Palm Beach County School District
No. 04-2539E
Initiated by: Parent
Hearing Officer: Florence Snyder Rivas
Date of Final Order: March 7, 2005

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

[redacted],	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 04-2539E
	)	
PALM BEACH COUNTY SCHOOL BOARD,	)	
	)	
Respondent.	)	
_____	)	

FINAL ORDER

Pursuant to notice, a final hearing was conducted in this case on November 3 through 5, 2004, in West Palm Beach, Florida, and on December 13, 2004, by telephone conference, before Administrative Law Judge Florence Snyder Rivas of the Division of Administrative Hearings.

APPEARANCES

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STATEMENT OF THE ISSUE

Whether Petitioner is entitled to be reimbursed for the cost of services provided to [redacted] while an inpatient at [redacted] Hospital.

PRELIMINARY STATEMENT

This case arises under the Individuals with Disabilities Education Act (IDEA), Title 20, Section 1400, et seq., United States Code. IDEA in the context of this case requires that exceptional students be provided a free appropriate public education in their least restrictive environment (FAPE).

This proceeding was commenced on July 19, 2004, when Petitioner's counsel requested a due process hearing as provided for under IDEA.

More specifically, Petitioner's parents (the [redacted]or Mr. and Mrs. [redacted] seek reimbursement for costs incurred by [redacted] while an inpatient at [redacted] Hospital [redacted] a psychiatric facility to which [redacted] was committed by [redacted] parents from July 12, 2004, through October 11, 2004.

Respondent rejected Petitioner's demand for reimbursement on the ground that [redacted]'s hospitalization at [redacted] was not driven by any educational need on [redacted] part. Respondent contends it was prepared at all times material to this case to implement [redacted]'s individualized education plan (IEP) --a document agreed to by home and school-- at [redacted] School

[redacted] a therapeutic day school which exclusively serves the needs of Palm Beach County's severely emotionally disturbed students.

Following two hurricane-related continuances, the final hearing was held in West Palm Beach on November 3 through 5, 2004; the hearing was completed via telephone on December 13, 2004.

At the commencement of the final hearing and from time-to-time as the hearing went forward, extensive discussions were had among the tribunal and counsel to clarify the scope of the hearing. Petitioner, through counsel, clearly and repeatedly elected to limit the scope of the hearing to the issue of reimbursement for costs incurred at [redacted] Petitioner's counsel specifically disclaimed any wish to litigate in this hearing any issue related to [redacted]'s IEP, including the issue of residential placement.

Well into the hearing, which comprises eight volumes of transcript over a four-day period, Petitioner's counsel changed [redacted] mind.

Citing no statute, case or rule in support of the relief sought, Petitioner moved, ore tenus, to expand the scope of the hearing. More particularly, Petitioner requested that the case record be kept open for the taking of additional evidence related not to the matter of reimbursement, but instead related

to the much broader matter of whether Petitioner should be provided residential placement.

Petitioner’s motion to keep the record open and to enlarge the scope of the hearing was untimely. No credible explanation was offered for Petitioner's failure to put residential placement into issue at any of the many times in the early stages of record development when [redacted] was given the opportunity to do so.

Petitioner’s only argument in support of [redacted] belated motion was a bare assertion that granting same would serve the interests of “judicial economy.” Inasmuch as Petitioner [redacted] had selected the single issue to be tried; the hearing on that issue had long since convened; and substantial labor by all hearing participants had been expended at the time the motion was made, argument based upon "judicial economy" must fail as disingenuous.

The denial of the motion to expand the scope of the hearing imposes no prejudice upon [redacted]'s interests.

This is so because under applicable federal and state law, [redacted] always has access to an IEP team which is under obligation to forthwith consider any relevant information developed since the immediate past IEP meeting. Such information could include subsequent developments which affect Petitioner's educational, psychological or social environment. Any subsequent IEP team

could also be asked to consider the record of this or any previous due process hearing to the extent relevant.

In the ordinary course of student life under IDEA, [redacted] can reasonably expect that a new IEP team meeting may be held in the near term, if one has not yet been held since the record in this due process hearing was closed.

Should Petitioner be dissatisfied with the outcome(s) of any such IEP team meeting, [redacted] has the right to seek a new due process hearing directed to such issue(s).

If Petitioner had chosen in a timely manner to put the matter of residential placement in issue in this hearing, prompt rendition of a final order would have been a matter of utmost importance under applicable state and federal law.

IDEA provides a maximum of 45 days from the filing of a case to rendition of a final appealable order as to issues which directly impact upon the provision of FAPE to an exceptional student. Residential placement is, of course, such an issue.

Although compensatory education is a remedy available to students where a hearing officer or a reviewing court determines that there has been a denial of FAPE, in a real sense, time spent in an inappropriate educational setting is an injury which can never be fully redressed.

Similarly, committing a child of tender years to a residential setting has life-changing consequences for the child

and [redacted] family. It is not to be treated as an afterthought, as Petitioner attempted to do here.

It is true, as the Findings of Fact detail, that the matter of residential placement lurked in the background of this record. Had Petitioner not specifically and repeatedly disclaimed any intent to litigate the matter of residential placement in this proceeding, a final order addressing that issue would have been long since rendered and the appeal process, if any, would have been well underway.

Reimbursement for sums already expended, by contrast, is akin to a civil dispute over money, and time is usually not of the essence. In this case, the parties agreed and the tribunal concurred that time was not of the essence because Petitioner had disclaimed any intent to litigate matters related to the daily provision of FAPE. Based upon this understanding, this forum liberally granted requests for continuances of various deadlines in order to accommodate the schedules of adult hearing participants.

Had the question of residential placement, or any other matter relating to the daily educational needs of Petitioner, been placed forthrightly into issue, this forum would have been obliged to adhere to the letter and the spirit of the deadlines imposed by Congress under IDEA, granting continuances only in

cases of exceptional good cause, and not merely as a courtesy from one over-scheduled adult to another.

The risk of creating an incoherent, incomprehensible record is substantial if Petitioner is permitted to engraft an issue of residential placement upon this voluminous record. Indeed, the record is already complicated out of all proportion to the simple financial dispute at bar.

Petitioner's belated attempt to add the question of residential placement to this hearing was inappropriate for yet another reason: at the time of Petitioner's ore tenus motion to expand the scope of the hearing, Respondent had yet to be given the opportunity to convene an IEP meeting to consider whatever new information Petitioner proposed to bring forward in this hearing. Under IDEA, an IEP team meeting is the appropriate venue for the initial consideration of information in support of such serious maters as residential placement.

For all this tribunal knows, the IEP team might, upon consideration of such information, agree with Petitioner’s views regarding residential placement and a resolution satisfactory to all parties might have been achieved. There is no way to know. What is known is that granting Petitioner’s untimely motion to expand the scope of the hearing would have been an unwarranted and possibly illegal usurpation of the prerogatives and responsibilities of [redacted]'s IEP team.

For all of these reasons, this case is limited to the issue originally framed by Petitioner, i.e. whether or not the [redacted]s should be reimbursed for the cost of any services provided to [redacted] while [redacted] was hospitalized at [redacted]

The identity of witnesses, exhibits and attendant rulings are set forth in the eight-volume transcript filed December 8, 2004, and December 22, 2004.

Timely Proposed Final Orders were received and have been painstakingly considered.

FINDINGS OF FACT

1. Petitioner, [redacted] was born [redacted] [redacted] and immediately placed with adoptive parents, Mr. and Mrs. [redacted].

2. At all times material to this case[redacted] meets the criteria for exceptional student education services (ESE or special education) in Florida. More specifically, under Florida education law, [redacted] is deemed to be severely emotionally disturbed (SED).

3. The record contains no evidence regarding [redacted]'s family of origin. [redacted] claims that [redacted] and [redacted] noticed nothing disturbing about their [redacted]'s development until [redacted] was about three and a-half years old. At that time, according to [redacted] the child's behavior in relation to temper tantrums and the like became more extreme than that of [redacted] peers.

4. Before moving to Florida with [redacted] parents on or about June 30, 2004, [redacted] completed first grade in the [redacted] School District [redacted] in New York.

5. At no time did any education professional there deem [redacted] a candidate to be tested for ESE services on account of any behavioral or academic problem. While [redacted] frequently acted out, [redacted] New York teachers were at all times able to manage [redacted] classroom behaviors and to provide [redacted] with an appropriate education.

6. It was [redacted]'s parents, rather than [redacted] teachers, who steered[redacted] into ESE programs. Their reason for doing so was primarily grounded in their inability to control [redacted] in the home.

7. No independent corroboration exists for most of the instances in which [redacted]'s at-home behaviors posed, in the [redacted]'s opinions, a danger to [redacted] or to others, principally [redacted]'s mother.

8. When [redacted] first entered a special education program in New York, [redacted] was classified as "other health impaired" due to attention deficit (hyperactivity) disorder. Again, this classification was based largely upon behaviors which the [redacted] reported to health care professionals and school officials. [redacted] was usually willing to admit [redacted] inappropriate behavior.

Sometimes [redacted] justified [redacted] behaviors by saying, "I don't like to be told no."

9. Prodded by [redacted]'s parents and hoping to provide [redacted] a "better education," New York officials, over a short period of time, elevated [redacted] classification to the New York state equivalent of SED, and placed [redacted] in increasingly more restrictive settings.

10. The [redacted]s, according to [redacted]'s testimony and the voluminous exhibits and testimony in this case, incurred substantial expense going to doctors, psychiatrists and psychologists seeking help to manage [redacted]'s behaviors in the home.

11. Yet, by [redacted]'s own testimony, they were not always amenable to the guidance offered by the experts whose advice they sought. When [redacted] was five, for example, the [redacted]s consulted a doctor whom [redacted] described as a "master child psychologist."

12. This doctor recommended that training be provided to the [redacted] in their home. The training included teaching the parents how to physically hold and restrain [redacted] when [redacted] was out of control.

13. Although this is a standard treatment for children who are posing a danger to themselves or others, [redacted] considered it to be a form of violence and fired the doctor because "we were like we're not going to do that to our own child."

14. Rather, [redacted] ". . . spent thousands of hours talking to [redacted] [redacted] cajoling [redacted], punishing [redacted], yelling at [redacted], not yelling at [redacted], anything that you can think of we tried. And then we called every professional we could think of to say, are we missing something here? Is there something else we can do?"

15. As [redacted] got older, larger, and harder for the [redacted]s to manage, there was, in fact, "something else" they could do.

16. But the [redacted]'s would not consistently apply well-tested and effective techniques such as putting the child in a safe room and ignoring [redacted] Nor would they reconsider their opposition to learning to physically restrain [redacted] by using a safe, age-appropriate hold.

17. Instead, they developed a pattern of committing [redacted] to psychiatric hospitals when they deemed [redacted] unmanageable at home. With respect to each such instance, there is no evidence that any independent witness viewed the behavior which provoked [redacted]'s parents to have [redacted] committed.

18. In between hospitalizations in New York, [redacted] returned to school where [redacted] was, as are most SED children, "a handful."

19. In March, 2004, [redacted]'s New York IEP team ". . . thought it was time to give [redacted] a more supportive program

although we didn’t see the aggressive behaviors that were seen in the home."

20. The "more supportive program" was a well-appointed private therapeutic day school known as [redacted] was admitted to [redacted] on March [redacted] 2004.

21. [redacted] is a much smaller and newer school than [redacted] [redacted]s' ESE students have a variety of disabilities. [redacted] attends exclusively to the needs of SED students.

22. In addition, [redacted] has amenities which [redacted] does not, such as a working farm. There was no persuasive evidence that any of the differences between [redacted] and [redacted] viewed individually or as a whole, rendered [redacted] more appropriately suited to [redacted]'s educational needs than is [redacted]

23. Under questioning, which invited testimony that[redacted]'s behavior at home was beginning to impact [redacted] success at school, an ESE supervisor for [redacted] said, "Well to the degree that you know [redacted] was being hospitalized and you know coming and going and missing a lot of school and showing distractibility, we just felt it [redacted] would be a better, more supportive place for [redacted]."

24. As the [redacted]s prepared to move to Florida, the New York IEP team gathered on [redacted]'s behalf for the last time on or about June [redacted] 2004.

25. With full knowledge that this team would not have to implement any IEP which would be prepared at this meeting, the New York team executed a new IEP.

26. This most recent New York IEP was identical to the IEP developed for [redacted] when [redacted] entered [redacted] less than three months earlier, with one important exception. For the first time, the New York IEP team made what Petitioner calls a "recommendation" for residential placement. The [redacted]s case for reimbursement for costs incurred at [redacted] substantially predicated upon this "recommendation."

27. However, in the context of the entire record, the New York IEP team's "recommendation' for residential placement merits little if any weight. Had the New York IEP team held a good faith belief as of June [redacted] 2004, that [redacted] was a candidate for residential placement, it would have been incumbent upon team members to insist that the recommendation be implemented.

28. They did not do so. Asked why [redacted] was not living at [redacted] on June [redacted] 2004, the day after the IEP team rendered its "recommendation" for residential placement, a New York educator opined, "It obviously wasn’t at an emergency level where [redacted] had to be immediately placed. It was looking ahead

to the start of the program [for the school year which would begin two months hence]."

29. Had [redacted] gone into residential care at [redacted] academic program would have remained identical to what it had been since [redacted] entered the school as a day student in March 2004.

30. The New York IEP did not create an entitlement to residential placement in Florida, or even in New York. To the contrary, had [redacted] remained in New York past July 1, 2004, or should [redacted] return there, a successor IEP team would have complete discretion to make a different recommendation as to any element of [redacted]'s IEP, including where it is to be implemented.

31. Respondent school district, in fulfillment of its obligations to [redacted] and to those similarly situated, has a substantially more comprehensive treatment program serving a far larger population of SED students than are served in the [redacted] school district.

32. Respondent, by virtue of its size, is able to maintain a large and highly qualified exceptional student education staff, which can and did in this case mobilize more quickly than the law requires to address the needs of [redacted] as [redacted] transitioned to Palm Beach County.

33. In addition, Respondent has effective partnerships with social service agencies experienced in working in homes to

assist parents who, like the [redacted]s, are unable to control their children's behavior.

34. After the [redacted]s were resident in [redacted] Florida, an IEP meeting was forthwith convened on July [redacted] 2004. By this time, the [redacted]s were intransigent in their view that they were entitled to residential placement for their [redacted].

35. According to [redacted] who attended the meeting on behalf of the family, "They told me they needed an opportunity, they being Palm Beach County, to conduct their own evaluation in school. And they typically didn't put children that young into a residential program regardless of the information we brought down from New York. And I stressed to them in the strongest possible case [sic] that we had ten consistent months of data and could they please take a look at the data. . . ."

36. Indeed, under Florida law relating to an exceptional student transferring from out of state, Respondent was entitled to six months to gather information, complete necessary evaluations, and develop its own IEP for [redacted] Yet, the education professionals on the Florida IEP team mobilized promptly and focused upon how to provide FAPE to [redacted] once [redacted] was resident in Palm Beach County.

37. Following thoughtful consideration, [redacted]'s Florida IEP team reasonably elected to implement the substance of [redacted]'s New York IEP at [redacted] Additionally, the Florida educators

on [redacted]'s team committed to closely monitoring [redacted] progress and making substantial decisions, if necessary, in less than the six months time allotted to them under the law.

38. Extensive evidence in the record demonstrates that the [redacted] staff is fully qualified to implement the academic and behavioral goals set forth in [redacted]'s New York IEP.

39. Behavioral events which [redacted] regard as a crisis are taken in stride at [redacted] The school is equipped to assist the [redacted]'s in accessing community resources which will provide meaningful help to them if they are willing to accept guidance with regard to managing their [redacted] in their home.

40. Respondent takes seriously, as it must under relevant law, its obligation to implement IDEA's requirement that children be educated in their least restrictive environment.

41. The law reserves residential placement for circumstances where an ESE student is failing to make progress in school; when the school lacks the capacity to implement an IEP; or when the student cannot safely be transported to school. None of these circumstances has been shown to exist here.

42. [redacted]'s relevant resources include monthly parents' support group meetings; medication management and psychiatric services of Dr. [redacted] an experienced school based psychiatrist who has served SED students for many years as [redacted]'s doctor in residence; a personal therapist with

whom students and families may meet, within reason, as often as needed; and faculty and staff which works exclusively with an SED population.

43. The IEP team's decision to implement [redacted]'s New York IEP at [redacted] was not lightly made. Respondent's top ESE official flew to New York and personally visited [redacted] and spoke with [redacted]'s teachers and other members of [redacted] New York IEP team.

44. The Florida IEP team offered Extended School Year (ESY) to [redacted] Professionals on the Florida team were of the reasonable belief that it would be in [redacted]'s best educational interests to participate in ESY. [redacted] parents rejected ESY and sent [redacted] instead to summer camp where [redacted] was not successful.

45. In the reasonable anticipation that [redacted] would begin attending school at [redacted] on August [redacted] 2004, Dr[redacted] met with [redacted] and [redacted] parents on July [redacted] 2004.

46. The fact-finder fully credits Dr. [redacted]'s testimony that "there was nothing about [redacted] and how [redacted] presented [redacted] that day in my office which indicated to me that [redacted] could not be educated. [redacted] did not appear to be a child who was an imminent risk to [redacted]. [redacted] participated in the interview. [redacted] was logical and organized. [redacted] described emotional stressors, [redacted] described having gone through a lot recently

but there wasn’t anything in my interactions with [redacted] during that short period of time that indicated an inability for [redacted] to engage in the interview process with me. To be honest with you, there was nothing very significantly different in my interview with [redacted] that day than my interview with lots of students who will come to [redacted] and do well. . . .”

47. In sum, with reference to the performance of the Florida IEP team with respect to [redacted]'s transition to Palm Beach County, the record overwhelmingly demonstrates that Respondent’s employees did their jobs, and did them well.

48. On July [redacted] 2004, events overtook dialogue between the [redacted]s and the school district. On that day, the [redacted]s committed their son to [redacted] Hospital, an acute psychiatric facility located in West Palm Beach. This admission, like the ones in New York, was based upon behaviors in the home observed only by [redacted]'s parents.

49. As the events described hereafter were to unfold, they had the effect of precluding Respondent, through no fault of its own, from attempting to educate [redacted] at any time relevant to this case.

50. Medical personnel at [redacted] quickly determined that [redacted] was not in acute psychiatric distress and was thus able to return to [redacted] home environment.

51. More specifically, on July [redacted] 2004, a highly qualified attending psychiatrist at [redacted] evaluated [redacted] reviewed [redacted] chart, conferred with the nursing staff and social worker and reasonably concluded the child was ready to be discharged to [redacted] home environment.

52. A "big screaming match" ensued between [redacted] and the [redacted] psychiatrist. [redacted] was unsuccessful in persuading the doctor that [redacted] should not be discharged home, and thereafter the [redacted]s refused to pick their [redacted] up.

53. Instead, they made arrangements to place [redacted] in [redacted], located in Martin County, Florida, approximately [redacted] miles north of the [redacted]'s [redacted] home.

54. [redacted] entered [redacted] on July [redacted] 2004, and was released on October [redacted] 2004.

55. Respondent was first informed of both hospitalizations on or about July [redacted] 2004. Respondent thus had no prior notice or opportunity to participate in making the contractual arrangements with [redacted] which generated the expenses at issue in this proceeding.

56. Petitioner offered no persuasive evidence that [redacted] was appropriately admitted to [redacted] for any reason, let alone for any educational reason.

57. [redacted] records reflect that[redacted] and all its other patients are admitted and discharged based solely upon

medical reasons. Other interpretations of this record are possible. However, for purposes of this hearing, it is unnecessary to determine whether [redacted] in fact required psychiatric hospitalization when the transfer to [redacted] was effectuated over the objections of [redacted]'s medical staff.

58. Instead, the fact-finder elects to view the evidence in the light most favorable to both hospitals and find that there was a difference of opinion between [redacted] and [redacted] medical staffs as to whether [redacted] was in need of psychiatric hospitalization at the time the transfer was made.

59. Even if [redacted]'s Florida IEP team had been consulted about the [redacted]'s desire to place their [redacted] at [redacted] the team lacked legal authority to order [redacted] to accept [redacted] purports to admit patients based solely upon the independent medical judgment of its physicians and specifically disclaims that it would admit a student for educational, rather than medical reasons. The IEP team is neither qualified nor legally responsible to determine if a student is in need of hospitalization for any medical or psychiatric problem.

60. Few hospitals have the ability to provide formal education to inpatients. [redacted] is the psychiatric hospital closest to [redacted]'s home which has a school program for its student patients.

61. [redacted] school was entering summer recess on July [redacted] 2004, the first day of [redacted]'s hospitalization there.

62. When [redacted] school resumed on August [redacted] 2004, personnel attempted to implement the IEP developed for [redacted] in New York and adopted by Respondent for implementation at [redacted]. Homebound hospital eligibility was added to the IEP for the purpose of securing payment from Martin County, where [redacted] was considered resident while hospitalized.

63. The parties stipulated that, in the event Petitioner prevailed in this proceeding, a separate hearing would be held in order to establish the exact amount of Petitioner's claim for reimbursement. Thus, this record contains no evidence regarding what portion of [redacted]'s charges incurred while at [redacted] are related to [redacted] education.

64. [redacted] provided respite for both [redacted] and [redacted] parents. [redacted] was observed by [redacted] caregivers to be a very bright boy who "figures [things] out probably a lot of times before other people, other adults do."

65. [redacted] did not require the kind of hands-on controls, nor the level of medication, needed for the truly out of control population which [redacted] more typically serves. Instead, [redacted] learned that manipulative behavior did not yield results in this particular environment.

66. The atmosphere which surrounded the hearing in this case was highly charged and counterproductive to the spirit of trust and cooperation which IDEA promotes. To take just one example, at hearing the [redacted]s and their attorney repeatedly expressed deep suspicions regarding the integrity of the people who administer the process by which student rights under IDEA are safeguarded.

67. More specifically, both on and off the record, the [redacted]s and their attorney expressed the view that Respondent's employees charged with the responsibility of enforcing the procedural and substantive requirements of IDEA have colored their testimony and subordinated the law and [redacted]'s interests to save the expense of residential placement.

68. These are serious charges which, if true, would warrant professional and possibly legal discipline, as well as harsh condemnation by this tribunal and reviewing courts. No evidence was presented to support Petitioner's view that Respondent's witnesses provided unreliable, let alone perjorious testimony in contravention of their oaths to tell the truth and their legal and moral obligations to their respective professions.

69. If the [redacted]s remain in Palm Beach County and elect to enroll their [redacted] in Respondent's school district, [redacted] and

Respondent's staff will be obliged by law to work as a team to provide [redacted] with FAPE until [redacted] turns 22.

70. It is to be expected that upon a dispassionate examination of the record, members of [redacted]'s IEP teams, present and future, will gain perspective regarding the factual and legal environment in which they will be called upon to operate over the next decade and a half. The poisonous atmosphere which surrounded this case created personal hardships, hurt feelings and significant expense, all of which IDEA seeks to minimize, if not eliminate altogether.

71. In order for IDEA to work for the benefit of a disabled student, an atmosphere of trust between home and school must prevail. At a minimum, civility is essential and "screaming matches" are never to be tolerated.

72. Based upon an exhaustive review of the record, including careful consideration of the demeanor of witnesses under oath; the interests and motivations of the witnesses to view identical circumstances in very different ways; the relationships among the parties and their history together; the respective academic credentials and experience of witnesses; and the accuracy, or lack of accuracy, regarding the factual predicate upon which opinion testimony was based; the trier of fact has no hesitation to say that at all relevant times, Respondent was able to implement [redacted]'s IEP at [redacted] a

less restrictive environment than [redacted] the psychiatric hospital unilaterally selected by the [redacted]s.

CONCLUSIONS OF LAW

73. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto. § 1003.57(5), Fla. Stat. (2004).

74. The United States Supreme Court has held that the requirements for a FAPE are met when a qualifying student is provided "access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child." Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176, 102 S.Ct. 3034, 3048-49, 73 L.Ed.2d 690 (1982). FAPE is to be provided in all cases pursuant to an IEP, the appropriateness of which is determined by two questions: "First, has the State complied with the procedures set forth within the Act? And second, is the individualized education program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits?." Id.

75. In determining the appropriateness of an IEP, or the manner in which it is to be implemented, deference is given to the education professionals responsible for providing FAPE to the child. J.S.K. v. Hendry County School Board, 941 F.2d 563, 1573 (11th Cir. 1991); Heather S. v. State of Wisconsin, 125 F.

3d 1045, 1057 (7th Cir. 1997); Hartmann v. Loudon County Board of Educ., 118 F.3d 996, 1005 (4th Cir. 1997). In this case, the relevant education professionals are situated in Florida, not New York.

76. After considering all relevant information, these individuals determined that Respondent school district could meet [redacted]'s educational needs at [redacted] No evidence has been advanced which would provide a basis for this forum to doubt the reasonableness of that decision.

77. If the record in this case permitted factual findings that New York IEP team had made a bona fide recommendation for residential schooling, which it did not; and if such a recommendation could be forced upon Respondent, which it cannot; and if this tribunal were empowered to require residential placement for reasons unrelated to [redacted]'s educational needs, which it is not, such finding(s) would yet not support a conclusion that it is appropriate in this case to order Respondent school district to reimburse the [redacted]s for any portion of their [redacted]'s [redacted] bill.

78. All of the persuasive and credible evidence presented in this forum demonstrates that [redacted] was not only the least restrictive environment in which [redacted]'s IEP could be implemented, but also all of the persuasive and credible

evidence suggests that [redacted] was especially well suited to[redacted]'s unique needs.

79. More precisely, the voluminous record in this case fails to demonstrate that [redacted]'s time in residence at [redacted] was educationally appropriate to [redacted] circumstances, let alone educationally necessary. All of the persuasive evidence suggests that [redacted]'s hospitalization at [redacted] had nothing to do with [redacted]'s education, nor was [redacted] least restrictive environment, at any relevant time.

80. At all times material to this case, Respondent's ESE staff has been respectful of and deferential to its New York counterparts. This courtesy has been demonstrated on the record in a variety of ways, including repeated instances where Respondent's counsel avoided obvious opportunities to play offense in zealously representing her client within the bounds of law. Instead, she was gracious and patient in the face of dubious characterizations of the facts and applicable law.

81. Here is one example from Respondent’s proposed final order: ". . . [the New York IEP team] recommended a residential placement so that [redacted] could do better, even though [redacted] was already making steady progress in [redacted] academics. This is above and beyond what Federal law or Florida law requires."

82. And so it is. Under all of the facts and circumstances of this case, Petitioner's claim for reimbursement for any time spent at [redacted] in 2004 is not well-founded.

83. Even if [redacted] had provided [redacted] with an outstanding educational experience, reimbursement would not be justified. Florida law, which predates Rowley, makes plain that there is nothing in IDEA which obliges a school district to provide the best possible education, or the placement a student's parents prefer. School Board of Orange County v. Blackford, 369 So. 2d 689, 691 (Fla. 1st DCA 1979). See also School Board of Martin County v. A.S., 727 So. 2d 1071 (Fla. 4th DCA 1999).

84. Put another way, the [redacted]s seek to compel Respondent to provide an education, such as it was, according to their dictates. There is no legal basis upon which Respondent may be so compelled. Weiss v. School Board of Hillsborough County, 141 F.3d 990, 997 (11th Cir. 1998).

85. Absent persuasive evidence that an ESE student's educational and medical needs are unseverable and necessitate 24-hour education, or, that 24-hour medical and behavioral supervision is necessary in order for the child to receive any educational benefit, the IEP team and the tribunal are precluded from ordering residential placement. See Jefferson County Board of Education v. Alabama Department of Education, 853 F.2d 853

(11th Cir. 1988); In re Drew P. v. Clarke County School District, 877 F.2d 927 (11th Cir. 1989); Walczak v. Florida Union Free School District, 142 F.3d 119 (2nd Cir. 1998); JSK v. Hendry County School Board, supra; Swift v. Rapides Pub. Sch. Sys., 812 F. Supp. 666 (W.D. La.), aff'd. 12 F.3d 209 (5th Cir. 1993).

86. In this case, evidence regarding the relationship between [redacted]'s educational and medical needs consisted largely of conclusory opinion testimony offered by individuals who lacked the appropriate credentials to render such opinions, and/or who were not fully and accurately informed of relevant facts.

87. Respondent is legally obligated in this case to provide appropriate supports and services to enable [redacted] to succeed in what is for [redacted], as opposed to [redacted] parents, the least restrictive environment. To the extent [redacted]'s parents may have been unable to maintain their [redacted] in [redacted] home after school hours, Respondent was obliged to exhaust community agency intervention options before residential placement could be implemented. See, e.g., Hendry County School Board v. Kujawski, 498 So. 2d 566 (Fla. 2d DCA 1986).

88. Petitioner's evidence, arguments and results argued for in this case are not the province of an Administrative Law Judge. Rather, they must be directed to Congress, the Legislature, and local school districts, for these are the entities lawfully

empowered to dictate methodology and to supply funds for the education of disabled children.

89. Petitioner's case must fail for another reason. Petitioner freely admitted that no effort was made to notify Respondent that [redacted] was being sent to [redacted] because Respondent was, in the [redacted]'s opinion, failing to provide a FAPE to their [redacted].

90. IDEA requires, at a minimum, that Respondent was entitled to notice and an opportunity to consent or not to the [redacted] placement, at least as it relates to any alleged educational necessity. Respondent was also entitled, if its staff so desired, to participate in negotiating financial arrangements with [redacted] or elsewhere, had the parties agreed to residential placement for educational purposes. IDEA imposes a notice requirement for good and sound reasons, one of which is to avoid the need for an administrative law judge to speculate after the fact regarding what the school district might have agreed to had it been given a fair opportunity to participate in the decision making process. Parents who unilaterally change their child's placement without the consent of appropriate school officials do so at their own financial risk. School Committee of the Town of Burlington, Massachusetts, et. al. v. Department of Education, 471 U.S. 359,

373-374 (1996); Florence County School District Four v. Carter, 510 U.S. 7 (1993).

91. In sum, Petitioner failed to demonstrate a factual or legal basis upon which expenses associated with [redacted] hospitalization at [redacted] may be reimbursed. Though not required to do so, Respondent established by the overwhelming weight of credible and persuasive evidence that at all times material to this case, it had the ability to meet [redacted]'s educational needs by implementing [redacted] New York IEP at [redacted]

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Petitioner's claim for reimbursement for the cost of services provided to [redacted] while an inpatient at [redacted] is denied.

DONE AND ORDERED this 7th day March 2005, in Tallahassee, Leon County, Florida.

S

FLORENCE SNYDER RIVAS
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Filed with the Clerk of the
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this 7th day of March, 2005.

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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.