

Broward County School District  
No. 05-2192E  
Initiated by: Parent  
Hearing Officer: Patricia M. Hart  
Date of Final Order: August 31, 2005

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

█, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 05-2192E  
 )  
BROWARD COUNTY SCHOOL BOARD, )  
 )  
Respondent. )  
\_\_\_\_\_ )

FINAL ORDER

Pursuant to notice, a formal hearing was held in this case on July 19 and 20, 2005, in Fort Lauderdale, Florida, before Patricia M. Hart, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: █, on behalf of █  
(address of record)

For Respondent: Edward J. Marko, Esquire  
Mary S. Lawson, Esquire  
Broward County School Board  
600 Southeast Third Avenue, 11th Floor  
Fort Lauderdale, Florida 33301

STATEMENT OF THE ISSUE

Whether the Respondent assigned the Petitioner to an Extended School Year ("ESY") placement that would provide [REDACTED] with a free appropriate public education in the least restrictive environment.

PRELIMINARY STATEMENT

On June 17, 2005, [REDACTED], on behalf of [REDACTED],<sup>1</sup> filed a request for a due process hearing with the Broward County School Board ("School Board"). In the request, [REDACTED] alleged as follows:

The School Board of Broward County, Florida has decided, without my consent, to place my [REDACTED] into an ESY program that is exclusively for disabled children because, they claim, "that is all (they) have." Convenience for the District should not mean that my [REDACTED]'s placement should be changed from general education into a segregated environment. My [REDACTED]'s placement is in a general education setting during the school year.

Furthermore, my [REDACTED]'s ESY goals cannot be met in this segregated environment. In addition, one week ago, I was informed that the District had changed the ESY schedule that I had agreed to. This was done in order to have my [REDACTED] spend 30 minutes a week in another setting, with non-disabled children who are not peers. (My [REDACTED] would have to be transported to another setting and then be transported home.) The goal for my [REDACTED]'s social interactions with non-disabled peers is not an activity that was to have been relegated to 30 minutes per week. That was not the intention of the IEP [Individualized Educational Program] committee nor was it articulated as such on the ESY IEP form.

█ requested that the School Board "[p]rovide ESY services in a general education setting that is available within the District." The School Board forwarded the due process hearing request to the Division of Administrative Hearings on June 20, 2005, and a pre-hearing conference was held on June 24, 2005. A Notice of Hearing and a Pre-Hearing Order were entered on June 27, 2005. The due process hearing was scheduled for July 20, 2005, in Fort Lauderdale, Florida.

Pursuant to the Pre-Hearing Order, the parties filed a statement of Joint Stipulated Facts on July 7, 2005; as a result of a motion filed by █, the parties were relieved of the requirement in the Pre-Hearing Order to file witness lists and authenticated copies of documentary exhibits on or before July 8, 2005. At the hearing, the School Board presented the testimony of Lida Yocum, Natalie Wong, Annette Tolar, Randi Weinstein, Carol Baskin, Susan Messing, Elayne Brown, and █ Respondent's Exhibits 1 through 17 were offered and received into evidence. █ testified on behalf of herself and █ and presented the testimony of Maryanne Echols, Debra Perkins, Cecile Champlaux, Liping Li, Vanessa Barnes, and Grace McDonald; █ did not offer any documentary exhibits into evidence.

The transcript of the proceeding was filed with the Division of Administrative Hearings on August 2, 2005, and the parties timely filed proposed findings of fact and conclusions

of law, which have been considered in the preparation of this Final Order. Pursuant to the agreement of the parties, the Final Order was due to be mailed to the parties on August 4, 2005, the date 47 days from the date on which [REDACTED] sent the due process hearing request to the School Board by facsimile transmittal. Because of the complexity of the issues of fact presented in this case, this Final Order was entered and mailed to the parties 75 days after the date on which the due process hearing request was filed with the School Board.

FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the following findings of fact are made:

1. [REDACTED] is a [REDACTED]-year-old [REDACTED] who has been diagnosed with autism. [REDACTED] is an only child, and [REDACTED] is a single parent.
2. In August 1999, [REDACTED] was identified as a student with disabilities in the areas of autism and speech and language impairment, and [REDACTED] started receiving exceptional student education ("ESE") and related services in these areas as a [REDACTED] student at [REDACTED] School in Broward County, Florida, pursuant to an Individualized Education Program ("IEP").
3. [REDACTED] attended [REDACTED] School through June 2001, when [REDACTED] completed the [REDACTED] grade. Because [REDACTED] school boundaries changed, [REDACTED] began the [REDACTED] grade at [REDACTED] School in August 2001. In

January 2002, [REDACTED] enrolled in the [REDACTED] grade at [REDACTED] (" [REDACTED] School") in Broward County, Florida, which is a public charter school operating under the control of the School Board. [REDACTED] completed the [REDACTED] grade at [REDACTED] School in June 2005, and will attend [REDACTED] School in Broward County, Florida, beginning in August 2005.

4. Pursuant to an IEP developed May 10, 2002, amended July 17, 2002, and in effect through the end of the 2004-2005 school year, [REDACTED] was assigned to a regular education classroom,<sup>2</sup> with ESE and related services provided in both the regular classroom and in other locations on the [REDACTED] School campus. The ESE and related services provided to [REDACTED] pursuant to the July 17, 2002, IEP included "speech & language, support facilitation, [and] pull-out service."

Development of [REDACTED]'s ESY IEP

5. [REDACTED]'s IEP team met on February 17, 2005, to consider whether [REDACTED] needed ESY services during the summer of 2005. At the time, Natalie Wong was the ESE specialist at [REDACTED] School, and she convened the February 17, 2005, meeting. Ms. Wong also completed the IEP Committee Recommendations for Extended School Year (ESY) Services form at the meeting.

6. [REDACTED] attended the meeting and participated in developing the ESY IEP.

7. The IEP team, together with [REDACTED], determined that [REDACTED] met all of the criteria for ESY services, finding specifically that, based on teacher observation and informal assessments of [REDACTED], it was likely that:

1. significant or substantial regression will occur on IEP goals/related services without extended school year services[;]
2. emerging critical life skills will be significantly impacted without extended school year services[;]
3. behaviors related to the disability will be significantly impacted without extended school year services[; and]
4. previously learned critical life skills/goals will be significantly impacted without extended school year services[.]

8. An IEP was developed for [REDACTED]'s ESY services during the February 17, 2005, IEP meeting, and several goals for the ESY were selected from [REDACTED]'s July 17, 2002, IEP. The following goals, in the areas of reading comprehension, listening comprehension, forming social relationships, initiating interactions, and demonstrating self-monitoring skills, were included in [REDACTED]'s ESY IEP":

- a. "[REDACTED] will increase [REDACTED] reading comprehension of nonfictional material to a 2nd grade level as measured by a post IRI w/ an 80% success rate";

b. "[REDACTED] will demonstrate improved listening comprehension measured monthly by documented teachers['] observation w/ 90% accuracy using 6 to 8 sentence paragraph";

c. "[REDACTED] will form appropriate social relationships with peers and teachers as measured by documented teacher observation 4 out of 5 times";

d. "[REDACTED] will verbally initiate interactions with non-disabled peers four times a day as measured by documented staff observation 80% accuracy";

e. "By 7/17/03, [REDACTED] will demonstrate self monitoring skills with no less than 3 - 5 verbal, physical and/or visual prompts across a variety of settings throughout the school day."

9. The IEP team also determined that [REDACTED] would receive transportation and assistive technology to allow [REDACTED] access to the ESY services and that [REDACTED]'s health issues and behavioral needs were to be addressed. These services were included in the ESY IEP.

10. Data was presented during the February 17, 2005, IEP meeting establishing that [REDACTED] had experienced regression after a school break in the area of reading comprehension, which was the basis for including reading comprehension as a goal on the ESY IEP. [REDACTED] did not experience regression in listening comprehension, but that goal was included in [REDACTED] ESY IEP because [REDACTED] brought to the attention of the IEP team that listening

comprehension was a critical life skill and appropriate for inclusion in ■■■'s ESY IEP. No speech goal was included in the ESY IEP because ■■■ had already met the speech goal set out in ■■■ July 17, 2002, IEP.

11. Randi Weinstein, a speech pathologist who participated in the February 17, 2005, IEP meeting, had worked at ■■■ School with ■■■ on ■■■ goal of initiating interactions with ■■■ non-disabled peers. She had observed through her work with ■■■ that initiating social interactions with non-disabled peers was very difficult for ■■■ and that, although ■■■ would initiate interactions with non-disabled peers with cuing, independently initiating such interactions was a new, emerging skill. In Ms. Weinstein's opinion, the goal of initiating interactions with non-disabled peers was appropriately included in ■■■'s ESY IEP to help ■■■ sustain through the summer break the progress ■■■ had made on this goal during the school year.<sup>3</sup>

12. The IEP team determined that ■■■ should receive ESY services in a school-based setting, with a unique aide, in a classroom with other ESE students for four hours a day, Monday through Friday, over a period of five weeks in a school-based setting. There was, however, no indication in the ESY IEP of the date on which the ESY program was to begin or end or the location of the ESY program.



13. The School Board offers school-based ESY programs of three weeks' duration and five weeks' duration. ■■■ requested that ■■■ receive services for more than five weeks, but the IEP team determined that the five-week ESY program was appropriate to meet ■■■'s needs. Had the IEP team determined that ■■■ needed ESY services of a longer duration, the School Board could have provided them, though not in a school-based setting.

14. The IEP team determined that, in addition to ESE services and a unique aide, ■■■ should receive the services of an occupational therapist, a speech/language therapist, and a counselor. The IEP team did not, however, discuss the frequency and duration of these services, and, as a result, the specific number of minutes and the times each week that ■■■ would receive occupational therapy, speech/language, and counseling services was not specified in the ESY IEP developed February 17, 2005.

15. Ms. Wong, who was responsible for completing ■■■'s ESY IEP, wasn't completely comfortable with determining the duration of the services to be provided ■■■ and wanted to consult with her district program specialist, Jim Fowler, to make sure that she did it correctly. Although Ms. Wong contacted Mr. Fowler, she did not complete the ESY IEP by including the frequency and duration of the services to be provided ■■■ during the ESY program before leaving her employment with ■■■ School on maternity leave.

16. When the IEP team meeting adjourned on February 17, 2005, Ms. Wong was not aware of the school that [REDACTED] would attend during the five-week ESY program, and the ESY location was, therefore, identified as "TBA" on the ESY IEP. [REDACTED] was ultimately assigned to the School Board's five-week ESY program at [REDACTED] School ("[REDACTED]"). Pursuant to the ESY IEP, the School Board was responsible for providing transportation for [REDACTED] from [REDACTED] home in Weston, Florida, to [REDACTED] and from [REDACTED] to [REDACTED] home.

17. At some time prior to April 8, 2005, [REDACTED] was advised in writing that [REDACTED] would receive ESY services from 8:00 a.m. to 12:00 p.m., Mondays through Fridays, at [REDACTED] for the period extending from June 20, 2005, through July 22, 2005. [REDACTED] completed the section on the notification form indicating that [REDACTED] would attend the ESY program and that [REDACTED] would be using the school system's transportation to attend the ESY program at [REDACTED]. [REDACTED] signed and returned the form to the School Board.

18. Between the first part of April 2005 and the beginning of the five-week ESY program in which [REDACTED] was to participate, the School Board and [REDACTED] were concerned with two primary issues. The first issue concerned the amount of time during the four-hour-a-day, five-days-a-week, five-week ESY program that [REDACTED] would receive varying exceptionalities instruction, speech and language therapy, occupational therapy, and counseling. The second issue concerned the opportunities [REDACTED] would have during

the ESY program to work on the goal of initiating interactions with non-disabled peers. A third issue arose at or about the time [REDACTED] was to begin the ESY program and concerned the arrangements made by the School Board for transporting [REDACTED] between [REDACTED] home in Weston, Florida, and [REDACTED].

Duration of specific services

19. At the end of March 2005, Carol Baskind, the School Board's ESE coordinator for the north-central area, telephoned Susan Messing, the principal of [REDACTED] School, and advised her that [REDACTED]'s ESY IEP was incomplete because no frequency or duration of varying exceptionalities instruction, speech and language therapy, occupational therapy, and social skills had been specified in the ESY IEP. As the principal of the school [REDACTED] attended during the 2004-2005 school year, Ms. Messing was ultimately responsible for seeing that [REDACTED]'s ESY IEP was completed and implemented.

20. Ms. Messing contacted [REDACTED] by telephone and explained that she needed to convene an IEP team meeting to determine the frequency and duration of the ESE services [REDACTED] was to receive in [REDACTED] ESY program.<sup>4</sup>

21. Ms. Messing asked [REDACTED] during the telephone conversation if she would be willing to waive the 10-day notice requirement for IEP team meetings so the meeting could be held on April 14, 2005, at the same time Ms. Messing and [REDACTED] were to

meet on another matter. [REDACTED] agreed in the telephone conversation to waive the 10-day notice requirement, and Ms. Messing prepared a Parent Participation form stating that an IEP team meeting would be held on April 14, 2005, to "[d]esignate time for ESY services." Ms. Messing also stated on the form: "Parent agrees to waive 10 day notice." In the "Parent Contacts" section of the form, Ms. Messing noted: "P[arent] P[articipation] F[orm] hand delivered 4/14/05" and, in a notation dated April 14, 2005, "Parent refused to waive 10 day notice after receiving attached letter retarding IEP meeting scheduled for April 21, 2005, and April 25, 2005."<sup>5</sup>

22. In an e-mail dated April 20, 2005, Ms. Messing advised Grace McDonald, the School Board's Due Process Coordinator, of her attempt to convene a meeting of [REDACTED]'s IEP team on April 14, 2005, and of her intention to schedule another meeting as soon as possible. Ms. Messing sent a copy of the e-mail to Ms. Baskind.

23. At some time after April 14, 2005, Ms. Messing had an informal conversation with Ms. Baskind in which Ms. Messing told Ms. Baskind that [REDACTED] had conveyed to her concern about [REDACTED]'s attending [REDACTED] for the ESY program because of its location, which was far from [REDACTED]'s home in Weston, Florida, and concern about the group that [REDACTED] was to join to work on [REDACTED] social skills. Ms. Messing told Ms. Baskind that she did not think [REDACTED] was

interested at that time in meeting to determine the frequency and duration of ■■■'s ESY IEP services because, in Ms. Messing's opinion, ■■■ was not sure she wanted ■■■ to attend the ESY program.

24. Ms. Messing did not schedule another IEP team meeting but, rather, asked Ms. Baskind for guidance in determining the frequency and duration of the services identified on ■■■'s ESY IEP. Ms. Baskind told Ms. Messing that she needed to complete this information on the ESY IEP as soon as possible.

25. Ms. Messing consulted informally with the ■■■ School teaching staff, speech and language therapist, and occupational therapist, and they came up with a suggested frequency and duration for each of the services specified on ■■■'s ESY IEP. Specifically, Ms. Messing and the ■■■ School staff decided that ■■■ should receive varying exceptionalities instruction for two hours a day, five days a week; speech and language therapy for 30 minutes each day; occupational therapy for 30 minutes a week; and social skills development for 30 minutes a week.

26. Ms. Messing conveyed these time allotments to Ms. Baskind, and she believed that Ms. Baskind thought the frequency and duration of services were appropriate and were in keeping with the time allotted to the particular services during the regular school year. Ms. Messing did not, however, attend to this matter promptly and had not provided the necessary

information on the ESY IEP as of June 20, 2005, the first day of the ESY program.

Initiating interaction with non-disabled peers

27. According to ■■■, ■■■ primarily interacts with adults but is beginning to initiate interactions with peers. ■■■ considers the goal in ■■■'s ESY IEP that ■■■ initiate interaction with non-disabled peers to be critically important to ■■■'s development. During the regular school year, ■■■ was in the classroom with non-disabled peers most of ■■■ school day, and ■■■ believes this is the optimal environment in which ■■■ can get exposure to ■■■ non-disabled peers and experience in initiating interactions. ■■■ believes that, for working on this particular goal, ■■■'s interactions should be with children that are the same age as ■■■

28. School Board staff determined that ■■■ could not work on ■■■ goal of initiating interactions with non-disabled peers at ■■■ because all of the students attending the five-week ESY program at that school were students with disabilities.<sup>6</sup> Ms. Baskind contacted Ms. Messing and asked if ■■■ School had a program planned for the summer that would provide ■■■ the opportunity of working on ■■■ goal of social interaction with non-disabled students. Ms. Messing notified Ms. Baskind that ■■■ School was running a summer sports camp, and Ms. Messing determined that ■■■ could work on the goal of initiating

interactions with non-disabled students by spending 30 minutes a week with the students enrolled in the sports camp. Ms. Messing then notified Ms. Baskind and [REDACTED] that [REDACTED]'s ESY schedule would include 30 minutes each week at [REDACTED] School's summer sports camp.

29. When Ms. Messing first proposed the [REDACTED] School summer sports camp as an appropriate venue for [REDACTED] to work on [REDACTED] goal of initiating interactions with non-disabled peers, she told Ms. Baskind that children of elementary-school age would be attending the camp. Ms. Messing also advised Ms. Baskind that the oldest child enrolled in the camp at the time was eight or nine years old but that she anticipated that older students would also be enrolled.

30. Ms. Messing later sent an e-mail to Ms. Baskind and other School Board personnel in which she expressed doubts that the [REDACTED] School summer sports camp was an appropriate placement for [REDACTED] to work on [REDACTED] social interaction goal because it was "only" a sports camp; because it included only children who were younger than [REDACTED]; because students who had not previously attended [REDACTED] School were enrolled in the camp; and because Ms. Messing was concerned that [REDACTED] would not consent to [REDACTED]'s having social interactions with the students enrolled in the sports camp.

31. Ms. Baskind concluded, however, that [REDACTED] could work on the goal of interacting with non-disabled peers at the [REDACTED]

School sports camp even if the children attending the camp were younger than ■■■, because the environment at ■■■ School was familiar to ■■■ and because ■■■ knew the coach who was running the camp. Ms. Baskind believed that the ■■■ School summer sports camp would provide ■■■ with a good match of services and support in which ■■■ could work on ■■■ social interaction goal. Nonetheless, Ms. Baskind asked Ms. Messing to investigate other camps or programs that ■■■ could attend to fulfill the goal of initiating interaction with ■■■ non-disabled peers.

32. Ms. Baskind did not hear from Ms. Messing regarding an alternative site in which ■■■ could work on non-disabled-peer social interactions. On June 9, 2005, Ms. Baskind wrote an e-mail to Ms. Messing advising her that ■■■ would be transported to the ■■■ School one day each week and would work on the social interaction goal for 30 minutes, from 12:30 p.m. to 1:00 p.m. This plan was consistent with Ms. Messing's decision regarding the frequency and duration of ESY services for ■■■ to work on this goal.

33. Ms. Baskind also advised Ms. Messing in this e-mail that "[a]n area office staff person, Melissa Cordo-Shaw, will be meeting the student there and will work with the staff person (your coach) and students in an inside social activity."<sup>7</sup> Finally, Ms. Baskind advised Ms. Messing in the e-mail that Ms. Baskind would arrange transportation for ■■■ from ■■■ to ■■■



School and that a social story would be developed and forwarded to ■■■'s parent so she could work with ■■■ in understanding the routine.<sup>8</sup> Ms. Baskind attached a draft letter that Ms. Messing was to send to ■■■ explaining the plan to transport ■■■ to ■■■ School once a week for interaction with non-disabled peers.

34. On or about June 17, 2005, the Friday before the ESY program was to begin, Ms. Baskind received the documentation from ■■■ School on ■■■'s ESY IEP program, and she noted that, in the July 17, 2002, IEP, ■■■ was to initiate interaction with non-disabled peers four times a day. Ms. Baskind determined that Ms. Messing's plan for ■■■ to spend 30 minutes a week at the ■■■ School sports camp would not be sufficient for ■■■ to engage in four social interactions with non-disabled peers. Ms. Baskind telephoned Ms. Messing on June 17, 2005, and notified her that ■■■ was to spend 30 minutes five days a week with the children enrolled in ■■■ School's sports camp rather than 30 minutes a week. Ms. Baskind also forwarded Ms. Messing an e-mail on June 19, 2005, confirming this change.

35. In an e-mail dated June 17, 2005, Ms. Baskind advised Ms. McDonald that she would be e-mailing Ms. McDonald a "social story to email to Mom today to share with C[] of [sic] this activity." Ms. Messing was under the impression from her June 17, 2005, conversation with Ms. Baskind that Ms. McDonald would notify ■■■ of the change through the social story, but

Ms. Messing also sent [REDACTED] an e-mail on Sunday, June 19, 2005, the day before [REDACTED]'s ESY program was to begin, confirming the schedule change. Ms. Messing's e-mail was the first notification [REDACTED] received of the schedule change.

36. Ms. McDonald prepared the social story Ms. Baskind requested and sent it to [REDACTED] by Federal Express on June 17, 2005. Ms. McDonald intended for the Federal Express package to be delivered to [REDACTED] on Saturday, June 18, 2005, but, due to an oversight by Ms. McDonald's secretary, the package containing the social story describing the activities [REDACTED] would engage in during the ESY program was not delivered to [REDACTED] until Monday, June 20, 2005, the first day of the program.

37. [REDACTED] visited the summer sports camp at [REDACTED] School on or about June 21, 2005, and met with Ms. Messing and Ms. Shaw, the ESE teacher assigned to work with [REDACTED] on social interactions. [REDACTED] did not approve of the School Board's decision to send [REDACTED] to the sports camp to work on [REDACTED] goal of initiating interactions with non-disabled peers. [REDACTED] was concerned because the children were not the same age as [REDACTED]; because [REDACTED] was scheduled to be at the camp during lunchtime, when [REDACTED] would be fixated on [REDACTED] food and unable to interact with other children; and because [REDACTED] would be an outsider coming for a short time each day into a group of children that had been together at the sports camp all morning. [REDACTED] also was opposed to [REDACTED]'s spending

most of the school day in the ESY program with disabled children.

### Transportation

38. Ms. Baskind's office made arrangements for [REDACTED] to be transported by bus from [REDACTED] home to [REDACTED] and from [REDACTED] to [REDACTED] home for the duration of the ESY program.

39. A form entitled Pupil Transportation Enrollment Data for Exceptional Student Education, dated May 26, 2005, was prepared in which the following "Special Transportation Needs" were identified: "Tinted windows"; "AC"; "Monitor or Attendant"; "Bus driver should have security gate notify parent of arrival to reduce wait time"; and "On Wednesdays, bus will pick up student at T. Marshall at 10:45, take student to Chancellor West for ESY extended services, wait 30 min. and then take student home." The form was not signed, and there is no indication on the form that it was sent to the School Board's transportation department.

40. In an e-mail dated June 17, 2005, Ms. Baskind notified both Cecile Champclaux, the School Board's transportation route analyst, and Ms. Messing that, as of June 20, 2005, [REDACTED] was to be picked up at [REDACTED] at 11:45 a.m. five days a week and transported to [REDACTED] School by 12:15 p.m. for [REDACTED] 30-minute "social interaction activity"; the bus driver was to wait for

█ at █ School and transport █ from █ School to █ home in Weston, Florida.

41. The house in which █ and █ reside is in a gated community, and the house is not close to the street. During the regular school year, the bus driver who transported █ to and from █ home and █ School was directed to advise the guard at the gate that she was on her way to pick up █. The gate guard would then call █, and she would have █ waiting at the street when the bus arrived. Once the gate guard became familiar with the routine, █ waved the bus through the gate and telephone █ without being asked.

42. The bus driver assigned to transport █ from █ home to █, from █ to █ School, and from █ School to █ home was not told to notify the gate guard that she was on her way to pick up █. Beginning on June 20, 2005, the bus driver drove to █'s home to pick █ up and transport █ to █. The gate guard waved her through the gate and, because she knew from other bus drivers that █ was sensitive to light, she shut off all of the lights in the bus when she stopped in front of █'s home. The bus driver waited for █, blew the horn, and continued to wait for █. When no one came out of the house, the bus driver circled around and stopped at █'s house again to make sure she did not miss █. The bus driver followed this

routine every day until she was told that [REDACTED] would not attend the ESY program at [REDACTED].

43. [REDACTED] did not receive a bus schedule advising her of the time at which the school bus would arrive to pick up [REDACTED] to transport [REDACTED] to [REDACTED]. The gate guard did not call [REDACTED]; she did not hear a horn; and she did not take [REDACTED] outside because she was not aware that the bus had arrived and was waiting for [REDACTED].

Implementation of [REDACTED]'s ESY IEP

44. Elayne Brown is the School Board's coordinator of ESE services for the south central area of Broward County. She was responsible for creating the 2005 ESY summer program at [REDACTED] and was familiar with the services and supports to be provided to [REDACTED]. Prior to the start of the ESY program, Ms. Brown knew that [REDACTED] would need the services of a speech pathologist; an occupational therapist; a family counselor; a teacher to work with [REDACTED] on social interactions at the [REDACTED] School summer sports camp; an aide assigned exclusively to assist [REDACTED]; and a bus and driver to transport [REDACTED] from [REDACTED]'s home to [REDACTED], from [REDACTED] to [REDACTED] School, and from [REDACTED] School to [REDACTED]'s home.

45. On June 20, 2005, the first day of the ESY program, [REDACTED] visited [REDACTED] and spoke with Liping Li, the ESE specialist at [REDACTED], about the plans for [REDACTED]'s ESY program.

46. During her visit on June 20, 2005, [REDACTED] wanted to know the name of the person who would serve as [REDACTED]'s full-time aide.

Ms. Li told [REDACTED] that she did not know the name of the specific individual that would be assigned to [REDACTED] but that she knew that sufficient staff had been hired to serve as aides to the ESE students enrolled at [REDACTED] and that an individual would be assigned to work exclusively with [REDACTED]. Ms. Li telephoned Ms. Brown about [REDACTED]'s inquiry and was advised that the person had not been identified as of June 20, 2005. On June 21, 2005, Ms. Li knew the name of the person assigned to serve as [REDACTED]'s full-time aide, and she telephoned [REDACTED] that day to give her this information. [REDACTED] returned Ms. Li's call on June 23, 2005, and Ms. Li told her the individual's name.

47. [REDACTED] School had sent some, but not all, of [REDACTED]'s documentation and materials to [REDACTED] prior to the beginning of the ESY program. The ESY IEP the [REDACTED] staff received did not include the frequency and duration of the services to be provided to [REDACTED]. Ms. Brown telephoned Ms. McDonald for direction, and she later received a telephone call from [REDACTED] School providing her with this information.

48. Because she had not received the time specifications for [REDACTED]'s speech and language therapy, occupational therapy, and counseling services prior to June 20, 2005, Ms. Li had not been able to prepare a final schedule for [REDACTED] prior to [REDACTED]'s visit on June 20, 2005. The personnel necessary to provide the services were, however, in place, and they were ready to begin working

with [REDACTED] as soon as the final schedule was developed. Ms. Li told [REDACTED] on June 20, 2005, that she had developed a tentative schedule for [REDACTED] but that it was in the possession of [REDACTED]'s ESE teacher.

49. [REDACTED] asked to meet with the ESE teacher, but Ms. Li refused because of a rule requiring that teachers receive 24 hours' notice prior to meeting with a parent. Ms. Li and [REDACTED] did, however, visit the classroom to which [REDACTED] was assigned. The class was an autism cluster including children in grades one through five and was the only class available for students attending the five-week ESY program. At the time of [REDACTED]'s visit, there were only two children present, and they were younger than [REDACTED]. Ms. Li told [REDACTED] that older students were assigned to the class but that they did not attend school on June 20, 2005.

50. During [REDACTED]'s visit on June 20, 2005, Ms. Li told her that the students attending the ESY program at [REDACTED] came from different schools and that, once a student began attending the program, the personnel at [REDACTED] would make all of the adjustments necessary to meet the student's needs.

51. Vanessa Barnes was the speech and language pathologist assigned to [REDACTED] for the ESY program. Ms. Barnes was not aware on June 20, 2005, of the number of minutes she was to provide speech and language therapy to [REDACTED]. She was advised on June 21,

2005, of the number of minutes she was to work with ■■■, and she was prepared to begin providing ■■■ with speech and language therapy on that date.

52. ■■■ decided on or about June 20, 2005, after visiting ■■■, speaking with Ms. Li, and observing the classroom in which ■■■ would be placed, that she would not send ■■■ to the ESY program at ■■■. ■■■ spoke with Ms. Li either June 22 or 23, 2005, and advised her that ■■■ would not attend the ESY program. ■■■ formally notified the School Board of her decision in a letter to Ms. Baskind dated June 27, 2005, in which she stated that her decision was a result of "your actions." The actions to which ■■■ was referring were the decisions to place ■■■ in an ESY program with disabled children at ■■■ and with non-disabled "non-peers" at the ■■■ School summer sports camp.

#### Summary

53. ■■■ does not complain in this due process proceeding that the goals or services identified in the ESY IEP were inappropriate. Rather, she asserts that the manner in which the School Board implemented the provisions of ■■■'s ESY IEP resulted in a denial of a free appropriate public education in the least restrictive environment: Specifically, ■■■ contends that the School Board's failure to have a schedule for ■■■ in place on the first day of the ESY program was unacceptable; that there was no unique aide assigned to ■■■ on the first day of the



ESY program; that the ESY program was not based on ■■■'s individual needs because the School Board did not design a program of a duration unique to ■■■ but, rather, placed ■■■ in the School Board's five-week ESY program; that ■■■'s placement at ■■■ was not the least restrictive environment for ■■■ because the classroom to which ■■■ was assigned was an autistic cluster classroom including younger children rather than a general education classroom; that ■■■'s participation in the ■■■ School summer sports camp would not allow ■■■ to interact with non-disabled peers because the children enrolled in the camp were several years younger than ■■■; and that the School Board did not make adequate arrangements for ■■■'s transportation from ■■■ home to ■■■. ■■■ requests "compensatory education and services for ■■■ for the instruction that ■■■ would have received had ■■■ been in ESY that was appropriate."<sup>9</sup>

54. The evidence presented by ■■■ is, however, not sufficient to establish that the School Board failed to fulfill its responsibility to make a free appropriate public education available to ■■■ in the ESY program for the summer of 2005. The uncontroverted evidence establishes that the School Board substantially complied with the requisite procedures in determining ■■■'s eligibility for ESY services and in developing ■■■'s ESY IEP. The evidence presented is also sufficient to

establish that the ESY IEP developed on February 17, 2005, was designed to provide ■■■ with a meaningful educational benefit.

55. The greater weight of the evidence is sufficient to establish that the IEP team based its decision to provide ■■■ with ESY services consisting of ESE instruction, speech and language therapy, occupational therapy, and counseling for four hours a day, five days a week, over a period of five weeks on an assessment of ■■■'s individual needs. The greater weight of the evidence also establishes that the ESY IEP would provide sufficient educational services to avoid substantial regression over the summer in certain of ■■■'s academic and social goals and to address ■■■ emerging, critical life skill of interacting with non-disabled peers.

56. The greater weight of the persuasive evidence is sufficient to establish that School Board personnel failed to make preparations for receiving ■■■ into the ESY program at ■■■ and the ■■■ School summer sports camp in an expeditious and professional manner. The evidence presented is not, however, sufficient to establish that the deficiencies in the preparation for the implementation of the February 17, 2005, ESY IEP were so serious that ■■■ would have been denied a free appropriate public education had ■■■ attended the ESY program.

57. It can reasonably be inferred from the evidence presented that School Board personnel at all levels were aware

that ■ needed time and assistance to assimilate and deal with a change in ■ routine. The lack of a schedule for ■ prior to the beginning of the ESY program, therefore, constituted a serious, though temporary, deficiency in the implementation of ■'s ESY IEP. The evidence is uncontroverted that ■'s IEP team was required to include in ■ ESY IEP the frequency and duration of the specific services to be provided as part of ■ ESY program, and the ESE specialist at ■ School should have followed through and ensured that the required information was included in ■'s ESY IEP before she left for maternity leave. At the least, once Ms. Messing learned of the omission, she should have promptly consulted with ■'s IEP team and completed the ESY IEP so that a schedule of services could be developed for ■ before the first day of the ESY program.

58. The greater weight of the persuasive evidence presented is, however, not sufficient to establish that the failure of the IEP team at ■ School to include the frequency and duration of the services to be provided ■ during the ESY program or the lack of a final schedule for ■ on the first day of the ESY program resulted in a denial of free appropriate public education. The uncontroverted evidence establishes that, had ■ attended the ESY program on the second day of the ESY program, ■ would have found that a schedule had been developed for ■'s four-hour school day; that all of the

personnel necessary to implement the goals in ■■■'s ESY IEP were available and ready to provide services, including an identified aide to work only with ■■■; that transportation had been arranged to take ■■■ to ■■■ School, where an ESE specialist was scheduled to meet ■■■ and work with ■■■ on interactions with the non-disabled children attending the ■■■ School summer sports camp.

59. ■■■ did not present any persuasive evidence to establish that the sports camp would not provide a meaningful opportunity for ■■■ to interact with non-disabled peers. It is ■■■'s position that the children enrolled in the sports camp were not ■■■'s "peers" because the children were three or four years younger than ■■■, but she failed to present any evidence that interaction with younger children would not provide ■■■ with a meaningful opportunity to develop ■■■ emerging skill of interacting with non-disabled peers. Significantly, ■■■'s ESY IEP goal does not specify that ■■■ will interact with non-disabled children ■■■ own age; ■■■ has had that opportunity during the regular school year as a result of ■■■ placement in a ■■■-grade regular classroom, but there was no evidence presented that interaction with children of the same age is a necessary condition for ■■■'s working toward ■■■ interaction goal.

60. ■■■ did not present any evidence tending to establish that the goals and services included in ■■■'s ESY IEP could be

provided in a lesser restrictive environment than the ESY program at [REDACTED]. It can be inferred from the evidence [REDACTED] presented that her primary concern was [REDACTED]'s having the opportunity to interact with non-disabled peers and that she considered [REDACTED]'s placement in an autistic cluster at [REDACTED] for ESE services during the summer ESY program inappropriate. The evidence established, however, that the School Board made arrangements for [REDACTED] to spend 30 minutes each day in an environment in which [REDACTED] had the opportunity to interact with children who were not disabled. It was not necessary for the School Board to replicate for the ESY program [REDACTED]'s placement in a regular classroom with non-disabled students but to provide an environment in which all of the goals included in [REDACTED] ESY IEP could be addressed. [REDACTED] presented no persuasive evidence that the placement offered by the School Board failed to provide the means for addressing these goals, and the evidence presented is sufficient to establish that the placement at [REDACTED], together with the time scheduled for [REDACTED] to spend interacting with non-disabled children, was designed to provide [REDACTED] with a meaningful educational benefit.

61. [REDACTED] also faults the School Board for failing to advise the bus driver assigned to transport [REDACTED] that she was to notify the gate guard to telephone [REDACTED] and advise her that the bus was on its way to pick up [REDACTED]. Although this certainly was an

oversight on the School Board's part, as was the School Board's failure to provide ■■■ with a bus schedule for ■■■, it did not impact the School Board's provision of a free appropriate public education to ■■■

CONCLUSIONS OF LAW

62. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to Section 1003.57(5), Florida Statutes (2005), and Florida Administrative Code Rule 6A-6.03311(11).

63. Pursuant to Title 20, Section 1412(1), United States Code (2003), which is part of the Individuals with Disabilities Education Act ("IDEA"),<sup>10</sup> a state is eligible for federal funds if it demonstrates that it has "in effect a policy that assures all children with disabilities the right to a free appropriate public education."

64. The IDEA defines a "free appropriate public education" at 20 U.S.C Section 1401(a)(8), as:

. . . special education and related services that --

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

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

(C) include an appropriate preschool,

elementary, or secondary school education in the State involved; and

(D) are provided in conformity with the individualized program required under section 1414(d).

65. With respect to the ESY services at issue herein, Title 34, Section 300.309, Code of Federal Regulations, one of the federal regulations implementing the IDEA, provides:

(a) General.

(1) Each public agency shall ensure that extended school year services are available as necessary to provide FAPE [free appropriate public education], consistent with paragraph (a)(2) of this section.

(2) Extended school year services must be provided only if a child's IEP team determines, on an individual basis, in accordance with Sec. 300.340-300.350, that the services are necessary for the provision of FAPE [free appropriate public education] to the child.

(3) In implementing the requirements of this section, a public agency may not--

(i) Limit extended school year services to particular categories of disability; or

(ii) Unilaterally limit the type, amount, or duration of those services.

(b) Definition. As used in this section, the term extended school year services means special education and related services that--

(1) Are provided to a child with a disability--

(i) Beyond the normal school year of the public agency;

(ii) In accordance with the child's IEP;  
and

(iii) At no cost to the parents of the  
child; and

(2) Meet the standards of the SEA.

66. Florida's plan for providing a free appropriate public education to students with disabilities is set forth in the Florida Statutes and in Florida Administrative Code Rules 6A-6.03011 through 6A-6.0361 and is consistent with the requirements of the IDEA and the Code of Federal Regulations. Section 1003.57, Florida Statutes (2004), provides in pertinent part:

Each district school board shall provide for an appropriate program of special instruction, facilities, and services for exceptional students as prescribed by the State Board of Education as acceptable, including provisions that:

(1) The district school board provide the necessary professional services for diagnosis and evaluation of exceptional students.

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

\* \* \*



(5) No student be given special instruction or services as an exceptional student until after he or she has been properly evaluated, classified, and placed in the manner prescribed by rules of the State Board of Education. The parent of an exceptional student evaluated and placed or denied placement in a program of special education shall be notified of each such evaluation and placement or denial. Such notice shall contain a statement informing the parent that he or she is entitled to a due process hearing on the identification, evaluation, and placement, or lack thereof. Such hearings shall be exempt from the provisions of ss. 120.569, 120.57. and 286.011, except to the extent that the State Board of Education adopts rules establishing other procedures and any records created as a result of such hearings shall be confidential and exempt from the provisions of s. 119.07(1). The hearing must be conducted by an administrative law judge from the Division of Administrative Hearings of the Department of Management Services. The decision of the administrative law judge shall be final, except that any party aggrieved by the finding and decision rendered by the administrative law judge shall have the right to bring a civil action in the circuit court. In such an action, the court shall receive the records of the administrative hearing and shall hear additional evidence at the request of either party. In the alternative, any party aggrieved by the finding and decision rendered by the administrative law judge shall have the right to request an impartial review of the administrative law judge's order by the district court of appeal as provided by s. 120.68. Notwithstanding any law to the contrary, during the pendency of any proceeding conducted pursuant to this section, unless the district school board and the parents otherwise agree, the student shall remain in his or her then-current educational assignment or, if applying for

initial admission to a public school, shall be assigned, with the consent of the parents, in the public school program until all such proceedings have been completed.

(6) In providing for the education of exceptional students, the district school superintendent, principals, and teachers shall utilize the regular school facilities and adapt them to the needs of exceptional students to the maximum extent appropriate. Segregation of exceptional students shall occur only if the nature or severity of the exceptionality is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

67. With respect to ESY services, Florida Administrative Code Rule 6A-6.03028(6) provides in pertinent part:

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

\* \* \*

(i) At least annually, whether extended school year services are necessary for the provision of a free appropriate public education to the student 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.

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

68. ■■■ conceded at the due process hearing that she did not disapprove of the substance of the ESY IEP developed February 17, 2005. In order to establish that the relief she requests on behalf of ■■■ should be granted, therefore, ■■■ has the burden of proving by a preponderance of the evidence that the ESY program for ■■■, as implemented, would not have provided ■■■ with a free appropriate public education. See Devine v. Indian River County School Board, 249 F.3d 1289, 1292 (11th Cir. 2001)("[B]ecause it is the parents who are seeking to attack a

program they once deemed appropriate, the burden rests on the parents in this IEP challenge.").

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

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

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

70. The procedural requirements of the IDEA are designed to involve a child's parent or parents in the process of determining their child's eligibility for ESE services, to apprise them of the School Board's proposal or refusal to evaluate their child and consider him or her for placement in an ESE program, and to permit the parent or parents to participate

in a meaningful way in the development of the IEP for their child. ■ did not allege, and the findings of fact herein do not support a conclusion, that the School Board failed to comply with the procedural requirements of the IDEA. The School Board timely considered ■'s eligibility for ESY services and ■ attended and participated in the IEP meeting on February 17, 2005, at which ■'s ESY IEP was developed.

71. To satisfy the substantive requirements of the IDEA, an IEP must be "reasonably calculated to enable the child to receive educational benefits," Rowley, 458 U.S. at 206-07, and it must be predicated on what appears to be "objectively reasonable . . . at the time" it is promulgated. Independent School District No. 283 v. S.D., 848 F. Supp. 860, 878 (D. Minn. 1995). The IDEA does not, however, require that the potential of a disabled child be maximized, and Florida law does not require school boards to provide a disabled child the best possible education or the placement preferred by the child's parents. School Board of Martin County v. A.S., 727 So. 2d 1071, 1074 (Fla. 4th DCA 1999). Rather, as summarized by the court in Michael F.,

[t]he "free appropriate public education" . . . described in an IEP, . . . need not be the best possible one, nor one that will maximize the child's educational potential; rather, it need only be an education that is specifically designed to meet the child's unique needs, supported by services that

will permit him "to benefit" from the instruction. In other words, the IDEA guarantees only a "basic floor of opportunity" for every disabled child, consisting of "specialized instruction and related services which are individually designed to provide educational benefit." Nevertheless, the educational benefit to which the Act refers and to which an IEP must be geared cannot be a mere modicum or de minimis; rather, an IEP must be "likely to produce progress, not regression or trivial educational advancement." In short, the educational benefit that an IEP is designed to achieve must be "meaningful."

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

72. This case involves the provision of ESY services, which are provided to eligible students any time there is a break in the traditional school calendar; for example, ESY services could be made available over the Christmas break, over the spring break, and/or over summer break. When a determination is made that ESY services are needed for a student with disabilities, reference is to be made to the student's regular IEP in determining the goals and objectives and related services that should be included in the ESY IEP, but not all goals and objectives or related services specified in the IEP must be provided through ESY services, and the placement for the ESY services need not be the same as the placement for the regular school year. See Florida Department of Education Technical Assistance Paper ESE311202, "Determining an Individual Student's Need for Extended School Year Services (January 2002).

73. In Johnson v. Independent School District No. 4 of Bixby, Tulsa County, Oklahoma, 921 F.2d 1022 (10th Cir. 1990), the court set forth the following standard for determining whether an ESY educational program offered during the summer months provided the student with a free appropriate public education: "[W]hether the benefits accrued to the child during the regular school year will be significantly jeopardized during the summer months." Id. at 1028 (quoting Alamo Heights Independent School District v. State Board of Education, 790 F.2d 1153, 1158 (5th Cir. 1986)). In the ESY IEP developed on February 17, 2005, the School Board devised an ESE program for ■■■ because the IEP team determined that, without ESY services, ■■■ would experience significant regression on ■■■ IEP goals; certain emerging critical life skills would be significantly impacted; behaviors related to ■■■'s autism would be significantly impacted; and critical life skills would be significantly impacted. Based on the findings of fact herein, in light of the legal authority discussed above and consistent with the applicable procedural and substantive requirements, ■■■ failed to satisfy her burden of proving by a preponderance of the evidence either that the program developed for ■■■ would not have met the standard set forth in Johnson had ■■■ participated in the program set up for ■■■ at ■■■ and the ■■■ School summer sports camp or that the program was not designed to provide ■■■

with a meaningful educational benefit during the summer of 2005. ■ failed, therefore, to satisfy her burden of proving by a preponderance of the evidence that the School Board denied ■ a free appropriate public education in the least restrictive environment.

CONCLUSION

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the relief requested by ■ on behalf of her ■, ■ is denied.

DONE AND ORDERED this 31st day of August, 2005, in Tallahassee, Leon County, Florida.

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PATRICIA M. HART  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 31st day of August, 2005.



## ENDNOTES

<sup>1/</sup> █████ is also known by a nickname and is sometimes referred to in the transcript as █████ \*\*\* will, however, be referred to as █████ in this Final Order.

<sup>2/</sup> A number of interim reviews have been conducted since July 17, 2002, and an IEP was developed but challenged by N.J. in a request for a due process hearing filed January 27, 2004. In a Final Order entered June 29, 2004, an administrative law judge ordered that the July 17, 2002, IEP, with some clarifications and modifications, was to remain in effect for the 2004-2005 school year.

<sup>3/</sup> During the regular school year, Ms. Weinstein worked on this goal with █████ for 40 minutes on Mondays, Wednesdays, and Fridays and for 30 minutes on Tuesdays and Thursdays. Ms. Weinstein and █████ worked together in a one-on-one setting in the regular classroom during science class and, often, during part of the time █████ was at recess.

<sup>4/</sup> Ms. Messing had personally taken over responsibility for seeing to the implementation of █████'s ESY IEP and for communications with █████ because Ms. Wong, the Chancellor Charter School's ESE specialist, was on maternity leave. Ms. Messing had attended a number of meetings of █████'s IEP team, including the February 17, 2005, meeting at which \*\*\* ESY IEP was developed, and was familiar with █████ due to \*\*\* attendance at Chancellor Charter School during the regular school year.

<sup>5/</sup> These meetings apparently concerned the annual review of █████'s IEP for the 2005-2006 school year, not the IEP for the ESY program.

<sup>6/</sup> All of the students with disabilities in Broward County who were to receive school-based ESY services in the five-week program were assigned to Thurgood Marshall Elementary.

<sup>7/</sup> Respondent's Exhibit 13.

<sup>8/</sup> A "social story" is "a strategy that communicates to a student what is going to be happening and what to anticipate. It's done in a visual way, and it's a way that the student can later on review it and practice and organize \*\*\*self and understand some social change or just a social situation." Transcript at page 114-15. █████'s July 17, 2002, IEP provides

that [REDACTED] is to receive social stories, with photographs if possible, describing changes in [REDACTED] schedule and for use in developing [REDACTED] social and pragmatic skills.

<sup>9</sup>/ Transcript at page 289.

<sup>10</sup>/ The Individuals with Disabilities Education Improvement Act of 2004 was signed into law in December 2004 and become effective on July 1, 2005. Because the events underlying this due process proceeding occurred prior to the effective date of the new Act, the 2003 version of the IDEA is applicable.

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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.