

Broward County School District
No. 05-1959E
Initiated by: Parent
Hearing Officer: Stuart M. Lerner
Date of Final Order: June 16, 2005

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

██████████,)
)
Petitioner,)
)
vs.) Case No. 05-1959E
)
BROWARD COUNTY SCHOOL BOARD,)
)
Respondent.)
_____)

FINAL ORDER

Pursuant to notice, a due process hearing was conducted in this case pursuant to Section 1003.57(5), Florida Statutes, on June 9, 2005, by video teleconference at sites in Fort Lauderdale and Tallahassee, Florida, before Stuart M. Lerner, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Joseph S. Paglino, Esquire
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STATEMENT OF THE ISSUE

Whether the Broward County School Board (School Board) is obligated to place ██████████ in the three-week Extended School Year program at ██████████ School, as requested by █'s parents (instead of placing █ in the five-week Extended School Year program at ██████████ School, as the School Board has proposed).

PRELIMINARY STATEMENT

On May 26, 2005, █'s parents ██████████ and ██████████ requested a due process hearing challenging the School Board's proposal to place █ in the five-week Extended School Year program at ██████████ School rather than in the three-week Extended School Year program at ██████████ School, which is located closer to their home. On that same day, May 26, 2005, the School Board referred the matter to the Division of Administrative Hearings (Division) for the assignment of a Division administrative law judge to conduct the due process hearing █'s parents had requested.

The undersigned was subsequently assigned the case and, on June 1, 2005, conducted a telephonic prehearing conference, at which the parties agreed to a June 9, 2005, hearing date. A Notice of Hearing by Video Teleconference was thereafter issued

formally setting the due process hearing in this case for June 9, 2005.

The due process hearing was held June 9, 2005, as scheduled. At the commencement of the hearing, the parties, through counsel, executed a stipulation (Parties' Stipulation) in which they stipulated to the following:

1. [REDACTED] was born on [REDACTED], 19[REDACTED].
- 2 [REDACTED] is eligible for Exceptional Student Education ("ESE") services in the areas of Autism, Occupational Therapy, Physical Therapy, and Language Impaired.
- 3 [REDACTED] attends [REDACTED] School during the regular school year.
4. On January 18, 2005 and April 15, 2005, [REDACTED]'s IEP Committee recommended [REDACTED] for Extended School Year ("ESY") services for five (5) weeks during the summer, due to the likelihood that without ESY services [REDACTED] would experience: (a) significant or substantial regression; (b) a significant impact on emerging critical life skills; and (c) behaviors related to this disability will be significantly impacted.
5. [REDACTED]'s parent was in agreement with the recommendation of the IEP Committee for five weeks of ESY services until [REDACTED] was informed that the program would take place at [REDACTED] School and require [REDACTED] to be transported on a school bus to the program.
6. The bus ride for [REDACTED] to attend the five-week ESY program is estimated at 45 minutes to one hour.
7. The School Board will provide a one-on-one aide to accompany [REDACTED] on the school bus to and from the ESY program.

8. The one-on-one aide will be trained to administer ██████'s Behavior Intervention Plan and Sensory Diet while ██████ is transported.

9. The School Board will provide "preferred activities" for ██████ while ██████ is transported to the ESY program.

10. The School Board will provide the necessary safety equipment on the bus to ensure that ██████ is not mobile while being transported.

A total of eight witnesses testified at the June 9, 2005, due process hearing: Beth Knepp, Eunice Lanzas, David Riddle, Nancy Quinones, Keeli Beeker, ██████ Nicole DeBarros, and Susan Schwartz. In addition to this testimony, a total of ten exhibits (Petitioner's Exhibit 1, and Respondent's Exhibits 1 through 9) were offered and received into evidence without objection.

At the conclusion of the evidentiary portion of the June 9, 2005, due process hearing, the undersigned, pursuant to the agreement of the parties, established and announced on the record a June 14, 2005, any time before midnight, deadline for submitting (by facsimile transmission) proposed final orders. In agreeing to this deadline, the parties specifically acknowledged their understanding that, in preparing their proposed final orders, they would not have the benefit of a transcript of the due process hearing since such a transcript would be available (on request) only after the undersigned issued ██████ final order in this matter.

The parties timely submitted their Proposed Final Orders on June 14, 2005.

FINDINGS OF FACT

Based on the evidence adduced at the due process hearing, and the record as a whole, the following findings of fact are made to supplement the factual stipulations contained in the Parties' Stipulation¹:

1. ██████ is ██████'s mother. ██████ is employed as an exceptional student education (ESE) teacher by the Miami-Dade County School Board. She teaches students with learning disabilities.

2. ██████ is ██████ father.

3. ██████ and ██████ (Parents) have one other child, an 11-month-old ██████.

4. The family resides in a home in the southwest corner of Broward County, several blocks from ██████ School (██████████), the school ██████ attended as a kindergarten student during the regular 2004-2005 school year (and the school ██████ will be attending the next regular school year).

5. As a kindergartener at ████████████████████, ██████ received instruction and services in a "self-contained" ESE classroom with other autistic children, where ██████ remained for the duration of the school day (which began at 8:00 a.m. and ended at 2:00 p.m.), leaving only to go to the playground, cafeteria, music area, or media center or to participate in a fire drill.

6. While at school, ██████ had a schedule of daily activities, which was followed "to a 'T.'" It was important to strictly adhere to the schedule because ██████ needs consistency, repetition, and routine. Doing so helped make it less difficult for ██████ to

transition from one activity to another during the course of the school day.

7. [REDACTED]'s schedule included the activity of going to the bathroom every half hour before lunch, starting at 8:15 a.m. Having [REDACTED] go to the bathroom in accordance with this schedule was designed to help [REDACTED] better tolerate people helping [REDACTED] with toileting tasks. [REDACTED] did not have any physical problem that required [REDACTED] to urinate or defecate every half hour.

8. [REDACTED] is a very loving child.

9. Although [REDACTED] shows little or no interest in interacting with other children, [REDACTED] does seem to enjoy receiving the attention of certain adults and becomes easily attached to them. There are also certain activities and items that [REDACTED] prefers.

10. [REDACTED] craves one-on-one adult attention.

11. When [REDACTED] does not receive the attention [REDACTED] desires, [REDACTED] can become physically aggressive.

12. [REDACTED] (who has significant speech and language deficits) also uses physical aggression to communicate [REDACTED] wants or needs.

13. Additionally, there are occasions when [REDACTED] has a physical outburst for no apparent reason. These outbursts can occur at any time and at any place.

14. The length of these episodes of physical aggression varies, as does the time it takes for [REDACTED] following such an episode, to "cool down" and "regroup" and regain [REDACTED] focus. There is a direct correlation between the length of the episode

and the amount of time it takes for ■ to return to ■ pre-outburst demeanor and attentiveness.

15. Having these physical outbursts interferes with ■'s ability to learn. ■'s school day would be more productive if these outbursts could be avoided. Measures and techniques designed to prevent such outbursts have been developed by School Board staff.

16. For example, Eunice Lanzas,² an occupational therapist employed by the School Board, has devised "sensory diet activities" for ■ during the school day to provide ■ "comfort and promote self-regulation." These activities include ■'s eating "sensory snacks," that is

foods that are:

1. Chewy: turkey jerky, gummies, granola bars, fruit leather, small pieces of steak, Tortellini, English muffins, Dehydrated apple rings, bagels.

2. Crunchy: Raw vegetables, apples, cereal, popcorn, Tortilla chips, pretzels, rice cakes.

3. Spicy: salsa, cheese nips, chips, chili.

4. Smooth and thick: peanut butter, hummus, strained banana, cooked cereal, cottage cheese, honey.

5. Sour: lemon, pickle, unsweetened yogurt.

6. Tart: cranberry juice, grapefruit juice, grape juice.

7. Cold: sparkling soda water, ice cream, frozen juice bar, chilled orange slices;

going on "sensory walks," which involve ■■■ "[c]arry[ing] a weighted backpack and walk[ing] around campus for approx. 10 minutes"; "us[ing] a Nuk" and "blow toys"; "bouncing" by "us[ing] a small trampoline/ball"; doing a "steam roller" exercise by "l[aying] on the floor and roll[ing] a large ball over the length of ■■■ body with consistent pressure"; doing "scooter work" by "l[aying] on ■■■ belly and . . . crawl[ing] with ■■■ hands for a distance of one hallway" or pulling a scooter with "heavy books" on it "along the distance of one hallway"; sucking on ice and "drink[ing] yogurt/milk shake/applesauce/pudding through a straw"; engaging in "resistive play" by "us[ing] clay, silly putty, dough, [and] squeeze toys"; and receiving a "deep pressure massage" where lotion is applied to ■■■ extremities and rubbed "firm[ly]."

17. ■■■ current IEP was developed at a meeting held on April 15, 2005 (April 2005 IEP ■■■ participated in the meeting and signed the IEP. Other participants included ■■■, as ESE specialist at ■■■; ■■■, ■■■ kindergarten teacher at ■■■; ■■■, the autism coach at ■■■; ■■■, a School Board speech language pathologist who had worked with ■■■ at ■■■ since the beginning of the school year; Ms. ■■■; and ■■■, a program specialist for behavior at

the School Board's south area office. (The foregoing participants in the April 15, 2005, meeting will hereinafter be referred to, collectively, as the "Committee.")

18. The Parents have not taken issue with any of the contents of the April 2005 IEP.

19. Under the "domain" of "[c]urriculum and [i]nstruction," the April 2005 IEP states the following regarding ██████ "[p]resent [l]evels of [p]erformance"; the "[i]mpact of ██████ disability on this [d]omain"; ██████ "priority educational need(s)"; and ██████ "[a]nnual [m]easurable [g]oal":

Present Levels of Performance

██████ attends to a variety of classroom tasks for 5 seconds with verbal, visual, gestural, and physical prompts on an inconsistent basis. ██████ mom reports that she has seen more attention during a preferred task at home. In a one-to-one environment in a quiet room with few distractors and no other students or adults, the OT and the Speech/Language pathologist have both seen attention to task for up to 5 minutes with verbal, visual and gestural prompting and continual reinforcement. Attention to task and activity is impacted by aggressive behavior (defined by hitting, kicking, biting, scratching and hair-pulling ██████ requires consistent redirection and a full prompt range to transition and to participate throughout the day. The staff utilizes actual photographs on a ring of areas/activities to show ██████ It is unclear whether ██████ understands the picture transition strategy at this time.

Impact of the disability on this Domain

■■■■■ disability affects ■■■■■ ability to attend to an activity.

Based on the educational impact of the disability, the priority educational need(s) for the duration of the IEP is/are the following:

Increase ability to attend to an activity.

1. Annual Measurable Goal

By September 2005, ■■■■■ will follow a teacher/adult model to imitate a simple action from a pool of five given verbal, visual, and gestural prompts for three consecutive sessions as measured by documented teacher observation.

20. Under the "domain" of "[s]ocial/[e]motional [b]ehavior," the April 2005 IEP states the following regarding ■■■■■ "[p]resent [l]evels of [p]erformance"; the "[i]mpact of ■■■■■ disability on this [d]omain"; ■■■■■ "priority educational need(s)"; and ■■■■■ "[a]nnual [m]easurable [g]oals":

Present Levels of Performance

■■■■■ appears to enjoy circle/music time and will, on an inconsistent basis, smile when teacher is performing gross motor and sing-a-long movements. Although interactions with peers given a full prompt range has been attempted, ■■■■■ displays no interest in ■■■■■ peers. ■■■■■ has responded positively on several occasions with preferred staff members and seeks their attention. ■■■■■ recent behaviors require that ■■■■■ peers are not in close proximity to maintain a safe environment for everyone. In the cafeteria ■■■■■ sits at a table away from ■■■■■ peers because when ■■■■■ is in close proximity to peers ■■■■■ attempts to lunge towards them. ■■■■■ often puts ■■■■■ hands over ■■■■■ ears in the cafeteria and in the media center. ■■■■■

continues to respond to a verbal SD [REDACTED] Chewy" to ensure that [REDACTED] is using safe items (those provided by OT, etc.) for oral stimulation. Scheduled sensory integration activities are embedded within [REDACTED] daily schedule along with a choice board for requesting as per [REDACTED] behavior plan to reduce aggressive behaviors. Data reflects an increase in a variety of aggressive behaviors including scratching, kicking, hair-pulling, and a few bites. Antecedents continue to be varied and many times are unclear. Several times, [REDACTED] has been in a "crisis-like" situation where [REDACTED] has fallen to the ground and displayed continuous aggressive behavior. Transition with staff often is problematic as [REDACTED] will pinch, scratch, and, on occasion, bite with a seemingly unclear antecedent. Two Behavior Intervention plans are currently in place: one to deal with inappropriate items in [REDACTED] mouth and one to deal with [REDACTED] aggressive behaviors.

Impact of the disability on this Domain

[REDACTED] disability affects [REDACTED] ability to interact appropriately with staff members.

Based on the educational impact of the disability, the priority educational need(s) for the duration of the IEP is/are the following:

Increase ability to request attention appropriately with staff members.

Annual Measurable Goals

2. By September 2005, [REDACTED] will replace aggression with appropriate attention-gaining behaviors demonstrating less than 5 aggressive incidents per day given verbal, visual, gestural, and physical prompts as measured by documented teacher observation.

3. By September 2005, [REDACTED] will reduce aggressive behaviors by utilizing relaxation strategies paired with a verbal cue "relax," across all school settings, and will be measured by observation.

21. Under the "domain" of "[i]ndependent [f]unctioning," the April 2005 IEP states the following regarding [REDACTED] "[p]resent [l]evels of [p]erformance"; the "[i]mpact of [REDACTED] disability on this [d]omain"; [REDACTED] "priority educational need(s)"; and [REDACTED] "[a]nnual [m]easurable [g]oals":

Present Levels of Performance

[REDACTED] will attempt to feed [REDACTED] using a spoon with moderate spillage on an inconsistent basis with physical prompting. [REDACTED] will follow a toileting schedule 30% of the time with staff utilizing verbal, visual, gestural, and physical prompts. The implementation of [REDACTED] toileting routine is impacted by aggressive behaviors when taken to toilet (i.e. when staff attempts to help pull up/down, wash hands [REDACTED] will often attempt to scratch). The team at this time is trialing the inclusion of comfort items (i.e. soft music, preferred character visuals, a[nd] preferred scents) in the bathroom to see if making the room itself less aversive [sic]. [REDACTED] is appropriately redirected to put a correct item in [REDACTED] mouth ([REDACTED] chewie or food item) with verbal and visual prompts 80% of the time across all settings.

Impact of the disability on this Domain

Based [o]n the impact of [REDACTED] disability [REDACTED] needs continual sensory input to identify [REDACTED] body awareness and maintain a calm, alert state.

Based on the educational impact of the disability, the priority educational need(s) for the duration of the IEP is/are the following:

For [REDACTED] to use a sensory diet[,] to participate in classroom activities across all school settings, and to increase [REDACTED] self-help skills.

Annual Measurable Goals

4. By September 2005, [REDACTED] will be able to feed self using adaptive equipment as needed, requiring minimal gestural/verbal/ and physical prompts and demonstrating minimal spillage, across all school settings, and will be measured by observations.

5. By September 2005, [REDACTED] will be able to engage presented tasks displaying minimal self-stimulatory behaviors, for 5 minutes, following a sensory diet activity, across all school settings, and will be measured by observations.

6. By September 2005, [REDACTED] will transition to the bathroom, sit on the toilet and tolerate assistance with clothing without demonstrating aggressive behavior in 4 out of 5 days.

22. The "[s]hort [t]erm [i]nstructional objectives" for this latter "[a]nnual [m]easurable [g]oal," as set forth in the April 2005 IEP, are as follows:

1. [REDACTED] will transition to the bathroom without demonstrating aggressive behavior in 4 out of 5 days.

2. [REDACTED] will sit on the toilet without demonstrating aggressive behavior in 4 out of 5 days.

3. [REDACTED] will tolerate assistance with clothing without demonstrating aggressive behavior in 4 out of 5 days.

23. Under the "domain" of "[c]ommunication," the April 2005 IEP states the following regarding [REDACTED] "[p]resent [l]evels of [p]erformance"; the "[i]mpact of [REDACTED] disability on this

[d]omain"; ■■■ "priority educational need(s)"; and ■■■ "[a]nnual [m]easurable [g]oals":

Present Levels of Performance

■■■ continues to change behavior when aurally stimulated. ■■■ responds to emitted noise and loud noises. ■■■ rarely responds to ■■■ own name. ■■■ cries, squeals, laughs, and smiles. ■■■ will use a modified sign "more" and "eat" when modeled and prompted. ■■■ uses ■■■ voice to entertain ■■■ ■■■ babbling is increasing. ■■■ will say some consonant vowel combinations without communicative intent. ■■■ explores ■■■ physical environment by scanning for desired items. ■■■ also seeks the attention of preferred adults inconsistently. With physical prompting ■■■ is able to choose a preferred item (food) from a field of two less than 60% of the time. Mom reports that over the past two weeks she has seen ■■■ touch an adult and then touch a preferred item to indicate that ■■■ wants the item.

Impact of the disability on this Domain

■■■ language skills are below those of ■■■ age level peers.

Based on the educational impact of the disability, the priority educational need(s) for the duration of the IEP is/are the following:

To consistently select a wanted item from a field of two. To respond to ■■■ name.

Annual Measurable Goals

7. By September 2005 ■■■ will select a wanted item from a field of 2 in 4 out of 5 opportunities with items, verbal and gestural prompts as documented by teacher observations.

8. By September 2005 ■■■ will indicate recognition of ■■■ own name by looking, smiling, or by stopping, or increasing activity in 3 out of 5 opportunities as documented by teacher observations.

24. The April 2005 IEP indicates that ■ will receive, during the regular school year, the following "special education services" and "related services" to help ■ meet the goals and objectives set forth in the IEP: "Integrated Specialized Instruction in academics, behavior, independent functioning, communication," five times a week for a total of 1590 minutes per week, in an "ESE Class"; "R.S. Intensive Speech/Language Therapy," five times a week for a total of 30 minutes a day, in an "ESE Class"; "Occupational Therapy," two time a week for a total of an hour per week, in an "ESE class"; and "Physical Therapy," one time a week for a total of 15 minutes per week, in an "ESE Class."

25. As noted in the April 2005 IEP, a Behavioral Intervention Plan (BIP) has been devised for ■ to "[d]ecrease risk of non-food items in ■ mouth [and] thus decrease the need for constant supervision which will then increase ■ level of independence." The BIP contains the following "[s]ummary ([h]ypothesis) [s]tatements"; "[d]escription of [i]nterventions"; and "[g]eneralization and [m]aintenance [s]trategies":

Summary (Hypothesis) Statements

* * *

When ■ is engaged in circle time, table task, checking ■ schedule, ■ places items which are not food in ■ mouth indiscriminately to gain a sense of comfort through oral stimulation.

Description of Interventions

Intervention Components What strategies will be used (based on the hypothesis)?

Protective Strategies

What environmental adjustments will be used to make the student's problem behavior unnecessary?

- "Chewy" - verbal reminder when blocking undesired objects going into [redacted] mouth

- Sensory Diet

- Curriculum provided will be to [redacted] developmental stage

- Using more photographs to communicate

- Learning basic sign language

Replacement Skills

What skills will be taught to replace (meet the same function as) the student's problem behavior)?

- Will discriminate through pictures and photographs food vs. nonfood items with prompting

- Will be able to select . . . picture/photograph of preferred food item when given two to three verbal cues (car, dog, Fritos)

Consequence Strategies

How will consequences be managed to insure the student receives reinforcers for positive, and not problem, behavior

When [redacted] puts down an inappropriate item before placing it [redacted] mouth, using the verbal, visual prompt of FOOD ONLY, then [redacted] will be given a choice from the photograph menu.

Generalization and Maintenance of Strategies

1. Describe how interventions will be implemented across time, people, and settings.

All staff involved with █████ in █████ school will be provided a copy of █████ Behavior Improvement Plan.

2. Describe the maintenance strategies (include fading process).

Daily monitoring of target behavior, once █████ is able to respond to the verbal/visual prompt of FOOD ONLY, then █████ will no longer require one to one blocking of objects going into █████ mouth. █████ will fade to verbal/visual reminders and reinforcers will be given immediately throughout the day for following █████ prompt.

26. As further noted in the April 2005 IEP, there is also a Positive Behavior Intervention Plan (PBIP) in place to "deal with █████ aggressive behaviors."

27. The PBIP was developed on April 15, 2005, based on the following "rationale":

- The student is engaging in behavior that places █████ or others at risk of harm and/or results in substantial property damage.
- Behavioral concerns may result in exclusion from participation in activities or settings with peers.
- The student's behavioral difficulties persist despite consistently implemented behavior management strategies based on a less comprehensive or systematic assessment.

It contains the following "[s]ummary ([h]ypothesis) [s]tatements"; "[g]oals of [i]ntervention"; [d]escription of

[i]nterventions"; "[g]eneralization and [m]aintenance
[s]trategies"; and "[c]risis management procedures":

Summary (Hypothesis) Statements

* * *

When [redacted] wants to gain attention from adults [redacted] demonstrates physical aggression in the form of scratching, kicking, hitting, biting and hair-pulling to gain attention.

When [redacted] wants to communicate a want or need [redacted] demonstrates physical aggression in the form of scratching, kicking, hitting, biting and hair-pulling to gain attention.

* * *

Goals of Intervention

* * *

To replace aggression with effective/acceptable ways to gain attention and therefore safety of [redacted] and others as well as create a safer classroom environment.

Description of Interventions

Intervention Components What strategies will be used (based on the hypothesis)?

Protective Strategies

What environmental adjustments will be used to make the student's problem behavior unnecessary?

Staff will develop a daily routine with sensory motor/heavy work activity incorporated into [redacted] schedule every 30 minutes.

Additional adult support will be provided to maintain close proximity and ensure the safety of self and others.

Staff will offer different samples of textures (i.e. felt, satin, bubble wrap, sand paper, etc.)

Staff will create a quiet area that is less stimulating with soothing background music/items.

Staff will teach [REDACTED] a relaxation strategy (make a bubble (inhale), pop a bubble (exhale)).

Staff will develop an attentional signal (a gentle stroke on arm/shoulder).

Replacement Skills

What skills will be taught to replace (meet the same function as) the student's problem behavior)?

[REDACTED] will participate in sensory motor/heavy work activities when presented with adult assistance.

[REDACTED] will explore different samples of textures with teacher assistance.

[REDACTED] will utilize [REDACTED] quiet area with teacher supervision.

[REDACTED] will utilize the relaxation strategy when modeled/prompted.

[REDACTED] will utilize the attentional signal when modeled and prompted.

Consequence Strategies

How will consequences be managed to ensure the student receives reinforcers for positive and not problem behavior?

Staff will deliver verbal and animated social attention (tickles, singing with movement, waving arms up and down) at a high frequency when [REDACTED] participates appropriately.

Staff will offer preferred items/activities that are Blues Clues/Wiggles related as reinforcement.

Generalization and Maintenance of Strategies

1. Describe how interventions will be implemented across time, people, and settings.

All staff members who work/interact with [REDACTED] will be inserviced on the plan and agree to implement the plan.

2. Describe the maintenance strategies (include fading process).

As behavior demonstrates a stable and level trend and a reduction in aggressive behaviors is evident, work activities will be faded to every 45 minutes, to an hour, to AM/PM, etc.

Crisis Management Are crisis management procedures needed to ensure safety and de-escalation of the student's behavior in emergency situations? No [sic]

If "Yes" describe strategies:
Staff will minimize verbalizations, limit giving direct eye contact, and maintain a flat affect during the aggressive episodes.

28. At the April 15, 2005, meeting referred to above, the Committee also made a formal written recommendation that [REDACTED] be provided five weeks of Extended School Year (ESY) services. The services recommended were: "Integrated Specialized Instruction in academics, behavior, independent functioning, communication," five times a week for a total of three and a half hours a day, at an "ESY District School Site," beginning June 20, 2005, and ending July 22, 2005; occupational therapy, two times a week for a total of an hour per week, at an "ESY District School Site," beginning June 20, 2005, and ending July 22, 2005; and "R S. Intensive Speech/Language Therapy (Autism, DD, TBI, DHH)," five times a week for a total of thirty minutes per day, at an "ESY District School Site," beginning June 20, 2005, and ending July 22, 2005. According to the Committee's written

recommendation, the specific "location of ESY services w[ould] be provided to the parent no later than May 15" and "[i]f the ESY site [were] more than 2 miles from the home, transportation [would] be provided."

29. At the time of the April 15, 2005, meeting, [REDACTED] was in agreement with the other members of the Committee that [REDACTED] needed the five weeks of ESY services that were recommended.

30. [REDACTED] however, subsequently parted company with the other Committee members when she discovered that the School Board was offering its five-week ESY program for students like [REDACTED] at a centralized location, [REDACTED] School ([REDACTED]), which is a considerable distance from the [REDACTED] residence.

31. In order to get to [REDACTED], [REDACTED] would have to take a school bus. [REDACTED] drove [REDACTED] to [REDACTED] during the regular school year, but she would not be able to drive [REDACTED] to [REDACTED] for the five-week ESY program because she could not get to work on time if she did.

32. The School Board offers a three-week ESY program at [REDACTED] School ([REDACTED]), which is closer than [REDACTED] to the [REDACTED] residence. [REDACTED] would not have to take a bus to attend this three-week ESY program since [REDACTED] would be able to drive [REDACTED] and still get to work on time [REDACTED] and her husband want the School Board to allow [REDACTED] to attend the three-week ESY program at [REDACTED] in lieu of the five-week ESY program at [REDACTED]. Underlying this desire is their belief that [REDACTED] riding on a school bus to and from

██████████ (for 45 minutes to an hour each way) would be "detrimental" to ██████

33. ██████ shared her views on the matter with the other Committee members at a meeting held on or about May 25, 2005. Following a discussion ██████ reached an "impasse" with the other Committee members, who, unlike ██████ felt that the five-week ESY program at ██████ was "appropriate" for ██████ and in ██████ "best interests," notwithstanding its distance from the ██████ residence. In making this determination, the other Committee members took into account the potential impact that traveling on a school bus to and from ██████ would have on ██████

34. The Parents are concerned, understandably, about how ██████ would react to being on a school bus for 45 minutes to an hour, two times a day.

35. It is not possible to gauge what ██████ reaction would be based on ██████ past bus-riding experiences since ██████ has never ridden on a bus before.³ Being transported on a school bus to and from ██████ would be a new experience for ██████ and involve a change in ██████ routine, which ██████ might, at least initially, find difficult to deal with. ██████ does not tolerate change well.)

36. Although ██████ has never been on a bus, ██████ has ridden in the family vehicle.

37. Even on short trips in the vehicle ██████ has had physical outbursts and managed to get out of ██████ seat belt, despite ██████

Parents' efforts to engage [REDACTED] in a preferred activity to prevent such conduct.

38. When the family is in the vehicle together, [REDACTED] sits next to [REDACTED]. On these occasions, [REDACTED] often attempts to scratch and hit her.

39. When she is driving with just [REDACTED] and her infant [REDACTED] in the vehicle [REDACTED] has to make sure that [REDACTED] is far enough away from [REDACTED] that [REDACTED] will not be able to hurt [REDACTED]. [REDACTED] obviously is not able to give [REDACTED] [REDACTED] undivided attention on these trips.

40. The Parents have taken [REDACTED] with them on long trips in the family vehicle.

41. Before they go on these trips, they request [REDACTED]'s physician to "prescribe something for [REDACTED] nerves."

42. Despite the difficulties they encounter, when [REDACTED] has a transportation need, the Parents drive [REDACTED] to where [REDACTED] has to go.

43. Presumably, [REDACTED] would be exposed to higher noise levels on a school bus (with other students on it) than [REDACTED] would be were [REDACTED] traveling to school in the family vehicle.

44. The Parents are apprehensive that the noise on the bus would cause [REDACTED] to have a physical outburst. [REDACTED] however, has demonstrated [REDACTED] ability to deal with "constant loud noise" coming from other students. [REDACTED] was exposed to such noise in the school cafeteria at [REDACTED] and was able to function in that environment despite the noise.

45. "Loud screeching" noises or "high-pitched" sounds, on the other hand, will sometimes frighten [REDACTED] and trigger an

outburst, but there has been no showing that ■ would more likely be exposed these outburst-triggering noises and sounds on a school bus than ■ would were ■ traveling in the family vehicle.

46 ■ has trouble sitting still for an extended period of time. In the classroom, ■ often leaves ■ seat and walks around. Walking has a calming effect on ■ ■ sometimes needs motion to "cool ■ off."

47. On the school bus ■ would take to ■, ■ would not be able to get up from ■ seat and walk around while the bus is moving. Other calming and "cool down" techniques, however, could be employed on the bus.

48. ■ would be restrained on the bus by a harness that is "like a removable seat belt." The harness goes over both shoulders and is put on like a vest. It has hooks on the back that clip on to the bus seat. When in the harness, ■ would be able to move around and even bounce in ■ seat, but ■ would be unable to leave the seat.

49. It is conceivable that, particularly when the bus is in motion, ■ might find sitting with a harness on ■ to be "comforting," even though it restricts ■ movement.

50. The School Board regularly transports (by school bus) autistic children like ■ who need to wear a harness for safety reasons.

51 [REDACTED] would be receiving the undivided attention of an adult (a one-on-one aide) on the bus ride to and from [REDACTED], something [REDACTED] would not be receiving if [REDACTED] mother (unaccompanied by another adult) were driving [REDACTED] to an ESY program.

52. The one-on-one aide would be trained to take measures designed to decrease the risk of [REDACTED]'s having a physical outburst on the bus.⁴

53. The aide would be able to help [REDACTED] communicate through the use of pictures and objects.

54. To make the ride more tolerable for [REDACTED] the aide could engage in preferred activities with [REDACTED] or provide [REDACTED] with preferred items.

55. The aide, if given the necessary training, could also assist in implementing certain portions of [REDACTED]'s "sensory diet."

56 [REDACTED]'s learning to ride on a school bus would increase [REDACTED] independent living skills.

57 [REDACTED]'s going to [REDACTED] to receive ESY services would not interfere with [REDACTED] ability, while at school, to go to the bathroom every half hour before lunch, as [REDACTED] had done at [REDACTED] during the regular school year in accordance with the schedule of daily activities that had been devised for [REDACTED]

58. More importantly, [REDACTED] attending [REDACTED] would not interfere with [REDACTED] receiving a free appropriate public education.

59. Indeed, [REDACTED]'s receiving five weeks of ESY services is critical to [REDACTED] receiving such an education. [REDACTED] would likely experience significant and substantial regression if [REDACTED] received ESY services of any shorter duration.⁵

60. [REDACTED] is the only location where the School Board has a program that meets [REDACTED]'s needs for ESY services. The School Board's ESY program at [REDACTED], although located closer than [REDACTED] to the [REDACTED] residence, does not meet [REDACTED] needs because it is not of sufficient duration.

61. In short, it appears that, based on the record evidence, for [REDACTED] the potential educational benefits of the five-week ESY program outweigh any disadvantages that may arise as a result of the program's location being 45 minutes to an hour (by school bus) from [REDACTED] home.

CONCLUSIONS OF LAW

62. District school boards are required by the Florida K-20 Education Code,⁶ to "[p]rovide for an appropriate program of special instruction, facilities, and services for exceptional students as prescribed by the State Board of Education as acceptable." §§ 1001.42(4)(1) and 1003.57, Fla. Stat.

63. "Exceptional students," as that term is used in the Florida K-20 Education Code, are students who have been "been determined eligible for a special program in accordance with rules of the State Board of Education." The term includes "students who are gifted and students with disabilities who are mentally handicapped, speech and language impaired, deaf or hard of hearing, visually impaired, dual sensory impaired, physically impaired, emotionally handicapped, specific learning disabled, hospital and homebound, autistic, developmentally delayed children, ages birth through 5 years, or children, ages birth through 2 years, with established conditions that are identified in State Board of Education rules pursuant to s. 1003.21(1)(e)." § 1003.01(3), Fla. Stat.

64. The Florida K-20 Education Code's imposition of the requirement that "exceptional students" receive special education and related services is necessary in order for the State of Florida to be eligible to receive federal funding under the IDEA, 20 U.S.C. §§ 1400 et. seq., which mandates, among other things, that participating states ensure, with limited exceptions, that "[a] free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school." 20 U.S.C. § 1412(a)(1); cf. Agency for Health

Care Administration v. Estabrook, 711 So. 2d 161, 163 (Fla. 4th DCA 1998)("[A] state that has elected to participate [in the Medicaid program], like Florida, must comply with the federal Medicaid statutes and regulations."); Public Health Trust of Dade County, Florida v. Dade County School Board, 693 So. 2d 562, 564 (Fla. 3d DCA 1996)("The State of Florida elected to participate in the Medicaid program, Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq. (1994), which provides federal funds to states for the purpose of providing medical assistance to needy persons. However, once the State of Florida elected to participate in the Medicaid program, its medical assistance plan must comply with the federal Medicaid statutes and regulations"; held that where a Florida administrative rule is in direct conflict with federal Medicaid statutes and regulations, the federal Medicaid law governs); and State of Florida v. Mathews, 526 F.2d 319, 326 (5th Cir. 1976)("Once a state chooses to participate in a federally funded program, it must comply with federal standards.").

65. To meet its obligation under Sections 1001.42(4)(1) and 1003.57, Florida Statutes, to provide an "appropriate" public education to each of its "exceptional students," a district school board must provide "personalized instruction with 'sufficient supportive services to permit the child to benefit from the instruction.'" Hendry County School Board v.

Kujawski, 498 So. 2d 566, 568 (Fla. 2d DCA 1986), quoting from, Board of Education of the Hendrick Hudson Central School District v. Rowley, 102 S. Ct. 3034 (1982); see also § 1003.01(3)(b), Fla. Stat. ("'Special education services' means specially designed instruction and such related services as are necessary for an exceptional student to benefit from education. Such services may include: transportation; diagnostic and evaluation services; social services; physical and occupational therapy; job placement; orientation and mobility training; braillists, typists, and readers for the blind; interpreters and auditory amplification; rehabilitation counseling; transition services; mental health services; guidance and career counseling; specified materials, assistive technology devices, and other specialized equipment; and other such services as approved by rules of the state board."). The instruction and services provided must be "'reasonably calculated to enable the child to receive educational benefits.'" School Board of Martin County v. A. S., 727 So. 2d 1071, 1073 (Fla. 4th DCA 1999), quoting from, Board of Education of the Hendrick Hudson Central School District v. Rowley, 102 S. Ct. at 3051. As the Fourth District Court of Appeal further stated in its opinion in School Board of Martin County, 727 So. 2d at 1074:

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

Educational benefits provided under IDEA must be more than trivial or de minimis. J. S. K. v. Hendry County Sch. Dist., 941 F.2d 1563 (11th Cir. 1991); Doe v. Alabama State Dep't of Educ., 915 F.2d 651 (11th Cir. 1990). Although they must be "meaningful," there is no requirement to maximize each child's potential. Rowley, 458 U.S. at 192, 198, 102 S. Ct. 3034. The issue is whether the "placement [is] appropriate, not whether another placement would also be appropriate, or even better for that matter. The school district is required by the statute and regulations to provide an appropriate education, not the best possible education, or the placement the parents prefer." Heather S. by Kathy S. v. State of Wisconsin, 125 F.3d 1045, 1045 (7th Cir. 1997)(citing Board of Educ. of Community Consol. Sch. Dist. 21 v. Illinois State Bd. Of Educ., 938 F.2d at 715, and Lachman v. Illinois State Bd. Of Educ., 852 F.2d 290, 297 (7th Cir. 1988)). Thus, if a student progresses in a school district's program, the courts should not examine whether another method might produce additional or maximum benefits. See Rowley, 458 U.S. at 207-208, 102 S. Ct. 3034; O'Toole v. Olathe Dist. Schs. Unified Sch. Dist. No. 233, No. 97-3125, 144 F.3d 692, 709 (10th Cir. 1998); Evans v. District No. 17, 841 F.2d 824, 831 (8th Cir. 1988).

"The [law] does not demand that [a district school board] cure the disabilities which impair a child's ability to learn, but [merely] requires a program of remediation which would allow the child to learn notwithstanding [the child's] disability."

Independent School District No. 283, St. Louis Park, Minn. V. S.D. By and Through J. D., 948 F. Supp. 860, 885 (D. Minn. 1995); see also Coale v. State Department of Education, 162 F.

Supp. 2d 316, 331 n.17 (D. Del. 2001)("If the IDEA required the State to 'cure' Alex's disability or to produce 'meaningful' progress in each and every weakness demonstrated by a student, then the State's decision to accommodate Alex's 'fine motor skills' problems with adaptive technology might be more problematic. But the court does not understand the IDEA to impose such requirements on the State.").

66. Pursuant to 34 C.F.R § 300.552 (with which Florida district school boards must comply), "[i]n determining the educational placement of [an exceptional student, the district school board] shall ensure that . . . the [t]he child's placement . . . [i]s as close as possible to the child's home." As the Fourth Circuit Court of Appeals pointed out in AW ex rel. Wilson v. Fairfax County School Board, 372 F.3d 674, 682 (4th Cir. 2004), "this language does not mandate that the student be assigned the closest school, but simply one that is as 'close as possible.'" Placement at a neighborhood school may not be "possible" if the school does not have the services the student needs. The IDEA does not require the district school board to equip the student's neighborhood school to meet the student's needs. Rather, the district school board is free to offer the services the student requires at a centralized location, notwithstanding that this location may be some distance from the student's home, provided that the distance would not have the effect of rendering the student unable to receive meaningful

educational benefit from the services offered. Id. at 682, n.9 ("[W]here a change in location results in a dilution of the quality of a student's education or a departure from the student's LRE-compliant setting, a change in 'educational placement' occurs. We recognize the possibility that a transfer to a different school might entail a commute so long or arduous as to negatively impact the student's ability to excel in the otherwise identical setting."); and Hill v. School Board of Pinellas County, 954 F. Supp. 251, 253 (M.D. Fla. 1997), aff'd, 137 F.3d 1355 (11th Cir. 1998) ("Because his IEP did not change upon his transfer to Countryside, Andrew remains in the 'then current educational placement' for the purposes of the IDEA and, therefore, no change in his educational placement occurred. (However, this Court does not dismiss as implausible the prospect of circumstances under which attributes of an institution, a location, a teacher-student relationship, or the like, might become so pronounced and valuable to the student and his or her IEP, that a change in the school is tantamount to a change in the IEP")). That district school boards have wide discretion in these matters was made clear in White ex rel. White v. Ascension Parish School Board, 343 F.3d 373, 380-82 (5th Cir. 2003), wherein the Fifth Circuit Court of Appeals stated the following:

The question then becomes whether Ascension was otherwise required by the IDEA to defer to the Whites' wishes that their son be transferred, along with his support services, to the neighborhood school. The Whites point to two main provisions that they contend support neighborhood school selection: (1) the child's placement is determined at least annually, is based on the child's IEP, and is as close as possible to the child's home, 34 C.F.R. § 300.552(b) (emphasis added); and (2) unless the IEP requires some other arrangement, the child is educated in the school that he or she would attend if not disabled, 34 C.F.R. § 300.552(c).

Regarding these provisions, their qualifying language is critical. 34 C.F.R. § 300.552(b) only requires that the student be educated as close as possible to the child's home. 34 C.F.R. § 300.552(c) specifies that the child is educated in the school he would attend if not disabled unless the IEP requires some other arrangement. Here, it was not possible for Dylan to be placed in neighborhood school because the services he required are provided only at the centralized location, and IEP thus requires another arrangement.

Of course, as the Whites point out, neighborhood placement is not possible and the IEP requires another arrangement only because Ascension has elected to provide services at a centralized location. This is a permissible policy choice under the IDEA. Schools have significant authority to determine the school site for providing IDEA services.

"State agencies are afforded much discretion in determining which school a student is to attend The regulations, not the statute, provide only that the child be educated 'as close as possible to the child's home.' However, this is merely one

of many factors for the district to take into account in determining the student's proper placement. It must be emphasized that the proximity preference or factor is not a presumption that a disabled student attend his or her neighborhood school."

Flour Bluff, 91 F.3d at 693-94 (emphasis added). In *Flour Bluff*, a deaf child's parents objected to her attending a centralized program rather than her neighborhood school. Our court held in favor of the school:

"IDEA expressly authorizes school districts to utilize regional day schools such as the one at issue here, and we think the importance of these regional programs is obvious. Undoubtedly there are a limited number of interpreters, speech pathologists with backgrounds in deaf education, and deaf education teachers; and by allocating these limited resources to regional programs, the state is better able to provide for its disabled children. Additionally, by placing these educators at regional centers, those centers are better able to provide further training for those educators and make substitutions for absent educators."

Id. at 694 (citations omitted).

All of our sister circuits that have addressed the issue agree that, for provision of services to an IDEA student, a school system may designate a school other than a neighborhood school. Restated, no federal appellate court has recognized a right to a neighborhood school assignment under the IDEA. See, e.g., McLaughlin v. Holt Public Sch. Bd. of Educ., 320 F.3d 663, 672 (6th Cir. 2003)(LRE provisions and regulations do not mandate placement in neighborhood school); Kevin G. by Robert G. v. Cranston Sch. Comm., 130 F.3d 481, 482 (1st Cir. 1997)("[W]hile it may be preferable for Kevin G. to attend a school

located minutes from his home, placement [where full-time nurse located] satisfies [the IDEA]. . . . The school district has an obligation to provide a school placement which includes a nurse on duty full time, but it is not required to change the district's placement of nurses when, as in this case, care is readily available at another easily accessible school".); Hudson v. Bloomfield Hills Public Sch., 108 F.3d 112 (6th Cir. 1997)(IDEA does not require placement in neighborhood school); Urban v. Jefferson County Sch. Dist. R-1, 89 F.3d 720, 727 (10th Cir. 1996)(IDEA does not give student a right to placement at a neighborhood school); Murray v. Montrose County Sch. Dist., 51 F.3d 921, 928-29 (10th Cir.) (no presumption in IDEA that child must attend neighborhood school--proximity to home only one factor), cert. denied, 516 U.S. 909, 116 S. Ct. 278, 133 L.Ed. 2d 198 (1995); Schuldt ex rel. Schuldt v. Mankato Indep. Sch. Dist. No. 77, 937 F.2d 1357, 1361-63 (8th Cir. 1991)(school may place student in non-neighborhood school rather than require physical modification of the neighborhood school to accommodate the child's disability); Barnett v. Fairfax County Sch. Bd., 927 F.2d 146 (4th Cir.) (school district complied with IDEA by providing deaf student with "cued speech" program in a centralized school approximately five miles farther than neighborhood school), cert. denied, 502 U.S. 859, 112 S. Ct. 175, 116 L.Ed. 138 (1991); Wilson v. Marana Unified Sch. Dist. No. 6 of Pima County, 735 F.2d 1178 (9th Cir. 1984) (school district may assign child to school 30 minutes away because teacher certified in child's disability was assigned there, rather than move the service to the neighborhood school).

Administrative agency interpretations of the regulations confirm that the school has significant authority to select the school site, as long as it is educationally

appropriate. The Office of Special Education Programs (OSEP), the Department of Education branch charged with monitoring and enforcing the IDEA and its implementing regulations, has explained:

"[I]f a public agency . . . has two or more equally appropriate locations that meet the child's special education and related services needs, the assignment of a particular school . . . may be an administrative determination, provided that the determination is consistent with the placement team's decision."

Letter from Office of Special Education Programs to Paul Veazey (26 Nov. 2001). See also, e.g., Letter to Anonymous, 21 IDELR 674 (OSEP 1994)(it is permissible for a student with a disability to be transferred to a school other than the school closest to home if the transfer school continues to be appropriate to meet the individual needs of the student); Letter to Fisher, 21 IDELR 992 (OSEP 1994) (citing policy letter indicating that assignment of a particular location is an administrative decision).

The Whites insist that 1997 amendments to the IDEA enlarged parents' role. Nevertheless, the amendments do not state-- and the Whites do not cite any post-amendment authority for the proposition-- that parents may alter a school's good faith policy decision regarding site selection. Moreover, the 2001 OSEP letter (interpreting the current version of the IDEA) is contrary to the Whites' position.

The Whites also urge that there is simply no reason the transliterator cannot move to Dylan's neighborhood school, because she provides services only for Dylan. Again, our task is not to question educational policy decisions; rather, it is to determine whether state and local officials have

complied with the IDEA. This principle is unquestionably applicable here:

"Whether a particular service or method can feasibly be provided in a specific special education setting is an administrative determination that state and local school

officials are far better qualified and situated than are we to make."

Barnett, 927 F.2d at 152.

See also Choruby, 2002 WL 32784016 *10 ("Plaintiffs argue that the suggested placement of D. C. at Rock Creek violates the IDEA because Rock Creek is at least a thirty-minute commute from D.C.'s home. The regulations that govern placement of a child require that the placement be 'as close as possible to the child's home.' 34 C.F.R. § 300.552(b)(3). However, placement as far away as 280 miles has been upheld where no other adequate services were available closer to the child's home. Poolaw v. Bishop, 67 F.3d 830, 837 (9th Cir. 1995). Rock Creek is the closest school equipped to provide D.C. with the services he requires. . . . Because Rock Creek is the closest school offering services for autistic children like D.C., placement at Rock Creek was appropriate.").

67. Providing a "free appropriate public education" to an "exceptional student" may require an "extended school year," which is defined in Florida Administrative Code Rule 6A-6.03028(2)(d) as "specially designed instruction and related services that are provided to a student with a disability beyond the normal school year of the school district, in accordance with the student's individual educational plan (IEP), and at no cost to the parents." Florida Administrative Code Rule 6A-6.03028(6)(i) requires that the determination of whether

"extended school year services are necessary for the provision of a free public education to the student" be "consistent with the following":

1. Extended school year services (ESY) must be provided if a student's IEP team determines, on an individual basis, that the services are necessary for the provision of a free appropriate public education to the student.

2. Criteria that can be used to determine whether a student requires ESY may include, but are not limited to:

- a. Regression and recoupment;
- b. Critical points of instruction;
- c. Emerging skills;
- d. Nature and/or severity of the disability;
- e. Interfering behaviors;
- f. Rate of progress; or
- g. Special circumstances.

3. School districts may not limit ESY to particular categories of disability or unilaterally limit the type, amount, or duration of those services.

68. If a student is found eligible for special education and related services, the district school board must develop, taking into consideration any input provided by the child's parents,⁷ an IEP designed to meet the student's unique needs. 20

U.S.C. § 1414(a)(4) and (d); and Fla. Admin. Code R. 6A-6.03028.

The IEP is "the centerpiece of the [IDEA's] education delivery

system for disabled children." Honig v. Doe, 484 U.S. 305, 311, 108 S. Ct. 592, 598 (1988).

69. Parents who have "complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child" under the IDEA must "have an opportunity for an impartial due process hearing, which shall be conducted by the State educational agency or by the local educational agency, as determined by State law or by the State educational agency." 20 U.S.C. § 1415(f). In Florida, by statute, a Division administrative law judge must conduct the "impartial due process hearing" to which a complaining parent is entitled under the IDEA. § 1003.57(5), Fla. Stat.

70. In the instant case, the Parents requested, and were granted, an "impartial due process hearing" to air complaints about the School Board's proposal to place ■ in the five-week ESY program at ■ instead of the three-week ESY program at ■ School, which is closer to their home.

71. The evidence presented at the "impartial due process hearing" reveals that the School Board's proposal to place ■ in the five-week ESY program at ■ is reasonably calculated to enable ■ to receive meaningful educational benefit; and it further reveals that ■ is the

closest school to [REDACTED] home equipped to provide [REDACTED] with the ESY services [REDACTED] requires, the three-week ESY program at [REDACTED] having been shown to be of insufficient duration to meet [REDACTED] needs.

72. Having offered [REDACTED] ESY services necessary to provide [REDACTED] with a free appropriate public education at a location that is in compliance with the requirements of 34 C.F.R. § 300.552, the School Board has met its obligation under the law.⁸

73. In view of the foregoing, the relief requested by the Parents (a finding that the School Board must allow [REDACTED] to attend the three-week ESY program at [REDACTED]) is unwarranted and will not be granted.

DONE AND ORDERED this 16th day of June, 2005, in Tallahassee, Leon County, Florida.

S

STUART M. LERNER
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Filed with the Clerk of the
Division of Administrative Hearings
this 16th day of June, 2005.

ENDNOTES

¹ These factual stipulations have been accepted. See Columbia Bank for Cooperatives v. Okeelanta Sugar Cooperative, 52 So. 2d 670, 673 (Fla. 1951)("When a case is tried upon stipulated facts the stipulation is conclusive upon both the trial and appellate courts in respect to matters which may validly be made the subject of stipulation. Indeed, on appeal neither party will be heard to suggest that the facts were other than as stipulated or that any material facts w[ere] omitted"); Schrimsher v. School Board of Palm Beach County, 694 So. 2d 856, 863 (Fla. 4th DCA 1997)("The hearing officer is bound by the parties' stipulations."); and Palm Beach Community College v. State, Department of Administration, Division of Retirement, 579 So. 2d 300, 302 (Fla. 4th DCA 1991)("When the parties agree that a case is to be tried upon stipulated facts, the stipulation is binding not only upon the parties but also upon the trial and reviewing courts. In addition, no other or different facts will be presumed to exist.").

² Ms. Lanzas also helped develop for [REDACTED] daily schedule of activities.

³ [REDACTED] has not been given a "trial run" on a school bus to find out what [REDACTED] reaction to riding on a bus would be. Compare with Choruby ex rel. D. C. v. Northwest Regional Education Service District, 2002 WL 32784016 *10 (D. Or. 2002)(" Related to Plaintiffs' argument that Rock Creek was too far from home, Plaintiffs argue that a bus ride to Rock Creek posed a serious safety threat to D.C. . . . There is no evidence in the record to support Plaintiffs' contention that bus transportation would be unsafe. . . . Plaintiffs do not dispute that ESD has the expertise to address bussing problems provided the problems are known. Trained instructional aides could have been assigned to ride with D.C. on the bus. Here, Plaintiffs never even engaged in a trial run to see how D.C. would react on a bus.").

⁴ While having a trained aide on the bus would not be an absolute guarantee against [REDACTED] having a physical outburst while being transported to and from [REDACTED], neither is there any assurance that, if [REDACTED] went to [REDACTED] for ESY services instead of [REDACTED], [REDACTED] trips (in the family vehicle) to and from school would be without incident.

⁵ Even having the weekend off from school causes [REDACTED] problems (in terms of regression).

⁶ Chapters 1000 through 1013, Florida Statutes, are known as the "Florida K-20 Education Code." § 1001.01(1), Fla. Stat.

⁷ "The [parents'] right to provide meaningful input [in the development of the IEP] is simply not the right to dictate an outcome and obviously cannot be measured by such." White, 343 F.3d at 380; see also AW, 372 F.3d at 683 n.10 ("Although AW's parents indicated their dissatisfaction with AW's April IEP by declining to sign it, the right conferred by the IDEA on parents to participate in the formulation of their child's IEP does not constitute a veto power over the IEP team's decisions.").

⁸ If the Parents decide to send █████ to the five-week ESY program at (and there is no requirement that they do so since participation in the ESY program is "voluntary"), the School Board will be responsible for monitoring █████ progress in the program and making any programmatic changes that are necessary. See M. C. on Behalf of J. C. v. Central Regional School District, 81 F.3d 389, 397 (3d. Cir. 1996)("[A] school district that knows or should know that a child has an inappropriate IEP or is not receiving more than a *de minimis* educational benefit must correct the situation. If it fails to do so, a disabled child is entitled to compensatory education for a period equal to the period of deprivation, but excluding the time reasonably required for the school district to rectify the problem. . . [I]t is the responsibility of the child's teachers, therapists, and administrators--and of the multi-disciplinary team that annually evaluates the student's progress--to ascertain the child's educational needs, respond to deficiencies, and place him or her accordingly."); and Brett v. Goshen Community School Corp., 161 F. Supp. 2d 930, 945 (N.D. Ind. 2001)("The Court finds no basis for holding Defendants liable for failing to recommend an IEP that would anticipate Brett's father's sudden death and be appropriate for Brett's changed emotional circumstances after the death. While the IEP became arguably unworkable after his father's death, Defendants were responsible to monitor Brett's progress and make changes. Defendants fulfilled this responsibility and took the necessary action, in less than a month's time.").

COPIES FURNISHED:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

This decision is final unless an adversely affected party:

- a) brings a civil action within 30 days in the appropriate federal district court pursuant to Section 1415(i)(2)(A) of the Individuals with Disabilities Education Act (IDEA); 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.