh grade, and [redacted] described [redacted] behavior as "oppositional, defiant." [redacted] was also suspended from [redacted] in the seventh grade for allegedly hitting a teacher and knocking [redacted] down. During seventh grade, [redacted] was treated by Jeff Hoffman, a psychologist, for a few months for behavior problems.

10. [redacted] enrolled [redacted] in eighth grade at [redacted] School because [redacted] thought the school work would be easier for [redacted] and because [redacted] wouldn't have to pay tuition for a private school. [redacted]'s grades were poor; [redacted] cut classes; and [redacted] was placed on internal suspension "quite a few times."[4] [redacted] was called to the guidance counselor's office several times because of [redacted]'s behavior, and [redacted] met two or three times with [redacted]'s teachers; [redacted] did not, however, mention that [redacted] had been previously seen by therapists. During the time [redacted] was enrolled in [redacted] School, [redacted] was not treated by a therapist.

11. [redacted] withdrew [redacted] from [redacted] School in February 2004, and enrolled [redacted] in the [redacted] School, where [redacted] finished the eighth grade. [redacted] chose to enroll [redacted] in a private school again

because [redacted] thought that [redacted] would focus better in a smaller school environment, away from [redacted] friends and other external distractions.

12. [redacted] enrolled [redacted] in [redacted] for the ninth grade, after [redacted] was rejected by two schools because of [redacted] poor grades and conduct problems. [redacted]'s grades for the first academic quarter were poor, and [redacted] failed honor's biology. [redacted] was particularly concerned about [redacted] failing honor's biology because [redacted] was simply not doing [redacted] work and not achieving. [redacted]'s behavior problems continued, and [redacted] was "not doing things that [redacted] was supposed to be doing, whether it be chores or school work, [and [redacted] was] fighting with [redacted] brother and sister."[5] Interim reports from [redacted]'s teachers at [redacted] indicated that [redacted] talked excessively and that [redacted] was tardy, not focused, and did not turn in assignments.

13. [redacted] became aware around this time that [redacted] was taking various illicit drugs and engaging in other risky behaviors, including sexual promiscuity, sneaking out of the house. [redacted] also discovered that [redacted] had been cutting [redacted]self with sharp objects, but [redacted] did not ask [redacted] why [redacted] was doing this. [redacted] knew at the time that many girls [redacted] 's age cut themselves because they considered it "cool," and [redacted] did not know whether this behavior was a sign of emotional instability or a just a phase [redacted] was going through.[6]

14. In or about December 2004, [redacted] snuck out [redacted] bedroom window and went out with a girlfriend. [redacted] called the police when [redacted] discovered that [redacted] was not in the house, and the police found [redacted] the next morning some distance from [redacted] home, in the parking lot of an apartment building in which another friend lived.

15. [redacted] did not talk to [redacted] when [redacted] returned home, but [redacted] talked with [redacted]. [redacted] told [redacted] that [redacted] was "severely depressed" and that [redacted] was taking a number of drugs, including cocaine, ecstasy, mushrooms, and marijuana, and that [redacted] was having sex for money and for drugs. [redacted] also told [redacted] that [redacted] had sex with knives. From [redacted] observation of [redacted] that night, [redacted] believed that [redacted] was "highly depressed," and [redacted] noted that [redacted] slept for two days after the incident.

16. Around this time, [redacted] reported to [redacted] that [redacted] had tried to commit suicide by drinking peroxide or something similar and that [redacted] wanted to hurt [redacted] brother and sister. [redacted] [redacted] contacted Dr. Redler, a psychologist who had been recommended to [redacted] by [redacted].

17. Dr. Redler recommended that Dr. Laura Artiles, a psychologist, evaluate [redacted] [redacted] contacted Dr. Artiles and asked her to perform a complete psychological assessment of [redacted] to evaluate [redacted] intellectual, academic, and emotional functioning. The evaluation was done on January 24, 2005. Dr. Artiles wrote

a report, but she did not treat [redacted] or do any follow-up with [redacted] after the January 24, 2004, evaluation.

18. In conducting her evaluation, Dr. Artiles interviewed [redacted] and obtained background information about [redacted] ; she observed and interviewed [redacted] ; she administered a number of tests to determine [redacted] tided intellectual functioning, academic functioning, learning process ability, perceptual-motor functioning, and personality functioning. Dr. Artiles reported that [redacted] was emotionally unstable on the day of testing, but she nevertheless believed that the testing conditions were adequate to consider the results valid, although she noted that the results of the psychometric assessment were of questionable validity and might not present an accurate assessment of [redacted] 's potential.

19. Dr. Artiles included the following findings and recommendations in her report:

a. Based on the results from the Wechsler Intelligence Scale for Children-Fourth Edition, [redacted] was functioning within the average range of intelligence, with some scale scores falling within the high average range and some at a very low level; Dr. Artiles attributed the difference in the scale scores to [redacted] 's inconsistent attention level during the assessment.

b. Results of the Woodcock-Johnson Psychoeducational Battery Test of Achievement indicated that [redacted] did not have any

significant academic deficits when compared with [redacted] intellectual ability. [redacted] exhibited some difficulties with reading comprehension, but Dr. Artiles related this to [redacted] ability to concentrate; [redacted] exhibited some difficulties with numerical calculation, but Dr. Artiles related this to the need for [redacted] to put forth effort to stay on task.

c. The results of the Woodcock-Johnson Psychoeducational Battery Cognitive Test indicated that [redacted] had no significant processing difficulties to suggest a learning disorder.

d. The Bender Gestalt Visual-Motor Test assesses neurological functioning, graph motor development, and visual-motor perceptual ability. [redacted] committed many errors in reproducing the design, which Dr. Artiles considered the result of organic involvement most likely due to perceptual disturbance related to drug abuse and [redacted] 's deteriorated emotional state.

e. Dr. Artiles set forth her observations of [redacted] 's personality functioning as follows:

> Results from the projective technique, the clinical interview and behavioral observations indicated that [redacted] [] appears to be severely emotionally disturbed. [redacted] [] is experiencing feelings of de-realization and depersonalization. [redacted] becomes easily confused with what [redacted] is doing, is forgetful and has difficulty keeping track of [redacted] immediate environment and reality orientation. At this time [redacted] is exhibiting very poor reality contact. [redacted] is affected by perceptual disturbances including visual and auditory

hallucinations. [redacted] visual hallucinations consist of perceived shadows, waking up at night and seeing visions, experiencing tactile hallucinations at night while in bed, experiencing people pulling the sheet off of [redacted] bed and waking up feeling nervous at night. [redacted] also has visual hallucinations during the daytime which include perceiving a person who shows up at times and disappears. [redacted] experiences auditory hallucinations which include several voices that talk outside of [redacted] head and sometimes a specific voice that gives [redacted] messages. [redacted] also has obsessive thoughts or voices inside [redacted] head and obsessive ideas involving suicidal and homicidal thoughts. Patient reports incongruence between these hallucination and [redacted] real intentions. [redacted] indicated that [redacted] wishes [redacted] did not have these thoughts and [redacted] true intention is not to hurt anybody or [redacted]self, but [redacted] has difficulty controlling these and is begging for help regarding being able to control this outside power which [redacted] considers is not [redacted]. When this examiner attempted to evaluate [redacted] emotional state, [redacted] [] had significant difficulty being in touch with [redacted] emotions. At this time [redacted] expresses that [redacted] does not know what love is and does not have the feeling of enjoying life, liking anybody or even liking [redacted]self. [redacted] self-esteem seems to be significantly impaired since [redacted] does not care about anything that happens to [redacted]. At this time it is expected that in this mental state, [redacted] performance or interest in any school-related activity or any other activity will be very affected. [redacted] reports not sleeping well and is not resting and cannot concentrate on [redacted] schoolwork or any other activity during the day.

Regarding [redacted] feeling, [redacted] admitted that [redacted] feels upset, sad and sometimes easily angry, but state that it is hard for [redacted] to define these feelings and sometimes even has difficulty crying and understanding [redacted]

> emotions. [redacted] admitted experimenting with illegal drugs in [redacted] interactions with some other teenagers. These substances may have inducted some organic dysfunction, creating a brain chemical imbalance and exacerbating her already existing emotional disturbance. Sexually promiscuous behavior has also been a part of [redacted] impulsive behavior to look for immediate gratification of [redacted] needs as well as [redacted] pleasure-oriented tendencies in which she disregards the consequences of [redacted] acts.[7]

f. Dr. Artiles suggested the following diagnoses for [redacted] :

> Axis I: 298.9 Psychotic Disorder NOS [not otherwise specified]
> R/O [rule out] Substance Induced Psychotic Disorder
> Attention-Deficit/ Hyperactivity Disorder, Inattentive Type by history
> Mood Disorder NOS

Dr. Artiles did not make a definite diagnosis of psychosis or of mood disorder because she did not know if [redacted] 's severe disturbance and [redacted] depression, anxiety, and sadness was temporary, especially since the evaluation was done when [redacted] was in a state of crisis.

g. Dr. Artiles noted in the summary of her evaluation that, although the testing showed that [redacted] had average academic functioning, [redacted] actual performance in class was very poor; that [redacted] 's consistent history of attention problems may have affected [redacted] academic performance throughout [redacted] school years; that [redacted] had emotional disturbances that, although they had

affected [redacted] during [redacted] entire life, were severe at the time of the evaluation; and that [redacted] was exhibiting a psychotic process that was significantly interfering with [redacted] academic performance, emotional stability and social adjustment. Dr. Artiles stated further:

> Due to the severity of [redacted] hallucinatory experiences and suicidal and homicidal thoughts, it is recommended that [redacted] be internalized in a psychiatric unit to stabilize [redacted], to provide [redacted] with the appropriate medication and to establish a treatment plan with follow-up. After discharge and upon [redacted] return to school, [redacted] may benefit from an individualized educational program supervising [redacted] academic performance and emotional stability. [redacted] may also be in need of individualized academic tutoring.

20. In Dr. Artiles' opinion, based on [redacted] 's emotional condition at the time of the evaluation, [redacted] needed more than a day-school program for severely emotionally disturbed students; in her opinion, [redacted] needed to be placed in a residential treatment facility because [redacted] needed constant and close supervision because of [redacted] tendency to use drugs, [redacted] promiscuity, and [redacted] suicidal and homicidal thoughts. [redacted] needed a program that would provide both an academic program and a therapeutic program so that [redacted] behavior was observed and [redacted] medication was managed.

21. After she completed the evaluation, Dr. Artiles talked with [redacted] and conveyed to [redacted] some of the results, particularly

the need for [redacted] to be admitted to a psychiatric unit for stabilization. In addition, after he was advised of the results of Dr. Artiles' evaluation, Dr. Redler telephoned [redacted] and discussed Dr. Artiles' recommendation that [redacted] go into a psychiatric unit immediately for treatment and stabilization. [redacted], however, refused to admit [redacted] into the hospital because they thought it would be detrimental to [redacted].

22. [redacted] did not discuss with Dr. Artiles [redacted] recommendation that, after [redacted] returned to school after hospitalization, [redacted] might benefit from having an IEP. At the time, the only alternatives that [redacted] was considering for [redacted] was whether [redacted] would be enrolled in a wilderness program or whether [redacted] would go into a residential treatment facility.

23. [redacted] assumes that Dr. Redler notified [redacted] of the results of Dr. Artiles' evaluation. [redacted] notified [redacted] that [redacted] was being home-schooled, and [redacted] was not allowed back on the [redacted] campus.

24. [redacted] supervised [redacted] 24 hours a day, seven days a week. They slept with [redacted] and hid everything that [redacted] though [redacted] could use to harm [redacted]self or others. [redacted] described [redacted] in January 2005 as "very depressed."[8]

25. Dr. Andrew Levinson, a psychiatrist, first saw [redacted] on or about January 27, 2005, when [redacted] was in crisis, though marginally stable. Dr. Levinson saw [redacted] approximately nine

times from January 27, 2005, through February 14, 2005; each session lasted from 45 minutes to an hour.

26. At the first session, Dr. Levinson did a full psychiatric intake, including taking [redacted] 's history and doing an evaluation. [redacted] described a long history of emotional problems, including significant drug abuse involving a number of different drugs, sexual promiscuity, sexual molestation, visual hallucinations, and suicidal gestures and attempts. Dr. Levinson also evaluated [redacted] 's thought processes in an extensive interview. At the end of the first session with [redacted] , Dr. Levinson tentatively diagnosed [redacted] with an Axis II diagnosis of borderline traits and personality disorder.[9] Borderline personality disorder is a Cluster B disorder that falls on the line between a mood disorder and a thought disorder.

27. Persons with borderline personality disorder have chaotic personalities and engage in impulsive behavior, make suicidal gestures, and have an intense pattern of unstable interpersonal relations. Some components of borderline personality disorder mimic some of the stringent and difficult thought disorders and also formal mood disorders, such as bipolar disorder, but persons with borderline personality disorder have transient psychotic episodes that last for a few minutes or hours; persons with bipolar disorder have psychotic

episodes, either manic or depressive, that last for a few days or a few weeks.

28. In Levinson's opinion, [redacted] did not meet the criteria for an Axis I diagnosis of bipolar disorder[10]; even though [redacted] had certain characteristics of this disorder, [redacted] did not exhibit sufficient consistency to satisfy the criteria. Dr. Levinson never included a formal Axis I diagnosis for [redacted] in his notes or otherwise, although what he considered [redacted] 's organic hallucinations did fall within that category.

29. The last time Dr. Levinson saw [redacted] , prior to her admission to [redacted], he changed his Axis II diagnosis from borderline personality disorder to Cluster B disorder, not otherwise specified, because he concluded that [redacted] had characteristics of several personality disorders. Cluster B disorders include borderline personality disorders, antisocial histrionic personalities, and narcissistic personality disorders. The accepted treatment for Cluster B and/or borderline personality disorders is intensive psychotherapy, a non-pharmacological intervention which involves a dialogue between a patient and a therapist or in group therapy.

30. Dr. Levinson initially prescribed several different medications for [redacted] , but [redacted] did not tolerate any of them well. This is often the case when the patient doesn't have a formal thought or psychiatric disorder. Dr. Levinson did prescribe

Seroquel, an antipsychotic drug, to help ameliorate [redacted] 's visual hallucinations.

31. Dr. Levinson wrote a letter dated February 14, 2005, addressed to "To whom it may concern," in which he stated:

> [redacted] [] has been in my care for the last month. [redacted] has significant history of psychedelic abuse, which contributes in large part if not in total to [redacted] intermittent psychosis. [redacted] described initially visual hallucinations, which might be better described as illusions. Clearly as part of [redacted] characterologic issues there is endorsement (attention) for this level of symptomatology. [redacted] is not in my opinion schizophrenic. [redacted] psychotic symptoms that exists [sic] at the present time consist of auditory hallucination (non-command type) i.e. hearing [redacted] dog barking. She meets full criteria for borderline personality disorder though is not by any means the most severe case. [redacted] is not at the present time suicidal but has been. [redacted] abuses drugs and has traded sexual favors for [drugs] as well. [redacted] has cut [redacted]self extensively in the past (though not at present) and has a long history of auto-asphyxiation. [redacted] has a significant history for sexual molestation at a very young age (the perpetrator was [redacted] female nanny).[11]

32. In this letter, he described [redacted] as "bright and articulate but troubled" and stated that [redacted] would "be a candidate for a residential program with intensive therapy." At the time, Dr. Levinson believed that [redacted] should not be at home, even under supervision, because there were opportunities for [redacted] to get into trouble going and coming from school and at school and because [redacted] was very destructive to [redacted]self and those around

[redacted]. In his opinion, [redacted] needed to be in a more restricted facility, with a highly supervised environment and intensive psychotherapy because [redacted] did not make good choices and was engaging in risky behaviors such as cutting, auto-asphyxiation, promiscuity, and drugs.

33. Lisa Friedman, a clinical social worker, treated [redacted] for three sessions in February 2005. Ms. Friedman first saw [redacted] on February 16, 2005, for an hour session. Ms. Friedman completed an initial assessment of [redacted], which consisted of asking [redacted] a lot of questions. The history [redacted] gave Ms. Friedman was similar in most respects to the history [redacted] gave Dr. Artiles and Dr. Levinson, and included [redacted] drug abuse, cutting and self-asphyxiation, auditory and visual hallucinations, and trading sex for drugs. [redacted] also told Ms. Friedman that [redacted] was seeing a psychiatrist who had diagnosed [redacted] as "borderline" and was taking Seroquel to control her hallucinations.

34. Ms. Friedman next saw [redacted] on February 23, 2005, and met with [redacted] alone for half of a session. At that time, [redacted] reported to her that [redacted] was having visual hallucinations of a man following [redacted] during the daytime and auditory hallucinations of footsteps. In Ms. Friedman's opinion, this was very significant, and she gave [redacted] an Axis I diagnosis of psychotic

disorder, not otherwise specified, because [redacted] had symptoms of hallucinations.

35. Ms. Friedman included [redacted] in the second half of the session. She told them of her serious concern about [redacted] reporting hallucinations, and she and [redacted] discussed the various therapeutic options available. Ms. Friedman told [redacted] that she thought that [redacted] needed to be assessed in a psychiatric facility immediately to ensure [redacted] 's safety and the safety of others, for assessment of her medication and the presence of other psychiatric disorders, and for drug testing to determine if the hallucinations were drug-related or the result of mental illness.

36. Ms. Friedman's second recommendation to [redacted] on February 23, 2005, was that [redacted] needed to be assessed for a longer residential psychiatric program where [redacted] would be safe and could work on the issues causing [redacted] symptoms. Ms. Friedman believed [redacted] needed to be in a safe, therapeutic environment in order to "access [redacted] education."[12]

37. [redacted] told Ms. Friedman that [redacted] would not send [redacted] to a hospital psychiatric unit but that they would investigate possible residential programs.

38. [redacted] decided around this time to put [redacted] into a private residential treatment facility because they thought she might harm [redacted]self or others and because, in [redacted]'s opinion, [redacted] could

not provide [redacted] with the around-the-clock supervision they believed [redacted] needed. [redacted] wanted [redacted] to get the therapy and the education they thought [redacted] needed.

39. Ms. Friedman's final session with [redacted] in 2005 was on February 28, 2005, at which time she learned that [redacted] did not go to a hospital. [redacted] told her that [redacted] wanted to kill [redacted] sister but had no plans and that [redacted] was moving to a residential facility in Utah. Ms. Friedman called [redacted] into the session and told her about [redacted]'s wanting to kill [redacted] sister. [redacted] promised that [redacted] would provide one-on-one, around-the-clock supervision for [redacted] until [redacted] left for Utah.

[redacted]

40. [redacted] found [redacted]'s website on the Internet. [redacted] spoke with the director and decided that [redacted] would be the best placement for [redacted]. It was a small facility that admitted only girls and that had an arts program that [redacted] though [redacted] would like. [redacted] did not look for a residential treatment facility in Florida.

41. [redacted] was admitted to [redacted] on March 8, 2005. At the time, [redacted] had just begun accepting students, and [redacted] was the second or third student admitted to [redacted]. The number of students increased gradually over the months: By the end of March, there were 12 students; by the end of April, there were 15 or 16 students; by the end of June, there were 20 students; and by

the end of August, there were 23 students, the maximum number of students enrolled at [redacted] at any given time. Each slot that opened was usually filled within a week.

42. [redacted] is a therapeutic residential treatment center that emphasizes fine arts and drama. It is licensed by the State of Utah. The facility is housed in what was formerly a large bed and breakfast inn. Each bedroom houses between three and four students, and each has its own bathroom. There are four classrooms, a computer lab, a kitchen, and a dining room.

43. At the time [redacted] was admitted to [redacted], it was not accredited, so it partnered with another private school in the area. The teachers from that school came to [redacted] and taught the students there. All of the students were in one class, and, each day, the teachers taught one core subject, including history, science, and English, and had one study hall each day.

44. In June 2005, [redacted] hired its own teachers and began the accreditation process. At that time, all of the students were shifted up a grade-level, and four or five classes were taught at a time. The teaching was done in a regular classroom setting, and core subjects were taught Mondays through Fridays in 50-minute class periods. There was generally one teacher to four-to-six students. The therapeutic component of [redacted]'s program was integrated throughout the day with the academic component throughout the day.

45. In August 2005, the Utah State Office of Education recommended to the Northwest Association of Accreditation that [redacted] have professional accreditation. [redacted] then had all rights of accredited institutions; they needed only to complete a self-study to obtain full accreditation. [redacted] is also a member of the National Association of Therapeutic Schools and Programs.

46. At the times material to this proceeding, [redacted] had both an educational and a therapeutic component in its program, and each component comprised approximately 50 percent of the program. The therapeutic component included individual therapy, group therapy, recreational therapy, and family therapy:

a. Students were assigned an individual therapist and attended individual therapy sessions from one-to-three times each week.

b. Students participated in group therapy every day and were assigned to different groups depending on their specific issues, in which they learned skills for coping with their particular issues. Groups were available for students with, among other issues, eating disorders, addiction, and sexually active behaviors.

c. Students participated in art therapy and drama therapy on alternate days, once or twice each week. Students worked on art projects that dealt with their feelings, and the projects were used as therapeutic tools. Drama was also used as a

therapeutic tool because the students could play different roles and express feelings.

d. Students participated in recreational therapy twice each week and engaged in various activities designed to help them learn to work in teams.

e. Students also participated in family therapy. Once each week, the family therapist was in contact by telephone with the parents, outside of the presence of the student; once each week, the family therapist conducted an hour-long family therapy session, with the therapist, the student, and the parents on speaker phone; every two months, parents were required to participate in "family weekend," which was an intensive two-and-a-half-day program in which parents participated in group therapy, acquired coping skills, and attended classes and workshops, as well as spent time with their daughters.

47. [redacted] employed "front line staff" who acted as mentors for the students and supervised the students 24 hours each day, seven days each week, helped them work through problems, and ensured that they follow the rules. The residential staff members assigned to work nights looked in on each student every 10 minutes. Residential staff members were also in each classroom and dealt with behavior problems as they arose.

48. At the times material to this proceeding, [redacted] operated its clinical and academic program under a "Level System"

consisting of six levels. The first level was the safety and trust level, when a student was no more than five feet away from a staff member at all times, although the student was not in seclusion and went about [redacted] daily schedule; when the staff was convinced a student could keep [redacted]self safe and was not aggressive, the student moved to the trust level, when the student began exploring the principles of trust and working with others. The second level was the accountability level, when a student learned how to "own" [redacted] part in events. The third level was the insight level, when a student began to understand what [redacted] was doing and how [redacted] was feeling and also to have insight into others. The fourth level was a pro-active level, when the student began to combine insight with action and make better choices. The fifth level was the leadership level, when a student began to separate [redacted] identity from that of others and to set an example for [redacted] peers. The sixth level is a transitional level, when the student was able to look for balance.

49. Each student worked on a level until the treatment team decided that the student had met all of the goals of that level and was ready to move on to the next level. The treatment team consisted of the therapists, the nurses, the teachers, and the residential staff. The treatment team met once a week and discussed each student.

50. Amy Jeppeson is a licensed clinical social worker who, at the times material to this proceeding, was the executive director of Certified Educational Recreational Therapeutic Services, a company that includes four residential facilities, [redacted]; [redacted], which is a transitional academy for students moving from a residential treatment center; [redacted], a residential treatment facility for children aged 11 to 15 years; and [redacted], which is a residential treatment facility for children with an interest in the outdoors and horses.

51. Ms. Jeppeson was the person who decided to admit [redacted] to [redacted]. She initially had concerns about admitting [redacted] because of the severity of [redacted] mental problems, which Ms. Jeppeson rated as nine-and-a-half on a scale of 10. Ms. Jeppeson was primarily concerned with [redacted] 's auditory and visual hallucinations, because, if [redacted] was actively psychotic, [redacted] would not be admitted to [redacted] because the program was not sufficiently restrictive for such severely disturbed children. Ms. Jeppeson spoke at length with [redacted], who told her that the decision to send [redacted] to a residential treatment facility was very difficult but that [redacted] 's mental condition had gotten worse.

52. Ms. Jeppeson also spoke at length with Dr. Levinson and finally decided to admit [redacted] because she concluded that, although [redacted] had a very severe mental illness, [redacted] was not

having a psychotic break. Ms. Jeppeson believed that [redacted] could be helped by the [redacted] program.

53. In March 15, 2005, shortly after [redacted] arrived at [redacted], Dustin Adams, an APRN employed by [redacted], prepared an Initial Psychiatric Evaluation of [redacted], which consisted primarily of information that [redacted] provided in response to questions and observations made by Mr. Adams. [redacted]'s recitation of the history of [redacted] present illness was substantially similar to that provided to Dr. Artiles, Dr. Levinson, and Ms. Friedman. Mr. Adams report included the following information:

a. [redacted] reported that [redacted] parents made [redacted] attend [redacted] "because of drug abuse, behavioral problems, poor school performance, and being sexually active."[13] [redacted] also reported that [redacted] had had auditory and visual hallucinations for years and had had difficulty focusing since [redacted] was very young. [redacted] denied having significant problems with [redacted] parents or siblings, but [redacted] had run away, was truant, and exhibited oppositional defiant behavior. [redacted] reported that [redacted] school performance began to deteriorate when [redacted] was in the fifth grade and that [redacted] recent grades were C's, D's, and F's. Contrary to what [redacted] told Ms. Friedman, [redacted] told Mr. Adams that [redacted] did not know [redacted] was going to Utah until the day [redacted] was sent there. Mr. Adams noted that, although [redacted] was pleasant and cooperative during

the interview, [redacted] often stared into space and lost focus on the topic they were discussing.

b. [redacted] reported depressive symptoms including difficulty falling asleep, waking several times during the night, many mood swings, poor appetite, low energy, feelings of worthlessness, and problems concentrating. [redacted] did not have suicidal ideations, plan, or intent at the time of the evaluation.

c. [redacted] reported that several of [redacted] maternal relatives had psychotic disorders and had committed suicide and that [redacted] suffered from depression.

d. [redacted] reported using alcohol, marijuana, cocaine, LSD, Ecstasy, Vicodin, Coricidin, and cough syrup.

e. [redacted] reported that [redacted] had a brother and a sister; that [redacted] had a good relationship with [redacted] but an "okay" relationship with [redacted]; and that [redacted] was sexually abused by a nanny when [redacted] was eight or nine years old and by a 33-year-old man when [redacted] was 13 years old.

f. Mr. Adams observed that, during the interview, [redacted] 's speech, psychomotor presentation, attitude, eye contact, and affect were good; [redacted] mood was sad; [redacted] thought process was "linear, coherent, and goal directed."[14] [redacted] was alert and oriented in [redacted] cognition, but Mr. Adams considered [redacted] 's insight and judgment to be poor because of [redacted] drug use and behaviors, including sexual activity.

g. [redacted] reported frequently worrying about things and being anxious when [redacted] has to be with unfamiliar people or give presentations. [redacted] reported "periods of inflated self-esteem and overconfidence"; "going for days without sleep but feeling rested"; experiencing anger and throwing things; mood swings; inattention and making careless mistakes with schoolwork; problems with organizing tasks and activities; losing things; forgetting; being easily distracted; fidgeting; talking and moving around too much; losing [redacted] temper; being angry and resentful and easily annoyed with others; arguing with adults; and blaming others for [redacted] mistakes.

h. Mr. Adams concluded that [redacted] "[met] significant criteria for multiple diagnoses including major depression, ADHD, psychotic disorder, and oppositional defiant disorder"; that [redacted] had "significant symptomatic history of mania and conduct disorder"; that the possibility of bipolar disorder should be pursued because of [redacted] problems with impulse control and significant mood changes; and that he considered the family history of schizophrenia to be "an important aspect."[15]

54. Mr. Adams included the following diagnoses in the report of his Initial Psychiatric Evaluation:

Axis I	1.	Major Depression, recurrent, moderate
	2.	Polysubstance dependence
	3.	Sexual abuse

4. Disruptive Behavior Disorder, NOS
5. Psychotic Disorder, NOS
6. Rule Out Bipolar Disorder NOS
7. ADHD, predominantly inattentive type

Axis II: Deferred
Axis III: No Diagnosis
Axis IV: Problems with school performance, problems with primary support
Axis V: Current GAF 45 Highest Past Year Estimated 55-80

55. Mr. Adams reported in the evaluation that he telephoned [redacted] to discuss a treatment plan for [redacted] ; that [redacted] told Mr. Adams that he was not comfortable with giving [redacted] psychotropic medications and that he preferred that [redacted] be treated with alternative therapies such as vitamins and herbs; that he told [redacted] that [redacted] needed medication because of [redacted] problems with hallucinations, inattention, and depressed mood; and that [redacted] agreed to an increase in the dosage of Seroquel from 75 milligrams to 150 milligrams. Mr. Adams noted in the report that he anticipated that [redacted] would need further increases in medication but noted that [redacted] will continue with therapeutic treatment while at [redacted].

56. Mr. Adams also noted in his report that he questioned [redacted] 's responses because [redacted] changed [redacted] answers several times during the interview and that he questioned how much of [redacted] description of auditory and visual hallucinations was real because [redacted] had "a history of being quite manipulative."

57. Nora Urbanelli is a licensed social worker who was the program director at [redacted] from the time [redacted] was admitted until September 1, 2005, when she became clinical director of [redacted]. As program director, Ms. Urbanelli's duties included hiring and training all of the residential staff at [redacted], setting up the residential program at [redacted], and handling a case load as a therapist. As clinical director, Ms. Urbanelli's duties included supervising and training therapists and supervising the nursing and clinical departments to make sure that everything is done according to policy.

58. Ms. Urbanelli prepared a Pyschosocial Assessment of [redacted] dated March 16, 2005. In preparing the assessment, Ms. Urbanelli relied on the information contained in [redacted] 's application for admission to [redacted], interviews with [redacted] , and conversations with [redacted] Ms. Urbanelli recalled that [redacted] reported a history of extensive drug use, suicidal tendencies, seeing things and hearing voices, and self-harm; [redacted] also was very angry and oppositional toward staff. During the interviews, Ms. Urbanelli had difficulty conversing with [redacted] because [redacted] seemed to disassociate and stare off into space. [redacted] also seemed depressed, anxious, and worried about what people thought of [redacted].

59. Ms. Urbanelli was the therapist who treated [redacted] while [redacted] was at [redacted], and she put together the clinical long term

goals included in [redacted] 's Master Treatment Plan, which was completed on March 31, 2005. The Master Treatment Plan is prepared for each student at [redacted] and includes the student's educational and therapeutic goals. [redacted]'s policy was that a student's therapist writes the treatment plan and identifies goals for the student to work on. These goals are supported in various ways, including being integrated into the educational component of the program.

60. The Master Treatment Plan includes forms entitled "Clinical Long Term goals." Several Clinical Long Term goal forms are included in [redacted] 's Master Treatment Plan; there is a form for depression, one for ADD/ADHD; one for anger management; one for mood instability; one for oppositional defiance; one for parent-child relational problems; one for low self-esteem; one for sexual acting out, and one for substance dependence. The long-term goal and the objectives for each condition are pre-printed on the forms. Ms. Urbanelli chose the forms that corresponded to the problems to be addressed with [redacted] , as noted on the first page of the Master Treatment Plan, and to more general goals related to symptoms associated with the problems. Even though the goals and objectives are pre-printed on the Clinical Long Term goal forms, the therapists at [redacted] were free to add or remove objectives for a student, if appropriate.

61. Ms. Urbanelli met individually with [redacted] once or twice a week, depending on what was happening with [redacted]. She also regularly saw [redacted] during the week and pulled [redacted] aside to talk with [redacted]. In addition, other therapists at [redacted] would talk with [redacted]

62. [redacted] participated in individual and family therapy, and she attended group therapy every day. [redacted] was in three groups, one for sexually active students, one for addiction recovery, and one general group, and [redacted] participated in art, drama, and recreational therapy.

63. [redacted] were not allowed to visit [redacted] during the first two months [redacted] was at [redacted]. After those two months, [redacted] regularly attended and participated fully in family therapy weekends, except that [redacted] missed one weekend because of business commitments. For these weekends, [redacted] would usually arrive at [redacted] on Wednesday and stay through Sunday and would spend all of their time working with [redacted]. [redacted] also participated in therapy sessions by telephone for one hour, four times a week.

64. In May 2005, Ms. Urbanelli and Ms. Jeppeson, with the agreement of [redacted], referred [redacted] to Dr. Jason Adams, a psychology resident working in Orem, Utah, under the supervision of Dr. Chris McRoberts. Dr. Adams was requested to conduct a full psychological evaluation "to clarify personality dynamics and mental health issues," including [redacted]'s reported auditory and

visual hallucinations; [redacted] underlying mood and anxiety difficulties; and "the true nature of possible psychotic symptoms."[16] Dr. Adams spent four or five hours with [redacted] on May 26, 2005, interviewing, evaluating, and testing [redacted]. Dr. Adams also spoke by telephone with [redacted] on June 1, 2005; interviewed Ms. Jeppeson; and reviewed the psychosocial assessment prepared by Ms. Urbanelli and the report of the initial psychiatric evaluation prepared by Mr. Adams. Dr. Adams compiled an 18-page Report of Psychological Evaluation in which he discussed the history obtained from [redacted], [redacted] parents, Ms. Jeppeson, and Ms. Urbanelli's and Mr. Adams's reports; discussed the results of psychological testing; set out his diagnoses; and made specific treatment recommendations:

a. The history provided by [redacted] was substantially similar to the histories [redacted] provided to Dr. Artiles, Dr. Levinson, Ms. Friedman, Mr. Adams, and Ms. Urbanelli, although [redacted] went into much greater detail regarding [redacted] symptoms and elaborated on some events: [redacted] denied being affected at the time or later by the sexual encounter [redacted] had at the age of 13 years with a 33-year-old man; [redacted] described dreams of [redacted] and a friend drugging and raping [redacted] repeatedly; [redacted] claimed that, during the previous year, [redacted] smoked three packs of cigarettes a day, used cocaine and marijuana daily, and took ecstasy three times a week; [redacted] claimed [redacted] tried to kill [redacted] brother and sister with

knives on several occasions but was interrupted by [redacted] each time; [redacted] recalled being secretly cruel to animals between the ages of 6 and 13 years; [redacted] asserted that [redacted] frequently penetrated [redacted] vagina with knives because the pain and the sexual feeling felt good to [redacted], although a physical examination revealed no scarring or bleeding; [redacted] admitted cutting [redacted]self because the pain was distracting; and [redacted] stated that [redacted] practiced auto-asphyxiation daily.

b. Dr. Adams administered several tests to evaluate [redacted]'s personality dynamics and the possibility of mental illness, the results of which presented an great deal of information to the effect that [redacted] was experiencing severe personality and psychological dysfunction in multiple areas, including but not limited to, very dark, evil forebodings indicative of very high levels of trauma in [redacted] past; severe levels of depression; very, very high levels of distress and extreme difficulties with reality testing; serious impairment of ability to think clearly, logically, and coherently; psychological manic and depressive features, cyclical in nature; strong tendencies toward substance abuse and chronic use of substances as self-medication, with the likelihood that [redacted] would not remain abstinent.

c. Dr. Adams included in his report the following diagnoses:

Axis I: 1. Bipolar I Disorder, Most

Recent Episode
Unspecified, Severe, With
Mood Congruent
Psychotic Features

2. Anxiety Disorder Not
Otherwise Specified
3. Sexual Abuse of a Child
4. Attention-
Deficit/Hyperactivity
Disorder,
Predominately Inattentive
Type (by history)
5. Rule Out Schizoaffective
Disorder, Bipolar Type
6. Rule Out Posttraumatic Stress
Disorder
7. Rule Oppositional Defiant
Disorder

Axis II: Diagnosis deferred on Axis II
Some dependency, borderline,
and schizoid features not fully
meeting criteria for a
diagnosis of a personality
disorder

Axis III: Deferred to physician

Axis IV: Extreme emotional distress, poor
coping mechanisms,
dysfunctional relationship
patterns, elevated and
consistent family conflict.

Axis V: Current GAF: 48.[17]

d. Dr. Adams' treatment recommendations included a conclusion that the level of care at [redacted] was warranted to ensure the safety of [redacted] and those around [redacted] and to manage [redacted] medications; that [redacted] needed a long-term, restrictive, structured residential setting because of the intensity of [redacted] depressive and panic symptoms, emotional instability, lack of

impulse control, and disassociation and homicidal ideation; that a step-down from [redacted] to a less-structured therapeutic program might be warranted in the future, though if [redacted] were to return home after completing [redacted] stay at [redacted], [redacted] should have structure, monitoring of drug use, and consistent psychotherapy and medication management; that [redacted] should participate in regular individual and group therapy; that medication management would be imperative as an adjunct to [redacted]'s therapeutic treatment; that family therapy would be imperative before [redacted] returns home; that, because [redacted] emotional difficulties and thought disturbance problems impaired [redacted] cognitive functioning, [redacted] should be in an academic environment that is self-paced and has one-on-one access to teachers and tutoring staff; and that participation in a chemical dependency program encompassing 12-step and other group programs would be important.

65. In Dr. Adams's opinion, given [redacted]'s condition at the time of his evaluation, a highly-structured therapeutic day program, with a return home in the evening and on weekends, would be inadequate to meet [redacted]'s needs for a stable environment, especially because of the complex interpersonal relationships within the family. In his opinion, the complexity of the familial and social environmental would quickly overwhelm [redacted]'s ability to control [redacted] impulsive behavior and manage environmental stressors, and the increasing level of emotional

distress, as well as the increase in psychotic, cyclical manic and depressive symptoms would make it very difficult for [redacted] to manage [redacted] education. Dr. Adams believed that it was important for [redacted] to be away from the family in order to reduce [redacted] level of emotional distress and give [redacted] the opportunity to change [redacted] behavior patterns, learn coping skills, and become stabilized on [redacted] medications.

66. [redacted] cut [redacted]self twice while [redacted] was at [redacted]. The first time was in early April, when [redacted] took a plastic item from the horse stables and cut [redacted]self in the bathroom. The cut was superficial and did not draw blood. The second time [redacted] cut [redacted]self was in July, during a visit by [redacted]. [redacted] had flattened the metal cylinder on a pencil that holds the eraser and used it to cut [redacted]self, again superficially. [redacted] reported this incident to the residential staff.

67. In July 2005, [redacted] pulled a staff member aside and told her that [redacted] wanted to kill one of the other students. [redacted] was kept away from the other student and in the line of sight of a staff member at all times; [redacted] slept in the living room, and Ms. Urbanelli checked with [redacted] every other day. [redacted] told Ms. Urbanelli that [redacted] really was not sure why [redacted] had these homicidal thoughts.

68. In August 8, 2005, Ms. Urbanelli reported in a letter addressed to "to Whom It May Concern," that [redacted] was depressed,

engaged in suicidal and homicidal ideation and feared that [redacted] will carry out [redacted] impulses, was unstable in [redacted] moods, was reporting every few days that [redacted] was having auditory and visual hallucinations, and would leave [redacted] room at night in a panic about what [redacted] had heard and seen.

69. In Ms. Urbanelli's opinion, [redacted] improved while [redacted] was at [redacted]. Once [redacted] medications were balanced, [redacted] talked less about depression, suicide, and hallucinations and more about trauma and where [redacted] wanted to go in [redacted] life. [redacted] began making friends with fellow students and would reach out and talk to staff about [redacted] feelings. Nonetheless, [redacted]'s "level" would vary from week to week or even more frequently, depending on [redacted] behavior.

70. In December 2005, [redacted] successfully completed the sixth level at [redacted], and [redacted] was discharged from the program. At the time of [redacted] discharge, Ms. Urbanelli felt that [redacted] had a long way to go to attain mental health. [redacted] continued to suffer from major depression, though reoccurrence was moderate; the staff was still trying to rule out a diagnosis of bi-polar disorder, although the medications helped [redacted] feel more stable; [redacted] continued to be hyperactive and distracted. In addition, [redacted] continued to show features of borderline personality disorder. [redacted] oppositional defiance had lessened from the time [redacted] was

admitted to [redacted], but [redacted] still had some family issues and issues with addiction.

71. Ms. Urbanelli prepared the mental health portion of [redacted]'s Discharge Summary, and she recommended that [redacted] be placed in a transitional program with supervision 24 hours each day, seven days each week. A transitional program would have less daily structure than [redacted], allowing the students to make more choices; there would be more students; and there would be contact with boys.

72. When [redacted] was discharged from [redacted], [redacted] was taking 60 milligrams of Strattera in the morning; 10 milligrams of Abilify at bedtime; 200 milligrams of Lamictal at bedtime; and 100 milligrams of Seroquel at bedtime. The Lamictal was first prescribed June 20, 2005, and was intended to address [redacted]'s symptoms of bipolar disorder, as noted in the report of Dr. Adams. [redacted] was also briefly on Geodon to address anxiety, but this medication was stopped due to nausea, increased dreaming, and agitation. All of the medications prescribed for [redacted] during [redacted] stay at [redacted] were prescribed by Mr. Adams, the APRN employed by [redacted].[18]

73. In Ms. Urbanelli's opinion, these medications stabilized [redacted]'s depression, and, when [redacted] was discharged, [redacted] was not withdrawn, [redacted] no longer had a blank stare at times, and

[redacted] generally appeared brighter and more able to take care of [redacted]self.

74. Kori Mayeski, who has a master's degree in educational administration, was the educational director of [redacted] until August 2005. Her duties included hiring teachers, assigning courses for the students, and seeing that [redacted] was accredited.

75. Ms. Mayeski met with [redacted] and [redacted] parents when [redacted] arrived at [redacted] in early March 2005. They discussed [redacted]'s educational goals and needs and placed [redacted] in the ninth grade. Ms. Mayeski reviewed [redacted]'s transcript from [redacted], identified the areas in which [redacted] need to make up credits so that [redacted] would be on track for the 10th grade, and worked on [redacted]'s schedule of classes.

76. Ms. Mayeski was responsible for writing the educational goals in [redacted]'s Master Treatment Plan. The educational goals were integrated with the therapeutic goals and included managing depression by maintaining a positive focus on one subject matter for 50-minute periods with 85 percent retention of material; managing her ADHD by maintaining attention during class discussion and during homework study, by demonstrating organizational skills, by being on time, using [redacted] planner, being prepared for class with materials and assignments in four out of five trials; and demonstrating impulse control during class and homework study in four out of five trials; and

managing [redacted] parent/child relational problems by participating appropriately in Parent-Teach-Student Conferences and in the process of determining educational placement after [redacted] in two out of four trials.

77. Ms. Mayeski had the opportunity to observe [redacted] on a daily basis at [redacted]. When [redacted] first arrived, the staff was concerned because [redacted] was having difficulties reading, but it become apparent that [redacted] inability to read was caused by "all of the interference that was going on in [redacted] head and what was going on emotionally."[19] Once [redacted] was properly medicated, however, Ms. Mayeski observed that [redacted] was able to function well in the educational component of the program. Ms. Mayeski considered [redacted] one of [redacted]'s top students; [redacted] was able to integrate into the classroom, participate in class, and complete her assignments.

78. When [redacted] began at [redacted], there were about three weeks left in the third grading period. [redacted] was assigned to the ninth grade, [redacted] took biology, English I, psychology, and physical education. The psychology class was not really an academic class and had more to do with [redacted]'s therapeutic program. [redacted] received three B's and an A and one-quarter credit for [redacted] work during the third term.

79. [redacted] took nine courses in the forth term of the 2004-2005 school year, which included art history, English, world

history, biology, Spanish, algebra I, theatre arts, and physical education. [redacted] earned all A's and B's, except for a C in art history.

80. Over the summer, [redacted] took double classes in algebra I and biology, and [redacted] also took Spanish, theatre arts, and physical education. By the end of the summer, [redacted] had completed [redacted] ninth-grade coursework, and [redacted] began 10th grade in the fall term, when [redacted] took English, world history, geometry, Spanish II, art, theatre, and physical education. [redacted] did very well in these courses.

81. [redacted] did not come to [redacted] with an IEP, and no IEP was written for [redacted] while [redacted] was at [redacted]. Even though all of the students at [redacted] had mental health issues, [redacted] did not write IEPs for students such as [redacted], who were functioning and capable of maintaining educational goals without an IEP. Utah law has changed, and private schools are no longer permitted to write IEPs. [redacted] does, however, accept and implement IEPs developed by students' home schools.

Eligibility determination and IEP

82. On August 8, 2005, [redacted] enrolled [redacted] at [redacted] School, a Broward County public school, and they requested that [redacted] be evaluated for eligibility for ESE services in the Broward County public school system. [redacted] provided school personnel with private psychiatric and psychological evaluations and

information from [redacted] that indicated that [redacted] might be eligible for ESE services.

83. At the time [redacted] enrolled [redacted] in [redacted] School, [redacted] advised School Board personnel that [redacted] would not be attending school in Broward County.

84. [redacted] had not requested that the School Board evaluate [redacted] for eligibility for ESE and related services prior to July 2005, when they submitted their first request for a due process hearing to the School Board. At the time they enrolled [redacted] at [redacted], [redacted] had not received ESE or related services in the Broward County, or any, public school system or in any private school that [redacted] had attended.

85. The documents made available to the School Board included a psychological report from Dr. Laura Artiles, a psychologist who had evaluated but never treated [redacted] while [redacted] was enrolled in the ninth grade at [redacted]; a letter from Dr. Andrew Levinson, a psychiatrist who had evaluated [redacted] and treated [redacted] for approximately 10 sessions; a psychiatric intake report done by Dustin Adams, an APRN, while [redacted] attended [redacted]; a psychosocial evaluation done by Nora Urbanelli, Clinical Director at [redacted]; a psychological report done by Jason Adams while [redacted] was enrolled at [redacted]; and the results of the ratings given to [redacted] at the School Board's request by a teacher at [redacted] and by [redacted] on the

Behavioral Assessment System for Children, second edition (BASC-2).

86. Dr. Joseph Tamburino, who coordinates and supervises the School Board's school psychologists and social workers in the south central area of Broward County, reviewed the evaluations and reports provided by [redacted]. He decided that all of the evaluations and reports were consistent in their essential elements and that it would not be necessary to actually assess [redacted]. He concluded that the reports and evaluations, supplemented with the results of the BASC-2 teacher and parent rating scales, would provide sufficient information upon which the School Board IEP team could base a determination of [redacted]'s eligibility for ESE services and of the appropriate placement for [redacted].

87. At Dr. Tamburino's request, Suzanne Spindler, school psychologist assigned to [redacted] School, reviewed the documents submitted by [redacted], together with the results of the BASC-2 rating scales completed by [redacted]'s teacher and by [redacted] parents. Dr. Spindler prepared a Psychological Addendum dated August 10, 2005, which contains the following summary:

> [redacted] was referred for a review of psychological and psychiatric assessments and of current behavioral checklist data in order to assist in educational planning. [redacted] appears to be a student with a long history of severe and extensive behavioral and emotional difficulties. Behavioral

> problems include drug abuse, sexual acting out, truancy, oppositional behaviors, . . . and poor academic performance. Emotional problems include depression, anxiety[,] hallucinations, a suicidal [sic] attempt, sexual abuse, and mood swings. Behavioral checklists from one teacher and from [redacted] also confirm that [redacted] has severe problems with anxiety, depression, and psychotic type unusual perceptions. [redacted] exhibits inappropriate types of behaviors or feelings under normal circumstances and a general pervasive mood of unhappiness. [redacted] has difficulty building and maintaining satisfactory interpersonal relationships with peers, teachers and family members. [redacted] has the characteristics of students who are Emotionally Handicapped.

88. On August 10, 2005, [redacted]'s IEP team convened a meeting to determine if [redacted] was eligible for ESE services in Broward County. [redacted] attended this meeting, as did their attorney, and Ms. Urbanelli, Amy Jeppeson and Kori Mayeski of [redacted] participated by telephone.[20]

89. Based on the available information, the IEP team determined that [redacted] met the eligibility criteria for both emotionally handicapped and seriously emotionally disturbed students and that [redacted] was, therefore, eligible for ESE services in Broward County.

90. An IEP was developed for [redacted], which included both educational and therapeutic goals. Ms. Urbanelli, Ms. Jeppeson and Ms. Mayeski participated with the Broward County IEP team in

developing these goals. [redacted] did not disagree with the goals set forth in the IEP.

91. The School Board representatives on the IEP team proposed to place [redacted] in the [redacted] Program, a therapeutic day program for students with serious emotional disturbances provided by the Broward County public school system. The IEP team considered various alternative placements, beginning with a regular education placement, but the determination was made that [redacted] needed close supervision and a substantial therapeutic component during the school day that could be provided in a regular education program, supplemented with an inclusion teacher and a therapeutic component. After considering the continuum of available placements, the School Board representatives settled on the [redacted] Program as the least restrictive environment in which [redacted] could access [redacted] education, given that [redacted] needed supervision, medication monitoring and management, low student-teacher ratio, on-site crisis intervention capability, and a therapeutic structural behavior management program infused with the educational program.

92. The ESE and related services available to [redacted] and [redacted] family from the placement in the [redacted] Program proposed in the August 10, 2005, IEP include the following:

a. The [redacted] Program is a separate day school for child with psychiatric disorders of some kind. The school's normal hours

of operation are from 8:00 a.m. to 3:00 p.m., Mondays through Fridays. The students are not in school on weekends, holidays, and during the summer, except for those students in the extended school year program. The program provides a standard diploma option in addition to a special diploma option. The classes have a lower student-teacher ratio, and every teacher is certified in a subject area and in exceptional student education. A teacher and a paraprofessional are assigned to each classroom, and self-contained classrooms are provided for students who cannot transition from one class to another. A speech therapist is on-site to work with students who qualify for speech and language services. A curriculum specialist, a reading coach, and a math coach are all on-site. Extended school year services are available for students who need services over the summer to maintain the progress they made during the school year. Dual enrollments are available in vocation school and community college.

b. The behavior management program in the [redacted] Program is intensive. The program includes a "level system" consisting of four levels that the students move through as their expectations and responsibilities increase, and students earn privileges as they move up levels. Each student carries an individualized daily goal sheet on which IEP goals are written, and students earn or lose points based on these goals. The points can be

used as "cool cash" that the students can use to purchase items from the school store and the daily classroom stores. In addition, any instructional or support staff member can initiate a level review during which the student participates with his or her peers and teaching and support staff to discuss the student's progress in mastering his or her goals, and the student's level is adjusted if appropriate.

c. The staff members in the [redacted] Program run conflict mediation groups that assist students in working to resolve conflicts with others in appropriate ways.

d. The program includes positive and negative reinforcers, and the negative reinforcers include internal school suspension in which a behavior causing the suspension is addressed and worked through before the student is returned to class.

e. Safety teams whose members are trained in professional crises management are on-site and in and out of classrooms all day. They remove students from the classroom when they are becoming aggressive or refusing to comply with instructions; they escort students on stress walks; and they teach students social and behavior skills.

f. Seclusionary rooms, which are padded rooms, are available when a student's behavior is out of control; the students in the rooms are monitored at all times.

g. If a student is having a mental health crisis or demonstrates the need for additional supervision, a "Code P" is called and the student is kept within the vision of staff at all times, is escorted whenever on the school grounds, and, if the student leaves campus, the student is followed and brought back onto the school grounds.

h. A behavior specialist and a behavior tech are on-site, and they develop behavior intervention plans used during class.

i. A mental health team is on-site, and every student is assigned a mental health therapist. The therapist provides individual therapy for the student and is the case manager with respect to the groups in which the student participates for therapy for different issues. The mental health team participates in clinical supervision; meet weekly as a team and with the psychiatrist and the school nurse who are on staff. The team reviews each student at least once a month with the psychiatrist and the nurse to discuss medication management and the need to contact outside doctors for the student.

j. A therapist is on call and available at any time during the school day for emergencies in the classrooms, and, at the student's request, the student's individual therapist can be called to assist.

k. The psychiatrist meets with parents, observes students in the classrooms, and is available to see a student during the school day.

l. The mental health team also runs parent groups that meet monthly, and it makes referrals for case management services through local agencies. The team is in contact with probation officers, attends court hearings, attends family service planning meetings for foster children, and attends meetings with parents who are seeking community support services.

m. After notifying the parents, the licensed therapists, the psychiatrist, and the psychologist will Baker Act any student that presents a danger of harm to himself or herself or to others.

n. Therapists in the [redacted] Program deal with a variety of issues with the students, including mood instabilities for students with bipolar disorder; manic and oppositional defiant behaviors; major depression; suicidal and homicidal ideation or threats; substance abuse; and pervasive developmental delays. The school therapists work with the students' parents in dealing with these issues, and, if the student has an outside therapist or if there is a community agency providing services to the student, the school therapist will contact these resources if

any serious issues come up with the student. Parents are also allowed to observe their child in the classroom.

o. The Severely Emotionally Disturbed Network is an agency of the Broward County public school system that, among other things, plans for and makes recommendations for community services to the families of emotionally disturbed children who are receiving ESE and related services in Broward County and who have conduct problems, have been victimized, have problems with substance abuse, or are supervised by the Florida Department of Juvenile Justice. These "wraparound" services for students in the Broward County public school system are coordinated through [redacted] Health, which has a centralized case management team. The services assist the family in dealing with a child's behavioral or emotional issues, and provide substance abuse programs, behavior technicians, and therapists.[21]

p. Parents are expected to pay attention to their child's behavior and to alert the outside agencies if, for example, the child becomes suicidal. If an issue arises when school is not in session, the student's school therapist will discuss the issue with the student upon the student's return to school. Depending on the seriousness of the issue, the school therapist, after talking with the student, would make an assessment about the need to Baker Act the child.

q. The parents of students in the [redacted] Program can also engage private therapists to work with the students and their parents in the home environment and to deal with any mental health or behavior issues that may arise after school hours or at any other time when school is not in session.

93. [redacted] did not agree with the placement proposed in the IEP developed for [redacted] because they did not think a therapeutic day program such as that proposed for [redacted], even with "wraparound" services, was appropriate to deal with [redacted] emotional and mental health problems. [redacted] were particularly concerned that the [redacted] Program would not provide supervision for [redacted] after school and at night or on the weekends and holidays. They believed that [redacted] needed care 24 hours a day, seven days a week to ensure [redacted] mental stability and allow [redacted] to benefit from [redacted] education.

94. Ms. Jeppeson also disagreed with the placement proposed in the IEP because, in her opinion, [redacted] needed a program in which [redacted] received therapeutic care and close supervision 24 hours a day, seven days a week, both in August 2005 and at the time of [redacted]'s discharge from [redacted]. When [redacted] was discharged from [redacted] in December 2005, the staff strongly recommended that [redacted] be placed in a transitional residential facility. Ms. Jeppeson believed that [redacted] needed that level of care so [redacted] could continue to "grow, heal, and move forward."[22]

In Ms. Jeppeson's opinion, even in December 2005, [redacted] was not ready to go back to the pressures of being at home, around [redacted] family and friends.

95. Ms. Urbanelli disagreed with the placement proposed in the IEP. She wrote in a letter dated August 8, 2005, to the IEP team, as follows:

> In our professional opinion, [redacted] is not stable enough to be able to function at home because of [redacted] impulses to hurt [redacted]self and others. [redacted] is also fighting a strong addiction to alcohol and Cocaine. [redacted] continues to report wanting to use [drugs and alcohol] and "numb out" [redacted] feelings when [redacted] is in depressive states. Coping in non self harm [sic] ways is new for [redacted] and [it] will take some time before constructive ways become more natural for [redacted]. We believe [redacted] would return to [redacted]self destructive behaviors very quickly were [redacted] to return home and enter public high school at this time.

96. [redacted] did not, at the times material to this proceeding, attend school either at [redacted] School or at the day school for seriously emotionally disturbed students proposed in the IEP but, rather, remained enrolled at [redacted] until December 14, 2005, when [redacted] was discharged from the program.

Reimbursement request

97. [redacted] paid tuition to [redacted] from July 14, 2005, when they first filed their request for a due process hearing with the School Board, until December 14, 2005, when [redacted] was discharged

from [redacted] at the rate of $8,950.00 per month for five months, for a total of $44,750.00.[23]

CONCLUSIONS OF LAW

98. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to Section 1003.57(5), Florida Statutes (2006), and Florida Administrative Code Rule 6A-6.03311(11).

99. Pursuant to Title 20, Section 1412(1), United States Code, a state is eligible for federal funds if it demonstrates that it has "in effect a policy that assures all children with disabilities the right to a free appropriate public education."

100. Florida's plan for providing a free appropriate public education is set forth in the Florida Statutes and in Florida Administrative Code Rules 6A-6.03011 through 6A-6.0361. Section 1003.57, Florida Statutes (2005), provides in pertinent part:

> Each district school board shall provide for an appropriate program of special instruction, facilities, and services for exceptional students as prescribed by the State Board of Education as acceptable, including provisions that:
>
> (1) The district school board provide the necessary professional services for diagnosis and evaluation of exceptional students.

(2) The district school board provide the special instruction, classes, and services, either within the district school system, in cooperation with other district school systems, or through contractual arrangements with approved private schools or community facilities that meet standards established by the commissioner.

* * *

(5) No student be given special instruction or services as an exceptional student until after he or she has been properly evaluated, classified, and placed in the manner prescribed by rules of the State Board of Education. The parent of an exceptional student evaluated and placed or denied placement in a program of special education shall be notified of each such evaluation and placement or denial. Such notice shall contain a statement informing the parent that he or she is entitled to a due process hearing on the identification, evaluation, and placement, or lack thereof. Such hearings shall be exempt from the provisions of ss. 120.569, 120.57. and 286.011, except to the extent that the State Board of Education adopts rules establishing other procedures and any records created as a result of such hearings shall be confidential and exempt from the provisions of s. 119.07(1). The hearing must be conducted by an administrative law judge from the Division of Administrative Hearings of the Department of Management Services. The decision of the administrative law judge shall be final, except that any party aggrieved by the finding and decision rendered by the administrative law judge shall have the right to bring a civil action in the circuit court. In such an action, the court shall receive the records of the administrative hearing and shall hear additional evidence at the request of either party. In the alternative, any party aggrieved by the finding and decision

> rendered by the administrative law judge shall have the right to request an impartial review of the administrative law judge's order by the district court of appeal as provided by s. 120.68. Notwithstanding any law to the contrary, during the pendency of any proceeding conducted pursuant to this section, unless the district school board and the parents otherwise agree, the student shall remain in his or her then-current educational assignment or, if applying for initial admission to a public school, shall be assigned, with the consent of the parents, in the public school program until all such proceedings have been completed.
>
> (6) In providing for the education of exceptional students, the district school superintendent, principals, and teachers shall utilize the regular school facilities and adapt them to the needs of exceptional students to the maximum extent appropriate. Segregation of exceptional students shall occur only if the nature or severity of the exceptionality is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

101. Thus, as required by the IDEA, Florida law gives the parents of an exceptional student the general right to "a due process hearing on the identification, evaluation, and placement, or lack thereof" of the student. See § 1003.57(5), Fla. Stat.; Fla. Admin. Code R. 6A-6.03311(11).

102. Parents are also entitled to a due process hearing specifically to resolve "[d]isagreements . . . regarding the availability of a program appropriate for the student, and the question of financial responsibility[,]" where the parents,

because of a dispute over the provision of a free appropriate public education, have removed their child unilaterally from the public school system and placed him or her in a private school. See Fla. Admin. Code R. 6A-6.03311(9)(b). In such a case, the parents are authorized to seek recovery from the school district, via the due process procedure, of the cost of the private placement.

103. The only issue presented in this case is whether [redacted] are entitled to reimbursement for tuition paid to [redacted] from the time of their first due process hearing request until [redacted]'s discharge in December 14, 2005. [redacted] contend that they are entitled to reimbursement for tuition paid to [redacted] because the School Board failed to provide [redacted] with a free appropriate public education. Specifically, [redacted] claim that the placement for [redacted] proposed in the IEP developed August 10, 2005, in the School Board's [redacted] Program was not appropriate because it was a day-school program for seriously emotionally disturbed students; [redacted] contend that a residential treatment facility was the only placement that would have allowed [redacted] to benefit from [redacted] education.

Authority to order reimbursement of private school tuition

104. Florida Administrative Code Rule 6A-6.03311(9)(c) sets forth the conditions under which parents can be awarded reimbursement of private school tuition:

> If the parents of a child with a disability, who previously received specially designed instruction and related services under the authority of a public agency, enroll the student in a private preschool, elementary, or secondary school without the consent of or referral by the school district, a court or an administrative law judge may require the school district to reimburse the parents for the cost of that enrollment; if the court or administrative law judge finds that the school district had not made a free appropriate public education available to the student in a timely manner prior to that enrollment, and that the private placement is appropriate. A parental placement may be found to be appropriate by an administrative law judge or a court even if it does not meet the state standards that apply to education by the Department of Education and the school district.

This Rule is nearly identical to the provisions of Title 20, Section 1412(a)(10)(C)(ii), United States Code,[24] and Title 34, Code of Federal Regulations, Section 300.403(c).[25]

105. Pursuant to the Florida rule and the federal statute and regulation cited above,[26] therefore, [redacted] must prove the following to establish their entitlement to reimbursement for tuition paid for [redacted] to attend [redacted]: First, [redacted] must have received ESE and related services prior to [redacted] enrollment in [redacted]; second, the School Board must have failed to make a free appropriate public education available to [redacted] in a timely manner prior to [redacted] enrollment in [redacted]; third, the placement at [redacted] must have been appropriate; and fourth, [redacted] must have paid, or be legally obligated to pay, the tuition for [redacted]'s attending [redacted].

106. Based on the findings of fact herein, [redacted] cannot establish their entitlement to reimbursement pursuant to Florida Administrative Code Rule 6A-6.03311(9)(c), Title 20, Section 1412(a)(10)(C)(ii), United States Code, or Title 34, Code of Federal Regulations, Section 300.403(c) because [redacted] never received ESE and related services from any public school prior to [redacted] enrollment in [redacted], nor did [redacted] ever request that [redacted] be evaluated to determine if [redacted] was eligible for such services prior to [redacted] enrollment in [redacted], and because the School Board had no opportunity to offer [redacted] a free appropriate public education prior to [redacted] enrollment in [redacted].

107. In a case in which entitlement to tuition reimbursement for unilateral placement of a student in private school cannot be awarded pursuant to the statute, rule, and regulation cited above, there is another avenue that may be pursued. Title 20, Section 1415(i)(2)(A), United States Code, gives a party "aggrieved by the findings and decision made in an impartial due process proceeding . . . the opportunity to bring a civil action in any state court of competent jurisdiction or in a federal district court, without regard to the amount in controversy." Title 20, Section 1415(i)(2), United States Code, further provides:

> (C) Additional requirements: In any action brought under this paragraph, the court-
>
> (i) shall receive the records of the administrative proceedings;
>
> (ii) shall hear additional evidence at the request of any party; and

> (iii) basing its decision on the preponderance of the evidence, shall grant such relief as the court determines appropriate.

108. The authority of a court to order a school district to reimburse the parents of a child with a disability for tuition and expenses of placing the child in a private school was first articulated by the United States Supreme Court in School Committee of Town of Burlington v. Department of Education, 471 U.S. 359, 369 (1985). In Burlington, the Court held that a School Board must "reimburse parents for their expenditures on private special education for a child" if it is ultimately determined that the School Board did not "provide a free appropriate public education to the child and that the child did receive an appropriate education in the private facility." Reimbursement is required even if the school in which the parents unilaterally place their child is not one of the schools approved by the State for public agency placements. See Florence County School District v. Carter, 510 U.S. 7 (1993).

109. Burlington was decided before the enactment of Title 20, Section 1412(a)(10)(C)(ii), United States Code, in the 1997 amendments to the idea and was based on the authority of the courts to "grant such relief as the court determines appropriate" found at the time of the decision in Burlington in Title 20, Section 1415(e)(2), United States Code, which contained language identical to that in Title 20, Section 1415(i)(2))C), United States Code. See Burlington, 471 U.S. at 369. In Florence County School District, which was also decided under Title 20, Section 1415(e)(2), United States Code, the Court made it clear that the holding in

Burlington was based on the equitable powers granted to courts in the IDEA:

> Under [20 U.S.C. § 1415(e)(2)] "equitable considerations are relevant in fashioning relief," Burlington, 471 U.S. at 374, and the court enjoys "broad discretion" in doing so, id. at 369. Courts fashioning discretionary equitable relief under IDEA must consider all relevant facts, including the appropriate and reasonable level of reimbursement that should be required.

510 U.S. at 16.

110. Hearing officers deciding cases under the Florida statutes and rules implementing the provisions of the IDEA do not have inherent or equitable powers but can exercise only those powers conferred by statute or rule. See S.T. v. School Bd. of Seminole County, 783 So. 2d 1231, 1233 (Fla. 1st DCA 2001). Accordingly, only a state court of competent jurisdiction or a federal district court has the power under Title 20, Section 1415(i)(2))C), United States Code, to determine, in its discretion, whether it would be equitable to award [redacted] reimbursement for the tuition they paid to [redacted].

111. This is not to say, however, that a hearing officer appointed by the Florida Department of Education does not have the obligation to provide a court with a record, together with findings of fact, containing, as far as possible, "all relevant facts" that the court might want to consider in deciding the relief that would be appropriate in a case falling within Title 20, Section 1415(i)(2))C), United States Code. Florence County

School Board, 510 U.S. at 16. Accordingly, in this case, a record relating to the actions of [redacted] in enrolling [redacted] in [redacted] prior to enrolling in the Broward County public school system and requesting that the School Board consider [redacted]'s eligibility for ESE and related services has been made, together with findings of fact, which the court may consider.[27]

113. The only impediment to a resolution of [redacted]'s right to reimbursement of tuition paid to [redacted] is the timing of [redacted]'s enrollment in [redacted] and of the request to the School Board for an eligibility determination for [redacted]. It is appropriate, therefore, to address in this Final Order the issues of whether the School Board offered [redacted] a free appropriate public education in the August 10, 2005, IEP and of whether the placement at [redacted] was appropriate. See Fla. Admin. Code R. 6A-6.03311(9)(c).

Free appropriate public education

114. In order to establish that they are entitled to reimbursement, [redacted] must prove by a preponderance of the evidence that the School Board did not provide [redacted] with a free appropriate public education. If they meet their burden of proving this prong of the Burlington test, they must then prove by a preponderance of the evidence that the program at [redacted] were appropriate. See Schaffer v. Weast, 126 S. Ct. 528, 537 (2005)("The burden of proof in an administrative hearing challenging an IEP is properly placed upon the party seeking relief.").

115. The court in Cypress-Fairbanks Independent School District v. Michael F., 118 F.3d 245, 247-48 (5th Cir. 1997), citing Board of Education of Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982), described the elements of a free appropriate public education as follows:

> When a parent or guardian challenges the appropriateness of an IEP crafted by a state or local education agency and the resulting educational placement, a reviewing court's inquiry is generally twofold. It must ask first whether the state or local agency complied with the procedures set forth in the Act, and if so whether "the individualized educational placement developed through the Act's procedures [was] reasonably calculated to enable the child to receive educational benefits."

See also Oberti v. Board of Education of Borough of Clementon School District, 995 F.2d 1204 (3d Cir. 1993); Board of Education of East Windsor Regional School District v. Diamond, 808 F.2d 987 (3d Cir. 1986).

116. There is no need to inquire into the sufficiency of the procedures followed by the School Board in developing the August 10, 2005, IEP for [redacted] since [redacted] have not raised this issue.

117. To satisfy the substantive requirements of the IDEA, an IEP must be "reasonably calculated to enable the child to receive educational benefits," Rowley, 458 U.S. at 206-07, and it must be predicated on what appears seems to be "objectively

reasonable . . . at the time" it is promulgated. Independent School District No. 283 v. S.D., 848 F. Supp. 860, 878 (D. Minn. 1995). The IDEA does not, however, require that the potential of a disabled child be maximized, and Florida law does not require school boards to provide a disabled child the best possible education or the placement preferred by the child's parents. School Board of Martin County v. A.S., 727 So. 2d 1071, 1074 (Fla. 4th DCA 1999). Rather, as summarized by the court in Michael F.,

> [t]he "free appropriate public education" . . . described in an IEP, . . . need not be the best possible one, nor one that will maximize the child's educational potential; rather, it need only be an education that is specifically designed to meet the child's unique needs, supported by services that will permit him "to benefit" from the instruction. In other words, the IDEA guarantees only a "basic floor of opportunity" for every disabled child, consisting of "specialized instruction and related services which are individually designed to provide educational benefit." Nevertheless, the educational benefit to which the Act refers and to which an IEP must be geared cannot be a mere modicum or de minimis; rather, an IEP must be "likely to produce progress, not regression or trivial educational advancement." In short, the educational benefit that an IEP is designed to achieve must be "meaningful."

118 F.3d at 247-48 (footnotes and citations omitted).

118. To meet its obligation to provide a free appropriate public education to each child with a disability in its

district, a school board must provide "personalized instruction with 'sufficient supportive services to permit the child to benefit from the instruction.'" Hendry County School Board v. Kujawski, 498 So. 2d 566, 568 (Fla. 2d DCA 1986), quoting from Rowley, 458 U.S. 176, 188 (1982).

119. Section 1003.01(3)(b), Florida Statutes, defines "special education services" as

> specially designed instruction and such related services as are necessary for an exceptional student to benefit from education. Such services may include: transportation; diagnostic and evaluation services; social services; physical and occupational therapy; job placement; orientation and mobility training; braillists, typists, and readers for the blind; interpreters and auditory amplification; rehabilitation counseling; transition services; mental health services; guidance and career counseling; specified materials, assistive technology devices, and other specialized equipment; and other such services as approved by rules of the state board.

120. The instruction and services provided must be "'reasonably calculated to enable the child to receive educational benefits.'" School Board of Martin County v. A. S., 727 So. 2d 1071, 1073 (Fla. 4th DCA 1999), quoting from Rowley, 458 U.S. at 207. As the Fourth District Court of Appeal further stated in its opinion in A.S.:

> Federal cases have clarified what "reasonably calculated to enable the child to receive educational benefits" means.

> Educational benefits provided under IDEA must be more than trivial or de minimis. J. S. K. v. Hendry County Sch. Dist., 941 F.2d 1563 (11th Cir. 1991); Doe v. Alabama State Dep't of Educ., 915 F.2d 651 (11th Cir. 1990). Although they must be "meaningful," there is no requirement to maximize each child's potential. Rowley, 458 U.S. at 192, 198, 102 S. Ct. 3034. The issue is whether the "placement [is] appropriate, not whether another placement would also be appropriate, or even better for that matter. The school district is required by the statute and regulations to provide an appropriate education, not the best possible education, or the placement the parents prefer." Heather S. by Kathy S. v. State of Wisconsin, 125 F.3d 1045, 1045 (7th Cir. 1997)(citing Board of Educ. of Community Consol. Sch. Dist. 21 v. Illinois State Bd. Of Educ., 938 F.2d at 715, and Lachman v. Illinois State Bd. Of Educ., 852 F.2d 290, 297 (7th Cir. 1988)).

727 So. 2d at 1074. Furthermore, "[t]he [law] does not demand that [a district school board] cure the disabilities which impair a child's ability to learn, but [merely] requires a program of remediation which would allow the child to learn notwithstanding [the child's] disability." Independent School District No. 283, St. Louis Park, Minn. V. S.D. By and Through J. D., 948 F. Supp. 860, 885 (D. Minn. 1995).

121. Based on the findings of fact herein and the legal standards set forth above, [redacted] have met their burden of proving by a preponderance of the evidence that the School Board did not offer [redacted] a free appropriate public education in the August 10, 2005, IEP. The evidence presented by [redacted] is sufficient to

establish that the School Board did not offer [redacted] a free appropriate public education in the IEP completed on August 10, 2005. Three independent private mental health professionals, Dr. Artiles, Dr. Levinson, and Ms. Friedman, were of the opinion in January and February 2005, that [redacted]'s mental and emotional condition was such that she needed to be placed in a residential treatment center. All of the mental health professionals who either worked with or evaluated [redacted] while [redacted] was at [redacted], Ms. Jeppeson, Ms. Urbanelli, Mr. Adams, and Dr. Adams, were of the opinion that [redacted]'s mental and emotional condition was such that [redacted] could not return home because the level of supervision and monitoring that could be provided by [redacted] parents was inadequate to [redacted] meet [redacted] needs. And all of the mental health professionals who treated or evaluated [redacted] agreed that [redacted] problems were so severe and pervasive that, unless [redacted] was closely supervised 24 hours a day, seven days a week, and received intensive therapeutic and pharmacological treatment integrated with an academic program, [redacted] could not benefit from an education.

122. The School Board personnel reviewed the reports and letters of the mental health professionals who had treated or evaluated [redacted], together with the opinions of Ms. Jeppeson, Ms. Urbanelli, and Ms. Mayeski given during the IEP meeting on August 10, 2005, and concluded that the School Board's [redacted]

Program would meet [redacted]'s educational needs. The program structure and the ESE and related services provided in the [redacted] Program are comprehensive and integrate significant therapeutic features into the school day. These services are, however, available only during the times that school is in session, and none of the School Board personnel disagreed with the opinion of Dr. Artiles, Dr. Levinson, Ms. Friedman, Ms. Jeppeson, Ms. Urbanelli, Mr. Adams, and Dr. Adams that [redacted] needed close supervision and access to therapeutic treatment 24 hours a day, seven days a week. The School Board personnel testified only that they thought [redacted]'s educational needs could be met in the [redacted] Program. Several School Board witnesses testified that the services provided by the [redacted] Program could be supplemented by community services, but School Board personnel did not identify the specific community services that would be available to [redacted] and her family when school was not in session. Even though the School Board was not required to cure [redacted]'s mental health problems, the evidence presented by [redacted] was sufficient to establish that the services the School Board offered [redacted] under the August 2005 IEP were not reasonably calculated to enable [redacted] to receive educational benefits.

Appropriateness of private placement

123. Based on the findings of fact herein, [redacted] have proved by a preponderance of the evidence that the educational and

therapeutic program provided by [redacted], even though it did not comply with all of the requirements of the IDEA. See Florence County School District v. Carter, 510 U.S. 7, 11 (1993). The evidence presented by [redacted] is sufficient to establish that the placement at [redacted] was appropriate. Prior to its accreditation in August 2005, educational program was provided by an accredited institution. The therapeutic component of [redacted]'s program was integrated into an academic component, and the students' coursework included core academic classes in such subject areas as history, the sciences, mathematics, English, and a foreign language. The students studied at grade level, were expected to attend classes and complete assignments, and were given grades at the end of each academic quarter. The evidence presented establishes that [redacted] made academic progress at [redacted] and had almost completed the second quarter of the 10th grade curriculum when [redacted] was discharged from the program.

CONCLUSION

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the relief requested in the request for due process hearing dated August 14, 2005, is denied because [redacted] was not receiving ESE and related services under a public agency prior to being enrolled in [redacted].

DONE AND ORDERED this 18th day of July, 2006, in Tallahassee, Leon County, Florida.

S

PATRICIA M. HART
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Filed with the Clerk of the
Division of Administrative Hearings
this 18th day of July, 2006.

ENDNOTES

[1]/ [redacted] originally filed a request for a due process hearing on July 14, 2005, at a time when [redacted] was not enrolled in any school in Broward County. The request for reimbursement relates back to this date.

[2]/ Transcript, volume I at page 52.

[3]/ Transcript, volume I at page 53.

[4]/ Transcript, volume I at page 55.

[5]/ Transcript, volume I at page 59.

[6]/ Transcript, volume I at page 60.

[7]/ With respect to her sexual behaviors, [redacted] told Dr. Artiles that [redacted] had sex with girlfriends and with boyfriends, one-on-one and in groups, and that [redacted] masturbated with a knife.

[8]/ Transcript, volume I at pages 106-07.

[9]/ An Axis II diagnosis identifies character disorders.

[10]/ An Axis I diagnosis identifies major psychiatric disorders.

[11]/ Petitioner's Exhibit 2.

[12]/ Transcript, volume I at page 94.

[13]/ Petitioner's Exhibit 3.

[14]/ Id.

[15]/ Id.

[16]/ Petitioner's Exhibit 7 at page 1.

[17]/ This indicates serious impairment in social, occupational, and social functioning related to suicidal ideation, difficulty managing interpersonal relationships. Dr. Adams attributes the impairments in these areas to her high level of distress.

[18]/ When [redacted] arrived at [redacted], [redacted] was not on any medication. Even though Dr. Levinson had prescribed a low dosage of Seroquel to help [redacted] manage [redacted] hallucinations in January 2005, [redacted] parents took [redacted] off the medication approximately three days prior to [redacted] going to [redacted]. Mr. Adams would call [redacted] from time to time for consent to add medications or to increase the dosage. [redacted] was concerned about the amount of medications [redacted] daughter was taking because [redacted] believed the medications were damaging to the brain and to the body. Nonetheless, [redacted] approved each of Mr. Adams's requests regarding medications.

[19]/ Transcript, volume I at page 218.

[20]/ Ms. Urbanelli did not recall participating in the telephone conference. A number of the other participants in the IEP meeting, including Ms. Jeppeson, recalled that Ms. Urbanelli did participate and offered her opinions.

[21]/ The testimony on this point was vague regarding the range of services available to students when school is not in session and the manner in which these services are provided. It was also not clear from the testimony if services were available for students with serious mental health and psychiatric problems.

[22]/ Transcript, volume II at pages 481-82.

[23]/ It is noted that, in March 2006, [redacted] filed a request for a due process hearing seeking reimbursement for tuition paid for a unilateral placement of [redacted] in a residential treatment facility

in February 2005. That request is the subject of a separate due process proceeding before the Division of Administrative Hearings.

[24]/ The federal statute provides as follows:

> If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private elementary or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment.

[25]/ The federal regulation provides as follows:

> Reimbursement for private school placement. If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary, or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the SEA and LEAs.

[26]/ It should also be pointed out that the provisions of Title 20, Section 1412(a)(10)(C)(ii), United States Code, were not altered in the 2004 Reauthorization of the IDEA. Florida Administrative Code Rule 6A-6.03311(9)(c) and the provisions of

Title 34, Code of Federal Regulations, Section 300.403(c) still govern requests for reimbursement.

[27]/ The following is a summary of some of the facts the court might want to consider:

When [redacted] enrolled [redacted] into [redacted], [redacted] had not been enrolled in the Broward County public school system for over a year, had attended Broward County public schools for only the first and second grades and approximately half of the eighth grade, and had never been determined eligible for ESE or related services or received such services in the Broward County public school system. [redacted] withdrew [redacted] from [redacted] in December 2005 and placed [redacted] in [redacted] in March 2005 without contacting the School Board about [redacted]'s eligibility for ESE services in the public schools. The first notice that the School Board received regarding [redacted]'s attendance at [redacted] and [redacted]'s intention to seek tuition reimbursement was the request for due process hearing filed July 14, 2005, after [redacted] had attended [redacted] for over four months. After Ms. Laureano, the ESE coordinator for [redacted] School, advised [redacted] that [redacted] needed to be enrolled in the Broward County public school system before [redacted] eligibility for ESE services was considered, [redacted] enrolled [redacted] and submitted another request for a due process hearing requesting reimbursement for [redacted]'s tuition at [redacted].

In addition, [redacted] did not follow the recommendations of Dr. Artiles and Ms. Friedman in January and February 2005 that [redacted] should be admitted to a hospital psychiatric unit for evaluation and stabilization on medications. They kept [redacted] at home and began researching residential psychiatric treatment facilities. There is no way to know whether, if [redacted] had followed these recommendations, [redacted] would have been stabilized and able to attend Broward County public schools with an IEP.

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(5), Florida Statutes; or
c) files an appeal within 30 days in the appropriate state district court of appeal pursuant to Sections 1003.57(5) and 120.68, Florida Statutes.