

Broward County School District
No. 05-2805E, 05-3157E, 06-0371E, 06-0372E, 06-1107E, 05-4467E
Initiated by: Parent
Hearing Officer: Robert E. Meale
Date of Final Order: July 21, 2006

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

█,)	
)	
Petitioner,)	Case Nos. 05-2805E
)	05-3157E
vs.)	06-0371E
)	06-0372E
BROWARD COUNTY SCHOOL BOARD,)	06-1107E
)	
Respondent.)	
_____)	
)	
BROWARD COUNTY SCHOOL BOARD,)	
)	
Petitioner,)	
)	
vs.)	Case No. 05-4467E
)	
█,)	
)	
Respondent.)	
_____)	

FINAL ORDER

Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings, conducted the final hearing in Ft. Lauderdale, Florida, on October 17-20, November 14-18, and December 13, 2005, and February 1-3 and 13-17, March 13-15, 17 (telephone), and 26-28, and June 9 (telephone), 2006. At the request of Petitioner/Respondent █ (Petitioner), the

Administrative Law Judge conducted the final hearing at the Legal Aid Service of Broward County, rather than in the offices of Respondent/Petitioner Broward County School Board (Respondent).

APPEARANCES

For Petitioner: ■■■■, parent of ■■■■
(address of record)

For Respondent: Edward J. Marko
Mary S. Lawson
Miami-Dade County School Board
600 Southeast Third Avenue, 11th Floor
Ft. Lauderdale, Florida 33301

STATEMENT OF THE ISSUES

The issue is whether Petitioner is receiving a free appropriate public education (FAPE).

PRELIMINARY STATEMENT

As to Case No. 05-2805E, Petitioner filed a due process request with Respondent on August 2, 2005. The issues raised in this case are identified in the Order discussed in connection with DOAH Case No. 05-3157E. By Order Consolidating Cases, Granting Continuance, Identifying Issues, and Striking Certain Witnesses entered September 9, 2005, the Administrative Law Judge identified the issues in this case. As later amended, the Order identifies the issues as:

1. Whether the August 1, 2005, individual education plan (IEP) provides FAPE despite its alleged substantive failures to:

- a. Provide the student with assistive technology in the form of a CART system for transcription.
 - b. Educate the student in small groups of not more than three students.
 - c. Educate the student in a general education^[1] environment, rather than a self-contained classroom.
2. Whether the IEP provides FAPE despite its alleged procedural deficiencies to:
 - a. Provide adequate notice to the parent of the August 1, 2005, IEP meeting.
 - b. Ensure the proper composition of the IEP teams assembled at the March 14 and August 1, 2005, IEP meetings.

As to Case No. 05-3157E, Petitioner filed a due process request with Respondent on August 29, 2005. By Order Consolidating Cases, Granting Continuance, Identifying Issues, and Striking Certain Witnesses entered September 9, 2005, the Administrative Law Judge identified the issues in this case. As later amended, the Order identifies the issues as:

1. Whether Respondent must provide at public expense an independent evaluation of the student's need for assistive technology in order to provide FAPE.
2. Whether Respondent is liable for compensatory services for the time during which the student was denied appropriate assistive technology.

As to Case No. 05-4467E, Respondent filed a due process request on December 9, 2005. The issues in this case are whether Respondent may implement an IEP dated October 5, 2005, IEP and a behavior intervention plan (BIP) September 12, 2005.

As to Case Nos. 06-0371E and 06-0372E, Petitioner filed due process requests with Respondent on January 30, 2006. The issue in Case No. 06-0371E is whether Respondent is implementing the stay-put IEP. The issue in Case No. 06-0372E is whether Respondent is required to provide an independent educational evaluation (IEE) regarding Petitioner's functional behavior assessment in order to provide Petitioner with FAPE.

As to Case No. 06-1107E, Petitioner filed a due process request with Respondent on April 6, 2006. The issues in this case are whether Respondent is required to provide an IEE in reading and incorporate the results of the IEE into a new IEP, in order to provide Petitioner with FAPE.

With a filing date of August 2, 2005, for Case No. 05-2805E, the 45-day period within which to issue a Final Order was September 16, 2005. The Administrative Law Judge granted specific extensions of the 45-day deadline, totaling 310 days, to implement subsequent scheduling agreements by the parties and to accommodate other developments outside the control of the parties, so this Final Order has been issued within the expiration of the 45-day period, which, with extensions, is July 23, 2006.²

The court reporters filed the transcript, except for the June 9 testimony, by May 10, 2006. The court reporter filed the last volume of the transcript, which is limited to the June 9

testimony, on June 15, 2006. The transcript identifies the witnesses and exhibits that were admitted into evidence. The parties filed their proposed final orders on June 15, 2006.

FINDINGS OF FACT

1. Petitioner was born on [REDACTED]. [REDACTED] has been diagnosed with autism. [REDACTED] is cognitively skilled and perceptive, but presents a complex case, even for a child with autism. [REDACTED] motivation varies from day to day, and [REDACTED] will avoid work if [REDACTED] is able, so that observers may sometimes mistake laziness for inability.

2. Children with autism fall within a broad spectrum in terms of ability and function. Over time, movement within the spectrum is common. At least 30 percent of children with autism are high functioning. These children will enjoy better outcomes.

3. Children with autism experience three types of deficits that impede their ability to function. In communications, children with autism generally experience a speech/language delay and have trouble initiating and sustaining conversation. In socialization, children with autism generally have trouble figuring out how to join group activities, and their play is stereotyped. In behavior, children with autism generally exhibit a restricted pattern of behavior with obsessive interests, repetitive behaviors such as rocking, and

hypersensitivity to sensory inputs, such as noises, sights, or touches.

4. Petitioner attended kindergarten at [REDACTED] School, which is part of the Broward public school system, starting in August 1999. At that time, Petitioner began to receive exceptional student education (ESE) services.

5. Due to a change in school zones, Petitioner attended second grade at [REDACTED] School starting in August 2001, where [REDACTED] remained until January 2002. In second grade, Petitioner received instruction in a general education classroom with selective pull-out services.

6. In January 2002, [REDACTED] transferred [REDACTED] to [REDACTED] School at [REDACTED] ([REDACTED]), where [REDACTED] received 1:1 pull-out instruction in math, reading, and language arts. Containing 900-1000 students, [REDACTED] is a charter elementary school owned by [REDACTED] Schools, Inc.

7. In the 2002-03 school year, starting in January 2002, Petitioner attended third grade at [REDACTED]; in the 2003-04 school year, Petitioner attended fourth grade at [REDACTED]; in the 2004-05 school year, Petitioner attended fifth grade at [REDACTED]; and, in the 2005-06 school year, Petitioner started sixth grade at [REDACTED] School ([REDACTED]), which is part of the Broward County public school system.

8. Respondent prepared an IEP for Petitioner on July 17, 2002 (Stay-Put IEP). The Stay-Put IEP has remained in effect

for Petitioner for the ensuing four years, due to the inability of the parties to agree upon a new IEP or obtain an adjudication that a newer IEP provides FAPE.

9. The Stay-Put IEP determines that Petitioner is eligible for ESE services in autism, speech and language therapy (SLT), and, as added on October 17, 2002, occupational therapy (OT). The Stay-Put IEP provides that Petitioner will take the Florida Comprehensive Assessment Test (FCAT) and is working on Sunshine State Standards on [REDACTED] grade level and another grade level.

10. The Stay-Put IEP provides 150 minutes weekly of SLT; 1800 minutes weekly of a paraprofessional to assist in prompting, organization, reinforcements, and modifications; 225 minutes weekly of interventions to preempt frustrations; and 300 minutes of pullout, direct academic instruction in math, reading, and language arts.

11. The Stay-Put IEP identifies several related services for the student to benefit from [REDACTED] special education. These related services are 30 minutes weekly of counseling for social skills with two typical students; ongoing social stories³, with photographs, if possible, for upcoming changes and social and programmatic skills; and 30 minutes weekly of pragmatics training by the speech and language therapist (ST).

12. The Stay-Put IEP identifies several supplementary aids and services. These supplementary aids and services are weekly

collaboration with the ST, general education teacher, ESE specialist, paraprofessional, and parent; twice monthly consultation with the District⁴ behavior specialist and parent; and provision of upcoming curriculum to the parent two weeks in advance of presentation in the classroom.

13. The Stay-Put IEP identifies accommodations to assist the student in accessing the general education curriculum. These are ongoing staff training in strategies and behavioral support of students with autism and notification to the parent of upcoming ESE meetings and workshops in the District and state of Florida.

14. The Stay-Put IEP discusses the criterion of the least restrictive environment (LRE) by noting:

A placement category is determined based on the total amount of time the child spends with nondisabled peers:

- Regular Class
- Resource Room
- Separate Class (ESE Class)
- Separate Day School (Center)
- Hospital/Homebound
- Residential Facility
- Juvenile Justice Program

15. The Stay-Put IEP provides that, for 61 percent of the time, Petitioner will participate in regular education for "most" academic class activities, lunch, and all special area classes, such as art, music, and physical education. For 39 percent of the time, Petitioner will not participate with

nondisabled students, as ■■■ receives SLT, support facilitation, and pull-out services, which refers to ESE services delivered to Petitioner while ■■■ has been pulled out of the general education classroom.

16. The Stay-Put IEP identifies the following special education services: 225 minutes weekly of support facilitation for social skills inclusion and ongoing generation of study materials, laminated and bound, that are delivered to ■■■ two weeks in advance.

17. The Stay-Put IEP identifies two accommodations required for Petitioner to access ■■■ general education curriculum. These accommodations are the use of a buddy system with two typical students to develop social skills and 30 minutes weekly of OT.

18. The Stay-Put IEP identifies supplementary aids and services to enable the student to be educated with nondisabled peers. These supplementary aids and services are consultations four times annually among ■■■, an ESE teacher, and assistive technology specialist to identify software to enhance learning and social skills; consultations four times annually among ■■■, an ESE teacher, and District reading specialist to identify reading comprehension strategies; and, as needed, the use of social stories (with photographs, if possible) for upcoming changes and social pragmatics skills.

19. The Stay-Put IEP describes Petitioner's present levels of performance (PLP) in several areas, which are known as "domains." For Respondent, the domains are "curriculum and instruction," "social/emotional behavior," "independent functioning," and "communication."

20. For curriculum and instruction, the PLP in the Stay-Put IEP states:

[Petitioner] receives instruction in a regular education classroom with continuous one on one assistance, [illegible writing] teaching, and support from pullout services. [Petitioner] can write simple sentences about pictures with minimal prompting. [redacted] independently writes appropriately sized letters. [Petitioner] answers simple "wh" questions in a variety of settings. [redacted] independently completes fill in the blank sentences [illegible writing--possibly "with a word bank"]. [Petitioner] can add and subtract double digit numbers with regrouping. [Petitioner] can discriminate between + and - signs independently. [Petitioner] enjoys completing phonics worksheets. On tests, [redacted] does extremely well when given a study guide w/ pictures a week before each test. [redacted] knows [redacted] multiplication facts up to 4. On [redacted] DRI form B Primer level [Petitioner] scored a 62.5 for comprehension and 99 for word recognition [illegible writing]. [Petitioner] was given a modified DRI form B (multiple choice). [redacted] struggled with main idea, inferences and sequencing. Verbal prompting and gestural cueing were given throughout the test. Based on the Broward math test, [Petitioner] struggled with [illegible writing] patterns with pictures, word problems involving multiplication, subtraction, and [illegible writing] measurements.

[Petitioner]'s disability interfere [sic] with [redacted] ability to comprehend language based materials, writing skills, and math skills on grade level.

21. For social/emotional behavior, the PLP in the Stay-Put

IEP states:

[Petitioner] responds to familiar adult greetings independently and can be very loving toward those familiar adults. [redacted] greets peers without given physical +/- verbal cues. [Petitioner]'s behavior is best when engaged in a preferred task or activity. [Petitioner] responds best to positive behavioral support. [Petitioner] infrequently attempts to initiate interaction w/ peers but when [redacted] does [redacted] often does in an inappropriate manner such as by touching them & grabbing them. [Petitioner] has a great sense of humor when [redacted] receives a reaction to inappropriate behavior & [redacted]'ll repeat that behavior over & over again. Ignoring inappropriate [sic] seems to be the best approach to extinguish that behavior. [Petitioner] can be redirected. [Petitioner]'s bad behavior is best [illegible writing] in a structured setting w/ a daily routine & ample notice of any changes using social stories in advance. Sometimes [redacted]'ll engage in going through other's property. [redacted] can be redirected by asking [redacted] "[Petitioner] is that yours?" [redacted]'ll say not[,] then you say "you may not touch it." This is usually effective.

Due to [Petitioner]'s disability, [redacted] struggles forming social relationships & interacting appropriately w/ peers & adults. The nature of [redacted] disability sometimes causes [redacted] to react w/ inappropriate behaviors adversely impacting and directing hindering [redacted] social relationships.

22. For social/emotional behavior, the PLP in the Stay-Put IEP was updated on October 17, 2002, and now states:

Currently, [Petitioner] is functioning at the following social/emotional level: [Petitioner] watches and appears interested in other children. When interacting with familiar adults, [redacted] independently responds to greetings. [redacted] demonstrates appropriate social interaction with adults, and is easily redirected if words or touch are inappropriate. [redacted] continues to require verbal and/or physical cueing to initiate interactions with peers. In a structured play setting [Petitioner] demonstrates the ability to take turns consistently with one adult with verbal and physical cueing. [redacted] participates in turn-taking, but remains unaware of the social aspect of conversation. [redacted] will inconsistently initiate social play with an adult, but requires verbal cueing and/or physical prompting for appropriate interaction and eye contact. When working with adults, [Petitioner] tends to become disorganized when more than 1 person is involved in the activity. [redacted] presents with impulsive, sensory-driven behavior, which [redacted] has difficulty modulating by [redacted] self. This behavior interferes with [redacted] ability to participate in turn-taking, sharing, and appropriate interaction.

23. For independent functioning, the PLP in the Stay-Put IEP states:

[Petitioner] is supervised at all times w/ one-to-one supervision. Physical & visual prompting are preferred in all settings. Throughout all work activities, [Petitioner] is closely supervised by an adult to ensure [redacted] safety & attention to task. [Petitioner] enjoys work rather than play. [redacted] stays on-task [illegible wording] in a non-preferred activity when given verbal

cues & close proximity of an adult. For preferred [redacted] attention span is longer. [redacted] transitions to activities using a visual schedule. [redacted] independently chooses [redacted] leisure activities given preferred choices. [Petitioner] can unpack [redacted] backpack given verbal cues.

The nature of [Petitioner]'s disability adversely affects [redacted] ability to discriminate what is relevant and important as compared with that which is irrelevant and unimportant. It also affects [redacted] ability to maintain attention in a classroom setting.

24. For independent functioning, the PLP in the Stay-Put IEP was updated, on October 17, 2002, and now states:

Currently in OT, [Petitioner] is requesting a sensory activity 2/5 trials within a 30 min session. [redacted] consistently requests proprioceptive input via a [Petitioner] sandwich 2/5 times out of 5 without prompting. [redacted] also requests racing/running 1/4 times appropriately, but continues to require prompting for appropriate/organized behavior during activity. [redacted] is currently able to express the need for a sensory break with verbal and/or physical cueing to prompt the need for an organized sensory activity.

25. Apparently a subdomain of the domain of independent functioning, "health" in the Stay-Put IEP contains the following

PLP:

As per doctor's order, [Petitioner] is required to wear a hat & sunglasses & sun protective clothing. When outside, [Petitioner] wears [redacted] hat & sunglasses independently when given verbal cues.

26. For communication, the PLP in the Stay-Put IEP states:

[Petitioner] is able to participate in group activities, following directions w/ auditory cues, ask for things that [REDACTED] wants/needs, reject objects [REDACTED] doesn't want, comment on expressing feelings, make choices to select objects.

Due to [Petitioner]'s disability, [REDACTED] has difficulty with pragmatic skills and expressive & receptive language.

27. The PLPs in the Stay-Put IEP conclude by identifying the priority educational needs of Petitioner, as follows:

To increase [REDACTED] math, reading, & writing skills, comprehension skills.

To increase [REDACTED] social interaction skills.

To increase [REDACTED] independent functioning skills.

To increase [REDACTED] communication skills.

28. The Stay-Put IEP contains several goals, each of which contains a set of short-term objectives. All of the goals are dated July 17, 2002, except Goal 8, which is dated June 14, 2002; Goal 9, which is dated June 12, 2004; and Goal 10, which is dated October 17, 2002.

29. As is typically done, each objective is closed out in a subsequent IEP meeting. Usually, IEPs last one year, and, thus, each IEP shows only one set of markings to indicate whether the objective was mastered, continued with revisions (meaning that Petitioner could not master the original

objective), or discontinued. Because the Stay-Put IEP has remained in effect for four years, multiple close-out notations occur on many objectives.

30. The first goal of the Stay-Put IEP is: "[Petitioner] will increase [REDACTED] computational math skills & then application in daily life as measured by pre & post test w/ a 50 percent increase." By March 10, 2005, Petitioner mastered two of the four objectives: independently determining the key work necessary to solve word problems mixing addition and subtraction four out of five times and identifying functional parts of everyday objects eight out of ten times. By March 10, 2005, Respondent discontinued two of the four objectives: independently determining the math function needed to solve a single step word problem four out of five times and independently determining the time span concept in daily living activities four out of five times.

31. The second goal of the Stay-Put IEP is: "[Petitioner] will increase [REDACTED] reading comprehension of nonfictional material to a 2nd grade level as measured by a post DRI with an 80 percent success rate." By March 10, 2005, Petitioner had mastered one of four objectives: sequencing events on a second grade level nonfiction passage given sentences with 90 percent accuracy. By March 10, 2005, the remaining three objectives had been continued with revisions: identifying the main idea in a

second grade nonfictional passage given multiple choice questions with 90 percent accuracy, making inferences on a second grade level reading passage given multiple choice questions (written and verbal) with 80 percent accuracy, and identifying cause and effect on a second grade level nonfiction passage given multiple choice questions in writing with 80 percent accuracy.

32. The third goal of the Stay-Put IEP is: "[Petitioner] will demonstrate increase in writing skills from 1 sentence to 4 sentences as measured by a pic & post [illegible writing] made test w/ writing prompts with 80 percent accuracy." By March 10, 2005, Petitioner had mastered one of three objectives: writing a paragraph to describe a picture given verbal cues in three out of four trials. By March 10, 2005, another objective had been continued with revisions: writing a paragraph on a given topic w[ithout] pictures & verbal cues w/ 4 sentences (topic sentence, 2 detail sentences, concluding sentences) in two out of four trials. By March 10, 2005, the last objective had been discontinued: independently writing a main idea sentence on a give topic and add two detail sentences given verbal and visual cues on three out of four trials.

33. The fourth goal of the Stay-Put IEP is: "[Petitioner] will demonstrate improved listening comprehension measured monthly by documented teacher observation with 90% accuracy

using 6 to 8 sentence paragraph." By March 10, 2005, all three objectives had been continued with revisions: answering detailed questions on three sentences read to ■■■ with 90 percent accuracy, answering detailed questions on four to five sentences read to ■■■ with 90 percent accuracy, and answering detailed questions on six to eight sentences read to ■■■ with 90 percent accuracy.

34. The fifth goal of the Stay-Put IEP is: "[Petitioner] will demonstrate improved independent functioning within the classroom as measured by documented teacher observation with 90-100 percent accuracy." By March 10, 2005, all three objectives had been mastered: staying on task for fifteen minutes doing a nonpreferred activity given verbal, gestural cues and close proximity with 90 to 100 percent accuracy, following class procedure and routine given a verbal schedule with 90 to 100 percent accuracy, and following a multi-step task given visual and verbal cues with 90 to 100 percent accuracy.

35. The sixth goal of the Stay-Put IEP is: "[Petitioner] will form appropriate social relationships with peers and teachers as measured by documented teachers observation 4 out of 5 times." By March 10, 2005, Petitioner mastered all four objectives: initiating peer interactions by asking the peer, "May I . . ." or saying, "Let's play" using verbal, visual, or textual cues with 70 percent accuracy; in a group activity,

requesting a desired item from a peer by asking, "May I have . . ." given verbal and visual cues with 70 percent accuracy; playing a game with a peer for five to ten minutes using verbal and direct prompts four out of five times; and requesting assistance from teachers or peer when needed using verbal or visual cues four out of five times.

36. The seventh goal of the Stay-Put IEP is: "[Petitioner] will verbally initiate interactions with non-disabled peers four times per day as measured by documented staff observation [with] 80% accuracy." By March 10, 2005, all four objectives had been continued with revisions: initiating a game given a verbal prompt with 100 percent accuracy; in a cooperative learning situation, requesting a desired item from a peer with 100 percent accuracy given verbal and visual cues; initiating conversation or comment to a peer at lunch given verbal and visual prompts with 80 percent accuracy; and inviting ■■■ buddy to the activity room given one verbal or visual prompt with 80 percent accuracy.

37. The eighth goal of the Stay-Put IEP is: "[Petitioner] will produce a grammatically correct 5-7 word sentence with one prompt in seven out of 10 opportunities by June 2003." By March 10, 2005, the three objectives had been continued with revisions: producing a grammatically correct five-to-seven word sentence with oral and written prompts, producing a

grammatically correct five-to-seven word sentence on oral and/or written prompt, and producing a grammatically correct five-to-seven word sentence with an oral prompt.

38. The ninth goal of the Stay-Put IEP is: "By June 2003, [Petitioner] will produce [the sound] [s] in conversation correctly in a variety of settings in 8 out of 10 trials as measured monthly by documentation." By April 2, 2003, all three objectives had been discontinued: producing [s] in conversation in four out of ten trials, producing [s] in conversation in six out of ten trials, and producing [s] in conversation in eight out of ten trials.

39. The tenth goal of the Stay-Put IEP is: "By 7/17/03 [Petitioner] will demonstrate self-monitoring skills with no less than 3-5 verbal, physical, and/or visual prompts across a variety of settings throughout the school day." By March 10, 2005, Petitioner had mastered two of three objectives: requesting a sensory activity with five to six verbal, physical, and/or visual prompts three out of five times and participating in a [illegible writing] sensory routine two times per [illegible writing] to help maintain focus and calming behavior with three to five verbal, physical, and/or visual cues. By March 10, 2005, the remaining objective had been continued with revisions: requesting the need for a sensory break three out of five trials with five to six verbal and/or visual prompts.

40. The Stay-Put IEP contains an accommodations checklist dated July 17, 2002. In all classes, Petitioner is to receive preferential seating, close proximity to the teacher, seating near a positive role model, and a study carrel for independent work. Petitioner is to receive ■■■ lessons broken into smaller segments, a visual schedule, shortened and fewer work assignments, and extra time for all activities, including tests. In class, Petitioner is to be allowed to give oral rather than written responses, write on the test rather than the answer sheet, dictate essays, and take multiple choice tests with word banks. In taking tests, Petitioner is to receive oral test instructions and, if allowable, prompts, as well as to have tests read to ■■■. Other accommodations included written notes and study guides, a buddy system for peer assistance, organizational strategies, regular feedback, previewed tests, return of tests as soon as graded, and another set of books for home use during the school year and for the summer of 2003, during which ■■■ was to complete the third grade curriculum.

41. The Stay-Put IEP contains a section titled, "Special Considerations" and is dated July 17, 2002. For health care needs, this section notes that Petitioner is sensitive to the sun and requires a special diet. For assistive technology, this section states that Petitioner is to receive an FM system, computer access, visual aids, and laminated photographs of

teachers and students with printed names. For behavioral needs, this section states that Respondent is to complete a functional behavior assessment and develop a BIP by August 26, 2002.

42. The last page of the Stay-Put IEP is also titled, "Special Considerations" and is dated May 14, 2003. The significant changes are to transportation and behavior. For transportation, this section states that Petitioner requires specialized supervision for bus safety and socialization because [REDACTED] demonstrates impulsive behavior and the need for redirection with monitoring to increase [REDACTED] social understanding. For behavior, this section states that Respondent is to conduct a functional behavior assessment and develop a BIP by March 14, 2003.

43. In September 2002, Petitioner filed a due process request, claiming that Respondent was not implementing the Stay-Put IEP. In satisfaction of this claim, on October 25, 2002, Petitioner and Respondent entered into a Settlement Agreement, which clarified the Stay-Put IEP. Among other things, the Settlement Agreement provides Petitioner with a one-on-one paraprofessional for 1800 minutes weekly and requires Respondent to train a backup paraprofessional in autism strategies and the implementation of the Stay-Put IEP and Petitioner's BIP. The Settlement Agreement states that Petitioner will work 1:1 with the varying exceptionalities (VE)

teacher in the resource room five times weekly for one hour each in an atmosphere conducive to learning, given Petitioner's sensory issues and distractibility.

44. The Settlement Agreement addresses social skills by requiring Petitioner to receive 30 minutes of social skills training weekly from an employee of Physiotherapy Associates. The Settlement Agreement requires Respondent to send home social stories, with photographs, if possible, for anticipated changes, such as fire drills and early release. The Settlement Agreement requires the ST or speech pathologist to develop social stories for social pragmatic skills and send copies of these stories home. For behavior, the Settlement Agreement provides that, twice monthly, [REDACTED] and a program specialist from ARC, which is a support group for persons with autism, shall meet.

45. The Settlement Agreement requires the classroom teacher to provide lesson plans to Petitioner two weeks in advance, but not less than seven days in advance. The Settlement Agreement requires Respondent to provide an ESE teacher to support the teachers, paraprofessional, and Petitioner at least 225 minutes weekly. The Settlement Agreement requires Respondent to prepare bound, laminated study material two weeks in advance, but not less than seven days in advance.

46. The Settlement Agreement requires the school, after receiving parental input, to identify and acquire appropriate software to support Petitioner's social skills and academics. The Settlement Agreement requires the ESE teacher, district reading specialist, and [REDACTED] to consult during the four marking periods.

47. For tests, the Settlement Agreement states that all tests, except spelling, will be multiple choice with word banks and flexible responding. The Settlement Agreement provides that all tests can be read, as needed. The Settlement Agreement requires the general education teacher, ESE teacher, ST, and ESE specialist to provide a daily home note relative to instruction and progress. The Settlement Agreement requires the school to provide work samples during the weekly meeting with [REDACTED]. Lastly, the Settlement Agreement provides Petitioner with access to the computer for instruction, as well as for reward.

48. Shortly after the Settlement Agreement was signed, the planning process began for the next IEP. However, the preparation of a new IEP, as well as the implementation of the Stay-Put IEP, were impeded by the high rate of turnover among ESE staff during the 2002-03 and 2003-04 school years at [REDACTED]. For instance, the [REDACTED] ESE specialist who did most of the work in preparing the Stay-Put IEP left a few days after completing the

document. ■■■ ESE staff started to prepare a new IEP during the 2002-03 school year, but failed to complete a useable document.

49. Jim Fowler, a District ESE Program Specialist who provides technical support to ESE staff at several schools, including ■■■, became involved in the efforts to prepare a new IEP. Mr. Fowler had previously become acquainted with Petitioner when ■■■ ESE staff had contacted him, shortly after Petitioner transferred to ■■■ in January 2002, with questions about how to implement ■■■ IEP. It is unclear what, if any, role Mr. Fowler played in the preparation of the Stay-Put IEP during the summer of 2002, but ■■■ knew that it had been drafted quickly and felt that it provided Petitioner with more than FAPE required.

50. Viewing the supplemental aids and services in the Stay-Put IEP as having been included more for ■■■ than for Petitioner, Mr. Fowler questioned the competence of the inexperienced ■■■ ESE staff, such as by including an FM system in the Stay-Put IEP without adhering to District policy for the selection of assistive technology. Mr. Fowler thought that the Stay-Put IEP was unduly onerous, such as by requiring the 1:1 paraprofessional, peer counseling twice weekly with typical students, advance delivery of curriculum to ■■■ two weeks in advance, notification to ■■■ of upcoming ESE workshops, daily notes home from several staffpersons, and replacement of

conventional parent-teacher conference with various types of other meetings.

51. At the same time, Mr. Fowler began receiving telephone calls from ■■■, who complained that ■■■ was not implementing the Stay-Put IEP. Among other things, ■■■ wanted previews of lesson plans and numerous IEP meetings rather than parent-teacher conferences. Things quickly deteriorated to the point that when, on October 18, 2002, Petitioner appeared at a meeting for ESE specialists only, Respondent effectively had law enforcement officers prepared to stop ■■■, and, when ■■■ refused to leave, they arrested and handcuffed ■■■.

52. Sometime after the IEP planning process had started during the 2002-03 school year, Mr. Fowler became involved as a facilitator. ■■■ attended meetings in some capacity from November 14, 2002, through December 12, 2003. At these meetings, ■■■ principal Susan Messing, among others, voiced the opinion that Petitioner's needs were too great for ■■■ to be educated at ■■■--an opinion that she later changed.

53. From August 2003 on, Mr. Fowler's focus was on preparing a new IEP, rather than providing general ESE technical assistance. Mr. Fowler found that new ■■■ ESE staff, unfamiliar with Petitioner, and the demands of ■■■ impeded progress toward preparing a new IEP. Eventually, ■■■ facilitated a finished IEP midway into the following school year.

54. By IEP dated December 12, 2003 (December 2003 IEP), Respondent effectively proposed to transfer Petitioner to a self-contained class in an autistic cluster school. A team consisting of [REDACTED]; Petitioner's aide; Petitioner's classroom teacher, Christina Negron, a District behavior specialist; Annette Tolar, an ESE teacher, who has since become an ESE specialist and worked with Petitioner in fourth and fifth grades; and two individuals from the Autism Consortium also prepared a BIP dated December 12, 2003 (December 2003 BIP).

55. In December 2003, Petitioner was refusing to complete [REDACTED] assignment and leaving [REDACTED] work areas 1-4 times daily, taking preferred items without asking 0-2 times daily, squeezing others one time monthly, throwing an object one time monthly, pushing others one time every two months, and attempting to kick one time every two months.

56. On January 27, 2004, [REDACTED] filed a due process request, which commenced DOAH Case No. 04-0378E. The request claimed that Respondent had not implemented the Stay-Put IEP and the December 2003 IEP was inappropriate. By Final Order entered June 29, 2004, Administrative Law Judge J. D. Parrish determined that the Stay-Put IEP provided Petitioner with FAPE in the LRE and thus found it unnecessary to consider the challenge to the December 2003 IEP.

57. While DOAH Case No. 04-0378E was pending, Petitioner continued to attend fourth grade at [REDACTED]. Ms. Messing, who had been the [REDACTED] principal since May 2003, noted that Petitioner made some improvement in behavior from January to June 2004, but "minimal" academic progress during this time.

58. Perhaps Ms. Messing measured Petitioner's behavioral progress from the fall of 2003, when she testified that she started suspending Petitioner for [REDACTED] behavior because, regardless of any progress in Petitioner's behavior, Ms. Messing found it necessary, in the summer following the 2003-04 school year, to develop a crisis management plan for staff to deal with Petitioner. On August 17, 2004, Ms. Messing and ESE Specialist Natalie Wong prepared a Professional Crisis Plan for Petitioner. The crisis team members were Ms. Wong, Ms. Tolar, and a physical education teacher.

59. Not approaching the detail of a BIP, the Professional Crisis Plan notes that Petitioner has an individual behavior plan with proactive strategies to avoid incidents, replacement behaviors, and consequences, but "continuous aggression, continuous high magnitude disruption, and continuous self-injury" require the intervention of the crisis team, which may clear the room of other students or remove the disruptive student. The Professional Crisis Plan also details procedures to employ if Petitioner runs away from the school campus.

60. Consistency in the implementation of the Stay-Put IEP continued to improve in the 2004-05 school year, in which Petitioner was in fifth grade. Learning that Petitioner was eligible for bus transportation, Ms. Messing made the arrangements for that service to start in the fall of 2004. For the first week, she drove her car to Petitioner's house and rode the bus with ■■■ to school. After the first week, she did this infrequently.

61. Spending time with Petitioner every day, Ms. Messing noticed that the improvement in Petitioner's behavior that had started at the end of the 2003-04 school year extended into the 2004-05 school year. At the same time, continuity among ■■■ ESE staff had improved. By the start of fifth grade, Ms. Messing had switched autism support service providers from the Autism Consortium to the Center for Autism & Related Disabilities (CARD). Unlike the Autism Consortium, which charges for services, CARD, which is funded by the Florida Department of Education, provides free autism-support services to schools and families. The CARD representative seemed to enjoy greater success working with Petitioner or ■■■ staff who worked with Petitioner than did the Autism Consortium representative. For ■■■ part, Petitioner responded by speaking in phrases and sentences. ■■■ began to talk to ■■■ staff, who always greeted ■■■ warmly.

62. However, behavior logs reveal that Petitioner was still presenting significant behavior challenges in school. On November 8, 2004, [REDACTED] repeatedly asked to go home and ran toward the door. The next day, Petitioner was again agitated. Eight days later, Petitioner threw a chair and was very upset in class. The following day, [REDACTED] screamed five times in class, threw another chair, and was very agitated. The next day, Petitioner screamed several times, slammed a door, threw a chair, and displayed very aggressive behavior, pulling a teacher's jacket and squeezing her arm. Three days later, Petitioner screamed and threw another chair. A few days later, [REDACTED] screamed, threw two chairs, slammed a door and broke [REDACTED] glasses.

63. On December 3, 2004, Petitioner was very agitated and attacked a staffperson. [REDACTED] screamed, tore up papers, and broke [REDACTED] sunglasses. Four days later, Petitioner screamed and threw a chair because [REDACTED] wanted to call [REDACTED].

64. Petitioner behaved better in January 2005, but, on January 27, screamed very loudly several times. Through the end of February, Petitioner behaved much better, although [REDACTED] pinched someone's arm twice and tore up some paper.

65. On the other hand, Petitioner's behavior had improved markedly in fifth grade when compared to [REDACTED] behavior in fourth grade. In fifth grade, it was necessary to clear the room only

one or two times. The prior school year, it was necessary to clear the room numerous times.

66. Ms. Messing was consciously preparing Petitioner for transition to middle school. In one respect, the transition would be easier than for many elementary school students because ■ students, including Petitioner, changed classrooms in fourth and fifth grades. Ms. Messing hoped that Petitioner could be assigned to general education for all courses except reading, which is the academic area that is most difficult for ■.

67. Early during the 2004-05 school year, in which Petitioner was in fifth grade, ■ staff started work on the new IEP. ■ contacted Felicia Droze, the ESE Specialist at ■, and invited her to observe Petitioner at ■, and Ms. Droze conducted two observations during the 2004-05 school year.

68. The first observation took place in November 2004. Ms. Droze observed Petitioner in ■ general education reading class. While ■ classmates were reading along with an audio tape, Petitioner was working to the side with ■ aide doing an alternate assignment because ■ had started an activity and had wanted to finish it. At recess, Ms. Droze watched Petitioner play with the other children in free play, but only when prompted and helped. Later, in general education science, which Vivian Benzriham taught, Ms. Droze watched the class do a group activity while Petitioner received SLT from Randy Weinstein, who

was an ST assigned by a contractor to [REDACTED]. Petitioner did a little book work when assisted by Ms. Weinstein, who also prompted other students to interact with Petitioner.

69. The second observation took place in November or December 2004. Ms. Droze saw Petitioner in general education science, in which the students were doing research on the computer. The 1:1 aide tried to get Petitioner to do computer research, but Petitioner wanted to visit other websites. Eventually, with prompting, Petitioner wrote down some research details. Next, Ms. Droze followed Petitioner to the resource room where [REDACTED] received 1:1 instruction from Ms. Tolar in reading and math. For the 20 minutes that Ms. Droze watched Petitioner, as [REDACTED] worked well, but required redirection.

70. Also in the fall of 2004, Ms. Weinstein prepared a draft version of what became the fifteenth goal of the IEP dated August 1, 2005, which is described below. This goal reflected what Ms. Weinstein was learning about Petitioner during the 30-minute, 1:1 SLT sessions that she was conducting each day while Petitioner was in science class.

71. By the end of 2004, Ms. Tolar, Ms. Weinstein, and Ms. Wong, whose involvement in the planning process ended in late March when she had a baby, had drafted much of an IEP on their own. In the next stage of the process, [REDACTED] staff, such as Ms. Tolar, worked with [REDACTED], often at weekly meetings, to draft

the PLPs and goals.⁵ Later, the IEP team, at formally noticed meetings, worked on PLPs and goals.

72. Ms. Droze tried unsuccessfully to arrange a matriculation meeting in March 2005 before Ms. Wong left on maternity leave. Ms. Droze wanted the meeting to allow ■■■ staff to learn about Petitioner from ■■■ staff. In discussions with ■■■ staff, Ms. Droze asked for work samples of Petitioner. Although ■■■ staff promised to deliver them, they never did, according to Ms. Droze, although Ms. Gomez-Schwein, an ESE teacher at ■■■, testified that she received in May 2005 a binder with samples of work and social stories after asking for this material in March 2005.

73. Ms. Droze's efforts to plan for Petitioner were frustrated by the lack of updated PLPs. The PLPs in the Stay-Put IEP were then nearly three years old and of decreasing value.

74. Less convincingly, Ms. Droze claims that she was unable to obtain timely information about Petitioner's behavior. Although ■■■ staff seem slow to have recounted the details of Petitioner's aggressive and disruptive behaviors, Ms. Droze could not have been misled by any incomplete or delayed disclosures by ■■■ staff. The April 2005 BIP, as described below, depicts some behavioral deterioration since the preceding BIP in December 2003. Also, in an IEP meeting in April or May

2005, Ms. Messing told Ms. Droze that Petitioner had assaulted an aide, who could no longer work with [REDACTED]. At one IEP meeting--probably July 27, 2005--Georgia Cuevas, a [REDACTED] teacher who was filling in for Ms. Tolar, told Ms. Droze that Petitioner's behavior was worse than had been previously disclosed.

75. On March 10, 2005, a reevaluation meeting took place. The participants were [REDACTED]; Joanne Brustad, District Assistive Technology Program specialist; Ms. Tolar; Ms. Negrón; Ms. Weinstein; Ms. Wong, who facilitated the meeting; Elizabeth Stabinski, a guidance counselor at [REDACTED]; Tara McGrath, an OT assigned by a contractor to work with Petitioner at [REDACTED]; and Ms. Messing. The main purpose of the reevaluation meeting was to consider the role of assistive technology in Petitioner's education. This meeting followed an earlier meeting in February 2005 attended by Ms. Brustad, [REDACTED], and others.

76. At the time of the March 10 meeting, Petitioner was using the above-mentioned FM system, which amplifies the voice of the teacher for the student using the system. [REDACTED] explains that [REDACTED] suffers from a significant auditory deficit, and the system helps [REDACTED] understand classroom presentations. District audiologist Erica Rubio had conducted an observation of Petitioner and concluded that the FM system was of no use to

Petitioner, but the group decided to continue this item of assistive technology to avoid a dispute with [REDACTED].

77. At the time of the March 10 meeting, Petitioner was using two other items of assistive technology on a trial basis: an Alpha-Smart, which is a portable word processor, and Play Attention, which is a device to increase attention span. The trial of the Alpha-Smart had started in January 2004, but the trial of the Play Attention had started only a few days earlier.

78. At the time of the March 10 meeting, Petitioner was using a visual schedule and a software program known as Kidspiration, which uses pictures to help students write and organize their work, as additional items of assistive technology.

79. At the February meeting, [REDACTED] had asked about classroom use of the Computer Assisted Real Time captioning (CART) system, of which Ms. Brustad was unaware. After the meeting, Ms. Brustad researched the CART system and learned that it was real time closed captioning primarily for students who are deaf and hard of hearing. However, Ms. Brustad consulted with two experts, who thought CART might help Petitioner, depending on the circumstances.

80. By the time of the March 10 meeting, Ms. Brustad was aware that Petitioner does better when information is presented electronically, regardless whether the medium is visual or oral,

and that [REDACTED] staff generally felt that the CART system would help Petitioner. However, Ms. Brustad remained doubtful of the value of the CART system, and she eventually informed [REDACTED] that Petitioner would unlikely benefit from the CART system due to [REDACTED] limited reading comprehension. Use of the CART system requires receptive skills in reading comprehension, language and decoding: of these three skills, Petitioner has only decoding skills.

81. Ms. Brustad discussed with [REDACTED] at the February and March meetings assistive technology that would help Petitioner remain focused. These items included Pocket Coach and Isaac. Ms. Brustad investigated these items, but found them inappropriate, given Petitioner's PLPs and goals, functional level, and need to develop independent functioning. [REDACTED] suggested to Ms. Brustad a software program called Jokemaster, which Ms. Brustad purchased with her own funds, but found age inappropriate for Petitioner.

82. The meetings were useful in providing Ms. Brustad with information on which to determine Petitioner's need for assistive technology. However, certain important items were lacking during the meetings. For instance, Ms. Brustad never learned how well Petitioner could take notes during a class lecture, nor did she have the PLPs or goals that were under development for the August 2005 IEP; without goals, it is

impossible to identify the assistive technology needed to provide FAPE. Ms. Brustad also never learned how the Play Attention trial worked out.

83. Apparently, though, Ms. Brustad intended for the February and March meetings to serve as an opportunity for staff to plot a future course for the consideration of assistive technology. Consistent with this purpose, the Reevaluation Plan, which emerged from the March 10 meeting, states that the question to be addressed is "What tools/strategies could benefit student meeting █ goals?" The plan notes that Petitioner continues to meet the eligibility criteria for autism, SLT, and OT and recommends reevaluation for the "eligibility" of "assistive technology," which is not an ESE eligibility.

84. Attached to the March 10 Reevaluation Plan is a Parent Consent/Notice: Reevaluation. The form lists several areas, such as hearing, vision, intellectual functioning, and OT, for which an "assessment" will be conducted. The parties checked "assistive technology" in this part of the consent/notice form. However, █ crossed out "assessment" and wrote in "evaluation," and the participants did not object. █ then signed the consent/notice form, agreeing to the "reevaluation" specified above.

85. The distinction between an assessment and an evaluation is that an assessment is a preliminary, ongoing

activity that permits staff to obtain baseline data, and an evaluation is a formal test. The assessment is more impressionistic. The evaluation conforms to a set of methodologies and protocol. The distinction, though, loses much of its force when IEPs remain in effect for three or four years, and "trials" of assistive technology, like the Alpha Smart, which clearly helped Petitioner write sentences, could not be closed by incorporating the item into a new IEP.

86. The necessarily preliminary nature of the March 10 meeting, at least as to consideration of assistive technology, is borne out by Respondent's Assistive Technology Procedural Manual. The procedural manual provides that the consideration of assistive technology requires three steps: a review of PLPs and evaluation data to determine the present role of assistive technology or the role that assistive technology could play in the future, an identification of priority educational needs and specific goals and objectives to determine if any of these needs or goals would be "difficult or impossible" to work on without assistive technology, and a decision as to whether specific assistive technology devices are required.

87. If the decision is that specific assistive technology devices are required, the next step is to commence a trial of assistive technology, according to the procedure manual. The procedure manual requires the multidisciplinary team (MDT)⁶ to

obtain data for six to eight weeks using the SETT form, which identifies the Student's limitations, identifies the Environment in which the student is having difficulty, identifies the Tasks or areas of difficulty, and considers the Tools or devices available. The selection process sensibly starts with nontechnical devices and proceeds to highly technical devices.

88. According to the procedural manual, the MDT reconvenes to analyze the data collected during the trial. If the trial is successful, the MDT recommends the assistive technology device to the IEP team. If the trial is unsuccessful, the MDT may subject a different item of assistive technology to a trial or request technical assistance by sending a request to the District's Assistive Technology Program Specialist, who will consult with the MDT to assess the student's needs for assistive technology and recommend additional trials.

89. The procedural manual states that the selection criteria for assistive technology include the simplest technology (i.e., one not requiring much, of any, training), the most effective technology, the least restrictive outcome in terms of functional independence, the least obtrusive technology, the technology in which the student and staff can adopt enthusiastically, and the technology that provides FAPE by increasing, maintaining, or improving functional capabilities.

90. If she had identified new assistive technology in March 2005, Ms. Brustad would have completed all necessary reevaluations by December 2005. However, she never had any adopted PLPs or goals with which to work. And, after early September, she no longer had a student with whom to work. Consistent with the requirement of PLPs and goals before the identification of assistive technology, Carol Baskind, the Area ESE Coordinator,⁷ wanted to reconsider the evaluation of assistive technology at the end of the IEP planning process then underway.

91. About a month after the March 10 reevaluation meeting, another meeting took place that generated information useful in the process then underway to prepare a new IEP. On April 7, 2005, Ms. Tolar, Ms. Negron, Ms. Benzriham, Ms. Weinstein, and █████ met and developed a BIP (April 2005 BIP).

92. According to the form, the reasons for the April 2005 BIP are that Petitioner was engaging in behavior that placed █████ or others at risk of harm or results in substantial property damage, and the behaviors may result in the exclusion of Petitioner from participation in activities or settings with peers.

93. The description of baseline behavior in the April 2005 BIP states that Petitioner was refusing to complete █████ assignment and leaving █████ work areas 1-2 times daily, taking

preferred items without asking 0-1 time monthly, squeezing others 2-3 times monthly, throwing small objects four times weekly, and attempting to kick one time monthly. As compared to the December 2003 BIP, the newer BIP shows that Petitioner's behavior has deteriorated in squeezing others, throwing objects, and attempting to kick others and has improved in refusing to complete assignments and staying in [REDACTED] work area and taking preferred items without asking.

94. The April 2005 BIP documents Petitioner's strengths as follows: "[Petitioner] can show affection and at times can recognize when [REDACTED] is doing something that affects others. [REDACTED] likes phonics, math, computers, music and videos. [REDACTED] strength seems to be spelling. [REDACTED] prefers movement activities in music class and painting in art class. [REDACTED] enjoys time with mother." The April 2005 BIP describes Petitioner's limitations as follows: "[Petitioner] has difficulty with reading comprehension, language comprehension and pragmatics, social interaction (particularly with other children), completing assignments and remaining in assigned area."

95. The April 2005 BIP identifies the goals of intervention as improving social interactions and academic performance. The objectives of the plan are increasing the completion of assignments, increasing the number of times that Petitioner requests breaks, and increasing the number of times

that Petitioner requests preferred items and the length of time that ■■■ will wait for them. Another objective is to decrease Petitioner's physical response to a stressful situation. The April 2005 BIP notes that the setting event is a change in routine when Petitioner is not notified in advance, and the consistent implementation of sensory breaks has a positive impact on Petitioner's behavior.

96. The April 2005 BIP identifies two "summary (hypothesis) statements." The first statement is that, when demands are placed for nonpreferred activities or participating in a large-group, relatively unstructured activity, Petitioner refuses to complete the assignment or leaves the assigned area to avoid the non-preferred activity. The second statement is that, when sweets are in sight, Petitioner takes the sweets without permission to obtain the sweets.

97. In response to a question about setting events affecting the student's behavior, the April 2005 BIP states: "Changes in routine when the student is not notified in advance seem to have a negative impact on behavior. Consistent implementation of sensory breaks has a positive impact on student's behavior." The April 2005 BIP states that the goals of the interventions are to improve Petitioner's social interactions and academic performance.

98. The April 2005 BIP describes 12 proactive strategies to adjust the environment to make Petitioner's problem behavior unnecessary, four replacement skills to replace the problem behavior, and four consequence strategies to ensure that the student is reinforced for positive, not problem, behavior.

99. The 12 proactive strategies are to use a visual schedule and prompt Petitioner to check it, implement at least three sensory breaks "scheduled" throughout the day, maintain a schedule when possible and prepare for expected changes, verbally remind Petitioner of reinforcers to be earned when work is completed and provide positive praise frequently, prompt Petitioner to request a break using a written card and prompt to read, preview instruction by the teacher and aide at least one day in advance to enable the aide to prepare Petitioner for the next day's work and any expected changes in routine, develop social stories to help with difficult situations, structure work and provide choices as to the work, remind Petitioner how many minutes are left when engaging in a reward activity, indicate expectations and choices rather than use negative statements, use "first/then" to schedule activities (e.g., "first we read the book, and then we work on the computer"), and distract Petitioner with a familiar topic or activity when ■■■ behavior escalates.

100. The four replacement skills are to complete assignments and remain in assigned area, request help with one verbal prompt, request a break when needed, and wait for a preferred item given a verbal prompt and a target time.

101. The four consequence strategies are to give a check for each appropriate activity provide a treat or preferred activity after Petitioner earns three checks, allow Petitioner to choose a preferred activity for a five-minute break and praise ■■■ for the request, give Petitioner an item after ■■■ makes a request and waits, and maintain visual contact, but not chase, unless it is a dangerous situation, when Petitioner runs away.

102. In early 2005, ■■■ staff and ■■■ worked on the new IEP, sometimes in IEP meetings and sometimes in parent-teacher conferences. Although meetings often ran five to seven hours, progress was slow, as the IEP team had difficulty setting priorities and actually writing the IEP.

103. Long discussions took place about PLPs. For instance, ■■■ thought the tongue thrust was clinically significant and wanted it in the PLPs, but Ms. Weinstein thought it was not. The two finally agreed that the IEP could mention the tongue thrust, with the caveat that the tongue thrust did not affect Petitioner's speech.

104. Long discussions took place about goals. For instance, ■ wanted separate goals for social interaction, OT, keyboarding, the use of idioms, sports, and a close-captioning device. Negotiations were slow.

105. Coinciding with the conclusion of the March 10 reevaluation meeting, the District ESE office took increased interest in the planning process. Mislabeling assistive technology as an eligibility, allowing ■ to revise the form to label the process one of evaluation rather than assessment, and, most importantly, showing signs of acceding to the insistence of ■ on the CART system likely renewed concerns in the District ESE office about whether this planning process would again overtax the experience and competence of the ■ ESE staff and again result in a labor-intensive IEP possibly providing more than FAPE required.

106. The day after the March 10 reevaluation meeting, Ms. Baskind called Ms. Messing and asked to see the draft goals. The next day, Ms. Baskind and Ms. Messing spoke by telephone, and Ms. Baskind said that the goals were inappropriate for an IEP. She questioned whether certain goals were measurable.

107. In the conversation of March 11 with Ms. Messing, Ms. Baskind learned of the IEP meeting scheduled for March 14. Ms. Baskind relayed this information to Grace McDonald, one of two District Due Process Coordinators and one of two immediate

supervisors of Ms. Baskind. Expressing concern with the time that it was taking to update the Stay-Put IEP, Ms. McDonald suggested that Mr. Fowler and Ms. Baskind attend the next IEP meeting. Although they were speaking on a Friday and the IEP meeting was scheduled for the following Monday, Ms. McDonald suggested that they obtain the permission of ■■■ to attend the meeting.

108. When Ms. Baskind told Ms. Messing that she and Mr. Fowler wanted to attend the IEP meeting the following Monday, Ms. Messing objected, saying she wanted ■■■ staff only at the meeting and ■■■ would likely object to the attendance of persons not named on the Parent Participation Form (PPF). Ms. Baskind replied that it was important for District staff to attend the meeting. Ms. McDonald later called Ms. Messing to re-emphasize the same point. Ms. Messing relented.

109. Over the weekend, Ms. Baskind spoke again to Ms. Messing. She explained that support services, such as assistive technology, were unsuitable for reevaluation and that they would have to revisit the matters taken up at the March 10 meeting.

110. When told, on the morning of the meeting, that Mr. Fowler and Ms. Baskin were present and intended to attend the meeting, ■■■ objected to the fact that they were not listed on the PPF. Although the reasons for her objection to the

presence of Ms. Baskind are unclear, ■■■ did not like Mr. Fowler, probably dating back to his role in the planning process that attempted to place Petitioner in a more restrictive environment. ■■■ refused to participate in the March 14 IEP meeting, and Ms. Messing canceled the meeting.

111. The refusal of ■■■ to participate in the March 14 IEP meeting accomplished nothing but delay. Three weeks later, ■■■ issued two new PPFs that announced a three-hour IEP meeting on April 21, 2005, and a four-hour IEP meeting on April 25, 2005, and listed as attendees for both meetings: ■■■; Ms. Messing; Mr. Fowler; Ms. Tolar; Ms. Weinstein; Ms. Brustad; Ms. Negron; Ms. McGrath; Ms. Stabinski, a District Behavior Specialist; Ms. Benzriham; Ms. Rubio; Eleanor Goldberg, a District Reading Specialist; Lori Insel, a District ESE Program Specialist; and Ms. Droze.

112. The April 21 IEP meeting was the first attended by Ms. Droze and Ms. Insel. Asked a week earlier by Ms. Baskind to facilitate the meeting, Ms. Insel did not have any background information on Petitioner, ■■■ Stay-Put IEP, or the IEP then under development prior to arriving at the meeting, so she entered the meeting without any preconceived notions about the best education plan for Petitioner. Ms. Insel served as the facilitator at each of the four IEP meetings that she attended,

which, in addition to April 21, were on April 25, May 19, and May 23.

113. By sometime in April, District ESE staff had encouraged the IEP team to prioritize its goals and accelerate the pace of its work. The PLPs in the August 2005 IEP are meticulously detailed and provide much useful information. Although it is difficult to conceive the point at which IEP drafters could provide too much detail as to the present performance of an ESE student, District ESE staff were rightly concerned that the benefit of detail in the PLPs was outweighed by the age of the Stay-Put IEP and the length of time it was taking to prepare a new IEP.

114. District ESE staff were rightly concerned with slow pace of the IEP team and the number of the goals. Too many and inappropriate goals are a problem in IEPs. Prior to the involvement of District ESE staff, the IEP team had drafted more goals than Petitioner or ■■■ teachers reasonably could have worked on during a school year and goals that teachers could have worked on without their inclusion as goals. The result would have been reduced emphasis, in implementation, on appropriate and important goals.

115. In the April and May IEP meetings, encouraged by District ESE staff, the IEP team gained momentum in identifying priorities in the educational plan that it was crafting for

Petitioner. But the involvement of District ESE staff came at a price. First, they slowed the process by revisiting goals that the IEP team had already considered finished. Second, and more importantly, they introduced the element of conflict, typically pitting ■■■ and ■■■ staff against District staff.

116. The planning process needed more of an edge than it had before the arrival of Mr. Fowler and Ms. Insel, but quickly the conflict became counterproductive. Just as the child was often lost in the mass of material that the IEP team had acquired and tried to digest earlier in the planning process, so was ■■■ often lost in the power struggles that now characterized the planning process. The cheery atmosphere of the IEP meetings in which the participants were mired down in surfeit of information and language was supplanted by a tense, and sometimes hostile atmosphere, in which District ESE staff prodded ■■■ staff to prepare a more elegant and useable document. Before long, certain ■■■ staff concluded that Mr. Fowler and Ms. Insel were not respecting their opinions, and, again, progress slowed.

117. The situation worsened during the May IEP meetings. On April 25, a PPF announced a four and one-half hour IEP meeting on May 19, 2005, and listed the same persons as attendees as had been listed on the PPF for the April 21 and 25 IEP meetings. On May 19, another PPF announced a three and one-

half hour IEP meeting on May 23, 2005, and listed the same persons as attendees as had been listed on the PPF for the May 19 IEP meeting, but added Ann Siegel, who was an invitee of [REDACTED].

118. At the May 19 IEP meeting, the IEP team was still discussing goals. Concerned that the insertion of language specifying "specialized instruction" meant an assignment in a more restrictive environment than general education, [REDACTED] objected to the use of this term. The IEP team also discussed assistive technology. Feeling that the professional disregard shown it by [REDACTED] ESE staff had reached an intolerable level, [REDACTED] ESE staff ceased participating in the IEP meeting. At times, CCE ESE staff silently did other tasks, such as grading papers.

119. Mr. Fowler became concerned that the refusal of [REDACTED] ESE staff to participate in the planning process would further slow progress of the IEP team. During a break from the May 19 IEP meeting, an irritated Mr. Fowler summoned Ms. Messing into an unoccupied room. Mr. Fowler entered the room ahead of Ms. Messing and initiated what would have been a loud exchange, but for the fact that, by Mr. Fowler's admission, Ms. Messing had "very little" to say. Mr. Fowler loudly complained that they would have a difficult time finishing the IEP without cooperation between District and [REDACTED] staff, but [REDACTED] staff had sat through most of the meeting doing other work. Ms. Messing replied that she knew, and Mr. Fowler answered that [REDACTED] knew

that she knew. Mr. Fowler shouted, "I'm really pissed at you and your staff. You've given the mother everything she wanted."

120. Ms. Messing defended herself and her staff by saying that they had worked many months to get to the point at which they found themselves and they had not given the mother all that she had wanted. Ms. Messing asked whether the District could live with additional assistive technology, meaning the CART system.

121. Mr. Fowler replied that the District could not live with the CART system that [REDACTED] wanted and that it was not going to happen. Mr. Fowler added that the District would not pay for assistive technology without following District procedure, including, if appropriate, a trial of each proposed device. In particular, Mr. Fowler wanted to avoid a costly repeat of the 2002 process in which [REDACTED] ESE staff had selected the FM system without a trial.

122. At the May 23 IEP meeting, the situation had deteriorated to the point that, immediately after Ms. Insel opened the meeting with groundrules, [REDACTED] stood up and announced a groundrule of her own, which would preclude attire that exposed cleavage. This remark was directed to Ms. Insel and undermined the collaborative atmosphere that is conducive to effective educational planning. However, the remark of [REDACTED] was partly the product of [REDACTED] frustration, shared by Ms. Messing at

times, that Ms. Insel failed to respect those persons who held opinions different from her own.

123. During the portion of the May 23 IEP meeting devoted to a discussion of the IEP under preparation, [REDACTED] voiced concerns about goals and assistive technology. Before long, Mr. Fowler announced that the IEP team was unable to reach consensus. [REDACTED] asked [REDACTED] if [REDACTED] would be filing a due process request. [REDACTED] said that [REDACTED] was not sure. [REDACTED] declared that the meeting was over and maybe Respondent would file a due process request.

124. It remains unclear what Mr. Fowler was thinking at this point. Petitioner and Respondent shared the need for a new IEP, as the Stay-Put IEP was now four years old. For Respondent to have filed a due process request prior to finalizing an IEP--especially prior at least to getting to the most important element of the IEP, the placement decision--would have been a waste of time as judges, lacking the authority to draft an IEP, may only determine whether already-drafted IEPs provide FAPE. Given his experience, Mr. Fowler's rash decision to cancel the meeting seems more likely to be the product of petulance than of a misunderstanding of ESE law.

125. In one other material respect, the termination of the IEP planning process was premature. Ms. McGrath, who had worked extensively with Petitioner on sensory integration, attended

four or five IEP meetings, patiently waiting for a chance to share with the IEP team her crucial knowledge about Petitioner. Based on the events that unfolded in the short time that Petitioner attended [REDACTED] the following school year, it is apparent, in hindsight, that the information possessed by Ms. McGrath was the most important information to be incorporated into the new IEP. For other OTs, the role of sensory diet in modulating the level of stimulation--and thus shaping the behavior--of a child with autism is theory-based. For Ms. McGrath, the role of sensory diet for Petitioner is experience-based.

126. The process of IEP meetings with notice and an opportunity to be heard exists precisely so persons such as Ms. McGrath can offer their unique insights, and the IEP team can incorporate this invaluable information into the IEP. Sadly, this process did not take place with Ms. McGrath. After the second or third IEP meeting that Ms. McGrath had attended but had not been asked to speak, [REDACTED] finally asked for the OT to be given a chance to provide her input. Ms. Insel responded by saying that they had an agenda and would not take Ms. McGrath before her turn.

127. Ms. Insel's discourtesy to Ms. McGrath and disservice to the IEP planning process deprived the IEP team of information concerning specific sensory exercises that worked with

Petitioner in the spring of 2005. If allowed to have addressed the IEP team, Ms. McGrath testified that she would have recommended OT twice a week for one-half hour each session. She would have recommended that the OT meet with teachers to ensure the proper use of the sensory diet. She would have recommended that the OT train the 1:1 aide in timely providing sensory input to Petitioner and that the OT speak to the aide at the end of each OT session with Petitioner.

128. Ms. McGrath's testimony provides considerable insight into what went wrong when Petitioner attended █████ in August 2005. Ms. McGrath, who specializes in children with autism, explained that Petitioner needs deep sensory input. Deep sensory input gets to the joints. A proper sensory diet permits Petitioner to self-organize and modulate █████ behaviors. As little as fifteen minutes of proper sensory input lasts up to six hours.

129. At the start of each session, Ms. McGrath explained, she reads Petitioner to determine if █████ is hypo- or hyper-reactive. The latter state is obvious, but the former state requires careful trial-and-error exploration with █████. Most of the time, Petitioner is hyper-reactive, meaning that █████ needs sensory exercises to make █████ less, not more, reactive to stimulation.

130. Each day that she works with ■■■, Ms. McGrath struggles to integrate three senses: touch (tactile), location in space (proprioceptive), and movement (vestibular). By doing so, Ms. McGrath not only modulates Petitioner's behavior, but prepares ■■■ to engage in each of the four domains of ■■■ IEP: communication, social/emotional, curriculum, and independent functioning. As basic a function as auditory processing is improved in Petitioner when ■■■ is better organized in terms of sensory processing. The same is true with basic cognitive functions, such as the ability to follow multi-step directions, or basic motor activities.

131. Without proper sensory integration, Petitioner is unable to process the complex sensory information that surrounds him. This is a disorienting and disabling condition. Eventually, Petitioner becomes frustrated or frightened, and soon ■■■ strikes out, runs, or otherwise escapes from this incomprehensible environment that, if not sufficiently familiar, ■■■ may find threatening, as well. Any attempt to educate Petitioner that does not examine ■■■ through this prism misses an invaluable opportunity to provide meaningful assistance to this child. In managing Petitioner's behavior during the period in question, sensory integration prior to aggressive or disruptive behavior was more effective than behavioral interventions before, during, or after the aggressive or

disruptive behavior or discipline, at which point suspension or detention provides the wrong message to the student with autism trying to avoid attending school.

132. As noted by Karen Jordan, an ST who has worked with Petitioner in the past, Petitioner has progressed in [REDACTED] ability at school to ask for sensory breaks when needed. She has also witnessed [REDACTED] progression from needing breaks with deep sensory inputs, like the steamroller activity also known as a Petitioner sandwich, in which Ms. Jordan lays on a large ball and rolls gently over Petitioner, to needing only breaks, at least when [REDACTED] is in the familiar and safe environment of [REDACTED] home. Ms. Jordan advises that educators may expect a decreasing reliance by Petitioner on sensory inputs, as adults with autism generally progress from requiring breaks with sensory activities to requiring breaks only and may need to do only aerobics, swimming, tennis, and other typical activities as sensory exercises. However, the record provides no guidance as to what Petitioner presently needs, in terms of sensory inputs, when in the unfamiliar, challenging, and stimulating environment of school, so it may be premature to deemphasize sensory inputs at present.

133. Ms. McGrath's involvement with Petitioner reflects another annoying problem in these cases, which is attributable to both [REDACTED] and Respondent. Ms. McGrath labored in the long

shadow of the Stay-Put IEP. Four years ago, all that could be expected of Petitioner was for ██████ to recognize when ██████ needed a sensory break and ask for one, so that is all that the Stay-Put IEP addressed in terms of OT and sensory input. These provisions were hopelessly obsolete four years later, but Ms. McGrath felt constrained to stick to the Stay-Put IEP, despite what she knew, based on her professional judgment, that Petitioner needed. For all of her attention to language and obvious intelligence, the limits of the Stay-Put IEP, in terms of what they permitted as to sensory input, came as a surprise to ██████ at the hearing. Eventually, Ms. McGrath tuned out the repeated exhortations to implement this obsolete IEP, as she developed her own OT goals that, although never reduced to writing, focused on more relevant needs, such as handwriting, but she remained ambivalent about her ability to cover more intensive tasks, such as keyboarding, which she felt were also well within reach of Petitioner.

134. The planning process seemingly stopped, on June 17, 2005, Petitioner filed two due process requests, which commenced DOAH Case Nos. 05-2192E and 05-2211E. Work on the IEP resumed shortly after the issuance the earlier of the two final orders resolving these due process requests.

135. Sometime after the IEP meeting that was terminated by Mr. Fowler, counsel of Imagine Schools and Ms. McDonald agreed

to have a meeting at which [REDACTED] staff could get a better understanding of their role in the IEP planning process. The meeting took place, but any improvement in the participation of [REDACTED] staff is difficult to assess because the IEP team would meet only two more times before finalizing the August 2005 IEP.

136. More productively, sometime toward the end of the 2004-05 school year, Ms. Tolar and Ms. Weinstein from [REDACTED] visited [REDACTED], which is the largest middle school in Broward County with 2230 students. In anticipation of the placement issue that the IEP team would eventually make, Ms. Tolar and Ms. Weinstein visited the VE and specialized varying exceptionalities (SVE) classrooms at [REDACTED].

137. The VE classroom visited by Ms. Tolar and Ms. Weinstein has a ratio of 12-15 students to one teacher, although it happened to be empty when the two teachers visited it. Presenting whole-group instruction, the VE teachers adhere to a scripted presentation and have little leeway in how to present the curriculum. In scheduling students in a particular VE classroom, Ms. Droze groups students by their individual needs.

138. In general, students in the VE class receive extra assistance, but study the same curriculum as that studied by the general education class. The students in the VE classrooms all take the FCAT and work on Sunshine State standards, although it

is unclear whether they are working on Sunshine State standards at their grade level. Petitioner is working on Sunshine State standards, but not on [REDACTED] grade level.

139. As compared to the ratio in the SVE classes, the VE classes have a larger ratio of students to teachers, which presents greater challenges to the staff trying to manage disruptive or escalating behavior. The SVE classroom is thus a more contained environment than the larger VE classroom. The larger ratio of students to teachers in the VE classes also makes it harder for the teacher to collect data concerning behavior, independent functioning, and academic performance.

140. The SVE classroom visited by Ms. Tolar and Ms. Weinstein had two children with one teacher on one side of the room, three children with one teacher on the other side of the room, and two children with either another teacher or 1:1 aides. All of the students in the SVE class were on task. Each student had a visual schedule, and the classroom had a high-tech projector for visuals during direct instruction.

141. Both teachers were impressed by the SVE classroom. Ms. Tolar concluded that Petitioner should be in the SVE classroom for the entire school day because [REDACTED] would benefit from the structured, small-group setting, and [REDACTED] would suffer socially in a general education class of 30 students and one teacher, insulated from the other students by a 1:1 aide. Later, at the

August 1 meeting, at which the IEP team discussed placement, Ms. Tolar reluctantly agreed with some general education, largely in deference to the previously expressed wishes of [REDACTED].

142. Ms. Weinstein testified that she thought that the SVE classroom was "incredible" and informed the IEP team that SVE was an appropriate placement for Petitioner for reading, math, and language arts. She told the IEP team that general education was an appropriate placement for health, science, and physical education, so that Petitioner could work on [REDACTED] social skills. Ms. Goldberg also testified that Petitioner should be in general education for social studies, but SVE for reading.

143. Ms. Tolar and Ms. Weinstein visited the SVE classroom of Ms. Harvey. There are two SVE classrooms at [REDACTED], and each contains students in sixth to eighth grade. Ms. Harvey's classroom works on academics the entire day, and Ms. Kneal's classroom works more on functional skills with more 1:1 instruction.

144. Ms. Kneal's classroom averages four students, who are taught by four adults. Students assigned to Ms. Kneal's classroom require more behavioral intervention. No student in Ms. Kneal's classroom takes general education classes for anything but electives. Some of Ms. Kneal's students are nonverbal.

145. Ms. Harvey's classroom averages nine students, but ranges from four to eleven students. She has two teaching assistants and three aides. All students in Ms. Harvey's classroom take general education classes for electives, and the teaching assistants attend elective courses with Ms. Harvey's students. All students in Ms. Harvey's SVE classroom take math, language arts, and reading in SVE. Some of Ms. Harvey's SVE students take science and social studies in general education. Ms. Gomez-Schwein testified that she has supported ESE students who are three to five years below grade level, as they take general-education science, social studies, and electives, but not math, language arts, or reading.

146. In Ms. Harvey's SVE class, students rotate from reading to math to writing centers throughout the day and receive adult reinforcement for the lessons being taught. The students' reading levels in Ms. Harvey's reading class range from pre-primer to fifth grade, so Petitioner's reading level would be in the middle, as would be [REDACTED] performance levels in writing and math.

147. Ms. Harvey uses direct instruction for reading, but centers for most math instruction. For writing, Ms. Harvey uses a large computer screen to display journal entries and other writing exercises. She has the technology in her classroom to incorporate Kidspiration into her curriculum.

148. At the end of fifth grade, Petitioner graduated from ■■■, and Ms. Messing reports that there was not a dry eye at the graduation ceremony. Staff and students alike had invested in Petitioner's success, and everyone appreciated the magnitude of ■■■ achievement. Undoubtedly, Petitioner and ■■■ were proud of the recognition of ■■■ achievements at the school.

149. However, as noted by Ms. Weinstein, Petitioner grasped only the basics of fifth grade science and never participated in classroom discussions. Although Petitioner was on Sunshine State Standards, ■■■ could not understand the content of classes covering grade-level material that conformed to Sunshine State Standards. As Ms. Gomez-Schwein testified, Petitioner required extensive modifications to the general-education curriculum, and ■■■ work corresponded only to a fraction of the work in the general-education setting.

150. As noted by Ms. Tolar, Petitioner made no meaningful progress over two years in reading, math, or independent functioning. Staff have administered to Petitioner various formal and informal reading tests, including the Qualified Reading Inventory and Diagnostic Assessment of Reading (DAR) instruments, although the DAR produced the often-mentioned second grade level of reading based on Petitioner's incorrect answers to a very small number of questions. Yet, there can be no legitimate dispute concerning Petitioner's reading level. By

the end of fifth grade, Respondent's reading, even with accommodations and modifications, was at the early second grade level, where it has remained since at least the start of fourth grade, and [REDACTED] oral vocabulary was below first grade level. According to Ms. Goldberg, Petitioner's reading comprehension problems are among the hardest to remediate because they are due to language deficits.

151. By the end of fifth grade, Respondent's math was third or fourth grade level with particular strengths in anything rote or involving calculation and particular weaknesses in math applications and math reasoning. Although Petitioner could do some math without assistance, [REDACTED] requires someone in close proximity to prompt [REDACTED] to remain on task.

152. By the end of fifth grade, Petitioner's independent functioning skills had not changed since the start of fourth grade. [REDACTED] required so many prompts that staff often used gestures to try not to wear out word prompts.

153. Petitioner's communication skills have showed some improvement over this time period, but Petitioner still required prompting, at the end of fifth grade, to greet someone. By the end of fifth grade, Petitioner still was not initiating conversation, although [REDACTED] had progressed from questions in fourth grade to blanket statements in fifth grade. As testified by Ms. Weinstein, Petitioner had difficulty with pragmatic skills,

particularly reading faces in conversation; receptive skills, particularly dealing with concepts; and expressive skills, particularly responding to questions.

154. By the end of fifth grade, Petitioner had progressed in [REDACTED] ability to request sensory breaks. In fifth grade, [REDACTED] performed wall pushups and rolled a toner ball, among other things, as sensory exercises.

155. As noted by Ms. Tolar, by the end of fifth grade, Petitioner's behavior interfered with [REDACTED] progress in all domains--academic, social, communication, and independent functioning. As Ms. Tolar testified, implementing Petitioner's BIP is as important as implementing [REDACTED] IEP.

156. On July 25, 2005, Administrative Law Judge Patricia M. Hart issued a Final Order in DOAH Case No. 05-2211E requiring Respondent to prepare an IEP for the 2005-06 school year. On August 31, 2005, Administrative Law Judge Hart entered a Final Order in DOAH Case No. 05-2192E, denying Petitioner's challenge to the extended school year program that Respondent had offered Petitioner.

157. On the date of the issuance of the July 25 Final Order, Respondent noticed an IEP meeting for July 27. At this IEP meeting, the IEP team reviewed nearly all of the goals. One of Respondent's employees had deleted several goals, such as those pertaining to sports, keyboarding, and idioms, in an

effort to reduce the number of goals to a more manageable level. Although [REDACTED] questioned what had happened to these goals, she did not object to their elimination. Attendees at the July 27 IEP meeting were [REDACTED]; Ms. Droze; Ms. Tolar; Ms. McDonald; Ms. Weinstein; Marion Klinger, a District Evaluation Specialist with expertise in behavior; Ms. Goldberg; Ms. Kaye, a sixth-grade teacher of social studies, math, and reading at [REDACTED]; Cathy Weech, a District Program Specialist; Lida Yocum, the other District Due Process Coordinator; Diane Corson, an OT assigned by a contractor to [REDACTED]; and Ms. Benzriham.

158. At the July 27 IEP meeting, the IEP team reviewed all of the remaining goals. Ms. Klinger added social stories and modeling to the IEP at the July 27 IEP meeting. The IEP team discussed some PLPs and goals, but not placement, services, accommodations, or programming.

159. At the end of the July 27 IEP meeting, the IEP team discussed when they could next get together. Different persons at the meeting heard and recall different things. All agree that the meeting wound down with a discussion of when they could again meet. Time was short because school was starting on August 8, and the Final Order had required a new IEP. Some persons believe that everyone agreed to reconvene the following Monday, August 1, but some persons believe that the attendees agreed only to try for that date. On the day after the July 27

IEP meeting, Respondent noticed what would be the last IEP meeting, which took place on August 1, 2005.

160. The next IEP meeting took place on the morning of August 1, but ■■■ was uncharacteristically absent. Extensive testimony on this dispute has not established why ■■■ did not attend the August 1 IEP meeting. She tried to communicate to Ms. Droze her inability to attend, but, due to unforeseeable circumstances, Ms. Droze did not receive the message before the meeting. The evidence does not establish that ■■■ knew that the IEP team was to meet on August 1 and decided not to attend the meeting. The evidence does not establish that the District and ■■■ members of the IEP team knew that ■■■ was unaware of the August 1 meeting and proceeded without her. However, no one at the meeting tried to call ■■■, despite the fact that she had never been a no call/no show for any other IEP meeting and that this IEP meeting would address the placement decisions about which she was most concerned.

161. Four weeks of testimony yields the inescapable inference that most of the District and ■■■ members of the IEP team were relieved to find ■■■ absent, so they could finalize the IEP without delay, and the probable inference that ■■■ did not want to attend another meeting just a few days after the July 27 IEP meeting, so she could slow the process that was obviously leading to the removal of ■■■ from the general

education setting in which the Stay-Put IEP had left [REDACTED] for the past four years.

162. Regardless why [REDACTED] was not in attendance at the August 1 IEP meeting, her absence does not establish a procedural violation for two reasons, either of which is sufficient to preclude a finding of a procedural violation. First, upon discovering that [REDACTED] objected to the August 1 IEP meeting proceeding without her, Ms. McDonald immediately offered to reconvene the August 1 meeting to revisit the placement decisions made in the absence of [REDACTED], but, having already decided to litigate, [REDACTED] declined.

163. Second, [REDACTED] had already provided the IEP team, and informed the planning process with, all reasonably available data and analysis pertaining to [REDACTED] during an extensive and remarkably detailed planning process. [REDACTED] is exceptionally high functioning, knowledgeable, and articulate. She prepared meticulously for IEP meetings, at which she would often read prepared statements. She is a tireless advocate for [REDACTED]. [REDACTED] participated fully and meaningfully in each IEP meeting through July 27, 2005, and this long, extensive planning process had yielded detailed PLPs and goals, which in turn drove the placement decisions. On these facts, FAPE no more requires the presence of [REDACTED] at the August 1 IEP meeting than it requires

that the IEP team in its entirety must agree to all planning decisions.⁸

164. Ms. Droze conducted the August 1 IEP team meeting, which ran four or five hours. Present at the meeting were Ms. Tolar (by telephone), Ms. Weinstein, Ms. Weech (by telephone), Ms. Kaye, Ms. Gomez-Schwein, Ms. Goldberg, Ms. McDonald, Ms. Corson, Ms. Kaye, Ms. Klinger, and Ms. Yocum. Ms. Siegel was also absent.

165. The IEP team discussed two pages of goals that it had not finished discussing at the July 27 IEP meeting. After completing the discussion of these goals, the IEP team discussed services and placement. For each goal and objective, before considering an SVE classroom, the IEP team discussed whether it could be met in a general education setting or, if not, in a VE classroom.

166. As part of this discussion, Ms. Droze provided a comprehensive description of the two SVE classrooms and the VE classrooms. Ms. Gomez-Schwein testified that the IEP team never considered Ms. Kneal's classroom for Petitioner. Regardless whether Ms. Droze identified into which SVE class she would schedule Petitioner, she and other of Respondent's witnesses uniformly agreed that Petitioner would attend Ms. Harvey's class, if [REDACTED] were placed in an SVE class.

167. In the discussion of placement in connection with the first goal of the August 2005 IEP,⁹ which involves writing, the IEP team discussed where Petitioner could make meaningful progress toward attaining this goal. Ms. Tolar told the group that writing remained a nonpreferred activity, for which Petitioner required a high level of prompting and assistance, especially when the content does not involve [REDACTED] personal experience. Because Petitioner's writing was well below grade level, [REDACTED] needed to obtain his instruction where [REDACTED] could get more intensive services, including considerable prompting, behavioral support, and curriculum modifications. The IEP team decided that neither the general education or VE setting provided sufficient individual instruction in writing.

168. In the discussion of placement in connection with the second goal of the August 2005 IEP, which involves vocabulary, Ms. Tolar testified that the IEP team agreed that Petitioner could meet this goal in a general education setting.

169. In the discussion of placement in connection with the third goal of the August 2005 IEP, which involves reading, Ms. McDonald asked Ms. Kaye, who, as noted above, teaches general education reading, to describe to the IEP team the sixth grade reading class in general education at [REDACTED]. Ms. Kaye replied that general education reading in a sixth grade class is very structured and requires higher-order skills requiring the

identification of the main idea of what is read. The class involves little group work, but mostly individual work at desks. The reading class is no longer working on fundamentals. Reading at the second grade level, Petitioner would clearly need more intensive, different instruction in reading to attain ■■■ goal of reading at the third grade level.

170. In the discussion of placement in connection with the fourth goal of the August 2005 IEP, which involves reading silently, the IEP team, noting Petitioner's present inability to read silently, rejected a general education setting in favor of a smaller setting.

171. In the discussion of placement in connection with the fifth goal of the August 2005 IEP, which involves solving math word problems using Petitioner's personal experience, the IEP team acknowledged that the sixth grade math curriculum is beyond students' personal experiences and again rejected a general education setting. Ms. Kaye, who, as noted above, teaches general education math, explained to the group that general education sixth grade math involves more group work than does reading, but the group work is largely in a lecture format with notetaking by the students, who then practice math skills individually at their desks.

172. In the discussion of placement in connection with the sixth, eighth, ninth, tenth, eleventh, twelfth, and thirteenth

goals of the August 2005 IEP, the IEP team recognized that teachers and other staff could implement these goals in a variety of settings, so none of these goals militated for placement in general education or ESE.

173. In the discussion of placement in connection with the seventh goal of the August 2005 IEP, which involves computational skills, the IEP team determined that Petitioner, whose computation skills were at the 3.5 grade level, would require more intensive assistance than ■■■ could obtain in the general education or even VE classroom.

174. In the discussion of placement in connection with the fourteenth goal of the August 2005 IEP, which involves sequencing events in stories, Ms. Weinstein had previously told the IEP team that she wanted to work on this aspect of SLT in a therapy room, rather than a classroom. As noted above, as part of the inclusion offered by the Stay-Put IEP, Ms. Weinstein had been working on this important skill with Petitioner in a corner while the rest of the general education class worked on science. Ms. Weinstein had also previously said that she and ■■■ had agreed that Petitioner would benefit from direct teaching of material pertinent to this goal out of the classroom.

175. In the discussion of placement in connection with the fifteenth, sixteenth, and seventeenth goals of the August 2005 IEP, the IEP team agreed that teachers and other staff needed to

teach Petitioner the underlying skills in a small-group or individual setting before [REDACTED] could take advantage of direct teaching of the skills in larger settings.

176. In making its placement decisions, the IEP team also properly relied on Ms. Kaye, who, as stated above, teaches general education social studies in deciding to place Petitioner in general education social studies and science. Ms. Kaye believed that Petitioner could use what [REDACTED] learned in SVE reading and SVE language arts in these two general education classes. As already noted, Ms. Kaye's opinions about the suitability of general education social studies and science were generally shared by Ms. Tolar (with reservations), Ms. Weinstein, and Ms. Goldberg, and it does not appear that anyone at the August 1 IEP meeting challenged these recommendations.

177. The IEP team also discussed assistive technology at the August 1 IEP meeting. The Alpha Smart, FM system, Kidspiration, and visual schedule evidently did not generate any significant discussion, as no one had any real problems with providing these items, and the IEP team agreed to continue these items of assistive technology. At either this or a previous meeting, Ms. Tolar had told the group that she was not sure that the CART system would help due to Petitioner's poor reading

skills, and Ms. Brustad had shared the same concerns with the group.

178. Nothing in the August 2005 IEP or October 2005 IEP, as described below, identifies to which class Petitioner would be assigned. In terms of placement, the IEP does no more than differentiate between general education and ESE. With the approval of Mark Kaplan, the [REDACTED] principal, Ms. Droze, will decide whether to schedule Petitioner for VE or SVE, but, as noted above, no one disagreed with the evident decision at the August 1 IEP meeting to place Petitioner in Ms. Harvey's SVE class.

179. The IEP dated August 1, 2005 (August 2005 IEP) continues Petitioner's eligibilities for autism, SLT, and OT. Like the Stay-Put IEP, the August 2005 IEP is divided into four domains: curriculum and instruction, social/emotional behavior, independent functioning, and communication.

180. In the domain of curriculum and instruction, the PLPs describe Petitioner's reading comprehension level as early second grade with the following assessment modifications: all questions were presented in multiple choice with the passage as a reference and all passages were presented in expository form rather than narrative text. Petitioner can learn grade-level content using pictorials, but cannot read silently. However,

Petitioner's word recognition skills are at the fourth grade level, and [REDACTED] spelling skills are at the fifth grade level.

181. The PLPs state that vocabulary deficits limit Petitioner's ability to self-correct, and [REDACTED] has difficulty understanding and expressing age-appropriate vocabulary. Petitioner's ability to express word meaning is below first grade level. [REDACTED] cannot use correct noun-verb agreement, and, in writing, Petitioner requires frequent support to use personal pronouns correctly. [REDACTED] writing is better when [REDACTED] writes about personal experiences or uses pictures to give [REDACTED] cues about [REDACTED] writing. [REDACTED] paragraphs contain sentences of five to seven words, and [REDACTED] can write 10-12 sentences, in list form, when describing a personal experience, if [REDACTED] is given visual and verbal responses for support. Petitioner uses Kidspiration software to think and learn visually.

182. The PLPs report that, reading a third-grade level reading passage, Petitioner can read 100 words per minute, but [REDACTED] reading is monotone and lacks expression. [REDACTED] has problems with listening comprehension. Presented with a passage of three to five sentences, Petitioner is unable to answer detailed questions related to the passage. Petitioner uses an Alpha Smart 3000 portable word processor to write in the ESE classroom. Petitioner benefits from supplemental texts, at [REDACTED]

grade level, to enhance ■■■ understanding of the materials taught in class.

183. The PLPs state that Petitioner can add and subtract three- to four-digit numbers with regrouping. Through lots of practice, Petitioner has significantly improved ■■■ ability to perform calculations. ■■■ can multiply factors up to 11. ■■■ can divide two-digit numbers by one-digit numbers, with or without remainders. ■■■ is starting to complete simple algebraic formulas. Petitioner can highlight the key word necessary to complete basic word problems.

184. The PLPs note that inattention continues to plague Petitioner through all areas of the curriculum. If the topic is of particular interest to Petitioner, ■■■ can maintain attention for at least 30 minutes. Petitioner will slack off to the extent that ■■■ teachers permit ■■■ to do so and requires high expectations to achieve ■■■ maximum learning potential. Petitioner uses a classroom assistive listening device, but there is little difference in ■■■ classroom performance when ■■■ is using it and when ■■■ is not using it.

185. The August 2005 IEP states that Petitioner's disability impacts the domain of curriculum and instruction by making it difficult for ■■■ to understand what ■■■ reads and what hears without visual references and prompting. ■■■ requires accommodations to participate in grade level

curriculum. Petitioner's language difficulties cause ■■■ to struggle with applying the language of math at grade level.

186. The August 2005 IEP states that, based on the educational impact of the disability, the priority educational needs of Petitioner are improved reading and listening comprehension, increased vocabulary, improved verbal and written expressive communication, and improved math skills.

187. The first goal of the August 2005 IEP is: "By April 21, 2006, using written questions as prompts with pictures and a word bank, [Petitioner] will write a sequenced paragraph of 5 sentences in 4 out of 5 opportunities with no more than two oral prompts." The first objective is to write a topic sentence with no more than two oral prompts, the second objective is to write detail sentences with no more than two oral prompts, the third objective is to write a conclusion sentence with no more than two oral prompts, and the fourth objective is to use word processing to formulate a complete paragraph with no more than two oral prompts.

188. The second goal of the August 2005 IEP is: "By April 21, 2006, when given concrete content vocabulary words, [Petitioner] will demonstrate understanding of the meaning of the word using a cloze technique in 3 out of 4 trials." The first objective is to identify a content area vocabulary word out of a field of five given its definition. The second

objective is to identify a content area vocabulary word out of a field of five by filling in a blank of a sentence form of a definition. The third objective is to identify a content area vocabulary word by selecting a sentence that demonstrates the meaning of the word.

189. The third goal of the August 2005 IEP is: "By April 21, 2006, using visual and verbal prompts, [Petitioner] will comprehend written passages on a 3.0 grade level as measured by a multiple choice test with 80% accuracy." The first objective is to identify the main idea of a written passage, the second objective is to answer detail questions related to a written passage, the third objective is to sequence events in a written passage, and the fourth objective is to use context clues to identify the meaning of an unknown word within the written passage.

190. The fourth goal of the August 2005 IEP is: "By April 21, 2006, in a variety of settings, [Petitioner] will independently read silently and comprehend on a 3.0 grade level passage as measured by a cloze technique with 75 percent accuracy." The first objective is to silently read and comprehend a sentence with a cloze technique, the second objective is to silently read and comprehend a paragraph with a cloze technique, and the third objective is to silently read and comprehend a passage with a cloze technique.

191. The fifth goal of the August 2005 IEP is: "By April 21, 2005, when given a math word problem involving a one-step operation and a visual prompt (e.g. key words chart), based on [REDACTED] personal interests and experiences, [Petitioner] will solve a word problem correctly in 3 out of 4 trials." The first objective is to identify the functions of the key word within a word problem using a visual prompt, the second objective is to create an addition equation based on a word problem using a visual prompt, the third objective is to create a subtraction equation based on a word problem using a visual prompt, and the fourth objective is to solve a one-step word problem using a visual prompt.

192. The sixth goal of the August 2005 IEP is: "By April 21, 2006, after being presented with an oral passage related to a personal experience (e.g. school curriculum experiences, activities with school staff and peers, home activities), [Petitioner] will improve [REDACTED] listening comprehension as measured by accurate responses in three out of four trials." The first objective is to repeat a complex sentence of five to ten words, the second objective is to answer a factual question after listening to a sentence, the third objective is to answer a factual question after listening to two sentences, and the fourth objective is to answer a factual question after listening to three sentences.

193. The seventh goal of the August 2005 IEP is: "By April 21, 2006, in a classroom setting, [Petitioner] will improve [redacted] computational skills to a 3.5 grade level with 80 percent accuracy." The first objective is to be able to multiply a two digit number by two digit number, the second objective is to be able to solve division problems consisting of three digit dividends and one digit divisors, the third objective is to be able to solve problems involving algebraic thinking skills using addition and subtraction, and the fourth objective is to be able to solve problems involving algebraic thinking skills using multiplication and division.

194. In the domain of social/emotional behavior, the PLPs state that Petitioner had made "significant gains" during fifth grade. When given a verbal script, Petitioner repeats a stimulus to initiate peer interaction, but [redacted] rarely initiates peer interactions on [redacted] own. Without prompts, Petitioner sometimes responds to greetings from adults and peers, and [redacted] tries to interact with other persons--adults to a greater extent than peers--more than [redacted] has done in the past. Petitioner often touches peers and adults on their hands, arms, or hands, but is redirected by adults.

195. The PLPs report that, when stressed, such as by an unplanned change, Petitioner may exhibit aggressive behaviors, such as pinching, squeezing, kicking, or throwing objects. When

engaged in inappropriate behaviors, Petitioner is more likely to respond in a positive manner when other persons tell █ what is expected of █ and what choices █ has, rather than direct █ negatively. When behavior is escalating, Petitioner responds well to physical activities to distract █ and allow █ to regain control or to requests for █ to use █ skill to identify the day of the week for any particular date.

196. The PLPs note that Petitioner's memorization skills can help █ social interaction with peers and adults. At school, providing physical activities and sensory inputs have allowed Petitioner to participate in the general education setting. Physical activities and sensory inputs work best when Petitioner is comfortable with the person with whom █ is interacting. Petitioner did well █ fifth grade year with a variety of teachers and staff and demonstrated "significant improvement" in handling significant changes, but █ social skills need "much improvement." Petitioner frequently cannot interpret unspoken signals from facial expressions or body language.

197. The PLPs state that Petitioner's deficits in auditory comprehension and vocabulary interfere with █ understanding of oral comments by unfamiliar persons. Petitioner sometimes points or gestures toward something and says, "Look at" Although Petitioner has begun to speak in the first person at

times, ■■■ inaccurate use of pronouns confuses unfamiliar listeners and inhibits ■■■ ability to interact with peers and adults. Petitioner has trouble understanding social boundaries such as observing personal space and can easily be persuaded to engage in inappropriate behaviors. ■■■ ability to interact in physical activity is limited by stamina, sensitivity to sun and heat, and limited insight into the game being played.

198. The PLPs report that Petitioner has difficulty recalling the names of peers, although photographs of peers with names helps Petitioner. At home or school, Petitioner has no friends, except ■■■.

199. The August 2005 IEP states that Petitioner's disability impacts the domain of social/emotional behavior because ■■■ social skills, attentional difficulties, and language deficits make it difficult for ■■■ to have relationships, particularly with peers.

200. The August 2005 IEP states that, based on the educational impact of the disability, the priority educational needs of Petitioner are improved reading and listening comprehension, increased vocabulary, improved verbal and written expressive communication, and improved math skills.

201. The eighth goal of the August 2005 IEP is: "By April 21, 2005, across all settings when given a topic of interest, [Petitioner] will maintain conversational exchanges of

two turns in 3 out of 5 opportunities daily." The first objective is to use specified conversational starters to initiate a conversation with no more than one verbal cue, the second objective is to respond with a conversational exchange of one turn with no more than one verbal cue when peers initiate a conversation, and the third objective is to ask "wh. . ." questions to obtain information with no more than one verbal cue.

202. The ninth goal of the August 2005 IEP is: "By April 21, 2006, through the use of social stories and modeling, [Petitioner] will maintain appropriate social distance during interactions with individuals across all school settings in 3 out of 4 opportunities each school day." The first objective is to refrain from unsolicited touching, and the second objective is to maintain social distance of one arm's length.

203. The tenth goal of the August 2005 IEP is: "By April 21, 2006, through the use of social stories and modeling procedures, [Petitioner] will positively interact with peers (non-disabled and disabled) across all settings in 4 out of 5 opportunities daily." The first objective is to respond verbally or gesturally when peers call Petitioner by name, the second objective is to maintain a conversational volume when communicating with peers, and the third objective is to

interpret and respond to unspoken signals from facial expressions and/or body language.

204. In the domain of independent functioning, the PLPs state that Petitioner requires continuous 1:1 adult supervision and constant verbal and visual prompts to assist [REDACTED] with transitions, completing tasks, following [REDACTED] daily written schedule, and implementing at least three sensory breaks daily. Petitioner participates in a sensory diet throughout the school day.

205. The PLPs report that redirection, visual cues, and reminders of rewards help Petitioner maintain attention. When presented with academic tasks, Petitioner requires verbal, visual, and gestural prompts and is unable to sustain attention to assigned tasks without considerable verbal and/or visual prompts. Computers play a considerable role in motivating Petitioner, but computer or other technological breakdowns frustrate Petitioner and may lead to problem behavior. Disliking the drag of a lead pencil, Petitioner uses an erasable pen.

206. The PLPs note that a functional behavior assessment and BIP have been completed and implemented. Frightened of dogs, if a dog is present, Petitioner will run away. On a recent occasion, Petitioner ran away from a dog, fell, and broke [REDACTED] arm.

207. The PLPs state that Petitioner navigates [REDACTED] way around familiar environments and events well, but can become frightened in unfamiliar settings. Social stories are useful to prepare Petitioner for change. A familiar adult must be in close proximity while Petitioner engages in unstructured activities. Escorted on the bus and met at the bus by a familiar adult, Petitioner telephones [REDACTED] before going to class each morning.

208. The August 2005 IEP states that Petitioner's disability impacts the domain of independent functioning because of [REDACTED] language and sensory deficits. Petitioner needs sensory input exercises to modulate sensory-driven behaviors, and [REDACTED] needs adult assistance and prompting to attend to all tasks and transition across all settings.

209. The August 2005 IEP states that, based on the educational impact of the disability, the priority educational need of Petitioner is to increase [REDACTED] attention to tasks and transition.

210. The eleventh goal of the August 2005 IEP is: "By April 21, 2006, [Petitioner] will independently maintain focus on a non-preferred teacher directed task for 10 minutes using self-selected sensory stimuli as needed." The first objective is, given a verbal, visual, or gestural prompt, to choose one out of four activities from [REDACTED] sensory diet chart to assist

with self-regulation, the second objective is to remain seated for five minutes during a classroom activity using a sensory tool of [REDACTED] choice as needed, the third objective is to complete a non-preferred teacher directed activity in five minutes with no more than four sensory stimuli provided or executed, and the third objective is to complete a non-preferred teacher directed activity in ten minutes with no more than three sensory stimuli provided or executed.

211. The twelfth goal of the August 2005 IEP is: "By April 21, 2006, [Petitioner] will wait without incident during a technological malfunction with electronic equipment for five minutes using a variety of coping strategies in 4 out of 5 opportunities." The first objective is to wait without incident for one minute using a variety of coping strategies, the second objective is to wait without incident for three minutes using a variety of coping strategies, and the third objective is to wait without incident for five minutes using a variety of coping strategies.

212. The thirteenth goal of the August 2005 IEP is: "By April 21, 2006, [Petitioner] will transition to another activity when provided a list of alternate activities without incident when a technological malfunction cannot be corrected in 3 out of 4 opportunities." When unable to correct the technological malfunction, the first objective is to transition to an

alternate activity given a list of alternate activities with physical, gestural and verbal prompts, the second objective is to transition to an alternate activity given a list of alternate activities with gestural and verbal prompts, the third objective is to transition to an alternate activity given a list of alternate activities with verbal prompts, and the fourth objective is to transition to an alternate activity given a list of alternate activities.

213. In the domain of communication, the PLPs state that Petitioner exhibits difficulty in receptive, expressive, and pragmatic language. ■■■ is able to understand and respond to simple one-step oral or written instructions, but does not use age-appropriate vocabulary and has difficulty retrieving previously learned vocabulary and concepts. When introduced to new vocabulary and concepts, Petitioner responds best to a multi-sensory approach using concrete visual examples. Teachers present new vocabulary to Petitioner by giving ■■■ a page with a single word, a grade-level definition, and a photograph. Teachers test Petitioner using verbatim definitions, as Petitioner has difficulty understanding more complex, inferential language.

214. The PLPs report that Petitioner is able to express ■■■ basic wants and needs, such as using the restroom or obtaining a drink. With verbal prompting, Petitioner can

sometimes make higher-level requests and can express himself in sentences or phrases of eight to nine words. However, [REDACTED] verbalizations often include implied meaning, which can confuse the listener. Further interfering with [REDACTED] ability to communicate is [REDACTED] frequent misuse of the third person for the first person when speaking of [REDACTED]self, although [REDACTED] can correct [REDACTED] mistake with verbal prompting.

215. The PLPs notes that Petitioner exhibits a slight tongue thrust, which is distracting, but does not interfere with the intelligibility of [REDACTED] speech. [REDACTED] exhibits errors of the phoneme /s/ in all positions within words, but is able to self-correct with minimal verbal cues. Petitioner's speech pattern and prosody lack variation when speaking and reading aloud, but Petitioner is able to modify [REDACTED] inflection when given cues or verbal models.

216. The PLPs states that, pragmatically, Petitioner is able to respond appropriately at times to situations and contexts, but has trouble in conversation with maintaining topic and taking turns. Petitioner sometimes interjects unrelated words or phrases on communication exchanges. [REDACTED] is able to establish eye contact with verbal cues and intermittent prompting.

217. The August 2005 IEP states that Petitioner's disability impacts the domain of communication, in all academic

and social settings, because of ■■■ difficulty with receptive, expressive and pragmatic language in spoken and written forms.

218. The August 2005 IEP states that, based on the educational impact of the disability, the priority educational need of Petitioner is to increase the proper use of possessive pronouns in conversational speech, improve the correct use of personal pronouns, increase the ability to understand oral language, and improve the ability to sequence events in paragraphs.

219. The fourteenth goal of the August 2005 IEP is: "By April 21, 2006, [Petitioner] will identify what comes next in a one paragraph story with visual cues and verbal prompts with 70 percent accuracy." The first objective is to select from three choices what will happen next, given a series of three or more pictures, the second objective is to complete the end of a short story with visual cues by selecting one of three provided endings, the third objective is to state what happens next, given a series of three or four sequential pictures with no more than one verbal cue, and the fourth objective is to state what happens next after hearing a short story with correlating pictures with no more than one verbal cue.

220. The fifteenth goal of the August 2005 IEP is: "By April 21, 2006, when speaking, [Petitioner] will appropriately use singular personal pronouns (I, me, you, he, she, it) in a

structured 5 min conversation given 3 out of 4 opportunities." The first objective is to select the correct singular pronouns from a field of three to describe pictures, the second objective is to use singular possessive pronouns in sentences to describe pictures, the third objective is to produce an oral sentence replacing the proper noun with the correct singular pronoun given three choices, and the fourth objective is, when given a verbal prompt, to self-correct when using an incorrect personal pronoun in conversation.

221. The sixteenth goal of the August 2005 IEP is: "By April 21, 2006, when speaking, [Petitioner] will appropriately use singular possessive pronouns (mine, my, your, yours, his hers) in a 5 minute structured conversation given 3 out of 4 opportunities." The first objective is to select the correct possessive pronoun from a field of three to describe pictures presented, the second objective is to use possessive pronouns in sentences to describe pictures, the third objective is to give an oral sentence replacing the proper name with the correct possessive pronoun given three choices, and the fourth objective is, given a verbal prompt, to self correct when using an incorrect singular possessive pronoun in conversation.

222. The seventeenth goal of the August 2005 IEP is: "By April 21, 2006, when given a written paragraph, [Petitioner] will substitute proper nouns with appropriate pronouns in 3 out

of 4 opportunities." The first objective is, when given a written word, to substitute the proper noun with a correct pronoun, the second objective is, when given a written sentence, to substitute the proper nouns with correct pronouns, and the third objective is, when given a written paragraph, to substitute the proper nouns with correct pronouns.

223. For curriculum, the August 2005 IEP states that Petitioner is working on Sunshine State Standards on another grade level and will take the FCAT and/or District norm-referenced achievement tests with accommodations. For these tests, Petitioner will receive the following accommodations: 1:1 testing; brief testing with frequent breaks, as allowed by the test manual; additional time of up to double the allotted time; permission to write answers in test manual; periodic checking to ensure that Petitioner is marking in the right spaces; masking portions of the test to direct attention to the unmasked portions; reading of directions and non-reading items; repetition, clarification, or summarization of test directions; and verbal encouragement.

224. For services, the August 2005 IEP discusses the LRE, which it defines as the total amount of time that the student spends with nondisabled peers. The categories, from least restrictive to most restrictive, are regular class (at least 80 percent with non-ESE students), resource room (more than 40

percent, but not more than 79 percent with non-ESE students), separate class (not more than 40 percent of time with non-ESE students), separate day school (center), hospital/homebound, residential facility, and juvenile justice program.

225. The August 2005 IEP provides for the duration of ESE services. Petitioner would receive 90 minutes weekly¹⁰ of direct SLT, 75 minutes weekly of monitoring/collaboration in behavior, 30 minutes weekly of monitoring/collaboration in electives and specials, 265 minutes weekly of specialized instruction in language arts, 265 minutes weekly of specialized instruction in math, 265 minutes weekly of specialized instruction in reading, 60 minutes weekly of specialized instruction in social skills, 30 minutes weekly of targeted specialized instructional assistance in science, 30 minutes weekly of targeted specialized instructional assistance in social skills, 53 minutes weekly of targeted specialized instructional assistance in social studies, and 45 minutes (once) weekly of OT. This section of the August 2005 IEP adds that Petitioner receives continuous supervision to ensure physical safety and receives continuous interventions related to behavior.

226. For supplementary aids and services, the August 2005 IEP identifies 26 items, including a daily note sent home, oral presentation of written directions (if allowable), highlighting key words in directions, tasks and tests, extra time for

assignments, processing information and responding, breaking lessons into smaller segments, reducing assignments, allowing movement as needed, and close proximity of teacher when giving directions and instruction.

227. For special considerations, the August 2005 IEP identifies Petitioner's health care needs in terms of sensitivity to the sun. Petitioner's assistive technology consists of a visual schedule, portable word processor, and FM system. This section notes that Petitioner has behavior needs and that: "A behavior plan will be [sic] developed for [Petitioner] by 4/7/2005." The August 2005 IEP describes the special training or materials required by staff as: "Training and implementation of sensory diet, training and implementing in the Positive Behavior Support Plan." Another note states that Petitioner has a BIP based on a functional behavior assessment dated April 7, 2005. Lastly, for transportation needs, the August 2005 IEP provides for tinted windows, air conditioning, and a bus attendant due to Petitioner's "reduced ability to express himself."

228. For placement, the August 2005 IEP states that Petitioner would be in general education 54.61 percent of the time and removed from general education 45.39 percent of the time, during which time [REDACTED] would be in the ESE resource room. The August 2005 IEP provides that Petitioner would be in general

education for science, social studies, electives, special area, grade level activities, lunch, and hallway passages. For the time that ■■■ would not be educated with nondisabled peers, the August 2005 IEP explains:

[Petitioner] requires intensive specialized instruction for Reading, Language Arts and Math with a lower pupil-teacher ratio in an effort to develop independent skills in the academic setting. In addition, ■■■ receives assistance for acquiring social skills and language skills in a small group setting to train/model desired pragmatic/language skills.

229. For recommendations for extended school year services, the August 2005 IEP states that the IEP team needs more time to determine whether Petitioner needs such services, so the IEP team will make this recommendation by April 1.

230. The final page of the August 2005 IEP identifies the IEP team. The IEP team members are ■■■, Petitioner, Ms. Droze, Ms. Kaye, Ms. Gomez-Schwein, Ms. Klinger, Ms. Weech, Ms. McDonald, Ms. Tolar, and Ms. Yocum.

231. On August 3, 2005, Petitioner filed a due process request, commencing DOAH Case No. 05-2805E. The issues in this case are detailed in the Preliminary Statement above and pertain to the August 2005 IEP.

232. On learning that Petitioner had filed a due process request, Ms. Droze spoke with Ms. McDonald about scheduling another IEP meeting. Ms. McDonald tried to reassemble the IEP

team for later in the same week, but was unable to do so. With Ms. McDonald's approval, Ms. Droze sent PPFs to ■■■ offering August 18 and August 19 for such a meeting, but ■■■ declined to participate in further IEP planning.

233. At this point, Ms. Droze's attention turned from designing an IEP to implementing an IEP--although, due to the filing of the due process request, she was constrained to implement the Stay-Put IEP. Ms. Droze met with Petitioner's teachers; Scott Dermer, the ■■■ Behavior Specialist; Ms. Gomez-Schwein, and Mark Vogel, the 1:1 aide assigned to Petitioner. With each of them, she went over the Stay-Put IEP and the April 2005 BIP. Ms. Droze prepared sample social stories and discussed them with each staffperson who would be working with Petitioner. With others, Ms. Droze prepared a visual schedule for Petitioner. Obtaining the lesson plans from Petitioner's teachers for the weeks of August 8, August 22, and August 29, Ms. Droze or Ms. Gomez-Schwein delivered them to ■■■ in advance of the lessons, although less than two weeks in advance.

234. Petitioner visited ■■■ at least three times prior to the start of school. The first time, ■■■ visited during the 2004-05 school year while the students were present. The last time, ■■■ visited just before the students returned for the 2005-06 school year. Ms. Droze escorted ■■■ through each of ■■■ classrooms. While doing so, she asked ■■■ questions to help her

prepare for Petitioner's arrival. Ms. Droze also read a social story. During [REDACTED] visit, Petitioner asked [REDACTED] mother if they were going to [REDACTED].

235. At the same time, [REDACTED] staff were also preparing for Petitioner's arrival. Ms. Gomez-Schwein and others met with behavioral support staff and then teachers to help with the preparation of visual schedules, social stories, and curriculum modifications, such as substituting a second-grade level of word problem solving in math for a sixth-grade level of the same activity and eliminating questions from materials to ensure that Petitioner would finish a task in the allotted time. Having been told by Ms. Droze to implement the Stay-Put IEP, [REDACTED] staff read the IEP, although, until Petitioner filed a due process request five days before school started, no one knew which IEP they would be implementing.

236. Ms. Gomez-Schwein and Mr. Dermer prepared most of the social stories, although Ms. Droze prepared some too. Ms. Droze took photographs of the school to familiarize Petitioner with [REDACTED] new environment.

237. With the start of school, on August 8, Petitioner transitioned smoothly at first. [REDACTED] attended every class and completed the work assigned to him. [REDACTED] sensory diet and positive behavior interventions seemed to be working. [REDACTED] first week at school went well, and Petitioner enjoyed success at

school for the first two weeks. ■■■ developed a good rapport with Mr. Vogel, who was enthusiastic, observant, intelligent, dedicated, willing to do whatever it took to help Petitioner succeed at school, and a quick learner.

238. During this period, ■■■ staff began the process of familiarizing themselves with Petitioner in ways that the PLPs could not facilitate. Responsible for delivering 1:1 instruction in math and reading, Ms. Gomez-Schwein learned that Petitioner's math skills were generally at the second grade level.

239. Ms. Gomez-Schwein also learned that Petitioner's verbal comprehension was low, and ■■■ relied on visual supports to understand things. She thus avoided constant streams of text, such as would be presented by the CART system. During the relatively short time that Petitioner was at ■■■, Ms. Gomez-Schwein was assessing ■■■ comprehension with the intent to find a good reading program for him. In general, Ms. Gomez-Schwein found that Respondent could not respond to simple questions about what ■■■ had read, but she could not determine if the failure was due to poor reading comprehension or poor expressive language. She determined that Respondent had a limited vocabulary, and she spoke with Ms. Goldberg about how to increase it.

240. In the short time that she had to work with Petitioner, which was perhaps no more than 20 hours, Ms. Gomez-Schwein spent at least half of the time assessing, not teaching. Tasks such as distinguishing problems in expressive language versus reading comprehension require close coordination with the ST. Especially at the start of a school year, this coordination takes time, although Ms. Gomez-Schwein could not recall if she had actually contacted the ST to initiate this important process.

241. Ms. Gomez-Schwein also helped teachers modify tests for Petitioner. But [REDACTED] remained at [REDACTED] only long enough to take two tests.

242. Addressing social skills, Ms. Gomez-Schwein ordered a game from Lingua Systems called Friendzee. This game presents social information, such as what to do if one bumps into another person, in an entertaining fashion. Ms. Gomez-Schwein planned to develop peer counselors, trained by CARD, but had not found a time for this activity prior to Petitioner's departure from [REDACTED]. In turn, Ellen Smukyan, a District Program Specialist in Autism, helped Ms. Gomez-Schwein and other teachers by suggesting additional social stories and improvements in how the 1:1 aide and other teachers could interact with Petitioner.

243. Every Monday, Ms. Gomez-Schwein met with teachers to support their efforts with Petitioner and other ESE students.

Typical of her useful advice, Ms. Gomez-Schwein told the teachers to ignore certain remarks of Petitioner and irrelevant questions.

244. Ms. Droze was conducting telephone conferences with ■■■ on each Tuesday. On the prior day, she sent Petitioner's study materials home. Ms. Gomez-Schwein also sent home a note frequently, if not daily, although other staffpersons did not send the daily notes required by the Settlement Agreement's clarification to the Stay-Put IEP.

245. Petitioner's early experience at ■■■ was not without its problems, though, In the first week, ■■■ engaged in some screaming and throwing of objects, but ■■■ did not kick, bite, or hit anyone. Objects that Petitioner threw included ■■■ sunglasses, a computer mouse, sensory toys, and, on one occasion, ■■■ FM system. Other students looked scared when Petitioner threw things or screamed.

246. From the first week, Petitioner would fidget and bounce in ■■■ chair and say that ■■■ did not want to go to ■■■. The screaming increased the second week, as did the throwing of objects and fidgeting. Petitioner was upset that ■■■ lacked a playground. Most days, ■■■ wanted to go home at 2:00 pm.

247. Ms. Corson, the OT under contract with ■■■, first met with Petitioner on August 12, which was the Friday of the first week of school. Up to this time, Mr. Vogel had done sensory

exercises in the form of running and walking on the track and basic relaxation techniques, but Mr. Vogel lacks the sensory-integration training of an OT or ST. Ms. Corson knew that Petitioner liked deep sensory pressure, based on what [REDACTED] had told her, but had not spoken with Ms. McGrath except for a single telephone call during the preceding school year and another call during the preceding summer. Ms. Corson's knowledge of Petitioner's sensory needs was thus not particularly specific in terms of exercises, nor was she sufficiently experienced with Petitioner to be able to read [REDACTED] stimulation level, as did Ms. McGrath.

248. The following week Ms. Corson gave Mr. Vogel a list of sensory exercises, but these were not custom-tailored to Petitioner. Ms. Corson only met with Petitioner one more time before the August 30 incident, where Ms. Corson intervened to spare the ST from being kicked in the face. This second OT session was August 15.

249. Unseen by the OT for two weeks, Petitioner received another OT session on September 1, which was the day after [REDACTED] returned to school following [REDACTED] one-day suspension for the August 30 incident. Ms. Corson took [REDACTED] and Mr. Vogel outside and showed Mr. Vogel how each sensory exercise should be done. Ms. Corson or Mr. Vogel took pictures, so Mr. Vogel could review the proper method for each exercise. At this time, Ms. Corson

gave a schedule for different sensory exercises to Mr. Vogel, as well as Ms. Gomez-Schwein and Richard Johnson, who was the seventh grade ESE Support Facilitator. Ms. Corson had previously taught Ms. Gomez-Schwein and Mr. Johnson the indoor sensory exercises, and someone, probably Ms. Corson, had presented general sensory-diet information at a group meeting of teachers. Overall, though, ■■■ staff received little specific help in handling Petitioner's sensory needs while ■■■ attended school there, although it would not be reasonable to expect general education teachers to stop teaching to read Petitioner's stimulation level or assist in providing ■■■ a sensory exercise.

250. Petitioner was interested in math, so it was not hard for Mr. Vogel to get ■■■ to work on math in class. ■■■ enjoyed reading, especially reading aloud. Petitioner did less well in social studies, as it was too abstract. Petitioner also liked computers, although ■■■ wanted to do what ■■■ wanted to do, not necessarily the computer assignment, and ■■■ would scream if the computer did not work.

251. Mr. Vogel tried to help Petitioner interact socially with ■■■ classmates. For instance, one boy asked Petitioner questions in computer class. When Petitioner did not respond, Mr. Vogel would rephrase them and encourage Petitioner to answer them. Petitioner tended to talk only to students from ■■■. When Mr. Vogel tried to get Petitioner to say hello to other

students, ■ would sometimes, but ■ would not make eye contact.

252. On the advice of Ms. Corson, Mr. Vogel would ask Petitioner to perform visualizations during some sensory breaks. For instance, they would lie down in the grass, and Mr. Vogel would ask Petitioner to describe the color of the sky. Petitioner would answer blue. But when ■ asked ■ to describe the shape of the clouds, Petitioner would say nothing.

253. Petitioner's inclusion in general education was substantially modified with respect to curriculum. In math, Petitioner would do some warmup, multiple choice questions at the start of class and listen to the first five minutes of the lecture, but would then leave for direct 1:1 instruction. In language arts, Mr. Vogel and Petitioner would convert an open-ended journal-writing assignment to a multiple choice task, but Petitioner remained in the class for the direct, large-group instruction. In sixth grade, the general education students are learning essay-writing skills. Petitioner cannot write a persuasive essay, such as on an abstract topic of whether a decision to go to war was good or bad, but ■ can write a timeline of war events and can always write enthusiastically about personal activities. In reading, where the class was working on fluency, Mr. Vogel and Petitioner each read a passage, and Petitioner would receive five minutes' direct

instruction, but when the class was reading and discussing novels at the sixth grade level--both activities that are presently out of Petitioner's reach--Petitioner would leave for 1:1 instruction at [REDACTED] reading level.

254. Petitioner's relatively successful period at school lasted 13 school days or through August 24. School was canceled on August 25 and 26, 2005, due to Hurricane Katrina, which struck the area on August 27. On the following Monday, August 29, Petitioner returned to school. Mr. Vogel was absent attending to hurricane damage that had occurred to [REDACTED] property, so a substitute 1:1 aide accompanied Petitioner at school. During the day, Ms. Gomez-Schwein helped Petitioner with transitions, and Mr. Dermer observed [REDACTED] from a distance.

255. The 1:1 aide who substituted for Mr. Vogel was unprepared for Petitioner, and Petitioner was equally unprepared for him, having never received a social story about the substitute aide. The aide had never seen Petitioner's Stay-Put IEP or April 2005 BIP. No one warned him about Petitioner's screaming or advised him to use social stories. On the morning of August 29, someone at the school informed him merely that [REDACTED] was going to be the aide for Petitioner. After lunch, Petitioner suddenly began to scream in science class. The substitute aide did the best that [REDACTED] could.

256. August 29 marked the start of a sudden turn for the worse in Petitioner's behavior at school. ■■■ had serious behavioral incidents on August 30, September 1, and September 7, after which ■■■ did not attend school for the rest of the 2005-06 school year. Petitioner never attended a day of school, without serious incident, after August 29, as ■■■ was suspended August 31 and September 2, attended school for only one hour on September 6 and September 5 was Labor Day. In sum, Petitioner attended school for a total of 18 days during the 2005-06 school year, which included three days that involved serious behavioral incidents and one day in which ■■■ attended school for only one hour.

257. No one can say with confidence what triggered Petitioner's sudden deterioration in behavior. By implication, Respondent contends that the academic stresses and numerous transitions of general education were too great, despite any amount of sensory integration or behavior management. On the other hand, ■■■ attributes this deterioration in behavior to several things, such as the hurricane disruption, careless implementation of social stories, unnecessarily disruptive transitions and stimulating environments, and improper implementation of sensory breaks. There is truth in the assertions of both sides, but the record suggests that, given Petitioner's level of performance, more careful attention to the

factors identified by [REDACTED] probably would not have been sufficient.

258. Undoubtedly, the amount of change in Petitioner's schedule was excessive, as Mr. Vogel noted in retrospect, and unnecessary, as [REDACTED] had not sufficiently thought out room assignments. Also, Mr. Johnson's appearance, without a social story, and [REDACTED] failure to tailor the length of an assignment to the available time placed unnecessary stress on Petitioner on August 30, but the adverse effects of these stressors would not have extended beyond the first incident.

259. Not every transition was previewed by a social story, and not every transition was as smooth as it could have been, and not every setting was the least stimulating one available. But the [REDACTED] staff did a good job--and often a very good job--discharging each of these responsibilities. Better communication with [REDACTED] might have helped, but conferences followed each of the three incidents. [REDACTED] could have done a better job with sensory breaks, although this effort would have been much easier if Ms. Insel had found time to allow Ms. McGrath to inform the IEP team of her unique knowledge of Petitioner's sensory needs or if Mr. Fowler had tried to create a more collaborative atmosphere.

260. But whatever shortcomings existed in social stories, transitions, settings, and even sensory breaks, they do not

account for the fact that Petitioner did reasonably well at school for three weeks. During those three weeks, [REDACTED] staff were still learning how to handle social stories and transitions, serve Petitioner in environments without excessive stimulation, and implement appropriate and timely sensory inputs. During these three weeks, [REDACTED] staff were not communicating with [REDACTED] as much as they did once the problems started. So, if anything, [REDACTED] staff were better serving Petitioner after the first three weeks, when the trouble started. Perhaps a cumulative effect of shortcomings, relatively minor in isolation, took place, but, if so, such a finding lies beyond the bounds of what Petitioner developed in the evidentiary record.

261. Additional evidence tends to rebut the contention of [REDACTED] that the failings of [REDACTED] accounted for her son's sudden behavioral decline. Once [REDACTED] behavior deteriorated, the [REDACTED] staff immediately responded to the challenge aided by Mr. Kaplan, who set a professional tone for his staff to follow. Mr. Kaplan's reaction to the first incident was surprise, and [REDACTED] essentially was prepared to treat the matter as an isolated incident. [REDACTED] had to deal with a battery on a teacher, who was crying well after the incident, and a student yelling loudly and repeatedly where other students and teachers could hear [REDACTED]. Mr. Kaplan wanted his staff to rethink how to manage Petitioner,

and he suspended Petitioner largely to give his staff time to do so. ■■■ directed Ms. Droze to clear her schedule and devote all of the time necessary to ensure that the safety of students and staff would be assured. However, Mr. Kaplan testified that ■■■ did not want to rush to judgment, and ■■■ did not.

262. Mr. Kaplan's reaction to the second incident was equally professional. ■■■ now knew that the first incident was not isolated, and ■■■ was "very concerned." Petitioner had entered an occupied classroom at random, and ■■■ was out of control. His concern for the safety of students and staff mounted, so Mr. Kaplan alerted the ESE experts in the District office and Ms. Droze to his expectation that they would deal with this emerging problem. ■■■ wanted to involve more people, especially District behavioral staff and his direct supervisor. Never did Mr. Kaplan treat the misbehavior as a threat to his authority. Never did ■■■ attempt to punish Petitioner, as the suspension was, again, an effort to give his people a chance to regroup. When people suggested that ■■■ reconvene the group to revisit Petitioner's BIP, Mr. Kaplan made sure that that process began promptly. As ■■■ testified, Mr. Kaplan took it upon himself to ensure that the right people became involved in search of a solution to the growing problem of Petitioner's behavior. Unfortunately, as ■■■ testified, no one suggested

involving ■■■, and the thought of doing so never occurred to him.

263. After the third incident, Mr. Kaplan felt that his staff were improving in their ability to handle Petitioner. This opinion is both supported and unsupported by the record. In support of Mr. Kaplan's opinion, neither the second nor third incident approached in intensity the first incident, which involved the attempted kick to the head of the ST. As ■■■ testified, Mr. Kaplan felt that the school had little chance to apply its increasing knowledge base due to the abrupt departure of Petitioner from school.

264. On the other hand, though, as sensibly observed by Ms. Sotelo-Bumberg, a CARD therapist with substantial experience with Petitioner, three suspensions in a week suggest that the BIP is not working--an opinion echoed by Gwendolyn Burney, the assistant principal of sixth grade and ESE at ■■■. Three suspensions in a week may also indicate, alternatively, that the BIP is deficient or that the school staff are not implementing the BIP, as suggested by Barbara Bateman, an ESE expert called by Petitioner.

265. In either event, Mr. Kaplan's model response enabled Ms. Droze and ■■■ staff to respond, as they saw fit, to the behavioral challenges that Petitioner began presenting in earnest on August 29. Mr. Kaplan treated them as professionals

and did not try to dictate to them how to achieve the shared goal of shaping Petitioner's behavior so it did not pose a threat to himself, other students, or staff or interfere with the education of the students attending the school. Without delay, Ms. Droze and the [REDACTED] staff altered settings, revised behavioral interventions, conducted observations of Petitioner to try to identify better means of shaping [REDACTED] behavior, collected and analyzed data, and, to some extent, spoke with [REDACTED]. But their efforts were hampered by their unfamiliarity with Petitioner, and the knowledge they were acquiring after the first three weeks of school was too crisis-based to be of much use.

266. For her part, at the hearing and presumably in August and September 2005, [REDACTED] repeatedly displayed a blind spot as she assessed the efforts of [REDACTED] staff to shape [REDACTED] behavior. [REDACTED] has trouble understanding why professional educators cannot share her success in managing [REDACTED] behavior, and, seeing obvious shortcomings in both, she attributes their failure to deficiencies in the design or implementation of [REDACTED] behavioral plan.

267. Ultimately, [REDACTED] and the educational professionals share the ultimate goal of helping Petitioner develop the ability to function independently. Thus, ultimately, their common quest is to equip Petitioner with the skills to operate

apart from [REDACTED] and in settings other than [REDACTED] home. Ultimately, the person who may be trying to shape Petitioner's behavior may be an impatient boss or discourteous customer, not a mother who has earned [REDACTED] trust through years of selfless dedication to [REDACTED] well-being or even a patient educator selflessly committed to helping Petitioner find success. Ultimately, the setting may be a place of business, not Petitioner's home.

268. The transitional process that culminates in Petitioner's achieving this level of independent functioning necessarily introduces Petitioner incrementally to relatively unfamiliar persons and insecure settings. Elementary school presents more parent surrogates and homelike settings than does middle school, where the academic and social challenges become more intense. Leaving elementary school and starting middle school presents a difficult transition for Petitioner, but it is vital that [REDACTED], [REDACTED], and the educational professionals get on with it. Also consistent with Mr. Kaplan's opinion that the situation was starting to improve when Petitioner left school is that [REDACTED] pattern in the past is to start a new endeavor with difficulty, but eventually settle in and succeed.

269. Overshadowing the reasons proffered by [REDACTED] for the sudden deterioration in [REDACTED] behavior are the nature of the first couple of weeks of school during which teachers perform undemanding tasks such as going over procedures and rules and

undertaking reviews of basic material from the preceding year, Petitioner's enjoyment of a four-day weekend at home occasioned by the hurricane, and Petitioner's unpleasant realization the following Monday that ■■■ had to go back to school. These conditions created the "perfect storm" that, suggestive of the quick acquisition of empirical-based knowledge, caused Petitioner to embark on a path of causes--i.e., disruptive or aggressive behavior--to achieve desired effects--i.e., suspensions and ultimately withdrawal--that would soon relieve of ■■■ of the ultimate nonpreferred activity--school.

270. It is very difficult to characterize the quality of the behaviors that Petitioner manifested over the ten calendar days that ■■■ continued, more or less, to attend school after August 29. Mr. Vogel, a witness who seems to have maintained very good perspective, describes the screams of Petitioner as "piercing," almost suggestive of nonvolitional, uncontrollable behavior. If the batteries were of the same quality, serious injuries would have repeatedly resulted, but they did not, except possibly in the first incident.

271. The record permits no basis to describe Petitioner's state of mind when ■■■ initiated improper contact--a push of an SLT, a grab of a student, a bite of Mr. Vogel's shoulder, and so on--but the only evidence of viciousness was the attempt to kick the already-fallen ST in her face. Although obviously no injury

resulted from this unsuccessful attempt, it is the most serious act of violence committed by Petitioner.

272. But for the attempted kick, and possibly the push of the ST and the extended attempt to pull Ms. Klinger's hair, the nature of the other batteries, the sudden termination of all agitated behavior upon the appearance of ■■■, and the repeated statements of contrition following the incidents are causes for optimism that the educational professionals will be successful in eliminating all unpermitted touchings, probably after they and ■■■ find a way to persuade Petitioner not to try to escape the task of attending school. As noted above, Mr. Kaplan believed the school was getting better at managing Petitioner's behavior, Ms. Sotelo-Bumberg believed that she could train school staff to do so, and Ms. Sotelo-Bumberg described past transitions to new schools that started badly, but eventually improved.

273. The first and most serious behavioral incident took place on August 30. As noted above, Mr. Vogel returned to school and was again serving as Petitioner's 1:1 aide. ■■■ told Petitioner that Ms. Gomez-Schwein, not Mr. Johnson, would be providing 1:1 instruction that day. Petitioner seemed okay with this change from routine, even though ■■■ was not prepared for it with a social story.

274. Petitioner and Mr. Vogel were walking in the hall when they met Mr. Johnson. Petitioner threw [REDACTED] sunglasses and ran upstairs. Mr. Vogel and Mr. Johnson followed and found [REDACTED] in an occupied classroom where [REDACTED] did not belong. They took Petitioner to the office of an ST where [REDACTED] was to receive [REDACTED] 1:1 instruction from Mr. Johnson. The ST had volunteered her office for use by Petitioner because it had a telephone and computer. In at least one respect, though, the office was unsuitable for Petitioner: equipment behind dividers emitted a loud sound into the office.

275. Mr. Vogel left Petitioner to work alone with Mr. Johnson. After 20 minutes, Mr. Vogel returned, and Mr. Johnson left. However, at the end of the session, when Mr. Johnson had determined that Petitioner would not have enough time to finish an assignment, [REDACTED] had told Petitioner that they would finish the assignment tomorrow--something that shortened assignments were designed to avoid.

276. While Mr. Vogel was preparing Petitioner for the next transition, Petitioner threw [REDACTED] sunblock and sunglasses to the ground. As Mr. Vogel was trying to sooth Petitioner, the ST entered her office to retrieve something. Although [REDACTED] had not had any serious incident with her previously, Petitioner inexplicably had developed a dislike for this ST, who gave [REDACTED]

SLT four days weekly. At times, Petitioner would say, "Ms. [E.] is a man," knowing that she is a woman.

277. The ST accidentally stepped on Petitioner's sunscreen bottle lying on the floor. Mr. Vogel whispered that Petitioner was not having a good day. This was an inopportune comment because Petitioner, as noted by Ms. Sotelo-Bumberg, becomes worried when someone says that Petitioner is not having a good day. Petitioner said [REDACTED] was sorry.

278. The ST offered to call Mr. Dermer, and Petitioner or Mr. Vogel said okay. The ST telephoned Mr. Dermer, but, before she had finished her conversation, suddenly agitated, Petitioner grabbed her water bottle and threw it to the ground. The ST screamed, which, though nonvolitional, nevertheless made Petitioner more upset. Petitioner got up from where [REDACTED] had been seated and started toward the door. The ST tried to block him, but [REDACTED] pushed her out of the way and into a desk that was behind her. The ST struck her lower back painfully on the corner of the desk.

279. Petitioner ran into an adjacent classroom that was full of students. Mr. Vogel coaxed [REDACTED] out of the classroom. Within a minute of the original incident, Petitioner ran back into the hall, where [REDACTED] found the ST crawling from her room, trying to avoid another confrontation with Petitioner.

Ms. Corson was helping the ST when Petitioner aimed a kick at the face of the ST. Ms. Corson blocked the kick with her hand.

280. By this time, Mr. Dermer had joined Mr. Vogel, and the two men got Petitioner back into the original room and tried to deescalate [REDACTED]. They closed the door with the ST and Ms. Corson in the hall.

281. The ST injured her back in the incident. She filed a workers' compensation claim, missed some work, and underwent physical therapy for awhile before achieving a full recovery.

282. [REDACTED] arrived at school shortly after she had been summoned. Petitioner approached her as soon as [REDACTED] saw her, and [REDACTED] did not misbehave again. [REDACTED] led [REDACTED] out to her car. She then left [REDACTED] in the car, where [REDACTED] waited without incident while [REDACTED] attended a meeting about the incident.

283. Initially, Mr. Kaplan decided to suspend Petitioner for the next three days of school. However, upon the arrival of [REDACTED] at school, Mr. Kaplan conducted a meeting with the school resource officer, Ms. Droze, and Mr. Vogel. [REDACTED] mentioned that Petitioner did not want to attend [REDACTED], so a suspension would reinforce negative behavior and escalate the incidents. She sensibly suggested instead that Mr. Kaplan impose detention, which would show Petitioner that the effect of disruptive or aggressive behavior to avoid school is more school.

284. After discussing the incident with ■■■, Mr. Kaplan decided to reduce the punishment to a one-day suspension, on August 31, and two one-hour detentions, on August 1 and September 1. Mr. Kaplan was motivated to reduce the duration of the suspension due to Petitioner's disabilities, but ■■■ wanted at least a one-day suspension to give his staff some time to review their procedures for handling the student.

285. On August 30, 2005, Petitioner filed a due process request, commencing DOAH Case No. 05-3157E. The issues in this case are detailed in the Preliminary Statement above and pertain to any obligation of Respondent to provide an IEE for assistive technology and to compensate Petitioner for any period that assistive technology was wrongfully denied. The filing of this request on the same day of the first behavioral incident is coincidental.

286. After the August 30 incident, Ms. Droze and Mr. Dermer consulted with Ms. Klinger about ways to manage Petitioner's behavior. Up to this point, the emphasis had been on preventative strategies, such as social stories, sensory inputs, and the proximity of an adult. Now, Ms. Klinger focused on crisis behaviors, in which Petitioner showed anxiety, fear, and even panic. This was progress in the sense that the educational professionals were focusing on the crisis behaviors that Petitioner was presenting, but it was not progress that ■■■

behaviors had deteriorated to this point, and it is premature to feature crisis-management techniques in a BIP designed to guide Petitioner's education in the long run.

287. Ms. Klinger invited [REDACTED] to work on a new BIP. Ms. Klinger also relied upon the behavioral data that Mr. Dermer received each Friday from Petitioner's teachers. [REDACTED] offered techniques that she had found useful when Petitioner was stressed to the point of running away. These techniques included pairing herself with a reinforcer or making an absurd or unexpected comment to distract Petitioner.

288. Petitioner's dislike of school was increasing. After the August 30 incident, Petitioner said even more often, "No [REDACTED]," "I don't want to go there," and "No Middle."

289. On September 1, the day of the second detention from the August 30 incident, the second incident took place. Mr. Vogel and Petitioner went to the library for a break. Petitioner went to [REDACTED] preferred computer, but found that [REDACTED] favorite website had not been updated. [REDACTED] screamed and threw the computer mouse, disturbing other students using the library.

290. Ms. Droze came to the class, and she and Mr. Vogel, took Petitioner to the ESE office, where [REDACTED] could deescalate. In the ESE office, Ms. Droze had Petitioner perform a sensory exercise of chair pushups. In five minutes, Petitioner relaxed and calmed down. Thinking they had deescalated Petitioner's

behavior, Mr. Vogel and Ms. Droze took Petitioner to computer class, but Petitioner did not want to work. So, they allowed Petitioner to do some sensory exercises, like chair pushups, and used calming tones, without any negative statements, as [REDACTED] tried to redirect Petitioner using the technique of saying, "first we do [a nonpreferred task] and then we can do [a preferred task]."

291. Ms. Droze left the computer class, and Petitioner threw the computer mouse and screamed. [REDACTED] screamed 40 times in one hour, even though the computer was working properly. Mr. Vogel summoned help, first Ms. Burney and then Ms. Droze. However, Petitioner was unappeased and threw [REDACTED] FM system. The bell rung, and the students left the classroom. The staff were then able to persuade Petitioner to go outside and run on the track, an activity that Petitioner loved.

292. Once outside, Petitioner sprinted, but toward the parking lot and away from the track. Knowing that it was important not to chase Petitioner, Mr. Johnson, who had joined the group, approached Petitioner, as Ms. Droze and Mr. Vogel watched. Once all three adults were in close proximity to Petitioner, [REDACTED] slapped Mr. Vogel in the head with an open hand, hit Mr. Johnson in the shoulder and chest with an open hand, and tried to hit Ms. Droze, as she spoke to [REDACTED] quietly. Petitioner then ran into the building.

293. The three adults followed Petitioner, but split up to try to cut off Petitioner's potential paths of escape. As they were following Petitioner, the three adults ran into Mr. Kaplan, who joined them in trying to calm Petitioner. As they were walking down a hallway, they heard John Leff, the eighth grade assistant principal, calling for help. They found Petitioner on the floor trying to kick Mr. Leff, but, as they approached, Petitioner got up and ran to the elevator, whose door Mr. Kaplan held open. Getting to the elevator, Petitioner almost knocked over a wheelchair-bound student. Inside the elevator, Petitioner tried to kick Mr. Kaplan, and ■■■ bit Mr. Johnson's shirt. However, the group continued to talk soothingly to Petitioner and eventually coaxed ■■■ to go to the ESE office.

294. Once ■■■ got to the ESE office, Petitioner found Ms. Corson there, and ■■■ chased her into an adjacent room. She tried to shut the door, but Petitioner wedged ■■■ foot into the door. She then got into a supply closet and locked it.

295. The adults then did sensory exercises with Petitioner, who tried to kick Mr. Leff, but instead fell to the floor, where ■■■ remained until ■■■ arrived at school to pick ■■■ up about 15 minutes later. Ms. Droze telephoned ■■■. While she was driving to the school, Mr. Vogel talked to Petitioner, who said that Mr. Kaplan was mad because ■■■ kicked him.

Petitioner repeated statements like "no Middle" and "I'm a bad [REDACTED]."

296. Notwithstanding Petitioner's aggressive behavior, Ms. Droze allowed Petitioner to serve [REDACTED] detention that afternoon at school. [REDACTED] came to the school. While speaking with Ms. Droze, [REDACTED] called Ms. Sotelo-Bumberg and asked her help with Petitioner. Ms. Droze invited [REDACTED] for another conference on September 6, which was also the date on which Ms. Sotelo-Bumberg would observe Petitioner.

297. Ms. Sotelo-Bumberg has worked extensively with Petitioner for many years. Ms. Sotelo-Bumberg, who has provided therapy for children with autism for many years, is the Site Coordinator for CARD at the University of Miami/Nova Southeastern University at the Dan Marino Center at Miami Children's Hospital.

298. Ms. Sotelo-Bumberg first met Petitioner when she was working directly for the Dan Marino Center. She was providing therapy for children with autism by working with an interactive metronome, which is a process by which therapists try to improve the child's attention. The program, which consists of 12-18 sessions, is hard and can confuse the patient. After initial difficulty, about one-third of the way through the program, Petitioner began to improve, and soon [REDACTED] enthusiastically worked for the entirety of each 45-60 minute session.

299. Later, Ms. Sotelo-Bumberg tutored Petitioner and then provided [REDACTED] services while [REDACTED] attended second grade at [REDACTED] Elementary School. When [REDACTED] announced her intention to transfer Petitioner from [REDACTED] to [REDACTED], Ms. Sotelo-Bumberg opposed the change as unnecessarily disruptive to Petitioner and was probably correct. As she had seen at [REDACTED] Elementary School, Ms. Sotelo-Bumberg observed Petitioner at [REDACTED] encounter problems adjusting to [REDACTED] new environment. Eventually, though, as [REDACTED] had done at [REDACTED] Elementary School, Petitioner made the adjustment to [REDACTED].

300. Over the years, Ms. Sotelo-Bumberg has learned that sensory activities are important for Petitioner, but they must be the right sensory activities. She also has seen strong evidence that Petitioner feels remorse and makes sincere apologies.

301. Ms. Sotelo-Bumberg has learned how to redirect Petitioner, who reacts poorly to commands, "no" or "don't." When Petitioner screams at her, Ms. Sotelo-Bumberg says that [REDACTED] is hurting her ears or asks [REDACTED] to look at her eyes and see that she is sad. When Petitioner engages in high-magnitude behavior, Ms. Sotelo-Bumberg starts to leave, asking "is it time to leave," to which Petitioner says "no" and returns to [REDACTED] seat. Obviously, an educational professional cannot use this technique. Also, each of Ms. Sotelo-Bumberg's redirection

techniques draws on the presence of a strong relationship between her and Petitioner and thus emphasizes the role of trust, and time, in working with Petitioner. In this important respect, Ms. Sotelo-Bumberg's long and close relationship with Petitioner takes on attributes of the relationship between Petitioner and [REDACTED].

302. For the September 1 incident, Mr. Kaplan again suspended Petitioner one day, September 2, which was a Friday. Monday, September 5 was a holiday, so the next day of school was September 6, which was the date on which Ms. Sotelo-Bumberg was to observe Petitioner.

303. However, the end of Petitioner's schooling for the year was drawing near. On September 6, [REDACTED] came to school shortly after Petitioner arrived. She met with Ms. Droze and Ms. Klinger. [REDACTED] told them that she was able to get Petitioner to go to school that morning only by promising that [REDACTED] would remain only one hour. Again, she said that she did not like suspensions because they reinforced negative behaviors like staying home from school. Ms. Klinger went over Petitioner's crisis intervention plan, including the designation of a safe area, and what they had presented to [REDACTED] staff in terms of behavior management techniques. [REDACTED] resisted the ideas of a safe area and crisis intervention techniques. Ms. Droze tried

unsuccessfully to get ■■■ to leave ■■■ at school longer than an hour.

304. As the hour came to an end, ■■■, Ms. Droze, and Ms. Klinger heard Petitioner scream in the main hallway. When Petitioner saw ■■■ in the hallway, ■■■ asked ■■■ if they could go home now. Again, Ms. Droze tried unsuccessfully to persuade ■■■ to return ■■■ to school after lunch.

305. Based on her one-hour observation on September 6, Ms. Sotelo-Bumberg approved generally of what the ■■■ staff were doing behaviorally, even though it was necessary to change the behavior strategies as events unfolded. Among other things, ■■■ staff had needed to emphasize sensory exercises even more.

306. On September 7, Petitioner came to school on the bus. Mr. Dermer and Mr. Vogel accompanied Petitioner to math class, which Petitioner attended for the first half of the period, but then left class to get 1:1 math instruction for the rest of the time.

307. In pullout class, Petitioner heard a social story to help ■■■ with the transition to a new room from the one in which the August 30 incident had taken place. Mr. Johnson was giving Petitioner 1:1 instruction in math. To reward ■■■ good work, Mr. Johnson gave Petitioner a choice of rewards in the form of computer time or candy, but Petitioner, wanting both, quickly became agitated. Petitioner threw a flower pot to the floor,

breaking it, and began screaming loudly. ■ then ran across the hallway into the computer class that ■ had entered during the September 1 incident. Mr. Johnson; Mr. Dermer, who had entered the room during the incident; Mr. Vogel; and Ms. Droze followed ■ and tried to get Petitioner out of the classroom, but Petitioner grabbed a student in the classroom. At 5' 4" tall, Petitioner is bigger than most sixth graders and was bigger than the child ■ had grabbed. The child was frightened.

308. Petitioner released the student, and Mr. Vogel and Mr. Johnson tried to deescalate Petitioner's behavior. In 15 minutes, Petitioner calmed down. ■ returned to the room in which the behaviors had started, and ■ picked up the pieces of the pot that ■ had thrown on the floor.

309. As she had promised, Ms. Droze telephoned ■ to inform her of the incident. They spoke for about 15 minutes just before noon. Ms. Droze assured ■ that Petitioner was in class and there was no reason for her to come to school at this time.

310. Later the same day, Petitioner and Mr. Vogel were walking through the school breezeway on the way to 1:1 reading with Ms. Gomez-Schwein, who taught in the same room in which the earlier incident that day had started. Petitioner declared that ■ would not go to ■ reading class. ■ threw ■ sunglasses

and backpack and slapped Mr. Vogel and Mr. Johnson, who had approached them. When Mr. Vogel merely looked away, Petitioner bit him on the arm, not breaking the skin. Petitioner shouted that ■■■ wanted to go to the speech room, but Mr. Vogel, who had since been joined by Mr. Dermer, Ms. Droze, and Ms. Klinger, told ■■■ that they had to go to class.

311. Petitioner grabbed Ms. Klinger by the hair, bit the hair, and pulled hard. Struggling with Petitioner for a couple of minutes, the others pried ■■■ fingers loose. Petitioner tried to run, but a security officer chased and caught ■■■. As this incident took place, other students passed Petitioner and the four adults struggling in the breezeway.

312. Petitioner then ran into the building, where ■■■ laid down on the floor in the middle of a hallway. Petitioner tried to hit and bite anyone who approached ■■■. Ms. Klinger advised the adults to quit trying to talk to ■■■. The adults then manually applied pressure to Petitioner's body to relieve the stimulation. They let ■■■ talk. ■■■, who had been in Miami, arrived at the school in about 40 minutes. While waiting for his mother, Petitioner said, "Mr. Vogel is mad," "I hit people," "I bit Mr. Vogel," and "I'm sorry." After ■■■ picked ■■■ up, Petitioner did not attend school for the rest of the school year.

313. However, ■■■ staff were not immediately aware of the intention of ■■■ not to return ■■■ to school. Mr. Kaplan suspended Petitioner for two days, so ■■■ was due to return to school on the next Monday, September 12. The ■■■ staff continued to work on crisis management plans and, with the help of Ms. Klinger, to review their behavior management techniques. When Petitioner did not return to school on September 12, Ms. Droze, Mr. Dermer, and Ms. Klinger called ■■■ and scheduled a one-hour telephone conference for September 14 to discuss Petitioner's return to school.

314. On September 12, 2005, the Intervention Team completed another BIP (September 2005 BIP) to replace the April 2005 BIP. The Intervention Team consisted of Scott Dermer; Ms. Droze; Ms. Kaye; the SLT who was the object of the August 30 incident; Ms. Corson; Cynthia Hack, a general education math teacher, Ms. Gomez-Schwein, Mr. Johnson, Mr. Vogel, Ms. Nealy, a general education language arts teacher; Daniel Chesto, a general education science teacher; and ■■■, who did not participate in the preparation of the BIP. Ms. Sotelo-Bumberg participated by telephone, and Ms. Klinger also participated. Ms. Klinger testified that she spoke to ■■■ on the morning of September 12 about a crisis management plan, but never mentioned that the group would be preparing a new BIP, which the group actually finished on September 27 and signed on October 5.

315. Although the relevance of a BIP in helping a student achieve the goals stated in the domains of social/emotional behavior and curriculum is obvious, Ms. Droze properly stressed the importance of a BIP in helping a student achieve the goals stated in the independent functioning domain of ■■■ IEP. When behavior is as disruptive as Petitioner's behavior has been, it is equally true that a BIP will help a student achieve the goals stated in the communication domain of ■■■ IEP.

316. The rationales for the September 2005 BIP are the same as those for the April 2005 BIP--namely, risk of harm or property damage and risk of exclusion of student from activities with peers--plus a new rationale that was not among those selected from the options on the April 2005 BIP form: "The student[']s behavioral difficulties persist despite consistently implemented behavior management strategies based on a less comprehensive or systematic assessment." As noted above, this statement is only partly true.

317. The September 2005 BIP is similar to the April 2005 BIP in identifying Petitioner's strengths and limitations. For strengths, the September 2005 BIP identifies spelling and adds that ■■■ enjoys phonics, math, computers, music, videos, soccer, and basketball. For limitations, the September 2005 IEP identifies reading comprehension, writing, language comprehension, pragmatics, observing appropriate boundaries,

interacting with peers and adults, completing assignments, remaining in assigned areas, and saying inappropriate things to show affection to adults, such as "Do you love me" or "Am I a good boy?"

318. The September 2005 BIP targets the behaviors of physical aggression--i.e., hitting, kicking, and throwing; verbal aggression--i.e., loud piercing screams; and elopement--i.e., running into other classrooms, the kitchen, parking lots, and the perimeter road. The baseline estimate of physical aggression took place over three days--i.e., August 30, 2005; September 1, 2005, and September 7, 2005. The baseline estimate of verbal aggression is a minimum of four times daily to 20 times per class. The baseline estimate of elopement is twice toward the parking lot, twice into the kitchen, and twice into another classroom. As compared to the April 2005 BIP, the newer BIP focuses exclusively on behavior, rather than behavior and classroom performance.

319. The September 2005 BIP discusses the information on which the BIP was based. Again, the new BIP focuses exclusively on behavior, rather than behavior and classroom performance. The information includes the three incidents of aggression toward staff and students on August 30, 2005, when Petitioner pushed a staffperson into furniture and injured her; September 1, 2005, when Petitioner hit, kicked, and tried to

bite staffpersons; and September 7, 2005, when Petitioner hit and kicked a student. The September 2005 BIP notes that Petitioner hit, bit, and kicked several staffpersons repeatedly, and pulled the hair of another staffperson. As discussed in the April 2005 BIP, the problem behaviors are less frequent when the teacher structures or modifies instruction and implements breaks. The September 2005 BIP states that the daily home note informs ■■■ of Petitioner's behavior in each class and ■■■ reinforcement and sensory break activities. According to the September 2005 BIP, the previous and ongoing interventions are rewards, prompting, 1:1 academic setting, specific positive praise, verbal and visual redirection, ignoring problem behavior with redirection, minimal and calming words, "first . . . then" statements, congratulatory "high fives," frequent sensory breaks, and social stories.

320. According to the September 2005 BIP, the following staffpersons noted the indicated problem behaviors:
Mr. Johnson--screaming, hitting, kicking, biting, and running;
Ms. Edenburg--verbal and physical aggression, difficulty in redirecting, and noncompliance; Ms. Gomez-Schwein--anxiety during nonpreferred activities, aggression, screaming, and difficulty de-escalating; Mr. Vogel--inappropriate noises, physical violence, elopement; C. Hack--screaming; L. Trujillo--impulsivity resulting in physical aggression; M. Nealy--yelling

and throwing objects such as █ desk; Mr. Chesto--screaming and throwing objects; and Ms. Kaye--throwing objects and yelling.

321. According to the September 2005 BIP, staffpersons implemented an average of 53 percent of the 12 proactive strategies in the April 2005 BIP, 48 percent of the four replacement skills, and 32 percent of the three consequence strategies.¹¹ This is not an exceptionally high rate of implementation.

322. The September 2005 BIP provides examples of the use of strategies and skills by staffpersons. According to Ms. Kaye, on August 18, 2005, Petitioner was working on a timeline project and gluing pictures onto a piece of paper. When instructed to write a word under each picture, Petitioner began to shout repeatedly, "Can we go to high school?" Ms. Kaye or the aide gave Petitioner sensory items, but █ threw the ball and beads. According to Mr. Vogel, on August 24, 2005, Petitioner entered the cafeteria and entered a line ahead of several other students. █ purchased a cookie and bread by inputting █ lunch number on the keypad. █ took a fork and a napkin. When █ started to take more than two packets of sauce, Mr. Vogel told █ to limit █self to two packets, and apparently █ did. █ sat at █ usual table and did not interact with any peers. █ only interaction was to ask

Mr. Vogel for help in opening a sauce packet. After lunch, Petitioner threw █ garbage out and left the cafeteria.

323. According to Ms. Nealy, on August 29, 2005, Petitioner walked into class, which was being taught by a substitute teacher. Petitioner started to scream, and the teacher redirected █ to █ seat. Petitioner threw █ sunglasses, breaking them, and then turned over █ desk. The teacher suggested that Petitioner take a sensory break, and Petitioner did so and went outside. According to Ms. Gomez-Schwein, on September 1, 2005, during 1:1 work, Petitioner repeatedly said to the OT, "she leaves." Then Petitioner asked █ paraprofessional to leave. Petitioner then ran onto the stage, into the kitchen, and out a door toward the parking lot. The ESE teacher stopped █ and implemented calming techniques, breaking exercises, and pressure on the hands. Petitioner kicked the ESE teacher and paraprofessional. █ then ran toward the high school, looking back to see if anyone was following him. When █ saw that no one was pursuing, █ returned to school. According to Ms. Hack, on September 7, 2005, Petitioner screamed as soon as █ entered the classroom. Complying with a direction to sit down, Petitioner sat and talked to himself. When █ asked the teacher an off-topic question, she responded that she would answer after █ did some work. █ screamed several more times.

324. The "summary (hypothesis) statements" in the September 2005 BIP omit the statement regarding sweets, are more numerous, and add an important detail to the one statement carried over from the April 2005 BIP. The carried-over statement is that, when demands are placed for non-preferred activities, Petitioner will scream or throw objects to avoid the non-preferred task, as noted in the previous BIP, and obtain sensory input, which is new in the September 2005 BIP. The second statement is that, when transitioning during class change, Petitioner will elope, throw glasses, scream or hit to escape and obtain sensory input. The third statement is that, when presented with a preferred, modified academic task, Petitioner will more likely complete the assignment to receive reinforcement and please staff. The fourth statement is that, when transitioning within the classroom from one activity to another, Petitioner will scream, throw glasses, or make inappropriate comments to avoid or escape the assignment or gain attention.

325. The September 2005 BIP identifies setting events as changes in routine, sensory breaks, broken technology, transitions, and large groups. Obviously, all of these items except sensory breaks adversely affect Petitioner's behavior. The September 2005 BIP identifies the goals as social, in terms of participating in the classroom setting and interacting

appropriately with adults and peers; behavioral, in terms of reducing verbally and physically aggressive behavior; and academic, in terms of increasing the amount of time spent in an assigned area, on-task behaviors, and completed work.

326. The September 2005 BIP identifies numerous proactive strategies, including substantially all 12 from the April 2005 BIP. The September 2005 BIP adds several new strategies: use appropriate boundaries and personal space when interacting, ignore low-magnitude, attention-seeking behaviors, use minimal words when giving a direction, use sensory motor activities, use calming and organizing strategies, provide a choice board of things to do in stressful situations, and model appropriate social interactions and verbally prompt as needed.

327. The September 2005 BIP retains two of the four replacement skills from the April 2005 BIP: complete assignments and remain in assigned area and request a break. The three new strategies are: transition to a new task within the classroom, transition within the school setting, and use calming strategies when provided a written or verbal selection.

328. The September 2005 BIP retains the first consequence strategy from the April 2005 BIP, which is to give Petitioner checks that apply toward earning a preferred reinforcement activity. The remaining three consequence strategies from the April 2005 BIP are omitted from the newer BIP.

329. The September 2005 BIP states that all staff will receive a copy of the plan, which will be explained to them to ensure consistent implementation. Staff will use the plan across all settings, and the plan will be updated as needed. The September 2005 BIP also provides that, when Petitioner demonstrates compliant behaviors and increased on-task performance, staff will reduce the frequency of interventions to allow Petitioner to develop independence. Staff will provide reinforcement on a continuous schedule, but will reduce reinforcement to allow Petitioner to develop independence when ■ exhibits a high level of compliance.

330. The September 2005 BIP states that crisis management procedures are necessary to ensure safety and deescalation of the student's behavior in emergency situations. The plan states that, if Petitioner demonstrates continuous aggressive, continuous self-injurious, or continuous high-magnitude disruptive behaviors, trained staff will use crisis management techniques.

331. The September 2005 BIP states that the behavior support specialist, ESE teacher, and general education teacher will be responsible for monitoring progress through weekly data collection. The plan adds that implementation and outcomes will be evaluated by daily home notes, data-collection charts,

teacher and parent input, and weekly data and crisis intervention documentation.

332. Ms. Klinger has reviewed all three BIPs, which were prepared in December 2003, April 2005, and September 2005. Although the September 2005 BIP was never implemented, after surveying similar strategies in the two earlier BIPs, Ms. Klinger notes that Respondent has been unable to obtain a consistent improvement in Petitioner's behavior, whose functions are to avoid demands, escape tasks, and respond to change, such as new adults. In this conclusion, she disagrees with the two principals, Ms. Messing and Mr. Kaplan, who are more directly involved with Petitioner on a day-to-day basis.

333. Ms. Kabot, an autism expert who works closely with Respondent, similarly identifies the triggers of Petitioner's behaviors in fourth grade: new or unexpected things, sensory overload, and transitions. The September 2005 BIP neglects to include the OT or incorporate her efforts to help Petitioner achieve sensory integration and thus regulate [REDACTED] behavior. Ms. Kabot testified that, to access [REDACTED] academic curriculum, [REDACTED] not only needed the September 2005 BIP, but also to be out of the general education setting for math, language arts, and reading, although, by negative implication, she had no objections to [REDACTED] placement in general education science, social studies, and electives. Ms. Kabot also opined that suspensions

would only reinforce aggressive behaviors, if a student strikes a teacher to avoid attending school.

334. During the September 14 telephone conference, which included Ms. Sotelo-Bumberg, ■■■ said that she did not think that ■■■ had planned for her son, and she did not feel comfortable bringing ■■■ back to school. Although it was obvious that Petitioner's return to school was now in substantial doubt, ■■■ staff continued to prepare as though ■■■ might return at anytime.

335. On September 23, Ms. Droze sent two PPFs to ■■■. The PPFs scheduled IEP meetings for October 5 or October 14, whichever ■■■ preferred. On advice of counsel, ■■■ did not respond to the PPFs, so, on September 30, Ms. Droze sent her new PPFs setting the IEP meeting for October 5 and, if needed October 7.

336. The PPFs identify the IEP team as ■■■, Ms. Gomez-Schwein, Ms. Droze, the SLT who was the object of the August 30 incident, Mr. Johnson, Ms. Klinger, Ms. Yocum, Ms. McDonald, Ms. Corson, Mr. Dermer, and Mr. Chesto. It is an exercise in understatement to note that the ST who was the object of the August 30 incident was not successful working with Petitioner. Mr. Johnson seems to have been present at more incidents, but his failure to reduce an assignment to finishable length does not suggest that ■■■ was especially attuned to Petitioner's

behavioral triggers. Ms. Droze and Ms. Gomez-Schwein were able to provide information in this area, but the person with the most direct experience, Mr. Vogel, was missing from the group. Ms. Klinger had worked with Petitioner at [REDACTED] Elementary School, but this information was becoming fairly dated. Also, given the use of general education science class as a forum for other activities, under the Stay-Put IEP, the record discloses no basis to infer that Mr. Chesto had any insights to share Petitioner's ability to handle a general education class.

337. [REDACTED] did not respond to the new PPFs. The IEP meeting took place, without Petitioner or any other representative of Petitioner, on October 5. Without a discordant note, the group quickly found the consensus that had eluded the previous planning effort. The IEP team did not require the second meeting tentatively scheduled for October 7.

338. One aspect of the October 5 IEP meeting bears mention. Mr. Chesto reported that the nature of general education science has changed in recent years. Fun activities that involved student interaction have yielded to the lecture format in which the teacher tries to convey as much information as efficiently as possible to the students in order to meet the demands of FCAT, the No Child Left Behind Act, and other sources of competitive pressures on individual schools and their students, teachers, and administrators. The legitimacy of these

concerns did not change, though, between October 5 and August 1, at which time the IEP team placed Petitioner in general education science and social studies. Also, according to Ms. Gomez-Schwein, two ESE sixth graders last year took general education science and social studies, although they could read only at the second grade level.

339. The IEP dated October 5, 2005 (October 2005 IEP) is, in many respects, identical to the August 2005 IEP. As noted below, the crafters of this IEP were educational professionals whose direct experience with Petitioner was of short duration. In some respects, they improved upon the August 2005 IEP. But their placement decision is clearly informed only by the crises of Petitioner's last few days in school, and, to the extent that these crises are atypical--both descriptively and proscriptively--and avoidable by better preparation and implementation that accompany increased familiarity with Petitioner, they provide a poor factual foundation on which to based a quick exercise in educational planning.

340. For curriculum and instruction, the October 2005 IEP adds a final paragraph to the PLPs:

[Petitioner] requires additional environmental and curricular modifications in order to learn and produce work. This includes continuous prompting (visual, verbal and gestural), work broken into small segments, visual schedule/agenda for entire day as well as classroom tasks assigned,

limited information presented per page with larger print, and individualized curriculum modifications from the 6th grade text.

341. The October 2005 IEP changes the discussion of how the disability impacts curriculum and instruction. This section now states: "Due to [Petitioner]'s disability, [REDACTED] requires moderate to extensive modifications to participate in below grade level curriculum with accommodations. These modifications are necessary in all academic areas."

342. The October 2005 IEP does not change any of the goals or objectives under the domain of curriculum and instruction, as compared to the August 2005 IEP.

343. The October 2005 IEP makes significant changes to the domain of social/emotional behavior. Under the PLPs, the October 2005 IEP notes that Petitioner requires constant adult prompting and modeling to display appropriate hallway behaviors, such as observing personal space and boundaries, walking with the flow of traffic, and stopping at multiple water fountains. The PLPs note that, when Petitioner's behavior is escalating, [REDACTED] responds well to "multiple other positive behavioral strategies (see [BIP] dated 9/27/2005)," in addition to the physical activities mentioned in the August 2005 IEP. The October 2005 IEP drops the statement in the August 2005 IEP that "providing physical activities and sensory input has allowed [Petitioner] to participate in the general education setting."

344. The PLPs under the domain of social/emotional behavior in the October 2005 IEP add considerable information to that contained under the same domain of the August 2005 IEP. The October 2005 IEP reports that Petitioner experiences frustration when computer and audio/visual equipment malfunctions. Additionally, the October 2005 IEP states:

In order to prepare for a smooth transition to ■■■ School staff participated in observations at ■■■ previous school placement and participated in multiple [IEP] meetings to learn information about [Petitioner]. [Petitioner] was provided with a social story and multiple tours of the school. Initially, while pre-crisis behaviors (occasional screaming in the classroom, need for reassurance, excessive questioning and perseveration, shaking and quivering of ■■■ legs and arms, throwing sunglasses, attempts to elope in and out of the classroom) were evident, [Petitioner] transitioned to ■■■ with extensive positive behavioral supports in place during the first few weeks of the school year. However, once planned and unplanned changes occurred as a part of the general education middle school environment, [Petitioner]'s pre-crisis behaviors escalated to crisis (hitting, kicking, screaming, pinching, biting, hair pulling, elopement and property destruction). In addition to the planned and unplanned changes, the classroom work load as well as content became more academic and demanding as the frequency and duration of pre-crisis behaviors increased. Infusion of the sensory diet was provided from the beginning of the school year. Social stories were generated and used as an ongoing strategy to assist when situations changed or new concerns were identified. With all of the [BIP] supports in place, transitions (within ■■■ schedule as well as

unplanned) triggered pre crisis and crisis behaviors. As a result of the increased frequency, duration and magnitude and intensity of aggressive behaviors in all school settings the [BIP] was reviewed and updated (9/27/05) to reflect [REDACTED] current needs in [REDACTED] current school setting.

[REDACTED] social interactions with peers and adults interfere with [REDACTED] overall functioning throughout the school day. Currently at [REDACTED] School, [REDACTED] is required to transition a minimum of 10 times inclusive of class changes, lunch, sensory breaks and individualized instruction sessions. [REDACTED] is also receiving instruction from a minimum of 10 different adults, including previously mentioned schedule with the addition of the [OT] and [SLT] providers. [REDACTED] emotional behaviors escalate when anxiety and panic are increasing. Indications of this anxiety and panic are evidenced when [Petitioner] shows physical changes such as [REDACTED] body quivering, loud screaming, hitting others, inappropriate negative comments to adults. With the programming of [REDACTED] day, including many transitions and providers, [REDACTED] anxiety and panic has progressively increased and intensified at [REDACTED].

345. The October 2005 IEP revises the language of the August 2005 IEP in terms of how Petitioner's disability impacts the domain of social/emotional behavior. The October 2005 IEP states that, as a result of Petitioner's disability, [REDACTED] pre-crisis behaviors escalate to crisis, which negatively affects [REDACTED] ability to interact with adults and peers. Due to the aggressive and disruptive behaviors, Petitioner is unable to complete [REDACTED] classroom schedule and daily assignments. The October 2005 IEP revises the priority educational need, under

the domain of social/emotional behavior, to an improvement of behavioral control across all school settings.

346. In the October 2005 IEP, the new tenth goal is: "By April 21, 2006, when [Petitioner] is using technology that is not working to ■■■ satisfaction, ■■■ will demonstrate appropriate coping strategies in 3 out of 4 opportunities."

This is a rewording of the twelfth goal of the August 2005 IEP, which is under the domain of independent functioning. Instead of measuring the duration of time that Petitioner can wait without incident for the technology to begin working, the new objectives are to verbalize and demonstrate effective coping strategies when presented with choices, to use one strategy to wait appropriately for adult assistance upon verbal and written cues, and to transition to another activity when the equipment cannot be fixed upon verbal and written cues.

347. The October 2005 IEP adds another goal to the domain of social/emotional behavior. The new goal, which is the eleventh, is: "By April 21, 2006, when demonstrating pre-crisis behaviors in the classroom setting, [Petitioner] will make a choice when provided with a written or verbal selection of strategies for calming down and returning to task 75 percent of ■■■ school day." When demonstrating pre-crisis behaviors in the classroom setting, the first objective is to make a choice when provided with a written or verbal selection of strategies for

calming down and return to task 50 percent of [REDACTED] school day, the second objective is to make a choice when provided with a written or verbal selection of strategies for calming down and return to task 60 percent of [REDACTED] school day, and the third objective is to make a choice when provided with a written or verbal selection of strategies for calming down and return to task 75 percent of [REDACTED] school day.

348. For the domain of independent functioning, the October 2005 IEP deletes from the PLPs that Petitioner's daily routine includes telephoning [REDACTED] before going to class. The October 2005 IEP adds that, upon arrival at school, Petitioner reviews [REDACTED] daily schedule and receives social stories targeting any known changes to [REDACTED] schedule.

349. The October 2005 IEP does not make substantial changes to the impact of the disability on independent functioning, except to provide that Petitioner requires limited transitions. The October 2005 IEP states that the priority educational needs are to increase independence in accessing [REDACTED] sensory exercises, improve ability to transition within the classroom and school campus, and increase time on task.

350. The first goal under the domain of independent functioning in the October 2005 IEP is the twelfth goal, which is a revision of the eleventh goal in the August 2005 IEP. The new goal is: "By April 21, 2005, [Petitioner] will maintain

focus, given visual and/or verbal prompting, on a non-preferred teacher directed task for 10 minutes when provided with opportunity throughout the day to use sensory exercises and tasks." The first objective is the first objective under the eleventh goal of the August 2005 IEP. The second objective is, given a visual prompt, to choose one out of four sensory activities to assist with self-regulation. The third objective is the second objective under the eleventh goal of the August 2005 IEP. The fourth objective is to complete a non-preferred teacher directed activity in ten minutes, but, unlike the similar objective in the August 2005 IEP, without sensory stimuli.

351. The October 2005 IEP adds a new goal to the domain of independent functioning. The fourteenth goal is: "By April 21, 2006, [Petitioner] will perform 80% of sensory exercises or tasks with gestural and visual prompts to assist with self regulation within the school setting." The first objective is to perform 70 percent of sensory exercises or tasks with verbal, gestural, and visual prompts to assist with self-regulation within the school setting, the second objective is the same except to the level of 80 percent, and the third objective is the same as the first objective except with only gestural and visual prompts.

352. The October 2005 IEP revises the PLPs under the domain of communication. In contrast to the August 2005 IEP, which stated that Petitioner could verbalize [REDACTED] basic wants and needs, the October 2005 IEP conditions this statement by adding, "when [REDACTED] is calm" and that, in [REDACTED] current setting, [REDACTED] requests [REDACTED] basic wants and needs inconsistently. In contrast to the August 2005 IEP, which stated that Petitioner is "[s]ometimes" able to make higher level requests with verbal prompting, the October 2005 IEP states only that [REDACTED] reports this information. Given the relationship between the District ESE staff and [REDACTED] ESE staff, this attribution is not part of a meticulous attempt to attribute the source of information, but to caveat the information as coming from an impliedly unreliable source. A similar example of this odd practice in an IEP occurs in the description of Petitioner's tongue thrust--a simple fact in the August 2005 IEP has become a phenomenon "reported" by [REDACTED] and "seen at times by the [ST] at [REDACTED]." Another example of this practice occurs in the revision of the statement that "Pragmatically, [Petitioner] is able to respond appropriately at times to situations and contexts." In the October 2005 IEP, this statement is reduced to: "At [REDACTED], [Petitioner] was able to respond appropriately at times to situations and contexts." The October 2005 IEP adds:

At [REDACTED], [Petitioner] has difficulty expressively interacting with peers. [REDACTED] approaches students who are injured and will begin to interrogate them without warning and will violate their personal space. [Petitioner] benefits from social stories to assist in appropriate social interactions with peers and adults across all school settings.

353. The October 2005 IEP does not substantially change the language of the August 2005 IEP regarding the impact of Petitioner's disability upon the domain of communication. The new priority educational needs are more ambitious, though: "To improve correct use of personal pronouns, to increase [REDACTED] ability to understand, process and produce receptive/expressive language, to increase [REDACTED] ability to interact with peers and adults."

354. The October 2005 IEP adds a fifteenth goal, which is essentially the eighth goal of the August 2005 IEP, except that the mastery criterion is seven out of ten opportunities. The objectives are the same under both goals. In stating the seventeenth and eighteenth goals, the October 2005 IEP adds writing to speaking, which was covered by the fifteenth and sixteenth goals of the August 2005 IEP and also reduces the duration of the targeted conversations in both goals from five minutes to two to three minutes.

355. The October 2005 IEP makes no changes to the August 2005 IEP in identifying the level at which Petitioner is working and the FCAT accommodations for Petitioner.

356. The October 2005 IEP makes substantial changes to the duration of ESE services that were listed in the August 2005 IEP. After correcting the typographical error for direct SLT and, thus, leaving this service unchanged at 90 minutes weekly, the October 2005 IEP would replace the 265 minutes weekly in specialized instruction in language arts, 265 minutes weekly in specialized instruction in math, 265 minutes weekly in specialized instruction in reading, 60 minutes weekly in specialized instruction in social skills, 30 minutes weekly in targeted specialized instructional assistance in science, and 53 minutes weekly in targeted specialized instructional assistance in social studies with 1235 minutes weekly of intensive specialized instruction in academics, behavior, independent functioning, and communication. The October 2005 IEP would thus appear to give Petitioner another hour daily of instructional time.

357. As in the August 2005 IEP, the October 2005 IEP provides that Petitioner receives continuous supervision to ensure physical safety and continuous interventions related to behavior. The October 2005 IEP eliminates two supplementary aids and services--the oral presentation of test directions and

prompts if allowable. Leaving unchanged the discussion of health needs, assistive technology, and transportation, the October 2005 IEP notes that a BIP will be developed for Petitioner "by 4/7/2005," but notes that Petitioner has a BIP based on a functional assessment of behavior that was updated on September 27, 2005. However, the October 2005 IEP does not incorporate the BIP.

358. The placement of Petitioner is substantially changed in the October 2005 IEP. [REDACTED] would now be removed from nondisabled students 67.95 percent of the time and remain with nondisabled students 32.05 percent of the time. Thus, based on the percentage breakdowns contained in the August 2005 and October 2005 IEPs, Petitioner's classification is changed from resource room in the August 2005 IEP to separate class in the October 2005 IEP. The October 2005 IEP changes the August 2005 IEP by deleting the earlier IEP's placement of Petitioner in general education science and social studies. The explanation for removal from the general education setting incorporates the same explanation from the earlier IEP, but adds that Petitioner requires intensive specialized instruction in academics, behavior, independent functioning, and communication, and the small-group setting presents minimal transitions around the campus.

359. As provided in the August 2005 IEP, the October 2005 IEP states that the IEP team needs more time to determine if Petitioner needs extended school year services and that they will make this decision by April 1.

360. The group that created the October 2005 IEP did not include [REDACTED] or anyone else representing Petitioner. The IEP team members are Ms. Droze; Mr. Chesto, who is a general education teacher; Ms. Gomez-Schwein; the SLT who was the object of the August 30 incident; Ellen Smukyan, who is a program specialist; Mr. Johnson; Ms. Yocum; Ms. Corson; and Ms. Klinger. The group met only one time.

361. The modifications to the PLPs in the October 2005 IEP reveal a marginalization of the inputs of the [REDACTED] staff, who had worked with Petitioner for several years, as contrasted to the 18 days with which [REDACTED] staff had gotten to work with him. PLP modifications now identify [REDACTED] inputs as items of information as reported or witnessed by [REDACTED] staff; it is unclear if the reader of the October 2005 IEP is to credit or discredit this information or perhaps, favoring the middle ground, take [REDACTED]-supplied information in the PLPs with a grain of salt. PLPs are present levels of performance, not descriptive statements from questionable sources whose reliability is in doubt.

362. Any contribution of [REDACTED] staff to the October 2005 IEP that may have conflicted with the placement decisions of [REDACTED]

staff is now safely distilled from the document. Free of the demands of [REDACTED] staff and [REDACTED], [REDACTED] and District ESE staff were of a single mind regarding Petitioner: [REDACTED] needed to be in SVE for social studies and science, not just math, reading, and language arts. The evidence permits no inference other than that this was the consensus opinion of the IEP team going into the October 5 IEP meeting, and this consensus opinion remained unaltered by any discussion that may have taken place during the meeting.

363. The planning exercise of October 5 suffers from two, potentiating deficiencies. First, the participants had already made up their minds prior to the October 5 IEP meeting as to what needed to be done in the new IEP. Second, their knowledge of Petitioner was limited, as compared to the knowledge of Petitioner possessed by [REDACTED] staff and [REDACTED], and crisis-based. There are circumstances in which the school district must proceed to develop an IEP despite the nonparticipation of an ESE student's parent, but, at this point, at which time the parties were already litigating the adequacy of an IEP incorporating Respondent's placement decisions only two months earlier, the nonparticipation of [REDACTED] is a grave omission.

364. The decision to proceed on August 1 was different. [REDACTED] staff still served on the IEP team, so the team knew Petitioner well and their insights were already incorporated into what would become the August 2005 IEP. [REDACTED] had already

contributed substantially to what would become the August 2005 IEP. The placement decisions that followed were almost ineluctable, so the absence of [REDACTED] from that meeting was harmless.

365. Not only in preparing the October 2005 IEP, but also in preparing the September 2005 BIP and trying to manage Petitioner's behavior while [REDACTED] attended school, no one at [REDACTED] even bothered to contact Ms. Negrón, who had substantial experience in dealing with Petitioner's behavior and had suggested such basic approaches as ensuring that Petitioner finished tasks and using social stories to ease transitions, or Ms. McGrath, who had good success dealing with sensory issues when she worked as [REDACTED] OT during the preceding school year.

366. The planning process requires more careful data collection and analysis, such as on the effect of suspensions versus detentions in deterring Petitioner's disruptive and aggressive behaviors, the availability of other means of encouraging good behavior and discouraging bad behavior, the ever-changing role of sensory breaks and exercises on Petitioner, the existence of alternative means of reducing the number of transitions, the availability of settings that do not overstimulate Petitioner, and the opportunity for more consistent implementation of social stories to prepare Petitioner for known changes. The result of such a planning

process may well be to place Petitioner in SVE for social studies and science, but the difference will be that the placement decision is informed.

367. Eighteen days with Petitioner and 65 days with the August 1 IEP were just not enough to justify ■■■'s decision to go it alone in this planning exercise. ■■■ was not entirely prepared to receive Petitioner--an especially vexing problem given the limited capacity ■■■ has to absorb change. For example, Mr. Johnson was not assigned to teach Petitioner 1:1 math until after the first week of school. The ST who was the object of the August 30 incident could not cover all of Petitioner's SLT, so Ms. Droze, who is also an ST, had to provide SLT one day a week. This lack of preparation was partly unavoidable due to the late date at which ■■■ learned that it would have to implement the three-year-old Stay-Put IEP, rather than the August 2005 IEP that everyone had worked so hard to complete. Only as they began to digest the Stay-Put IEP could ■■■ staff begin to understand the intense requirements imposed upon them by this outdated IEP. ■■■ staff responded as best as they could. For instance, the transition and change effected by Mr. Johnson's involvement was because ■■■ had seen from the body language and other signs that Ms. Gomez-Schwein was already overwhelmed, just in the first week of school, working as much as she was with Petitioner.

368. Although not rising to a denial of FAPE, the self-assessment of ■■■ staff concerning the rate of implementation of the April 2005 BIP, as noted above, showed room for improvement, and improvement was taking place toward the end. Admitting the obvious in her testimony, Ms. Droze stated that, even in the third week of school, ■■■ staff were still learning new ways to handle Petitioner. Ms. Burney admitted that Mr. Vogel needed more training, even though ■■■ developed quick rapport with Petitioner and appears to be extremely qualified to work with Petitioner. After the August 30 incident, Ms. Droze realized that Petitioner needed a larger room in which to receive instruction. Ms. Droze also admitted that ■■■ had added several paraprofessionals at the start of the 2005-06 school year, implying that training them in what was known about Petitioner might not have been completed in the first three weeks. In retrospect, Ms. Droze recognized that, if adequate paraprofessionals had been available, it would have been useful to have one work with Petitioner to backup Mr. Vogel without presenting a jarring change to Petitioner and prepare social stories when needed and Mr. Vogel was not available. The relatively smooth start that Petitioner enjoyed at ■■■ probably lulled Ms. Droze and Ms. Corson into thinking that sensory integration was not a high-priority item for Petitioner; at least this is how they approached it.

369. To the extent that [REDACTED] misallocated resources in these crucial first three weeks of school, much of the blame rests with the mortmain of the Stay-Put IEP. At least by the start of middle school, Mr. Fowler was right--the Stay-Put IEP provided some services of limited or no utility and, more importantly, tried to retain a general education placement in core courses when such a placement was no longer workable, at least for the present. Even when new, and thus still relevant, this IEP consumed considerable human resources, as it tried to retain Petitioner's general education placement by supplementing it with considerable 1:1 teaching, numerous parent-teacher conferences, and other means. As Ms. Gomez-Schwein testified, no ESE student required as much time and effort in terms of support services than did Petitioner. Now obsolete, this IEP was more wasteful of human resources because it and the litigation environment in which [REDACTED] staff were operating in August and September 2005 pressured the educational professionals, always fretfully awaiting the next email to appear at a deposition or hearing, to stick to three-year old goals and objectives and not adapt their practices to the changed setting of middle school and the changed student that Petitioner had become three years later.

370. On December 9, 2005, Respondent filed a due process request, commencing DOAH Case No. 05-4467E. The issues in this

case are detailed in the Preliminary Statement above and pertain to the October 2005 IEP and September 2005 BIP.

371. On January 30, 2006, Petitioner filed two due process requests, commencing DOAH Case Nos. 06-0371E and 06-0372E. The issues in these cases are detailed in the Preliminary Statement above and respectively pertain to the Stay-Put IEP and any obligation of Respondent to provide an IEE of behavior.

372. ■ testified at the end of the hearing that Petitioner was unhappy that ■ was not in school, although ■ did not miss ■. Petitioner especially misses Mr. Vogel and shaved ■ head to resemble ■ former aide. ■ misses the food at ■. ■ wants ■ to attend school, but, afraid of the inability of ■ staff to manage ■ behavior and the possibility that, with ■ behavior unmanaged, ■ might hurt other persons, she kept ■ out of school for the entire 2005-06 school year. ■ is unsure if Petitioner will resume sixth grade when ■ returns to school.

373. ■ testified that Petitioner is now beyond needing a sensory diet, although, once again, this is when ■ is in her presence or at least at home, rather than in a large middle school away from ■. Any effort to educate Petitioner must quickly determine the extent to which ■ continues to need sensory-integration work and, if so, what sensory exercises are most effective.

374. In direct response to the issues raised in DOAH Case No. 05-2805E, the August 2005 IEP provides FAPE in the LRE. With no reasonable combination of services and aids could Petitioner access the curriculum in general education reading, writing, and math. A period of specialized instruction in ESE may equip ■■■ to do so, but ■■■ is not able to do so at present and attempts to leave ■■■ in a corner of these general education classes, while ■■■ typical peers undertake work that is increasingly foreign to Petitioner, effectively isolate ■■■ more than segregating ■■■ in an ESE class.

375. Additionally, FAPE does not require that Respondent provide Petitioner with additional assistive technology, including a CART system. Apart from the testimony of ■■■ that her son enjoys close captioning watching movies at home, there is no basis to find that Petitioner could make use of this device, given ■■■ reading comprehension problems. FAPE does not require that Respondent educate Petitioner in small groups within general education, except to the extent that provisions of the August 2005 IEP may call for smaller-group interventions in the general education electives or in general education science or social studies. FAPE and LRE do not require that Respondent educate Petitioner in general education, beyond general education science and social studies and general education electives.

376. Additionally, notice of the August 1 IEP meeting was adequate, and the absence of [REDACTED] and Ms. Siegel did not deny Petitioner FAPE. The composition of the IEP team was proper, and the composition of the IEP team on March 14 and August 1 did not deny Petitioner FAPE. Although the planning process had its problems--most seriously, the loss of Ms. McGrath's valuable input--it served its purpose well in facilitating the production of an exceptionally detailed and well-thought-out document that responds carefully and sensitively to Petitioner's abilities, needs, and hopes.

377. In direct response to the issues raised in DOAH Case No. 05-3157E, Respondent is not required to provide an IEE for assistive technology. Through the point of the August 1 IEP, Respondent had adequately discharged its responsibilities in assessing, evaluating, and subjecting to trials various items of assistive technology. This is an ongoing process, as is the larger process of preparing an IEP. At this time, especially given the substantial time that has passed since Petitioner was last in the education system, it is time for another IEP, and the attendant planning process will, as always, present ample opportunity for the parties to consider, based on Petitioner's current characteristics, the role, if any, of additional or current assistive technology. Based on the foregoing, Respondent is not liable for compensatory services because it

never failed to provide assistive technology when FAPE required it to do so.

378. In direct response to the issues raised in DOAH Case No. 05-4467E, the October 5 IEP does not provide FAPE in the LRE for the reasons set forth above. Essentially, the procedural violations inherent in Respondent's "going it alone" are not harmless, but deny Petitioner FAPE. Subsequent events may require the placement of Petitioner in ESE science and social studies--after Respondent tries to implement the August 2005 IEP and after Respondent engages, in good faith, in the planning process required by law.

379. Additionally, it is not entirely clear why Respondent added the September 2005 BIP to its due process request, as it never incorporated this or any other BIP into an IEP. But Respondent has clearly considered behavioral management in the overall planning process, as obviously it must in a case involving a student for whom behavioral management is so important.

380. In direct response to the issues raised in DOAH Case No. 06-0371E, Respondent appropriately implemented the Stay-Put IEP. As noted above, shortcomings in the implementation existed, but these shortcomings pale in comparison to the effect of trying to implement an obsolete IEP that doubled up the pressures and overstimulation that would inevitably attach to

attending a new, large middle school by requiring Petitioner to make this transition while placed in general education classrooms where the materials were increasingly inaccessible to him. Four years ago, the IEP team designed the Stay-Put IEP for Petitioner's education in third grade with third-graders, not sixth grade with sixth graders. The IEP team designed the Stay-Put IEP team for the child that Petitioner was in July 2002, not the young man that ■■■ was becoming three years later. Trying to implement in sixth grade what could work in the social and academic setting of third grade was a futile exercise. Seen in this light, ■■■, led by its principal, did a very good job.

381. In direct response to the issues raised in DOAH Case No. 06-0372E, FAPE requires that Respondent provide, at public expense, an IEE of Petitioner for behavior. Respondent has had repeated opportunities to fine tune its behavioral plans for Petitioner. Respondent seems to have reached the limits of what it can do in collecting behavioral data, analyzing the data, and reducing its conclusions to elements of a BIP. Work remains, particularly in the area of appropriate consequences, given the purpose of much of Petitioner's behaviors, and the extent to which sensory integration, if still needed in the school setting, may be incorporated into the more easily amended BIP, as opposed to an IEP. Ms. Klinger's main offering, toward the end of Petitioner's tenure at ■■■, of a safe room to place

Petitioner during periods of crisis, although efficacious to prevent or limit school disruptions and preserve school safety, nonetheless has the air of being a final resort. FAPE requires at this point that Respondent obtain outside expertise to determine if other, less extreme measures might now work with Petitioner, prior to the point that [REDACTED] loses control and jeopardizes the safety of students and staff and disrupts the educational functions of the school. Respondent should welcome the help.

382. In direct response to the issues raised in DOAH Case No. 06-1170E, FAPE does not require that Respondent provide an IEE in reading. Respondent's employees have made numerous informal assessments and formal evaluations of Petitioner's reading. These assessments and evaluations show little variability in outcome. At this point, it would be premature to require the sought-after relief, at least until after Petitioner returns to school and the educational process resumes.

CONCLUSIONS OF LAW

383. The Division of Administrative Hearings has jurisdiction over the subject matter. § 1003.57(5), Fla. Stat. (2005).

384. Section 1001.42(4)(1), Florida Statutes, provides that School Boards must provide an appropriate program of

special instruction, facilities, and service for ESE students. Section 1003.57(6), Florida Statutes, prohibits the segregation of ESE students unless the nature or severity of a disability means the education in the regular classroom, with supplementary aids and services, "cannot be achieved satisfactorily."

385. Florida Administrative Code Rule 6A-6.03028 requires School Districts to develop IEPs for every ESE student. Parents have an important role in preparing IEPs for the children.

Florida Administrative Code Rule 6A-6.03028(1) provides:

(1) Role of parents. The role of parents in developing IEPs includes, but is not limited to:

(a) Providing critical information regarding the strengths of their child;

(b) Expressing their concerns for enhancing the education of their child so that their child can receive a free appropriate public education;

(c) Participating in discussions about the child's need for specially designed instruction and related services;

(d) Participating in the determination of how the child will be involved and progress in the general curriculum, including participation in the statewide assessment program and in district-wide assessments;

(e) Participating in the determination of what services the school district will provide to the child and in what setting; and

(f) Participating in the determination of whether the child is pursuing a course of study leading towards a standard diploma, consistent with Section 1003.43, Florida Statutes, or a special diploma, consistent with Section 1003.438, Florida Statutes.

386. Florida Administrative Code Rule 6A-6.03028(4)

addresses the composition of the IEP team:

(4) IEP team participants. The IEP team, with a reasonable number of participants, shall include:

(a) The parents of the student in accordance with subsection (3) of this rule;

(b) At least one (1) regular education teacher of the student, if the student is or may be participating in the regular education environment. The regular education teacher of a student with a disability must, to the extent appropriate, participate in the development, review, and revision of the student's IEP, including assisting in the determination of:

1. Appropriate positive behavioral interventions and strategies for the student; and

2. Supplementary aids and services, classroom accommodations, modifications or supports for school personnel that will be provided for the student consistent with paragraph (7)(c) of this rule.

(c) At least one (1) special education teacher of the student;

(d) A representative of the school district who is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of students with disabilities, is knowledgeable about the general curriculum, and is knowledgeable about the availability of resources of the school district. At the discretion of the school district, the student's special education teacher may be designated to also serve as the representative of the school district if the teacher meets the requirements described in this paragraph;

(e) An individual who can interpret the instructional implications of evaluation results who may be a member of the team as

described in paragraphs (4)(b)-(d) of this rule;

(f) At the discretion of the parent or the school district, other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate. The determination of the knowledge or special expertise of any such individual shall be made by the party who invited the individual to be a member of the IEP team; and

(g) The student, if appropriate. If the student does not attend the IEP meeting consistent with paragraphs (4)(h)-(i) of this rule, the school district shall take other steps to ensure that the student's preferences and interests are considered.

(h) The student, beginning by the student's fourteenth birthday (or younger if determined appropriate by the IEP team), when the purpose of the meeting is to consider the student's transition service needs, as described in paragraphs (7)(i)-(j) of this rule. If the student does not attend, the school district shall take other steps to ensure that the student's preferences and interests are considered.

(i) To implement the requirements of paragraph (7)(j) of this rule, the school district shall invite a representative of any other agency that may be responsible for providing or paying for transition services, when the purpose of the IEP meeting is to consider transition services. If an agency invited to send a representative to a meeting does not do so, the school district shall take other steps to obtain the participation of the agency in the planning of any transition services.

387. Florida Administrative Code Rule 6A-6.03028(5) provides that School District shall review IEPs annually, and IEP meetings shall take place annually to review existing IEPs.

388. Florida Administrative Code Rule 6A-6.03028(6)

provides in relevant part:

(6) Considerations in IEP development, review, and revision for students with disabilities. The IEP team shall consider the following in IEP development, review, and revision:

(a) The strengths of the student and the concerns of the parents for enhancing the education of their child;

(b) The results of the initial or most recent evaluation of the student;

* * *

(d) In the case of a student whose behavior impedes learning or the learning of others, if appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior;

* * *

(h) Whether the student requires assistive technology devices and services. On a case-by-case basis, the use of school-purchased assistive technology devices in a student's home or in other settings is required if the IEP team determines that the student needs access to those devices in order to receive a free appropriate public education;

(j) If, after consideration of the factors in paragraphs (6)(a)-(i), the IEP team determines that a student needs a particular device or service, including an intervention, accommodation or other program modification, in order for the student to receive a free appropriate public education, the IEP must include a statement to that effect.

389. Florida Administrative Code Rule 6A-6.03028(7)(a)-(g)

provides:

(7) Contents of the IEP for students with disabilities. Each district, in collaboration with the student's parents, shall develop an IEP for each student with a disability. . . . The IEP for each student with a disability must include:

(a) A statement of the student's present levels of educational performance, including how the student's disability affects the student's involvement and progress in the general curriculum. For students with disabilities who participate in the general statewide assessment program, consistent with the provisions of Rule 6A-1.0943, F.A.C., a statement of the remediation needed for the student to achieve a passing score on the statewide assessment, or for prekindergarten children, as appropriate, how the disability affects the student's participation in appropriate activities;

(b) A statement of measurable annual goals, including benchmarks or short term objectives related to meeting the student's needs that result from the student's disability to enable the student to be involved in and progress in the general curriculum or for preschool children, as appropriate, to participate in appropriate activities and meeting each of the student's other educational needs that result from the student's disability;

(c) A statement of the specially designed instruction and related services and supplementary aids and services to be provided to the student, or on behalf of the student, and a statement of the classroom accommodations, modifications or supports for school personnel that will be provided for the student to advance appropriately toward attaining the annual goals; to be involved and progress in the general curriculum in accordance with paragraph (7)(a) of this rule; to participate in

extracurricular and other nonacademic activities; and to be educated and participate with other students with disabilities and nondisabled students in the activities described in this paragraph;

(d) An explanation of the extent, if any, to which the student will not participate with nondisabled students in the regular class and in the activities described in paragraph (7)(c);

(e) A statement of any individual accommodations in the administration of the state or district assessments of student achievement that are needed in order for the student to participate in state or district assessments. A parent must provide signed consent for a student to receive instructional accommodations that would not be permitted on the statewide assessments and must acknowledge in writing that he or she understands the implications of such accommodations. Accommodations that negate the validity of a statewide assessment are not allowable in accordance with Section 1008.22(3)(c)6., Florida Statutes. If the IEP team determines that the student will not participate in the Florida Comprehensive Assessment Test (FCAT) or district assessment of student achievement or part of an assessment, a statement of why that assessment is not appropriate for the student and how the student will be assessed. If a student does not participate in the FCAT, the district must notify the student's parent and provide the parent with information regarding the implications of such nonparticipation in accordance with Section 1008.22(3)(c)6., Florida Statutes.

(f) The projected date for the beginning of the specially designed instruction, services, accommodations and modifications described in paragraph (7)(c) of this rule and the anticipated frequency, location, and duration of those services; [and]

(g) A statement of how the student's progress toward the annual goals will be measured and how the student's parents will

be regularly informed (at least as often as parents are informed of their nondisabled children's progress) of the student's progress toward the annual goals and the extent to which that progress is sufficient to enable the student to achieve the goals by the end of the year[.]

390. Florida Administrative Code Rule 6A-6.03028(11)

states in part:

IEP implementation and accountability. The school district, or other state agency that provides special education and related services either directly, by contract, or through other arrangements, is responsible for providing the specially designed instruction and related services to students with disabilities in accordance with the students' IEPs. However, it is not required that the school district, teacher, or other person be held accountable if a student does not achieve the growth projected in the annual goals and benchmarks or objectives. An IEP must be in effect before specially designed instruction and related services are provided to an eligible student and is implemented as soon as possible following the IEP meeting.

391. Florida Administrative Code Rule 6A-6.03311

establishes the elaborate procedural safeguards accorded to ESE students. In part, this rule provides:

. . . The establishment and maintenance of policies and procedures to ensure that students with disabilities, as defined in Section 1003.01(3)(a), Florida Statutes, and their parents are provided procedural safeguards with respect to the provision of a free appropriate public education is required in order for school boards to receive state and federal funds for the provision of specially designed instruction

and related services to these students. The school board policy and procedures for procedural safeguards shall be set forth in accordance with Rule 6A-6.03411, F.A.C., and shall include adequate provisions for the following:

* * *

(2) Provision of Procedural Safeguards to Parents.

(a) Parents must be provided a copy of their procedural safeguards which provides a full explanation of the provisions of subsections (1)-(12) of this rule relating to:

1. Prior written notice;
2. Provision of the procedural safeguards;
3. Informed parental consent;
4. Opportunity to examine records and participate in meetings;
5. Mediation;
6. State complaint procedures, including a description of how to file a complaint and the timelines under these procedures;
7. Independent educational evaluation;
8. Discipline procedures;
9. Placement of student with disabilities in private school by their parents when the provision of free appropriate public education is at issue;
10. Transfer of rights at the age of majority;
11. Due process hearings, including the student's placement during the pendency of due process proceedings and requirements for disclosure of evaluation results and recommendations; and
12. Attorney's fees;
13. Civil Action;
14. Placement in an interim alternative educational setting;

15. Unilateral placement by parents of children in private schools at public expense.

* * *

(7) Independent educational evaluation.

(a) The parents of a child with a disability have the right to obtain an independent educational evaluation for their child and be provided upon request for an independent educational evaluation information about where an independent educational evaluation may be obtained and of the qualifications of the evaluation specialist in accordance with paragraph (4)(a) of Rule 6A-6.0331, F.A.C.

(b) Independent educational evaluation is defined to mean an evaluation conducted by a qualified evaluation specialist as prescribed in paragraph (4)(a) of Rule 6A-6.0331, F.A.C., who is not an employee of the district school board.

(c) Public expense is defined to mean that the school district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.

(d) Whenever an independent educational evaluation is conducted, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the evaluation specialist, shall be the same as the criteria prescribed by paragraph (4)(a) of Rule 6A-6.0331, F.A.C., for use by the school district when it initiates an evaluation to the extent that those criteria are consistent with the parent's right to an independent educational evaluation.

(e) The school district may not impose conditions or timelines for obtaining an independent educational evaluation at public expense other than those criteria described in paragraph (7)(d) of this rule.

(f) A parent has the right to an independent educational evaluation at public

expense if the parent disagrees with an evaluation obtained by the school district.

(g) If a parent requests an independent educational evaluation at public expense, the school district must, without unnecessary delay either:

1. Ensure that an independent educational evaluation is provided at public expense; or

2. Initiate a hearing under subsection (11) of this rule to show that its evaluation is appropriate or that the evaluation obtained by the parent did not meet the school district's criteria. If the school district initiates a hearing and the final decision from the hearing is that the district's evaluation is appropriate then the independent educational evaluation obtained by the parent will be at the parent's expense.

(h) If a parent requests an independent educational evaluation, the school district may ask the parent to give a reason why he or she objects to the school district's evaluation. However, the explanation by the parent may not be required and the school district may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the school district's evaluation as described in subsection (11) of this rule.

(i) Evaluations obtained at private expense. If the parent obtains an independent educational evaluation at private expense:

1. The school district shall consider the results of such evaluation in any decision regarding the student if it meets the appropriate criteria described in paragraph (7)(d) of this rule; and

2. The results of such evaluation may be presented as evidence at any hearing authorized under subsection (11) of this rule.

(j) If an administrative law judge requests an independent educational

evaluation as part of a hearing, the cost of the evaluation must be at public expense.

(11) Due process hearings. While use of mediation and the state complaint procedure may be preferable and less litigious, due process hearings are required to be available to parents of students with disabilities and to school districts to resolve matters related to the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education.

(a) Such hearings may be initiated by a parent or a school district on the proposal or refusal to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student.

(b) A hearing shall be conducted by an administrative law judge (ALJ), appointed as required by Section 120.65, Florida Statutes, from the Division of Administrative Hearings, Department of Management Services, on behalf of the Department of Education.

(d) Status of student during proceedings. Except as provided in subsection (9) of Rule 6A-6.03312, F.A.C., during the time that an administrative or subsequent judicial proceeding regarding a due process hearing is pending, unless the parent of the student and the district agree otherwise, the student involved in the proceeding must remain in the present educational placement. If the proceeding involves an application for an initial admission to public school, the student, with the consent of the parent, must be placed in a public school program until the completion of all proceedings. If the administrative law judge agrees with the parent and finds that a change of placement is appropriate, that placement becomes the agreed-upon placement during the pendency of the appeal.

392. Florida Administrative Code 6A-6.03411 provides in part:

This rule shall apply beginning with the procedures documents submitted for the 2004-05 school year and thereafter, in accordance with Section 1003.57(4), Florida Statutes. All students with disabilities aged three (3) through twenty-one (21) residing in the state have the right to a free appropriate public education (FAPE) consistent with the requirements of Title 34, Sections 300.300-300.313, Code of Federal Regulations (CFR). FAPE shall be available to any individual student with a disability who needs special education and related services, even though the student is advancing from grade to grade. The only exceptions to the provision of FAPE are for students who have exited with a standard diploma or the equivalent and certain students who are incarcerated in an adult correctional facility as referenced in 34 CFR 300.122 and 300.311. For a school district or agency to be eligible to receive state or federal funding for specially designed instruction and related services for exceptional students, it shall: develop a written statement of policies for providing an appropriate program of specially designed instruction and related services, as required by Section 1003.57(4), Florida Statutes; submit its written statement of procedures to the designated office in the Department of Education; and

report the total number of exceptional students in the manner prescribed by the Department. Applicable state statutes, State Board of Education rules, and federal laws and regulations relating to the provision of specially designed instruction and related services to exceptional students shall serve as criteria for the review and approval of the procedures documents. This procedures document is intended to provide district and school-based personnel, parents of exceptional students, and other interested persons information regarding the implementation of the state's and local school board's policies regarding exceptional student education programs. The procedures document shall be submitted in accordance with timelines required by the Department and shall include, but not be limited to, the requirements specified in subsections (2) - (5) of this rule.

(1) Definitions.

* * *

(f) Free Appropriate Public Education (FAPE). FAPE refers to special education, specially designed instruction, and related services for students ages three (3) through twenty-one (21) and for students who are gifted in kindergarten through grade twelve that:

1. Are provided at public expense under the supervision and direction of the local school board without charge to the parent;
2. Meet the standards of the Department of Education;
3. Include preschool, elementary, or secondary programs in the state as applicable; and
4. Are provided in conformity with an individual educational plan (IEP) for students with disabilities that meet the

requirements of Rule 6A-6.03028, F.A.C., or an educational plan (EP) for students who are gifted that meet the requirements of Rule 6A-6.030191

* * *

(3) General Procedures. General procedures shall be implemented in accordance with Rule 6A-6.0331, F.A.C.

(a) Procedures for placement in the least restrictive environment. Procedures for placement determination shall be made in accordance with 34 CFR 300.552-300.553 and shall include consideration of the following:

1. To the maximum extent appropriate, students with disabilities, including those in public or private institutions or other facilities, are educated with students who are not disabled;

2. Special classes, separate schooling or other removal of exceptional students from the regular educational environment occurs 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; and

3. A continuum of alternative placements, including regular class placement, is provided for exceptional students consistent with subsection (1) of Rule 6A-6.0311, F.A.C.

393. The burden of proof is on the party, in each case, that is seeking relief. Schaffer v. Wuest, __ U.S. __, 126 S. Ct. 528 (2005). This principle applies to the general issue of FAPE, as well as the specific issue of LRE. L. E. v. Ramsey Board of Education, 435 F.3d 384, 392 (3d Cir. 2006). Thus, if Petitioner seeks an order that the August 2005 IEP does not

provide FAPE in the LRE, Petitioner bears the burden of proving both elements. Likewise, if Respondent seeks an order that the October 2005 IEP provides FAPE in the LRE, Respondent bears the burden of proving both elements.

394. As stated in Rowley v. Board of Education, 458 U.S. 176, 207, 102 S. Ct. 3034, 3051 (1982), the twofold test is: "First, has the State complied with the procedures set forth in the Act? [Footnote omitted.] And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits?"

395. Elaborating on the procedural requirements, the Supreme Court added, in Rowley at 458 U.S. at 205, 102 S. Ct. at 3050:

When the elaborate and highly specific procedural safeguards embodied in § 1415 are contrasted with the general and somewhat imprecise substantive admonitions contained in the Act, we think that the importance Congress attached to these procedural safeguards cannot be gainsaid. It seems to us no exaggeration to say that Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process, see, e. g., §§ 1415(a)-(d), as it did upon the measurement of the resulting IEP against a substantive standard. We think that the congressional emphasis upon full participation of concerned parties throughout the development of the IEP, as

well as the requirements that state and local plans be submitted to the Secretary for approval, demonstrates the legislative conviction that adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP.

396. In Ms. S. v. Vashon Island School District, 337 F.3d 1115, 1131 (9th Cir. 2003), cert. denied, 544 U.S. 928, 125 S. Ct. 1662 (2005), the court noted that "'procedural inadequacies that . . . seriously infringe on the parent's opportunity to participate in the IEP formulation process . . . clearly result in a denial of a FAPE,'" citing Amanda J. v. Clark County School District, 267 F.3d 877 (9th Cir. 2001). As held in W. G. V. Target Range School District, 960 F.2d 1479 (9th Cir. 1992), a school district denies FAPE if it enters an IEP meeting with its mind made up as to placement and program, especially when it failed to consider input from knowledgeable persons, such as the student's classroom teacher.

397. In Amanda J. v. Clark County School District, 267 F.3d 877, 892 (9th Cir. 2001), the court stated:

Procedural violations that interfere with parental participation in the IEP formulation process undermine the very essence of the IDEA. An IEP which addresses the unique needs of the child cannot be developed if those people who are most familiar with the child's needs are not involved or fully informed.

398. The emphasis is on a process that assures at least a reasonable opportunity to inform the local educational agency that is ultimate responsible for deciding upon the contents of a student's IEP. There is no requirement of consensus, nor is it appropriate to decide issues by majority vote. Appendix A to Title 34, Part 300 of the Code of Federal Regulations warns school districts against requiring consensus of IEP teams or even making decisions by majority votes. Instead, the U.S. Department of Education advises that the IEP team must continue the planning and IEP-preparation process and timely offer the option of a due process hearing to a parent who believes that the resulting IEP does not provide FAPA:

9. What is a public agency's responsibility if it is not possible to reach consensus on what services should be included in a child's IEP?

The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to make joint, informed decisions regarding the (1) child's needs and appropriate goals; (2) extent to which the child will be involved in the general curriculum and participate in the regular education environment and State and district-wide assessments; and (3) services needed to support that involvement and participation and to achieve agreed-upon goals. Parents are considered equal partners with school personnel in making these decisions, and the IEP team must consider the parents' concerns and the information that they provide regarding their child in developing,

reviewing, and revising IEPs (Secs. 300.343(c)(iii) and 300.346(a)(1) and (b)).

The IEP team should work toward consensus, but the public agency has ultimate responsibility to ensure that the IEP includes the services that the child needs in order to receive FAPE. It is not appropriate to make IEP decisions based upon a majority "vote." If the team cannot reach consensus, the public agency must provide the parents [FR Page 12474] with prior written notice of the agency's proposals or refusals, or both, regarding the child's educational program, and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing.

Every effort should be made to resolve differences between parents and school staff through voluntary mediation or some other informal step, without resort to a due process hearing. However, mediation or other informal procedures may not be used to deny or delay a parent's right to a due process hearing, or to deny any other rights afforded under Part B.

399. Considering these issues carefully, the court in Doe v. Maher, 793 F.2d 1470, 1488-89 (9th Cir. 1986) reasoned:

The majority-rule view draws no express support from any relevant authorities. Moreover, such a policy seems inconsistent with the liberal provisions for expansion of IEP team membership. The regulations, to illustrate, provide that either parents or the agency may, at their discretion, invite additional persons to attend IEP meetings. See 34 C.F.R. 300.344 (1985). This eliminates a key prerequisite to utilization of the majority rule, viz. a body having a fixed and specific number of members during the pendency of the issue sought to be resolved. Majority rule with a floating membership would encourage both sides in an

IEP dispute to attempt to "stack the deck" by inviting numerous additional participants who shared the same views. It is inconceivable to us that Congress intended such a result. Therefore, we reverse the district court's judgment regarding majority rule.

A question remains, however, as to what principle of decisionmaking should be employed. Decision by consensus has little utility with respect to issues whose intensely emotional nature makes reconciliation impossible. Perhaps the local educational agency has the power, after consulting with other IEP team members, to resolve any IEP issue that arises after an initial placement. [Footnote omitted.] In natural opposition to this position stands the interests of the parents. Although the EAHCA clearly envisions an active participatory role for parents in the placement process, see *Burlington School Committee*, 105 S. Ct. at 2002; 20 U.S.C. § 1401(19) (1982); *id.* § 1412(7); *id.* 1415(b)(1)(A), the Act nowhere explicitly vests them with a veto power over any proposal or determination advanced by the educational agency regarding a change in placement.

400. Bringing its analysis of the consensus argument to a head, the Maier opinion, at 793 F.2d 1489-90 concluded that consensus is not required:

However, the Supreme Court's opinion in *Burlington School Committee v. Department of Education*, 471 U.S. 359, 105 S. Ct. 1996, 85 L. Ed. 2d 385 (1985), qualifies the "consensus" inference. In discussing parents' participatory role in developing IEPs for their children, the Court observed that Congress, "apparently recognizing that this cooperative approach would not always produce a consensus between the school

officials and the parents, and that in any dispute the school officials would have a natural advantage, . . . incorporated an elaborate set of what it labeled 'procedural safeguards' to insure the full participation of the parents and proper resolution of substantive disagreements." *Id.* 105 S. Ct. at 2002.

We construe the Court's language as a recognition that, although the formulation of an IEP is ideally to be achieved by consensus among the interested parties at a properly conducted IEP meeting, sometimes such agreement will not be possible. If the parties reach a consensus, of course, the EAHCA is satisfied and the IEP goes into effect. If not, the agency has the duty to formulate the plan to the best of its ability in accordance with information developed at the prior IEP meetings, but must afford the parents a due process hearing in regard to that plan. n13 See 20 U.S.C. § 1415(b)(2); 34 C.F.R. pt. 300, app. C, at 68 (1985) (discussing individualized educational programs). Similarly, the parents have a right to a due process hearing should they believe that the IEP drafted by the local agency conflicts with the consensus reached at the meeting. Any party aggrieved by the findings and decisions made during such due process hearings may seek judicial review under 20 U.S.C. § 1415(e)(2).

401. With respect to LRE, in Daniel R. R. v. State Board of Education, 874 F.2d 1036, 1048 (5th Cir. 1989), the court stated:

First, we ask whether education in the regular classroom, with the use of supplemental aids and services, can be achieved satisfactorily for a given child. See § 1412(5)(B). If it cannot and the school intends to provide special education

or to remove the child from regular education, we ask, second, whether the school has mainstreamed the child to the maximum extent appropriate. *See id.* A variety of factors will inform each stage of our inquiry; the factors that we consider today do not constitute an exhaustive list of factors relevant to the mainstreaming issue. Moreover, no single factor is dispositive in all cases. Rather, our analysis is an individualized, fact-specific inquiry that requires us to examine carefully the nature and severity of the child's handicapping condition, [REDACTED] needs and abilities, and the schools' response to the child's needs.

402. Addressing the outside limits of LRE, the Daniel

R. R. opinion adds, at 874 F.2d at 1048-49:

Although broad, the [LRE] requirement is not limitless. States need not provide every conceivable supplementary aid or service to assist the child. *See generally Rowley*, 458 U.S. 176, 102 S. Ct. 3034, 73 L. Ed. 2d 690. Furthermore, the Act does not require regular education instructors to devote all or most of their time to one handicapped child or to modify the regular education program beyond recognition. If a regular education instructor must devote all of her time to one handicapped child, she will be acting as a special education teacher in a regular education classroom. Moreover, she will be focusing her attentions on one child to the detriment of her entire class, including, perhaps, other, equally deserving, handicapped children who also may require extra attention. Likewise, mainstreaming would be pointless if we forced instructors to modify the regular education curriculum to the extent that the handicapped child is not required to learn any of the skills normally taught in regular education. The child would be receiving special education instruction in the regular

education classroom; the only advantage to such an arrangement would be that the child is sitting next to a nonhandicapped student. [Footnote omitted.]

403. Applying the foregoing law to DOAH Case No. 05-2805E, Petitioner failed to prove that the August 2005 IEP fails to provide FAPE in the LRE, failed to prove any material procedural irregularities, and failed to prove that FAPE required Respondent, at the time, to provide additional assistive technology, including a CART system. Determinations of the adequacy of an IEP must necessarily be based on the facts in existence on the date of the adoption of the IEP, see, e.g., Fuhrmann v. East Hanover Board of Education, 993 F.2d 1031, 1040 (3d Cir. 1993) ("Our understanding of *Rowley* comports with that of the district court: that the measure and adequacy of an IEP can only be determined as of the time it is offered to the student, and not at some later date.") See also Delaware County Intermediate Unit #25 v. Martin K., 831 F. Supp. 1206, 1216 (E.D. Pa. 1993). Thus, because Respondent cannot be required to anticipate future events as it prepares IEPs, the three incidents occurring after the adoption of the August 2005 IEP are irrelevant to a determination of whether the August 2005 IEP was reasonably calculated to provide educational benefit.

404. Applying the foregoing law to DOAH Case No. 05-3157E, Petitioner failed to prove that FAPE requires that Respondent

provide an IEE for assistive technology or that Respondent must pay for compensatory services for any failure to provide assistive technology.

405. Applying the foregoing law to DOAH Case No. 05-4467E, Respondent failed to prove that the October 2005 IEP provides FAPE in the LRE. The procedural irregularities attending the hasty preparation of this IEP are material. Due to these irregularities, the October 2005 IEP and its new placements are uninformed by appropriate data and analysis.

406. Applying the foregoing law to DOAH Case No. 06-0371E, Petitioner failed to prove any material deficiencies in Respondent's implementation of the Stay-Put IEP, of such a magnitude as to deny Petitioner FAPE.

407. Applying the foregoing law to DOAH Case No. 06-0372E, Petitioner proved that FAPE requires Respondent to provide an IEE for behavior. The conditions precedent are satisfied. In particular, the September 2005 BIP and associated functional behavioral assessments do not appropriately incorporate sensory integration, appropriate consequences given the function of the disruptive and aggressive behavior, and training of key staff.

408. Applying the foregoing law to DOAH Case No. 06-1170E, Petitioner failed to prove that FAPE requires Respondent to provide an IEE in reading.

ORDERS

It is

ORDERED that:

1. The requests for due process hearing in DOAH Case Nos. 05-2805E, 05-3157E, 05-4467E (October 2005 IEP only), 06-0371E, and 06-1170E are dismissed. The effect of the dismissal of the petition in DOAH Case No. 05-2805E is to permit Respondent to implement the August 2005 IEP.

2. In DOAH Case No. 06-0372E, Respondent shall provide, at public expense, an independent educational evaluation of behavior for Petitioner. Respondent shall determine the timing of this evaluation, as Respondent may determine that it must take place, in whole or in part, in the school setting or other non-home setting.

DONE AND ORDERED this 21st day of July, 2006, in
Tallahassee, Leon County, Florida.

S

ROBERT E. MEALE
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 21st day of July, 2006.

ENDNOTES

¹ As used in this Final Order, regular education and general education are synonymous.

² As noted above, the original deadline for the issuance of the Final Order in Case No. 05-2805E was September 16, 2005. Specific extensions, described below, totaled 310 days, extending the deadline for the Final Order to July 23, 2006.

By Order Enlarging Deadline for Decision entered August 17, 2005, the Administrative Law Judge granted the request of Respondent, over the objection of Petitioner, to extend the 45-day period 31 days through October 17, 2005. On the same date, the Administrative Law Judge set the final hearing for September 12-16, 2005.

On September 7, 2005, Petitioner filed an untitled motion requesting additional hearing time and informing the Administrative Law Judge that, due to a conflicting medical appointment, [REDACTED] was unavailable for one of the days scheduled for the hearing.

On September 9, 2005, the Administrative Law Judge entered the above-described Order Consolidating Cases, Granting Continuance, Identifying Issues, and Striking Certain Witnesses, following two prehearing conferences totaling three and one-quarter hours on September 9 and the preceding day. As the Order notes, during one of the prehearing conferences, ■ realized that she had failed to produce certain documents, on which she intended to rely at hearing. Accordingly, Petitioner requested a continuance. As noted in the Order, Respondent objected, but agreed that, if a continuance were to be granted, it should be no more than two weeks. In the Order continuing the start of the hearing from September 12-16 to September 26-30, 2005, the Administrative Law Judge granted a specific extension of 14 days.

On September 13, 2005, Petitioner filed a Motion for Continuance, which noted that ■ was attempting to retain counsel and that ■ had waived ■ right to a final order in 45 days. On the next day, attorney Michael Boswell entered a Notice of Limited Appearance, which was limited to representing Petitioner in his request for a continuance. On the following day, the Administrative Law Judge entered an Order Granting Continuance, Assigning Hearing Dates in Case to be Filed, and Setting Deadline for Filing Petition in New Case. The Order notes that Respondent agreed to a continuance, but not past October 17, 2005. In continuing the hearing from September 26-30 to October 17-21, 2005, the Administrative Law Judge granted a specific extension of 21 days. (The reference to another petition is to the petition of Respondent that later commenced Case. No. 05-4467E, and the Order sets the hearing for this case for September 28-30, 2005, provided Respondent filed the petition by a certain deadline.)

At the start of the hearing on October 17, 2005, in Case Nos. 05-2805E and 05-3157E, Petitioner asked for an abatement in order to pursue extraordinary relief before the Administration Commission. The Administrative Law Judge granted the abatement as to Case No. 05-3157E, but denied it as to Case No. 05-2805E and proceeded to hearing. An Order memorializing these rulings and severing the two cases was entered October 27, 2005.

The hearing proceeded from October 17-20, 2005. These four days generated 27.75 hours of hearing time. The hearing was unable to proceed on October 21 due to approaching Hurricane Wilma. Hurricane Wilma struck Ft. Lauderdale on the following Monday,

October 24, inflicting considerable damage to the area, including the Broward County School District main building, which suffered extensive wind and rain damage.

By previous agreement among the parties and the Administrative Law Judge, based on the soonest available dates to resume the hearing, the hearing was reset for November 14-18, 2005, so the Administrative Law Judge granted a specific extension of 29 days. However, on November 9, 2005, Petitioner's counsel filed a Notice of Unavailability stating that [REDACTED] had conflicts on November 14, 17, and 18. By Order entered November 10, 2005, the Administrative Law Judge reaffirmed that the hearing would resume, as scheduled, November 14 and proceed through November 18.

At the start of the hearing on November 14, 2005, Petitioner's counsel, appearing by telephone, requested leave to withdraw due to conflicts with [REDACTED], who objected to the request. The Administrative Law Judge granted the request. At this point, ***, who is trained as a lawyer, but does not practice and has never practiced litigation, expressed misgivings about her ability to proceed without jeopardizing [REDACTED] cases. The Administrative Law Judge granted counsel's request to withdraw and memorialized this ruling by Order entered November 18, 2005.

After considerable discussion, immediately after the ruling allowing Petitioner's counsel to withdraw, the Administrative Law Judge denied Petitioner's request for a continuance and ruled that the hearing would proceed that week, but acknowledged that [REDACTED] would try to obtain other counsel to take over the litigation. The Administrative Law Judge also assured [REDACTED], who indicated at this time that little progress had yet been made in securing expert witnesses, that the Administrative Law Judge would pace the hearing so that Petitioner would have time to find and retain expert witnesses. Proceeding at a faster pace was problematic for Respondent as well due to the recent hurricane damage to its building and the entire area. Broward County public schools did not reopen until November 7, 2005--two weeks after the hurricane struck Ft. Lauderdale.

The hearing proceeded November 14-18, 2005, and generated 37 hours of hearing time. Given the need of Petitioner to obtain expert witnesses and make them available for deposition and the problems that Respondent's employees and witnesses were still having with area damage, such as traffic lights that were inoperative at major intersections and spotty availability of

fuel, it was impossible to reschedule the hearing any earlier than December 13-16, 2005, so the Administrative Law Judge granted a specific extension of 28 days.

On November 21, 2005, Petitioner filed an untitled motion to take Case No. 05-3157E out of abeyance and re-consolidate it with Case No. 05-2850E. On December 9, 2005, Petitioner filed a motion to consolidate newly filed Case No. 05-4467E. Respondent did not object to these consolidations.

The hearing proceeded on December 13, 2005, and generated 6.5 hours of hearing time. At the start of the hearing, the Administrative Law Judge granted the requests to consolidate and memorialized these rulings in an Order entered December 20, 2005.

This week of hearing concluded after a single day due to a family medical emergency of the Administrative Law Judge, who thus granted a specific extension of 52 days to the next scheduled hearing time, which was January 30-February 3, 2006. Due to the family medical emergency, the Administrative Law Judge was required to cancel the first two days of hearing during the week of January 30, but proceeded with the hearing from February 1-3, 2006. The hearing generated 23.5 hours of hearing time. At the hearing, Petitioner requested the consolidation of Case Nos. 06-0371E and 06-0372E, and Respondent did not object. The Administrative Law Judge consolidated these cases and entered an Order on February 7 memorializing this ruling.

The next available time for the parties, witnesses, and Administrative Law Judge was the week of February 13-17, 2006, so the Administrative Law Judge granted a specific extension of 14 days. The hearing proceeded at that time, generating 34.25 hours of hearing time.

By subsequent telephone conference, the Administrative Law Judge determined that the next available time for the parties, witnesses, and Administrative Law Judge was March 13-17, 2006, so the Administrative Law Judge granted a specific extension of 28 days and set the hearing to proceed at that time. However, confusion on the part of [REDACTED] led her to schedule conflicting medical appointments for two days during this week. Additionally, [REDACTED] had had trouble scheduling expert witnesses to testify. The Administrative Law Judge consequently canceled the hearing for March 16, thus granting a specific extension of one

day, and limited the hearing on March 17 to a single witness by telephone. The hearing during the week of March 13 thus generated only 19.5 hours.

The next available time for the parties, witnesses, and Administrative Law Judge was March 27-29, 2006, so the Administrative Law Judge granted a specific extension of 13 days. The hearing proceeded during these three days and generated 19.25 hours of hearing time.

On April 7, 2006, Petitioner filed a Motion to Consolidate Case No. 06-1106E. Respondent did not object. The Administrative Law Judge granted the motion by Order entered April 13, 2006.

The next available time for the parties, witnesses, and Administrative Law Judge was April 19-21, 2006, so the Administrative Law Judge granted a specific extension of 23 days. The hearing proceeded during these three days and generated 24.25 hours of hearing time. This session concluded the hearing except for one witness, a law enforcement officer whom Petitioner wished to call, but had not properly subpoenaed. The schedule of this witness and the parties dictated when the remaining witness's testimony could be taken. The earliest date was June 9, 2006, so the Administrative Law Judge granted a specific extension of 49 days, during which time the parties started working on their proposed final orders. This witness testified for 45 minutes on June 9, 2006, with the Administrative Law Judge participating by telephone.

At the parties' request, the Administrative Law Judge granted the parties until June 16, 2006, within which to file proposed final orders, thus granting a specific extension of 7 days.

³ Designed to ease transitions, a social story is a narrative explanation of something that is going to happen and what will be expected of Petitioner in that situation.

⁴ The Final Order uses "District" to include "Area." In Broward County, the District is divided into several Areas.

⁵ Witnesses, counsel, and [REDACTED] often used "goal" to mean "goal" and the cluster of "objectives" under each "goal." In describing the IEP-preparation process, this Final Order uses "goals" to mean "goals" and "objectives."

⁶ In these cases, the members of the MDT are, more or less, the members of the IEP team.

⁷ As stated in endnote 4, this Final Order uses "District" to include "Area." For Ms. Baskind and Mr. Fowler, who is described below, it is necessary to designate them as "Area Coordinators" to distinguish them from the two District Coordinators, Grace McDonald and Lida Yocum. The District Coordinators have direct supervisory authority over the Area Coordinators.

⁸ An incorrect understanding of ESE law led the IEP team repeatedly to try to resolve contentious disputes by asking the disputants, "Is this something everyone can live with?" Among other things, the search for consensus extended the life of the Stay-Put IEP by years and extended the time spent in drafting the August 2005 IEP by weeks and possibly months. As discussed in the Conclusions of Law, if the IEP team could not reach consensus, the solution is not for the school district to file a due process request before finishing an IEP, but for the education professionals to continue drafting the IEP while continuing to invite the parents to participate in the process and then allow the parent to file a due process request, if the parent believes that the resulting IEP fails to provide FAPE.

⁹ The goals and objectives of the August 2005 IEP are set forth below.

¹⁰ The August 2005 IEP states "3 time(s)/wk[---]Total 30 min/wk." Testimony established that the intent was for 90 minutes weekly, not 10 minutes a day times three days.

¹¹ By itself, this statement in the September 2005 BIP could mean that roughly half of the staffpersons implemented all of the proactive strategies and replacement skills from the April 2005 BIP and the other half implemented none of the strategies and skills or that all of the staffpersons implemented roughly half of the strategies and skills. Likewise, this statement could mean that roughly one-third of the staffpersons implemented all of the consequence strategies, and the remaining two-thirds of staffpersons implemented no consequence strategies, or that all of the staffpersons implemented only one of the "three" consequence strategies. (Actually, there are four consequence strategies.)

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to Section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original notice of appeal with the Clerk of the Division of Administrative Hearings and a copy, accompanied by filing fees prescribed by law, with the District Court of Appeal, First District, or with the District Court of Appeal in the Appellate District where the party resides. The notice of appeal must be filed within 30 days of rendition of the order to be reviewed.