

Polk County School District
No. 04-1760E
Initiated by: Parent
Hearing Officer: William F. Quattlebaum
Date of Final Order: November 8, 2006

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

█,)
)
Petitioner,)
)
vs.) Case No. 04-1760E
)
POLK COUNTY SCHOOL BOARD,)
)
Respondent.)
_____)

ORDER PURSUANT TO REMAND

On August 28 through September 1, 2006, an administrative hearing in this case was held in Bartow, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Timothy W. Weber, Esquire
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STATEMENT OF THE ISSUE

Pursuant to the Judgment entered on May 3, 2006, in ████ and █████ as legal guardians of █████ v. Polk County School Board, Case No. 8:04-cv-2657-T-24EAJ, United States District Court, Middle District of Florida, Tampa Division, the issue in the case is whether Petitioner █████ was denied a free appropriate public education (FAPE) by the Polk County School Board (Respondent) during the 2002-2003 and 2003-2004 school years to the extent that the Petitioner's parents identified certain deficiencies in █████ education in the request for a due process hearing. The court also stated that the Administrative Law Judge (ALJ) must consider challenges to IEPs during that time period that relate to alleged denials of FAPE.

PRELIMINARY STATEMENT

This dispute was originally heard by the undersigned ALJ on August 17 through 19, 2004. A Final Order was entered on November 10, 2004. The Petitioner appealed the Final Order to the United States District Court, Middle District of Florida, Tampa Division. On May 3, 2006, by Judgment in ████ as legal guardians of █████ v. Polk County School Board, Case No. 8:04-cv-2657-T-24EAJ, the court remanded a portion of the dispute back to the ALJ.

On June 19, 2006, the Respondent notified the Division of Administrative Hearings (DOAH) of the remand. A telephone conference was conducted for purposes of scheduling the hearing,

and a Notice of Hearing dated June 23, 2006, identified the hearing dates as September 18 through 22, 2006.

On June 26, 2006, the Petitioner filed a Motion to Expedite or Reassign the Case. On June 29, 2006, the Respondent filed a response in opposition to the motion. By Order Re-scheduling Hearing dated July 7, 2006, the Motion to Expedite was granted, and the hearing was re-scheduled for August 28 through September 1, 2006.

At the hearing, the Petitioner presented the testimony of Bruce Thornhill, Gina Zwanzig, Terri Crace, Kim Spence-Cochran, Sherwin Holmes, Thomas Oakland, and █████ (████), and had Exhibits numbered 15, 33, 39, 40, 43, 44, and 47 (parts A and B) admitted into evidence.

The Respondent presented the testimony of Leslie Allore, Teri Bronson, Christine Reeve, Susan Kabot, Willie Saenz, and █████ (████), and had Exhibits numbered 1, 2, 6, 7, 9 through 13, 15, 16, 20, 32, 37, 54, 55, 59, 60, 73, and 74 admitted into evidence.

Additional exhibits related to a January 23 through 26, 2006, hearing in the district court were admitted by stipulation of the parties and were identified as ALJ Exhibits 3, 10, 11, 14 through 20, 23, 24, 26 through 31, 35, and 37 through 39. The Transcript of the January 2006 hearing was also admitted into evidence.

The Transcript of this proceeding was filed on September 12, 2006. Both parties filed proposed orders on September 25, 2006. The Respondent filed supplemental exhibits on September 27, 2006.

The remand order directs the ALJ to consider whether [REDACTED] was denied FAPE by the Respondent during the 2002-2003 and 2003-2004 school years to the extent that the request for a due process hearing identified certain alleged deficiencies.

As stated by the Petitioner at the hearing, such issues include the following allegations:

1. [REDACTED] has not met [REDACTED] IEP Annual Goals, Benchmarks and Short-term Objectives, particularly in the domains of Academics, Independent Functioning, Social-Emotional Behavior, and Communication.
2. [REDACTED] has not been provided with any effective transitional services and has not met the necessary transitional goals and objectives. [REDACTED] has not even been prepared to transition into regular education classes and was not able to receive [REDACTED] education with typically developing non-disabled peers. [REDACTED] is not prepared to transition into any post high school education or vocation. [REDACTED] has not even developed skills that allow [REDACTED] to function in the community on any kind of independent or even partially independent basis.
3. [REDACTED] has serious and important behavioral deficiencies. [REDACTED] has not made behavioral progress, due to the institutional neglect of [REDACTED] behavioral/social/emotional needs. The School District has consistently failed to provide a functional behavioral program, depending instead on environmental control

instead of behavioral training. This has left [REDACTED] unable to function independently. Even [REDACTED] education was done in a self-contained, highly restrictive environment.

Both parties submitted testimony and evidence related to the time period following the student's receipt of a diploma, and addressed the period in their proposed orders. The remand order does not direct the Administrative Law Judge to address any period outside the 2002-2003 and 2003-2004 school years. Although all evidence admitted has been considered in the preparation of this Order, issues outside the specific language of the remand order are not addressed by this order.

This Order further does not address the matter of compensatory education, to which the district court conducted a three-day evidentiary hearing in January 2006 and in which the court has retained jurisdiction. No findings or conclusions have been made as to whether educational progress, if any, that occurred subsequent to the date upon which [REDACTED] received sufficient academic credits to receive a standard high-school diploma, constitutes compensatory education.

No findings or conclusions have been made relative to the timeliness of the request for due process hearing, to the quality of the academic work produced by the student, or to whether the student had earned sufficient credit to obtain a regular high-school diploma from the Polk County School Board,

which matters were addressed in the Final Order dated November 10, 2004.

FINDINGS OF FACT

1. At all times material to this case, ■■■ was a ■■■ student (date of birth: ■■■) residing in ■■■, Florida, and enrolled in the Polk County Public School District.

2. According to the student's parents, ■■■ has been diagnosed with Asperger's Syndrome, but apparently does not meet the diagnostic criteria to be classified as autistic.

3. ■■■ presentation of Asperger's Syndrome is atypical in that most children with the syndrome communicate verbally at an early age, as contrasted to children with autism, who generally have delayed language use. ■■■ is essentially non-verbal and ■■■ communication occurs through other methods as identified herein.

4. ■■■ completed the academic requirements to receive a standard high-school diploma on May 13, 2004. The parents have asserted that they questioned at several of the IEP meetings whether the standard diploma track was appropriate for ■■■, but review of the IEP team meetings indicates, as set forth herein, that although the issue was discussed, the parents did not specifically request that the diploma option be changed until the IEP meeting of February 2004, at which point the IEP team declined to do so.

5. During the two school years material to this Order, ■■■ was taught by Bruce Thornhill, who was assisted by a paraprofessional. This job was Mr. Thornhill's first teaching employment. Mr. Thornhill was hired by the Respondent because he was available and willing to take the job, and because he had some experience working with juvenile detainees. ■■■'s parents met with Mr. Thornhill and approved his employment before he was hired.

6. As set forth herein, Mr. Thornhill collected essentially no written data demonstrating compliance with the specific goals, benchmarks, and objectives of the IEPs during the two school years material to this Order. Mr. Thornhill maintained no written lesson plans or grade books. There is no evidence that anyone in a position of responsibility for Mr. Thornhill ever directed him to maintain records related to ■■■'s education or ■■■ progress towards the IEP goals.

7. Although Mr. Thornhill testified that he kept records by making "check marks" in notepads, apparently none of the data was compiled for review, and the notepads were allegedly discarded. The undersigned is not persuaded that the records existed. Further, there is no credible evidence that anyone in a position of responsibility for Mr. Thornhill ever reviewed any records in any notepads.

8. At all times material to this case, ■■■ received ■■■ education in a fenced portable classroom building across the street from the ■■■ School campus. ■■■ has a history of aggression and was (and by all accounts continued to be at the time of the hearing) of sufficient size, strength, and temperament to cause injury to ■■■ and to others during an aggressive incident. ■■■ expresses the aggression by biting, kicking, pinching, shoving, and hitting.

9. The decision to educate ■■■ in a separate portable classroom was a response to a series of aggressive incidents that occurred at Polk Life and Learning Center which eventually resulted in ■■■ being taken to a juvenile detention facility. The student's parents assert that the incidents at ■■■ Center were related to poorly trained staff, but there is no credible evidence to support the assertion.

10. The separate classroom setting was created with the full participation of the student's parents who were concerned that additional incidents of aggression would result in further detention. The parents wanted the student removed from the ■■■ Center and placed in a safe environment where the potential for further involvement with law enforcement would be minimized. Another location proposed by the Respondent (the ■■■ Center) was rejected by the parents for reasons that are unclear.

11. During the two school years at issue in this proceeding, ■■■ did not take classes with other students and did not participate in activities with other students. After the student was placed in the portable classroom setting, there were discussions, addressed elsewhere herein, regarding methods of initiating interaction between ■■■ and other students, but for reasons primarily related to ■■■ behavioral issues, such interaction with other students was essentially non-existent during the course of ■■■ high-school career.

12. While the Respondent presented evidence as to the use of a series of "Social Stories" books to work on issues of socialization, there is essentially no credible written documentation that the social skills instruction occurred on a regular basis during the school years addressed in this Order. Similarly, whether the alleged instruction resulted in improvement in the student's socialization skills or in meeting any of the related goals is unclear.

13. ■■■ exhibits obsessive-compulsive behavior. ■■■ becomes fixated on articles of clothing (open-toed shoes, some types of jewelry, or hair accessories) and becomes anxious, agitated, and sometimes behaves inappropriately towards persons wearing the items. ■■■ is also sensitive to surrounding stimuli and can become overwhelmed by large crowds of people.

14. Both parties introduced testimony and evidence related to the issue of behavioral causality at the hearing. The Petitioner asserts that all of the student's behavioral antecedents can be identified, and that the Respondent's failure to do so and to provide appropriate services, was a denial of FAPE. The Respondent asserts that some of the behaviors, especially the aggressive events, are a response to "internal" stimulation that is related to the student's disability, and cannot be therapeutically addressed. The evidence is insufficiently persuasive to establish that either position is correct. It is reasonable to presume that the reality lies somewhere between the positions asserted by the parties.

15. There are clearly some behavioral triggers, including the clothing items, but the evidence establishes that ■■■ does not react to the items on a consistent basis. For example, at times, ■■■ is able to see a hair "scrunchy" without becoming compelled to remove it from the wearer's head.

16. There are also behaviors, particularly some of the aggressive outbursts, that appear to be a reaction to demands placed on ■■■ to perform certain tasks or are related to overstimulation by noise or crowds. However, not all of ■■■ behaviors have clearly identified antecedents, and some appear to occur perhaps randomly without consistency as to time or place.

17. Although the Petitioner asserts that all antecedents can be identified and addressed through systematic desensitization therapy, such therapy requires that a behavioral antecedent be identified before a desensitization technique can be employed. There is no credible evidence that all of [REDACTED] behavioral antecedents can be identified. On the other hand, it is clear that many antecedents have already been identified and it is likely that others could be. A program of systematic desensitization could have reduced some of the student's behavioral deficits. No desensitization techniques were implemented by the Respondent during the school years at issue in this proceeding.

18. Review of the IEP meeting transcripts reveals that the parents participated in the process of reviewing the student's progress (or lack thereof) and in the creation of the IEP documents, including in some cases the establishment of goals and benchmarks. As set forth herein, assumptions related to the student's alleged progress were unsupported by credible data.

19. The remand to the ALJ requires the ALJ to consider the Petitioner's challenges to the IEPs during the 2002-2003 and 2003-2004 school years. The evidence fails to establish that the Petitioners filed any due process hearing request challenging the IEPs for the referenced periods prior to the request for due process hearing filed on May 17, 2004, after

academic credits had been awarded sufficient for [REDACTED] receipt of a regular diploma.

20. Although the parents expressed concern as to unmet goals and objectives, as further set forth herein, there is no credible evidence that the Petitioners formally challenged any IEP during the 2002-2003 or 2003-2004 school year until an apparent request for mediation was filed related to the "graduation" IEP dated February 23, 2004. The sole request for due process hearing to challenge the IEP was filed on May 17, 2004.

21. The Petitioner's parents assert that [REDACTED] did not meet the goals, benchmarks, and objectives identified in [REDACTED] IEPs. In substantial part, the evidence establishes that the assertion is correct.

2002-2003 SCHOOL YEAR

The April 17, 2002, IEP

22. For the purpose of reviewing subsequent IEPs, the April 17, 2002, IEP has been considered as the "baseline" identification of the student's abilities, goals, and objectives.

23. According to the April 17, 2002, IEP, [REDACTED] was seeking a standard diploma. The desired post school outcome after obtaining the standard diploma was "to attend college and pursue

a computer related field." The diploma option was identified by school officials based on information provided by [REDACTED] parents.

24. In the domain of "Curriculum and Learning," (Transition Area: Instruction) the IEP identified the "Priority Educational Need" as follows:

The student is currently able to read and comprehend basic information and answer objective questions and needs to be able to answer subjective questions. [REDACTED] also needs to work on solving word problems.

25. Measurable Annual Goal 1 was "[g]iven individual instruction, [REDACTED] will read and comprehend literature selection with 70% accuracy."

26. Short-Term Objective 1-1 required that the student answer subjective questions from literary selection with 70 percent mastery as demonstrated by work samples, teacher-made tests, and grade report.

27. Short-Term Objective 1-2 required that the student increase [REDACTED] understanding of figurative language with 70 percent mastery as demonstrated by work samples, teacher-made tests, and grade report.

28. In the domain of Social Emotional Behavior, the IEP identified the "Priority Educational Need" as follows:

The student is currently able to interact with peers and needs to be able to respond appropriately to the directives of adults/authority figures. [REDACTED] needs to

understand the effect of ■■■ behavior on others.

29. Measurable Annual Goal 2 was as follows:

During activities that may cause conflict, the student will manage physical anger (biting, hitting, kicking, throwing) while respecting the rights of others in 3 of 5 trials.

30. Short-Term Objective 2-1 required that the student "recognize when ■■■ feels angry and use cues to prevent losing self-control" on a daily basis, three of five times, as demonstrated by tally sheets and structured observation forms.

31. Short-Term Objective 2-2 required that the student "comply with directives of authority figures" on a daily basis, three of five times, as demonstrated by tally sheets and structured observation forms.

32. In the domain of "Curriculum and Learning," Measurable Annual Goal 3 was stated as follows: "[g]iven individual instruction, ■■■ will write an essay with/without a prompt with 70% accuracy."

33. Short-Term Objective 3-1 required that the student write a short story with appropriate content, sequence, and character development with 70 percent mastery as demonstrated by work samples, grade report, and student product.

34. Short-Term Objective 3-2 required that the student would compose and write a simple poem with 70 percent mastery as demonstrated by work samples, grade report, and student product.

35. In the domain of Independent Functioning, the IEP identified the "Priority Educational Need" as follows:

The student is currently able to effectively communicate [REDACTED] wants and needs and needs to be able to participate appropriately in the learning environment.

36. Measurable Annual Goal 4 was as follows:

Given class instruction the student will use organizational skills/strategies to complete work assignments 70% of the time.

37. Short-Term Objective 4-1 required that the student "use a daily assignment notebook to document completed assignments" on a daily basis with 70 percent mastery as demonstrated by tally sheets and grade reports.

38. Short-Term Objective 4-2 required that the student "use an organizational tool (backpack/bookbag) daily to transport materials from school to home and from home to school" on a daily basis, with 70 percent mastery as demonstrated by tally sheets and structured observation forms.

39. In the domain of Communication, the IEP identified the "Priority Educational Need" as follows:

The student is currently able to operate/use ACD and needs to be able to use the ACD device to communicate appropriately and effectively with individuals in the

classroom setting and to carry-over these skills into the home and community. ■■■ also needs to be able to develop a better understanding of interpreting other's non-verbal skills such as facial expressions, body language.

40. Measurable Annual Goal 5 was stated as follows:

Given instruction the student will demonstrate pragmatic skills in the ESE classroom in 7 of 10 trials utilizing an Augmentative Communication Device.

41. Short-Term Objective 5-1 required that the student "demonstrate appropriate attention seeking skills such as raising hand, using ACD to get another's attention, and waiting for eye contact" on a monthly basis, six of 10 times with decreasing prompts, as demonstrated by tally sheets.

42. Short-Term Objective 5-2 required that the student "initiate, maintain, and close conversations appropriately" on a monthly basis, seven of 10 times with minimal prompts, as demonstrated by tally sheets.

43. Short-Term Objective 5-3 required that the student "demonstrate appropriate turn-taking and use of questioning skills during conversation" on a monthly basis, seven of 10 times with minimal prompts, as demonstrated by tally sheets.

44. Short-Term Objective 5-4 required that the student "interpret and use non-verbal cues in a conversational setting" on a monthly basis, five of 10 times with decreasing prompts, as demonstrated by tally sheets.

45. Short-Term Objective 5-5 required that the student "express greetings and farewells" on a monthly basis, seven of 10 times with minimal to no prompts, as demonstrated by tally sheets.

The February 25, 2003, IEP meeting

46. At the commencement of the February 25, 2003, IEP meeting, a school official stated that ■■■ was "making progress" and stated "we changed some of the percentages" for the benchmark measurements from the April 2002 IEP.

47. The evidence fails to include written data sufficient to support the assertion that the student had progressed, but as set forth herein, some benchmarks were increased from the prior IEP. The revised benchmarks were reviewed at the IEP meeting with the parents, who participated in establishing the measurements, despite the lack of reviewable data. Other existing benchmarks were unaltered, indicating that no progress had been made in those areas.

48. The issue of the student's compliance (or lack thereof) was central to the team's discussion. Although by this date, ■■■ had already passed the writing portion of the Florida Comprehensive Assessment Test (FCAT), writing remained a significant concern of the parents because of the student's impaired verbal ability. The classroom teacher was unable to motivate the student to write. There appeared to be general

agreement that the student was capable of writing, but that [REDACTED] was resistive and refused to write. [REDACTED] suggested that the teacher needed to be less deferential to the student on the issue of writing and other goals. [REDACTED] criticized the classroom teacher's practice of "backing off" from educational demands when the student became resistant, and suggested that the teacher needed to be less flexible with the student, but also acknowledged some ambivalence as to "how far" to push the student and concern as to whether increased demands would trigger an aggressive outburst. [REDACTED] suggested that a consultation with a behavioral therapist could perhaps identify the reasons for the student's resistance. The IEP was amended to reflect [REDACTED]'s concern regarding the student's writing and a goal specifically related to writing was established.

49. There was a discussion of grooming skills and the difficulty the parents had in encouraging the student to meet personal hygiene needs. As reflected in the IEP, grooming skills were added to the document. Additionally, the team discussed skills related to food preparation, and such skills were added to the IEP document.

50. There was a suggestion that the student could utilize the [REDACTED] School kitchen to learn such skills, and all participants seem agreeable to the idea.

51. As part of a discussion of transition services, the team questioned the parents on their desired post high-school outcome. The parents were concerned with the student's behavioral issues and clearly understood that, in addition to the student's difficulty in remaining on tasks not of [REDACTED] own choosing, the behavioral issues were an impediment to the ultimate outcome. According to the IEP meeting Transcript, the father stated as follows:

Our attitude has been all along, if [REDACTED] can do the academics, we should get the academics in [REDACTED] such that at the time [REDACTED] behavior improves and [REDACTED] compliance improves, [REDACTED] will be there. [REDACTED] education will be there.

And so, we're getting close to [REDACTED] education being there, but the behavior is still a question, and compliance is probably, you know, more of a question.

52. The team questioned the parents as to whether the goal of [REDACTED] going to college was continuing. The parents expressed their belief that the student was capable of going to college, but that [REDACTED] behavior was the limiting factor. [REDACTED] indicated that [REDACTED] concern was the student's compliance, believing that it was unlikely "colleges are going to be as accommodating" as the current placement.

53. There was discussion of available non-college options for the student, including services potentially available from other agencies, including the Division of Vocational

Rehabilitation. For a variety of reasons, ■■■ did not appear to be eligible for such services, and the behavioral issues would likely have precluded ■■■ participation.

54. ■■■ inquired whether, due to the lack of available services, it would be appropriate for the student to remain in high school until ■■■ was 21 years of age, and was told that once the student received the regular diploma he was finished with high school. ■■■ inquired as to whether it would be appropriate to slow down the academic progress and increase the "life skill" instruction. Both parents clearly expressed a desire for the student not to exit the school system upon graduation, but the IEP diploma option remained unchanged.

55. The parents also expressed a desire that ■■■ interact with peers and develop friendships outside the family unit. Team members opined that the student's behavior had somewhat improved (although the evidence is insufficient to attribute any improvement to medication or to the effort of the classroom teacher, or to some other factor) and that it might be possible to take ■■■ to the main high-school campus to interact with peers walking at the track. The parents also expressed a desire to have ■■■ sit in on a regular high-school class, but some team members expressed concern that the situation could overwhelm the student's ability to monitor ■■■ behavior.

56. ■■■ requested that ■■■ receive more detailed reports as to ■■■ behavior during the school day, including time spent specifically on educational goals, and the extent to which the student was sleeping in class. There was a suggestion that sleeping in the classroom was related to medication the student was taking. ■■■ also asked that a portfolio of the student's homework be maintained.

The February 25, 2003, IEP

57. According to the February 25, 2003, IEP, ■■■ was seeking a standard diploma. The desired post school outcome ("to attend college and pursue a computer related field") after obtaining the standard diploma was unchanged from the prior IEP.

58. In the domain of "Curriculum and Learning (Reading)," (Transition Area: Instruction) the February 25, 2003, IEP identified the "Priority Educational Need" as follows:

The student is currently able to read and comprehend basic information and answer objective questions and needs to be able to answer subjective questions. [■■■] also needs to work on solving word problems.

59. Measurable Annual Goal 1 was "[g]iven individual instruction, ■■■ will read and comprehend literature selection with 80% accuracy," an increase from the 70 percent level identified in the prior IEP.

60. Short-Term Objective 1-1 required that the student answer subjective questions from literary selections with

80 percent mastery (an increase from the 70% identified in the prior IEP) as demonstrated by work samples, teacher-made tests, and grade report.

61. Short-Term Objective 1-2 required that the student increase [REDACTED] understanding of figurative language with 80 percent mastery (an increase from the 70 percent identified in the prior IEP) as demonstrated by work samples, teacher-made tests, and grade report.

62. In the domain of "Curriculum and Learning," Measurable Annual Goal 2 was "[g]iven individual instruction, [REDACTED] will write an essay with/without a prompt with 70% accuracy." This goal remained unchanged from the prior IEP.

63. Short-Term Objective 2-1 required that the student write a short story with appropriate content, sequence, and character development with 70 percent mastery as demonstrated by work samples, grade report, and student product. This objective remained unchanged from the prior IEP.

64. Short-Term Objective 2-2 required that the student compose and write a simple poem with 70 percent mastery as demonstrated by work samples, grade report, and student product. This objective remained unchanged from the prior IEP.

65. In the domain of "Curriculum and Learning (Writing)," Measurable Annual Goal 3 was stated as: "[g]iven a writing assignment, the student will use written communication

skills/language mechanics to complete the assignment with 80% accuracy." This measurable annual goal and the related objectives were new to the student's IEP.

66. Short-Term Objective 3-1 required that the student write several paragraphs on one topic at least weekly with 80 percent mastery as demonstrated by work samples and student product.

67. Short-Term Objective 3-2 required that the student "write a composition with introduction-body concluding paragraphs correctly sequenced relative to theme" at least weekly with 80 percent mastery as demonstrated by work samples and student product.

68. In the domain of Social Emotional Behavior, the February 25, 2003, IEP identified the "Priority Educational Need" as follows:

The student is currently able to interact with peers and needs to be able to respond appropriately to the directives of adults/authority figures. [REDACTED] needs to understand the effect of [REDACTED] behavior on others.

69. Measurable Annual Goal 4 was stated as follows:

During activities that may cause conflict, the student will manage physical anger (biting, hitting, kicking, throwing) while respecting the rights of others in 7 of 10 trials.

70. The goal reflected an increased level of required compliance as compared to the prior IEP.

71. Short-Term Objective 4-1 required that the student "recognize when [REDACTED] feels angry and use cues to prevent losing self-control" on a daily basis, seven of 10 times, as demonstrated by tally sheets and structured observation forms. This objective reflected an increase from the "3 of 5 times" identified on the prior IEP.

72. Short-Term Objective 4-2 required that the student "comply with directives of authority figures" on a daily basis, seven of 10 times, as demonstrated by tally sheets and structured observation forms. This objective also reflected an increase from the "3 of 5 times" identified on the prior IEP.

73. In the domain of Communication, the February 25, 2003, IEP identified the "Priority Educational Need" as follows:

The student is currently able to operate/use ACD and needs to be able to use the ACD device to communicate appropriately and effectively with individuals in the classroom setting and to carry-over these skills into the home and community. [REDACTED] also needs to be able to develop a better understanding of interpreting other's non-verbal skills such as facial expressions, body language.

74. Measurable Annual Goal 5 was as follows:

Given instruction the student will demonstrate pragmatic skills in the ESE classroom in 7 of 10 trials utilizing an Augmentative Communication Device.

75. This goal and the related objectives were unchanged from the prior IEP.

76. Short-Term Objective 5-1 required that the student "demonstrate appropriate attention seeking skills such as raising hand, using ACD to get another's attention, and waiting for eye contact" on a monthly basis, six of 10 times with decreasing prompts, as demonstrated by tally sheets.

77. Short-Term Objective 5-2 required that the student "initiate, maintain, and close conversations appropriately" on a monthly basis, seven of 10 times with minimal prompts, as demonstrated by tally sheets.

78. Short-Term Objective 5-3 required that the student "demonstrate appropriate turn-taking and use of questioning skills during conversation" on a monthly basis, seven of 10 times with minimal prompts, as demonstrated by tally sheets.

79. Short-Term Objective 5-4 required that the student "interpret and use non-verbal cues in a conversational setting" on a monthly basis, five of 10 times with decreasing prompts, as demonstrated by tally sheets.

80. Short-Term Objective 5-5 required that the student "express greetings and farewells" on a monthly basis, seven of 10 times with minimal to no prompts, as demonstrated by tally sheets.

81. Grooming skills were added in the domain of Independent Functioning (Transition Area: Daily Living Skills), and the February 25, 2003, IEP identified the "Priority Educational Need" as follows:

The student needs to develop [redacted] personal grooming skills as well as [redacted] independent living skills.

82. Measurable Annual Goal 6 was set forth as follows:

Given class instruction the student will use organizational skills/strategies to complete work assignments 80% of the time.

83. The measurable annual goal reflected an increase from the 70 percent level identified in the prior IEP.

84. Short-Term Objective 6-1 required that the student "use a daily assignment notebook to document completed assignments" on a daily basis with 80 percent mastery as demonstrated by tally sheets and grade reports, an increase from the 70 percent level identified in the prior IEP.

85. Short-Term Objective 6-2 required that the student "use an organizational tool (backpack/bookbag) daily to transport materials from school to home and from home to school" on a daily basis, with 80 percent mastery as demonstrated by

tally sheets and structured observation forms, an increase from the 70 percent level identified in the prior IEP.

86. In the domain of Independent Functioning (Transition Area: Daily Living Skills), a new measurable annual goal identified as No. 7, provided that "[g]iven daily practice in hygiene routines, the student will adequately participate in school related grooming tasks 60 percent of the time as evaluated by checklist."

87. New Short-Term Objective 7-1 states "[g]iven verbal prompts, [REDACTED] will brush [REDACTED] teeth independently" on a daily basis, three of five times, as demonstrated by "Teacher/Student developed checklist."

88. New Short-Term Objective 7-2 states "[g]iven verbal prompts, [REDACTED] will brush [REDACTED] hair" on a daily basis, three of five times, as demonstrated by "Teacher/Student developed checklist."

89. In the domain of Independent Functioning (Transition Area: Daily Living Skills), a new measurable annual goal identified as No. 8 provided as follows: "Given instruction and practice the student will demonstrate skills for planning and preparation of food at a functional level with 60% mastery or in 3 of 5 trials."

90. New Short-Term Objective 8-1 stated "[t]he student will plan simple meals" with 60 percent mastery, as demonstrated by "Student Product."

91. New Short-Term Objective 8-2 stated "[t]he student will follow a simple recipe or package directions" with 60 percent mastery as demonstrated by "Student Product."

2003-2004 SCHOOL YEAR

The October 6, 2003, IEP Meeting

92. According to the Transcript from the October 6, 2003, IEP meeting, the discussion of progress towards meeting the IEP goals and objectives was based on the classroom teacher's anecdotal recollection. There is no credible evidence that any tally sheets or other observation forms reporting actual data were collected in a written format so as to permit review of whether the benchmarks were being met.

93. The classroom teacher continued to be unable to motivate the student to write, and accordingly, the writing goals were not being achieved. The Transcript also reveals that little classroom routine was being enforced. No physical lesson plans were created or maintained. Subject matter was taught in a random order, apparently depending on either the student's willingness to engage the task or the teacher's preference. The student was permitted to decline participation in various requirements or activities.

94. No personal grooming checklist was being maintained. ██████ acknowledged that the personal hygiene goals were "extremely stressful" for the student, but there was no discussion of reducing the goals.

95. As had occurred at the prior IEP meeting, there was discussion about taking ██████ to the main high-school campus to interact with peers, in a classroom setting or at the track, or to have some high-school students come to the portable classroom to interact with ██████ during a lunch period, but there is no evidence that the student went to the main campus to interact with peers on a regular basis, or that any high-school students came to interact with ██████ in the portable.

96. There was again discussion at the team meeting regarding the extent to which ██████ could be pushed when the student rejected various classroom requirements, and the student's ██████ expressed concern for the safety of the classroom personnel. ██████ also stated that it might be advisable to obtain gate locks for the fence surrounding the student's portable classroom building, so that the student could be released from the classroom during an incident, but not leave the classroom grounds.

97. The IEP team decided to implement a structured academic schedule, followed approximately two weeks later by a behavioral reinforcement program intended to encourage the

student to comply with the schedule and to progress towards meeting the IEP goals.

The October 6, 2003, IEP

98. According to the October 6, 2003, IEP, [REDACTED] was still seeking a standard diploma. The desired post-school outcome ("to attend college and pursue a computer related field") after obtaining the standard diploma was unchanged from the prior IEP.

99. Comparison of the February 25, 2003, IEP and the October 6, 2003, IEP reveals markedly little difference between the two documents, other than an additional focus on the demonstration of writing ability. For example, revision of Measurable Annual Goal 1 required a written demonstration of reading and comprehension skills, but for the most part, the measurable goals and benchmarks were unchanged.

100. In the domain of "Curriculum and Learning (Reading)," (Transition Area: Instruction) the October 6, 2003, IEP identified the "Priority Educational Need" as follows:

The student is currently able to read and comprehend basic information and answer objective questions and needs to be able to answer subjective questions. [REDACTED] also needs to work on solving word problems.

101. Measurable Annual Goal 1 was "[g]iven individual instruction, [REDACTED] will read and comprehend literature selection with 80% accuracy" with the additional requirement that the goal be "demonstrated by written work."

102. Short-Term Objective 1-1 required that the student answer subjective questions from literary selections with 80 percent mastery as demonstrated by work samples, teacher-made tests, and grade report. There was no change to this objective from the prior IEP.

103. Short-Term Objective 1-2 required that the student increase [REDACTED] understanding of figurative language with 80 percent mastery as demonstrated by work samples, teacher-made tests, and grade report. There was no change to this objective from the prior IEP.

104. In the domain of "Curriculum and Learning (Writing), the priority educational need was to require that the student "express [REDACTED] ideas in written form." Measurable Annual Goal 2 was "[g]iven individual instruction, [REDACTED] will write an essay with/without a prompt with 70% accuracy." There was no change to this goal from the prior IEP.

105. Short-Term Objective 2-1 required that the student write a short story with appropriate content, sequence, and character development with 70 percent mastery as demonstrated by work samples, grade report, and student product. There was no change to this objective from the prior IEP.

106. Short-Term Objective 2-2 required that the student would compose and write a simple poem with 70 percent mastery as

demonstrated by work samples, grade report, and student product. There was no change to this objective from the prior IEP.

107. The October 6, 2003, IEP contained two goals identified by No. 3.

108. In the domain of Social Emotional Behavior, the October 6, 2003, IEP identified the "Priority Educational Need" as follows:

The student is currently able to interact with peers and needs to be able to respond appropriately to the directives of adults/authority figures. [REDACTED] needs to understand the effect of [REDACTED] behavior on others.

109. Unchanged Measurable Annual Goal 3 was as follows:

During activities that may cause conflict, the student will manage physical anger (biting, hitting, kicking, throwing) while respecting the rights of others in 7 of 10 trials.

110. Short-Term Objective 3-1 required that the student "recognize when [REDACTED] feels angry and use cues to prevent losing self-control" on a daily basis, seven of 10 times, as demonstrated by tally sheets and structured observation forms. There was no change to this objective from the prior IEP.

111. Short-Term Objective 3-2 required that the student "comply with directives of authority figures" on a daily basis. The objective required that the student achieve a minimum of 50 percent success on [REDACTED] daily reinforcement program for seven

of 10 days, as demonstrated by tally sheets and "monitoring intervals." (The prior benchmark required that the student comply seven out of 10 times, but the revised benchmark potentially appears to reduce the compliance requirement.)

112. The second goal identified as No. 3, was in the domain of Independent Functioning (Transition Area: Daily Living Skills), and identified the "Priority Educational Need" as follows:

The student needs to develop [REDACTED] personal grooming skills as well as [REDACTED] independent living skills.

113. Unchanged Measurable Annual Goal 3 was as follows:

Given class instruction the student will use organizational skills/strategies to complete work assignments 80% of the time.

114. Short-Term Objective 3-1 required that the student "use a daily assignment notebook to document completed assignments" on a daily basis with 80 percent mastery as demonstrated by tally sheets and grade reports. There was no change to this objective from the prior IEP.

115. Short-Term Objective 3-2 required that the student "use an organizational tool (backpack/bookbag) daily to transport materials from school to home and from home to school" with 80 percent mastery as demonstrated by tally sheets and structured observation forms. There was no change to this objective from the prior IEP.

116. In the domain of "Curriculum and Learning (Writing)," unchanged Measurable Annual Goal 4 was "[g]iven a writing assignment, the student will use written communication skills/language mechanics to complete the assignment with 80% accuracy."

117. Short-Term Objective 4-1 required that the student write several paragraphs on one topic at least weekly with 80 percent mastery as demonstrated by work samples and student product. There was no change to this objective from the prior IEP.

118. Short-Term Objective 4-2 required that the student "write a composition with introduction-body concluding paragraphs correctly sequenced relative to theme" at least weekly with 80 percent mastery as demonstrated by work samples and student product. There was no change to this objective from the prior IEP.

119. In the domain of Communication, the October 6, 2003, IEP identified the "Priority Educational Need" as follows:

The student is currently able to operate/use ACD and needs to be able to use the ACD device to communicate appropriately and effectively with individuals in the classroom setting and to carry-over these skills into the home and community. ■ also needs to be able to develop a better understanding of interpreting other's non-verbal skills such as facial expressions, body language.

120. Unchanged Measurable Annual Goal 5 was as follows:

Given instruction the student will demonstrate pragmatic skills in the ESE classroom in 7 of 10 trials utilizing an Augmentative Communication Device.

121. Short-Term Objective 5-1 required that the student "demonstrate appropriate attention seeking skills such as raising hand, using ACD to get another's attention, and waiting for eye contact" on a monthly basis, six of 10 times with decreasing prompts, as demonstrated by tally sheets. There was no change to this objective from the prior IEP.

122. Short-Term Objective 5-2 required that the student "initiate, maintain, and close conversations appropriately" on a monthly basis, seven of 10 times with minimal prompts, as demonstrated by tally sheets. There was no change to this objective from the prior IEP.

123. Short-Term Objective 5-3 required that the student "demonstrate appropriate turn-taking and use of questioning skills during conversation" on a monthly basis, seven of 10 times with minimal prompts, as demonstrated by tally sheets. There was no change to this objective from the prior IEP.

124. Short-Term Objective 5-4 required that the student "interpret and use non-verbal cues in a conversational setting" on a monthly basis, five of 10 times with decreasing prompts, as

demonstrated by tally sheets. There was no change to this objective from the prior IEP.

125. Short-Term Objective 5-5 required that the student "express greetings and farewells" on a monthly basis, seven of 10 times with minimal to no prompts, as demonstrated by tally sheets. There was no change to this objective from the prior IEP.

126. The next measurable annual goal in the IEP was identified as No. 9 and was in the domain of Independent Functioning (Transition Area: Daily Living Skills). Unchanged Measurable Annual Goal 9 stated "[g]iven daily practice in hygiene routines, the student will adequately participate in school related grooming tasks 60% of the time as evaluated by checklist."

127. Short-Term Objective 9-1 stated, "[g]iven verbal prompts, [REDACTED] will brush [REDACTED] teeth independently" on a daily basis, three of five times, as demonstrated by "Teacher/Student developed checklist." There was no change to this objective from the prior IEP.

128. Short-Term Objective 9-2 stated, "[g]iven verbal prompts, [REDACTED] will brush [REDACTED] hair" on a daily basis, three of five times, as demonstrated by "Teacher/Student developed checklist." There was no change to this objective from the prior IEP.

129. In the domain of Independent Functioning (Transition Area: Daily Living Skills), unchanged Measurable Annual Goal 10 provided as follows: "Given instruction and practice the student will demonstrate skills for planning and preparation of food at a functional level with 60% mastery or in 3 of 5 trials."

130. Short-Term Objective 10-1 stated "[t]he student will plan simple meals" with 60 percent mastery, as demonstrated by "Student Product." There was no change to this objective from the prior IEP.

131. Short-Term Objective 10-2 stated "[t]he student will follow a simple recipe or package directions" with 60 percent mastery as demonstrated by "Student Product." There was no change to this objective from the prior IEP.

The February 23, 2004, IEP meeting

132. The Transcript from the February 23, 2004, IEP meeting again indicates that the issue of the student's noncompliance was central to the team's discussion.

133. The classroom teacher was still unable to motivate the student to write, and the student had not written an essay, a poem, or a complete paragraph as a response to a test question. The student's [REDACTED] was clearly frustrated that the writing goals were not being met.

134. There is no credible evidence that the structured academic schedule or the behavioral reinforcement program that were discussed at the prior IEP meeting were implemented on a consistent basis.

135. The draft IEP being addressed at the meeting eliminated the writing-related goals that had been included in prior IEPs. The student's [REDACTED] objected to the removal of the goals from the IEP. The classroom teacher asserted that he asked the student to write on a regular basis, and that the student refused to do so.

136. The Transcript of the meeting indicates that the IEP team, as well as the parents, believed the student to be capable of writing and agreed that the failure to meet the IEP writing goals was a function of the student's noncompliance. The IEP team noted that the student had passed the writing portion of the FCAT, which demonstrated an ability to write. The student attended the IEP meeting, and [REDACTED] asked [REDACTED] about [REDACTED] failure to meet the writing goals. The student indicated (based upon [REDACTED] questions) that [REDACTED] refusal was a matter of choice. There was additional discussion of how to motivate the student to write, but the classroom teacher noted [REDACTED] concern about the effect of forcing the student to write.

137. The student's [REDACTED] expressed concern that because the student was essentially non-verbal, the student's refusal to

write was a behavioral issue that needed to be addressed. ■■■ queried whether the IEP needed to include a behavioral element that required the student to "learn to express himself in writing." The behavioral analyst present in the meeting responded that the school's obligation was to teach the student "how to write," to which the student's ■■■ responded that the school should teach the student to "be willing to communicate in writing."

138. There was discussion about whether it would be advisable to require that the student communicate only in writing, but the behavior analyst noted that historically, the goal was to provide multiple communications options for ■■■ and she expressed opposition to revisiting the decision that had been made to accommodate the student.

139. The IEP team also noted that the student attended the meeting and had spoken with several people in the room who were able to relay ■■■ concerns to the team. The student's ■■■ acknowledged that the student had improved in ■■■ communication abilities.

140. The evidence fails to establish that the student cannot communicate. By all accounts, ■■■ was proficient at using a keyboard-based communications tool called the "Light Writer," that has text-to-speech capability. Occasionally, the machine mispronounced words, and the student was able to alter the

spelling of the words so that the machine's pronunciation was correct. ■■■ was also proficient at communicating through hand signing, although ■■■ signed quickly and it was difficult for persons who understood hand signing to comprehend ■■■ rapid pace.

141. The evidence also establishes that the communication goal and the writing goal were separately identified on the IEPs and had separate objectives. While the student met some of the communication objectives, there is no evidence that the student met any of the writing goals set forth in the IEPs referenced herein.

142. The student's ■■■ expressed concern that the student's refusal to write would likely limit ■■■ progression to college, assuming the behavioral issues were to subside, because it was unlikely that a college professor would agree to deal only verbally with a student who did not write.

143. Based on the passage of the FCAT, it would appear that the student can write when ■■■ is motivated to do so. The classroom teacher failed to motivate the student to write to an extent sufficient to meet the specific goals set forth in several consecutive IEPs. It is reasonable to assume, since the student had been motivated in some manner to successfully complete and pass the writing portion of the FCAT, that the

student could have been motivated to complete the writing goals set forth in the IEPs.

144. The IEP eliminated goals related to organizational skills. The evidence establishes that the student met at least part of the benchmark objectives set forth as part of this goal. ■ was utilizing ■ backpack to organize ■ materials, and was "sometimes" carrying the backpack to and from the classroom. However, the objective of using a daily assignment notebook to document completed assignments was not met because the student generally refused to write in the notebook. Rather than continue to work towards meeting the goal, the IEP team eliminated the goal.

145. There was an extensive discussion of post-school options and the limited availability of community-based services for which the student might be eligible. Even if such services were available, the IEP team identified the student's noncompliance and behavioral issues as the reason the student would be unable to access the services.

146. The student's ■ relayed the student's concern about ■ post-school employment prospects. The student's ■ stated that it was extremely difficult to envision a vocation for the student because ■ would not write. There is no credible evidence that the student's refusal to write would completely prohibit ■ from employment.

147. As to behavioral issues, the severity of incidents continued to be of concern. There was general agreement that the student's behavior had improved and the frequency of serious aggression had declined; however, there was no data collected which could convincingly attribute the reduced frequency to a specific cause.

148. ■■■ had increased ■■■ ability to monitor ■■■ emotional condition and decreased the frequency of "escalation" into potentially aggressive events. For example, on a visit to the high school, ■■■ encountered the chaos of students changing classes and became anxious. Upon returning to ■■■ classroom, ■■■ requested a rest period to calm down and was successful in reducing ■■■ agitation. However, the increased interaction with peers that had been discussed at prior IEP meetings had not occurred because the student declined to walk to the main high-school campus, and the teacher bowed to the student's position.

149. While ■■■ had friendly relationships with the adults with whom ■■■ interacted on a regular basis, ■■■ had essentially no interaction with ■■■ peer group at school.

150. There was a substantial discussion of the actual benchmarks in the IEP. The ■■■ of the student participated fully in determining the language of the goals and benchmarks set forth therein. (The student's ■■■ had another appointment and was unable to stay for the entire IEP meeting.) To the

extent ■ was asked to do so, the student also participated in determining the benchmarks.

151. When asked, the classroom teacher again opined as to whether certain objectives were being met. There is no credible evidence that any actual data was collected in a written format to permit review of whether progress towards meeting goals was occurring.

152. There was again a discussion of grooming skills and the difficulty the parents had in encouraging the student to meet personal hygiene needs. Physical limitations related to the student's disability presented obstacles to some grooming skills; however, ■ acknowledged that the student's tooth-brushing routine at home had improved.

153. There was discussion of food preparation skills during the meeting. The student was able to read package directions and prepare simple "instant" food using a microwave oven, but there had been no attempt to prepare food using a recipe. The suggested utilization of the ■ School kitchen had not occurred. For unidentified reasons, a delay occurred in obtaining a key to the kitchen, and once the key was obtained, the student, who initially indicated interest, declined to participate.

154. The team discussed an occupational assessment that indicated that the student had aptitude in management and

business administration; in engineering, surveying, and architecture; and in clerical occupations.

155. The Respondent invited a representative from the [REDACTED] College to attend the IEP meeting, but no one from the college was present. There is no evidence that the Respondent can require the attendance of the college representative.

156. A representative from the Florida Department of Education, Division of Vocational Rehabilitation, attended the IEP meeting and offered to perform a multi-day vocational evaluation and assessment to assist in determining potential employment for the student and whether additional training would be useful in [REDACTED] becoming employed. The belief of [REDACTED] was that the student's compliance issues would prevent employment; [REDACTED] inquired as to whether there were day programs that could accommodate [REDACTED] after high school. There were apparently none for which the student was qualified, and there was a general acknowledgement that there were no services in Polk County that would meet the student's post-school needs for which [REDACTED] was qualified.

157. The vocational rehabilitation representative continued to encourage that the assessment be performed in order to determine whether [REDACTED] could become employed on even a part-time basis.

158. The team discussed the fact that the student was working on gaining the final two half-credits ■■■ needed to graduate with a regular high-school diploma. The student's ■■■ expressed dismay that some goals were not being met and asked whether services would continue after the student had sufficient credits to graduate. ■■■ was told that once the credits were earned, the student would have met all requirements to graduate in May 2004. ■■■ was also told that the IEP team had no control over the issue of the student's graduation.

159. The student's ■■■ then asserted that the IEP team should change the diploma track option so that the student would be pursuing a special diploma rather than the standard diploma, with the apparent intent being to keep ■■■ in the school system beyond the proposed graduation date. The team denied the request, asserting that the student had demonstrated the capability of earning a standard diploma and was two half-credits short of completing all requirements for a regular diploma.

160. The parents asked that progress towards earning the academic credits cease, and stated that they believed the sole focus of ■■■ schoolwork should have been directed towards life skills, but the request was denied.

161. The student's ■■■ asserted that the student should be permitted to remain in school after the credits were earned, and

that if the Respondent would not agree to do so, [REDACTED] wanted an immediate "formal letter of refusal," and they would proceed into mediation. A school representative agreed to provide the "formal letter."

162. Near the conclusion of the IEP meeting, the [REDACTED] was asked if [REDACTED] request for a "letter of refusal" was a refusal of the IEP, and [REDACTED] responded that it was not. However, [REDACTED] was clearly displeased that the request to alter the diploma track had been denied and shortly thereafter, the meeting concluded.

The February 23, 2004, IEP

163. As discussed in the IEP meeting, all previous writing and organizational goals were abandoned and were omitted from the February 23, 2004, IEP. For the first time, the IEP identified the student's desired post-school outcome as employment as a travel agent and to reside at "[REDACTED]."

164. [REDACTED] has been identified as a residential community planned to accommodate the needs of adults with disabilities and in which the student's [REDACTED] is involved; however, the community was in planning stages and did not present a residential option for the student at the time of the graduation or as of the date of the hearing. At the IEP meeting, the parents indicated that the student would remain with them in their home, but expressed a reasonable concern about the eventual need for another living arrangement.

165. In the domain of Social Emotional Behavior, the February 23, 2004, IEP amended the "Priority Educational Need" to state as follows:

■ needs to control ■ physical aggression.

166. Measurable Annual Goal 1 was as follows:

During activities that may cause conflict, ■ will manage physical aggression (biting, hitting, kicking, throwing) while respecting the rights of others by exhibiting no more than one physical aggression per month.

167. The prior measurable annual goal stated that the student "should manage physical anger . . . while respecting the rights of others in 7 of 10 trials."

168. Short-Term Objective 1-1 required that the student "recognize when ■ feels angry and use cues to prevent losing self-control" on a daily basis, a minimum of once per week, as demonstrated by tally sheets and monitoring intervals. The prior objective established a benchmark of "7 of 10 times."

169. Short-Term Objective 1-2 required that the student "comply with directives of authority figures." The student was to achieve a minimum of 80 percent success on ■ daily reinforcement program for seven of 10 days, as demonstrated by tally sheets and monitoring intervals. The prior objective established a minimum benchmark level of 50 percent.

170. There is no evidence that any data was collected, and accordingly, no credible evidence that ■■■ met Measurable Annual Goal 1 or any of the related objectives.

171. In the domain of Independent Functioning (Transition Area: Daily Living Skills), unchanged Measurable Annual Goal 2 was "[g]iven daily practice in hygiene routines, the student will maintain *** present level in school related grooming tasks 60% of the time as evaluated by checklist."

172. Short-Term Objective 2-1 stated, "[g]iven verbal prompts, ■■■ will brush ■■■ teeth independently" three out of five times per week, as demonstrated by "Teacher/Student developed checklist." There was no change to this objective from the prior IEP.

173. Short-Term Objective 2-2 stated, "[g]iven verbal prompts, ■■■ will brush ■■■ hair independently" three out of five times per week, as demonstrated by "Teacher/Student developed checklist." There was no change to this objective from the prior IEP.

174. There is no evidence that any data was collected, and accordingly, no credible evidence that ■■■ met Measurable Annual Goal 2 or any of the related objectives.

175. In the domain of Independent Functioning (Transition Area: Daily Living Skills), Measurable Annual Goal 3 provided as follows: "Given instruction and practice the student will

demonstrate skills for planning and preparation of food at a functional level with 60% mastery or in 3 of 5 trials."

176. Short-Term Objective 3-1 stated, "████ will plan simple meals" with 60 percent mastery, as demonstrated by "Student Product." There was no change to this objective from the prior IEP.

177. Short-Term Objective 3-2 stated, "████ will follow a simple recipe or package directions" with 60 percent mastery as demonstrated by "Student Product." There was no change to this objective from the prior IEP.

178. There is no evidence that any data was collected. The evidence establishes that █████ could follow microwave directions and prepare instant food, but there is no credible evidence that any meal planning occurred or that any food recipe was followed, and accordingly, no credible evidence that █████ met Measurable Annual Goal 3.

179. In the domain of Communication, the IEP identified the "Priority Educational Need" as follows:

████ needs to use the ACD and sign language to demonstrate pragmatic skills.

180. Unchanged Measurable Annual Goal 5 was as follows:

Given instruction the student will demonstrate pragmatic skills in the ESE classroom in 7 of 10 trials utilizing an Augmentative Communication Device.

181. Short-Term Objective 5-1 required that the student "demonstrate appropriate attention seeking skills such as raising hand, using ACD to get another's attention, and waiting for eye contact before engaging in communication" on a monthly basis, six out of 10 times with decreasing prompts, as demonstrated by tally sheets. There was no change to this objective from the prior IEP.

182. Short-Term Objective 5-2 required that the student "initiate, maintain, and close conversations" on a monthly basis, seven out of 10 times with minimal prompts, as demonstrated by tally sheets. There was no change to this objective from the prior IEP.

183. Short-Term Objective 5-3 required that the student "demonstrate appropriate turn-taking skills during conversation" on a monthly basis, seven of 10 times with minimal prompts, as demonstrated by tally sheets. There was no change to this objective from the prior IEP.

184. Short-Term Objective 5-4 required that the student "use non-verbal cues in a conversational setting" on a monthly basis, five of 10 times with decreasing prompts, as demonstrated

by tally sheets. There was no change to this objective from the prior IEP.

185. Short-Term Objective 5-5 required that the student "express greetings and farewells at appropriate intervals" on a monthly basis, seven of 10 times with minimal to no prompts, as demonstrated by tally sheets. There was no change to this objective from the prior IEP.

186. Although the evidence establishes that ■■■ used the ACD with fluency, there was no evidence that any data was collected, and no credible evidence that Measurable Annual Goal 5 or any of the related objectives were achieved.

TRANSITION SERVICES

187. The Petitioner's parents assert that ■■■ was not provided appropriate transitional services, that ■■■ was not prepared to transition into regular education classrooms with non-disabled students, that ■■■ was not prepared to transition into any post high-school education or vocation, and that ■■■ has not developed skills that allow ■■■ to function in the community on even a partially independent basis.

188. There is no credible evidence that even remotely suggests the student could have been transitioned into regular education classrooms with non-disabled students. Nothing about the student's behavior suggests that ■■■ could have been transitioned into a regular classroom at anytime during the

years at issue in this proceeding. Although there were goals related to socialization with peers, even had those goals been met, it is little more than speculative to assume that such limited interaction would have resulted in full reintegration into a regular high-school classroom, because no behavioral plan that could have addressed the student's deficiencies was implemented on a consistent basis.

189. The April 2002 IEP stated that the student had transition needs related to academic instruction and related services (transportation, occupational therapy, assistive technology device, and behavioral analyst services). There was essentially no evidence presented related to this IEP.

190. The February 2003 IEP meeting included a transition specialist who appeared to be oriented towards "lower-functioning" non-college bound students, but who was able to offer information related to services for which [REDACTED] might have received benefit. The meeting also included an occupational therapist that had just begun working with [REDACTED]

191. After the February 2003 IEP was written, an occupational evaluation was performed. In addition, a computer was set up in [REDACTED] classroom so that [REDACTED] could engage in an online course, the expectation being that [REDACTED] pursuit of post-high-school education would require use of an online classroom setting. [REDACTED] initially participated in the online course, but

shortly after starting the class, ■■■ stopped and refused to engage in the process.

192. No transition specialist attended the October 2003 IEP meeting.

193. Prior to the February 2004 IEP meeting, another occupational evaluation was performed by the transition specialist. At the IEP meeting, various transition services were discussed, and the vocational rehabilitation representative was present. Although the parents expressed dismay that the community-based services were extremely limited, there is no evidence that such services are within the responsibility of the Respondent.

194. The evidence establishes that there was little coordination in the provision of transition services to ■■■ and that there was no identification of a reasonable post-school outcome for a student receiving a regular high-school diploma. Until a few months before the student graduated, the identified transition outcome was for ■■■ to continue on to college. At the graduation IEP, at which point ■■■ was two half-credits from receiving ■■■ diploma, the IEP team deleted college as the projected outcome with little explanation.

195. To the extent that the specific goals of the IEPs were unmet, the evidence establishes that the Respondent failed to provide appropriate transition services to the student.

BEHAVIORAL DEFICIENCIES

196. The Petitioner's parents assert that [REDACTED] has serious behavioral deficiencies and did not make behavioral progress due to the "institutional neglect of [REDACTED] behavioral/social/emotional needs." The Petitioner's parents further assert that the Respondent consistently failed to provide a functional behavioral program, and relied on "environmental control" instead of behavioral training, which "left [REDACTED] unable to function independently." The Petitioner's parents note that the education was provided in a "self-contained, highly restrictive environment."

197. There is no evidence that the Respondent "neglected" the student's "behavioral/social/emotional needs," but the evidence indicates that the Respondent's behavior programs were inconsistently implemented. The Respondent provided no cognitive behavioral therapy and no desensitization training, and Mr. Thornhill's practice of allowing [REDACTED] to reject and thereby escape from various tasks likely reinforced the propensity of the student to refuse the tasks.

198. The evidence establishes that Mr. Thornhill was attempting to educate [REDACTED] without provoking an aggressive incident that [REDACTED] viewed as detrimental to the student's progress; however, there is no credible evidence that a plan was consistently implemented to address the student's resistance,

and there is no credible evidence that such a plan could not have been created and implemented.

199. As to the instructional location, initially the segregated portable classroom placement was determined based on the student's aggressive behavior at the [REDACTED] Center. It is unclear who initially chose the location; however, it is clear that the parents supported the decision. Although the parents, as did other IEP team members, expressed a desire that the student be able to interact more with peers, it is clear that the parents were not dissatisfied with the location of the student's education. Even during the February 23, 2004, IEP team meeting, the student's [REDACTED] agreed that the student required continuing supervision because of the history of aggression and that were the student to be located with other students in the high-school facility, there could likely be increased aggressive behavior.

200. It should be noted that at some point, there was an attempt to have students from the high school, including [REDACTED], come to the student's portable classroom. After a few times, the visits stopped for reasons that are unclear, but there is no evidence that the discontinuation was related to any behavior by [REDACTED]

201. The parents now suggest that a residential placement would be less restrictive than the portable classroom, but in

fact, a residential placement in a secured facility, away from the student's home with ■■■■ parents, would be a more restrictive environment than that which the School District provided. The evidence establishes that, based on consideration of all factors, the separate classroom location constituted the least restrictive placement available in which ■■■■ could receive instruction.

CONCLUSIONS OF LAW

202. As set forth herein, the Division of Administrative Hearings has jurisdiction over the parties to and the specific subject matter of this proceeding. See Judgment in a Civil Case, Case No. 8:04-cv-2657-T-24EAJ, United States District Court, Middle District of Florida, Tampa Division, May 3, 2006.

203. The Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400, et seq. (IDEA), provides the right of all disabled children to FAPE.

204. The IDEA defines "free appropriate public education" at 20 U.S.C. 1401(9), as follows:

The term "free appropriate public education" means special education and related services that-

(A) have been provided at public expense, under public supervision and direction, and without charge,

(B) meet the standards of the State educational agency,

(C) include an appropriate preschool, elementary school, or secondary school education in the State involved, and

(D) are provided in conformity with the individualized education program required under section [1414(d)] of this title.

205. The issue in the case is whether the Respondent has provided FAPE to the Petitioner.

206. In order to satisfy the IDEA requirement of FAPE, the School Board must provide personalized instruction with sufficient support services to permit the handicapped student to benefit educationally from that instruction. The School Board is not required to maximize the student's educational benefit or guarantee a specific level of success. The student is entitled to an individual plan of instruction that contains goals and objectives reasonably calculated to provide educational benefit. The issue at an administrative hearing is to determine whether the School Board has complied with statutory procedures, and then determine whether the individualized program developed through such procedures is reasonably calculated to enable student to receive educational benefits. Board of Education v. Rowley, 458 U.S. 176 (U.S. 1982); JSK v. Hendry County School Board, 941 F.2d 1563 (11th Cir. 1991).

207. The nature and extent of services which must be provided to an exceptional student were addressed in School

Board of Martin County v. A. S., 727 So. 2d 1071, 1074 (Fla. 4th DCA 1999) as follows:

Federal cases have clarified what "reasonably calculated to enable the child to receive educational benefits" means. Educational benefits provided under IDEA must be more than trivial or de minimis. J.S.K. v. Hendry County Sch. Dist., 941 F.2d 1563 (11th Cir. 1991); Doe v. Alabama State Dep't of Educ., 915 F.2d 651 (11th Cir. 1990). Although they must be "meaningful," there is no requirement to maximize each child's potential. Rowley, 458 U.S. at 192, 198. The issue is whether the "placement [is] appropriate, not whether another placement would also be appropriate, or even better for that matter. The school district is required by the statute and regulations to provide an appropriate education, not the best possible education, or the placement the parents prefer." Heather S. by Kathy S. v. State of Wisconsin, 125 F.3d 1045, 1045 (7th Cir. 1997) (citing Board of Educ. of Community Consol. Sch. Dist. 21 v. Illinois State Bd. of Educ., 938 F.2d 712 at 715, and Lachman v. Illinois State Bd. of Educ., 852 F.2d 290, 297 (7th Cir. 1988)).

208. The burden is on the Petitioner to establish by a preponderance of the evidence that the student has not received FAPE. Schaffer v. Weast, 126 S. Ct. 528, 537 (2005). In this case, the Petitioner has met the burden. As set forth herein, the evidence establishes that the Respondent failed to provide FAPE to [REDACTED]

209. Although the IEPs included measurable annual goals and objectives as required by law, the Respondent failed to execute any systematic data collection process to ascertain

whether goals or objectives were being met, and, thereby, failed to implement the IEPs.

210. The review of the student's progress was based almost entirely upon the classroom teacher's anecdotal recollection of the student's performance levels. It is simply not rational to establish numerically quantifiable goals and objectives without providing for systematic data collection to determine by review of data whether the goals and objectives are being met.

Accordingly, the succeeding IEPs were not based upon a reliable determination of the student's abilities or achievements, and were not reasonably calculated to enable the student to receive educational benefits.

211. It is also apparent, based on the obvious fact that many of the goals and objectives were essentially unchanged from one IEP to the next, that no meaningful progress was made on a number of the goals, yet there was no genuine attempt to address why the goals were unmet other than to assert that it was either a matter of the student's noncompliance or a result of the student's allegedly innate behavioral deficits.

212. As to the assertion that the failure to meet goals were a matter of noncompliance by the student, the evidence fails to support the assertion, because there is no credible evidence that any appropriate behavioral program that could have

encouraged compliance and impacted the student's ability to achievement █ IEP goals was consistently implemented.

213. The Respondent's failure to provide appropriate behavioral support is nowhere as evident as in relation to the writing goals set forth in several consecutive IEPs. █ was insistent that the student needed to be encouraged, if not required, to write more. Given that the student was non-verbal, █ focus and persistence were well founded.

214. The Respondent asserts that the student can write, but chose not to, yet the IEPs continued to identify a college education as the intended post high-school outcome, an outcome that was highly unlikely for a student who would not comply with a directive to write. It is reasonable to expect that a non-verbal student would be encouraged to communicate by every possible method, at the very least to assist in the student's survival as an non-verbal adult much less in pursuing further education, yet the Respondent completely failed to motivate the student sufficiently to meet the writing goals set forth in the IEPs.

215. Since the commencement of this litigation, the Respondent has in part relied upon █ passage of the writing portion of the FCAT to demonstrate █ writing ability. If passage of the FCAT were all that was required of a Polk County high-school student to receive a regular diploma, the inclusion

of the writing goals in ■■■ IEPs would appear to be superfluous. It is instead presumed that the IEP team thought the writing goals were meaningful to the student's progress and therefore included them in the IEPs. The minimal writing samples attributed to ■■■ and admitted as evidence, do not meet the specific objectives of the IEPs in terms of content or frequency. The fact that ■■■ passed the FCAT writing test is more significantly considered as evidence that ■■■ could be motivated to write, notwithstanding Mr. Thornhill's lack of success, and clearly establishes that the school's efforts in regard to meeting the IEP writing goals were not sufficient.

216. As to the assertion that the IEP goals were unmet due to the student's behavioral deficits, the Respondent took the position during the due process hearing conducted in 2004 that the student had earned ■■■ academic credits, had been awarded a regular diploma, and was prepared to enter college, but for ■■■ behavior, which the Respondent then asserted was a matter of noncompliance.

217. The Respondent now asserts the position that the student's behaviors are at least in part based on response to internal stimuli. To some extent, the Respondent now appears to seek to revisit the IEPs and eliminate certain unmet goals, arguing that the goals were unnecessary to begin with or that

they could not be met because of the student's behavioral challenges.

218. At the hearing, the Respondent presented evidence, specifically the testimony of Dr. Susan Kabot, who opined that ■■■ made progress over the course of ■■■ education to the extent that ■■■ was able to do so, given the nature of ■■■ abilities and ■■■ behavioral challenges. She testified that ■■■ had developed academic skills and was able to communicate effectively, but that ■■■ social and adaptive skills were significantly impaired to the extent that ■■■ will never be able to live independently due to the behavioral issues.

219. As to the writing skills, Dr. Kabot reviewed some written work samples and opined that the student's potential for additional progress towards academic writing goals was very limited, and that based on the rate of progress made during the course of ■■■ high-school education, (and the post high-school education provided pursuant to district court order) the student's ability to improve ■■■ academic writing was marginal. Dr. Kabot testified that because of the impediments presented by ■■■ behavior, little facility would be gained in terms of the future outcome by continuing to focus on essay or poem writing. Dr. Kabot also noted that ■■■ had passed the FCAT writing test.

220. Dr. Kabot testified that although the student had developed skills that sometimes permitted ■■■ to calm ■■■ before

an outburst occurred, the fact was that such outbursts continued to occur with the same historical severity, albeit with less frequency. She opined that it was not possible to assert with reliability that [REDACTED] behavior would not result in injury to another person, a fact that Dr. Kabot identified as a "door closer" as far as [REDACTED] post high-school options.

221. The Respondent's attempt at this point to assert that the failure to meet the IEP goals because of the behavioral challenges would not have influenced the student's outcome after receipt of the high-school diploma, is inappropriate. Further, if it were to be presumed that the Respondent's current position was correct and that the goals were unnecessary, it would appear to be an admission by the Respondent that the IEPs under which the student was educated were not reasonably calculated to enable the student to receive benefit.

222. The Respondent's obligation in providing FAPE was to recognize and address the student's deficiencies, including making an educated and informed determination of the barriers to the student's ability to access the educational offering. Once the IEP was written, the responsibility of the school district was to implement the IEP as written, to subsequently identify any causes for a lack of progress towards the goals, and then to revise the IEP accordingly.

223. There is no credible evidence that there was any reasonable attempt by the Respondent during the two years at issue in this proceeding to respond to the student's behavioral deficits. The Respondent failed to implement a consistent behavioral plan to address the deficits. No behavioral cognitive therapy was provided and no program of desensitization was offered. Mr. Thornhill generally allowed [REDACTED] to dictate what occurred in the classroom and likely reinforced the student's noncompliance with demands.

224. As to transitional services, the Respondent failed to designate appropriate transition services in the IEP documents and failed to provide the services to which the student was entitled, including behavioral and psychological services. Pursuant to law, and based on the student's age, such services should have been specifically identified in the earliest of the IEPs referenced in this order and provided to the student. The services provided in this case were minimal and failed to address the student's specific deficits.

225. Even as late as the final IEP meeting, after the vocational rehabilitation representative suggested that, absent the aggressive behavior, there were programs to address the deficits sufficiently to permit [REDACTED] to utilize [REDACTED] public school education through employment, the Respondent did nothing to reassess whether the behavior could be improved or to provide

appropriate services. Instead, the Respondent eliminated a series of unmet goals from the final IEP and a few months later handed the student a diploma.

226. The School Board is obligated to provide personalized instruction with sufficient support services to permit the handicapped student to benefit educationally from that instruction. There is little evidence that any educational benefit was received by ■■■ during the 2002-2003 and 2003-2004 school years. Under the facts of this case, the award of a diploma at the conclusion of the student's school attendance is insufficient in and of itself to constitute educational benefit.

ORDER

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

DETERMINED that the Polk County School District has not met its obligation to provide a free appropriate public education to ■■■ for the 2002-2003 and 2003-2004 school years.

DONE AND ORDERED this 8th day of November, 2006, in
Tallahassee, Leon County, Florida.

S

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NOTICE OF RIGHT TO JUDICIAL REVIEW

This decision is final unless an adversely affected party:

- a) brings a civil action within 30 days in the appropriate federal district court pursuant to Section 1415(i)(2)(A) of the Individuals with Disabilities Education Act (IDEA); [Federal court relief is not available under IDEA for students whose only exceptionality is "gifted"] or
- b) brings a civil action within 30 days in the appropriate state circuit court pursuant to Section 1415(i)(2)(A) of the IDEA and Section 1003.57(5), Florida Statutes; or
- c) files an appeal within 30 days in the appropriate state district court of appeal pursuant to Sections 1003.57(5) and 120.68, Florida Statutes.