St. Johns County School District
No. 05-1304E
Initiated by: Parent
Hearing Officer: Ella Jane P. Davis
Date of Final Order: September 28, 2005

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

[redacted]	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 05-1304E
	)	
St. Johns County School Board,	)	
	)	
Respondent.	)	
	)	

FINAL ORDER

Administrative Law Judge Ella Jane P. Davis of the Division of Administrative Hearings (DOAH) held a due process hearing in the above-styled cause May 24 through 26, 2005, in Jacksonville, Florida.

APPEARANCES

For Petitioner: Doris L. Raskin, Esquire
Post Office Box 600606
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For Respondent: Sidney M. Nowell, Esquire
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STATEMENT OF THE ISSUES

(1) Whether Respondent School Board provided procedural due process to Petitioner as required by law;

(2) Whether Petitioner is, in fact, a child with a

disability who is entitled to the provisions of the Individuals with Disabilities Education Act (IDEA)[1/];

(3) Whether Respondent denied a free, appropriate public education (FAPE) to Petitioner for the 2003-2004 School Year (SY);

(4) Whether Petitioner is entitled to reimbursement from Respondent for educational expenses, including education-related counseling, incurred in the 2003-2004 SY;

(5) Whether Respondent denied FAPE to Petitioner for the 2004-2005 SY; and

(6) Whether Petitioner is entitled to reimbursement from Respondent for all costs associated with [redacted] placement in [redacted] an out-of-state residential treatment center, on March 5, 2005, and for continuing placement thereafter.

PRELIMINARY STATEMENT

THIS cause was referred to the Division of Administrative Hearings on or about April 12, 2005.

Respondent School District refused mediation.

By stipulation, the due process hearing was heard at the location requested by Petitioner, on the days agreed-to by the parties.

All time frames provided by law have been waived by both parties, specifically and sequentially on the record as the case proceeded or by operation of law due to the dates the post-hearing proposals were filed.

Joint Exhibits A-1 and A-2 were admitted in evidence. Joint Exhibit A-1 contains stipulated facts which were interlineated

with agreed changes, as set out in the Transcript.

Petitioner presented oral testimony, either live or by telephone, of [redacted] M.D., [redacted], [redacted] and the Petitioner's parents. Any irregularities concerning telephone testimony have been waived, either by oral stipulations on the record or by virtue of a failure to timely file an objection, pursuant to the terms of the Order entered herein on August 3, 2005. Petitioner's Exhibits P-1 through P-3, P-5 through P-7, and P-10 through P-13, were admitted in evidence. Exhibits P-4 and P-9 are part of Respondent's Exhibit 1 (Composite), which was admitted in evidence. Petitioner's Exhibit 8, which was not admitted, appears to be a rough draft of Exhibit P-11, which was admitted.

Respondent presented the oral testimony of [redacted], and [redacted] Respondent's Exhibits R-1 (Composite) through R-3 were admitted in evidence.

Respondent provided a Transcript, and the parties have filed Proposed Final Orders,[2/] which have been considered in preparation of this Final Order.

In compliance with Chapter 230, Florida Statutes, "new" rules of the Florida Department of Education, and Orders entered in this cause, the parties entered into a detailed Joint Stipulation, containing specific agreed findings of fact, but these stipulated facts were followed by certain reservations listed by Respondent. (See Joint Exhibit 1-A.) Some stipulated facts also have been varied or expanded upon by sworn testimony

or documentary evidence. Neither Proposed Final Order adopted verbatim all the stipulated findings of fact, and both parties' proposals have digressed from the specific language of their stipulations. Some of the stipulated findings of fact also referred to the Petitioner by name, not initials, and therefore, adoption of those stipulated facts verbatim would breach the confidentiality guaranteed Petitioner and [redacted] parents by law. Therefore, for the foregoing reasons, in the interest of consistency of grammar, space, tense, and style, and in order to meet the statutory and rule requirements of this case, the stipulated facts have been utilized as much as practicable, but not adopted verbatim.

FINDINGS OF FACT

1. Petitioner presently is a [redacted]-year-old [redacted]. [redacted] date of birth was [redacted].

2. At all times material, Petitioner's legal domicile has been with [redacted] parents in St. Johns County, Florida. [redacted] is entitled to FAPE.

3. Petitioner and [redacted] family moved from West Virginia to St. Johns County in October 2003.

4. Petitioner's mother is credible that, prior to enrolling Petitioner, she contacted a counselor at [redacted] in St. Johns County, and expressed her concerns about "transition" of Petitioner into that school population, alerting the counselor that Petitioner had school avoidance issues and a serious drop in grades while [redacted] was in West Virginia. However, due to her equally credible testimony that Petitioner had been resistant to

any type of psychotherapy or school intervention in West Virginia and the details of how the family was hoping that things would improve in Florida, plus her testimony as a whole, it is found that the mother made no specific request to [redacted] or St. Johns County School District for educational evaluation or Exceptional Student Education (ESE) services prior to enrolling Petitioner at Fruit Cove. The counselor reassured her that teachers would make Petitioner's transition go smoothly.

5. Since Petitioner was not yet enrolled, no record was kept by the school or counselor of this pre-enrollment conversation.

6. On November 3, 2003, [redacted] parents enrolled Petitioner in the eighth grade at [redacted]. Neither prior to enrollment, nor at this initial enrollment of Petitioner in a Florida school, did Petitioner's parents provide school officials with any prior or existing Individual Educational Plan (IEP) or classification of Petitioner as an ESE student from [redacted] last school in West Virginia, because none existed. The mother reiterated her transitioning concerns at enrollment, but there was no explicit request for ESE services at enrollment.

7. After a month or two at [redacted] Petitioner began to miss classes, claiming illness. At what point Petitioner began to smoke "pot" and at what point [redacted] began to fly into uncontrollable rages, punching out walls in the family home, is unclear from the record, but apparently, one or both of these problems existed was early as January 2004.

8. On January 20, 2004, [redacted] mother telephoned

[redacted] school guidance counselor, Mrs. [redacted] and Deputy Sheriff [redacted] the school resource officer, and told them that Petitioner was sleeping late, staying in bed, missing classes, running with the wrong crowd, and cutting [redacted]. Petitioner refused to speak to Officer [redacted] on the phone, and the mother declined, due to the presence of other children, to have a law enforcement officer come to the home to talk to Petitioner.

9. Therefore, Mrs. [redacted] arranged a meeting at [redacted] for January 21, 2004, which included Petitioner, [redacted] mother, and Officer [redacted] Petitioner probably was dressing "Goth" by this time, but so were other [redacted] students. How bad the slash marks actually were on January 21, 2004, is open to debate, based on the appearance of Petitioner's arms in a yearbook photograph which was taken the following SY when [redacted] was a high school freshman at [redacted]). The marks are barely visible in the photograph. Petitioner's slashing [redacted] got much worse later in 2004, than it was on January 21, 2004. How much was actually revealed to school officials concerning Petitioner's aberrations on January 21, 2004, also is vague. However, when that meeting occurred, some cuts were visible on Petitioner's arms. The counselor and the resource officer observed the slash marks that Petitioner had inflicted on [redacted] arms, and the resource officer spoke to Petitioner about the marks. However, at [redacted] mother's request, the school officials focused on Petitioner's truancy, and made arrangements for Petitioner to participate in football and jazz band, activities that matched the talents the mother described Petitioner as having. They concurred with the mother

that such activities would keep Petitioner "involved" in school and help [redacted] make friends. Petitioner promised to come to school. [redacted] principal, [redacted] briefly visited with the group and concurred in the selection of activities. Testimony conflicts, and there is no reliable evidence as to what degree, if any, Mr. [redacted] observed, or was otherwise made aware of, any lacerations on Petitioner.

10. Petitioner's mother candidly admits that she made no specific request for ESE referral, evaluation, or staffing with regard to ESE at the January 21, 2004, meeting.

11. On February 4, 2004, Petitioner was arrested at school on an aggravated battery charge for hitting and injuring another student after getting off the school bus on February 3, 2004. Officer [redacted] recorded that Petitioner had "multiple scars on [redacted] left arm." The student victim required several stitches under [redacted] eye. School officials considered this a serious situation, requiring Petitioner's suspension.

12. St. Johns County provides an educational component in the juvenile detention facility to which Petitioner was taken.

13. On February 6, 2004, Petitioner was released from detention by an order of the juvenile court judge, which order required both regular school attendance and psychiatric care. The same day, Petitioner was unilaterally placed by [redacted] parents at [redacted] a psychiatric facility for children and adults, in Jacksonville, Duval County, Florida. Petitioner was on school suspension for 10 days, and the parents did not notify [redacted] or St. Johns School District officials of Petitioner's

out-of-district hospitalization before or when it occurred.

14. When released from [redacted] on or about February 9, 2004, Petitioner began to be treated/counseled by [redacted] M.D., a Florida-licensed physician and board-certified psychiatrist.

15. On February 9, 2004, Petitioner was assigned by the St. Johns County School District Disciplinary Committee to [redacted] for the remainder of the 2003-2004 SY, subject to review of this alternative educational placement at the end of the SY. No prior discrete manifestation hearing was held before this placement or prior to the school suspension, because Petitioner had not as yet been evaluated/classified as eligible for ESE. In fact, upon [redacted] assignment to [redacted], no school or District officials were even clearly aware that Petitioner was, or had been, in [redacted]

16. During Petitioner's short stay at [redacted] and while [redacted] was being treated at [redacted] either once or twice before February 20, 2004, Petitioner's mother observed new signs of self-mutilation. The parents did not request ESE services or notify [redacted] officials of the self-mutilation.

17. Petitioner was not formally withdrawn from the St. Johns County School District, but on or about February 20, 2004, (approximately ten school days after [redacted] was released from [redacted] the first time), Petitioner's parents unilaterally placed [redacted] at [redacted] and informed [redacted] of their unilateral placement. Focus is an in-patient, lock-down psychiatric facility located at [redacted] Georgia. Focus does not have a

discrete educational component, not even tutoring. This placement by the parents was made upon the advice of Dr. [redacted] after the mother reported discovery of substantial evidence that Petitioner's self-mutilation was escalating.[3/]

18. On February 23, 2004, Attorney Carol A. Caldwell, wrote [redacted] St. Johns County's Director of ESE, on behalf of Petitioner's parents, requesting assistance in beginning the process to determine Petitioner's eligibility for ESE in St. Johns County. She advised Ms. [redacted] that the parents had requested assistance in getting an evaluation of Petitioner to determine if, in fact, [redacted] emotional problems were contributing to [redacted] diminished school performance, but that there had been no response. Specifically, her letter stated:

> At this time I am requesting:
>
> 1. That you contact me as soon as possible to discuss this situation and that you direct your communications to me as the legal representative of [the parents.]
>
> 2. That you provide me a complete copy of [Petitioner's school records including all grade reports, disciplinary records, teacher notes, school nurse notes, and any other papers with [Petitioner's] name, [the mother] will stop at [redacted] and sign an authorization for release of the records once you notify me that they are ready for pick-up.
>
> 3. That you provide the [parents] with appropriate school work for [Petitioner] immediately so that they may have [redacted] attempt to keep [redacted] on grade level.
>
> 4. That you begin the process of a comprehensive evaluation on [Petitioner] and that you expedite that evaluation. We will provide you copies of the evaluation from Dr. [redacted] [sic.] and, once Dr. [redacted]

completes [redacted] evaluation, we will provide that, as well.

5. That you schedule a meeting as soon as possible to discuss [Petitioner's] school placement prior to [redacted] being released from [redacted]. The meeting should include the ESE Department, [redacted] principal, teachers and guidance counselor, and representative from the [redacted] School. I would also request that Mr. [redacted] attend the meeting since [redacted] provides counseling for children with emotional problems at the middle school level.(P-1)[4/]

19. On February 24, 2004, Principal [redacted] responded to Attorney Caldwell's letter with a letter of [redacted] own, in which [redacted] advised that her report of a previous request for an evaluation was untrue. [redacted] stated that [redacted] holds a true interest in [Petitioner's] well being and we are more than willing to provide the doctors, psychologist and counselors with all the information that would assist in helping [Petitioner] through these trying times." [redacted] offered to provide records. However, all that [redacted] did was to forward Ms. [redacted]'s request and Petitioner's school records to [redacted] where Petitioner was placed, and to St. Johns County School District's attorney, Tracy Upchurch.

20. About February 23 or 24, 2004, Ms. [redacted] District ESE Director, attempted to respond to Ms. Caldwell's letter via a phone call. Ms. [redacted] testimony that Ms. [redacted] hung up on her is unrefuted, as is Ms. [redacted]'s testimony that it is not St. Johns County's policy to pursue students outside of the State in order to evaluate them. She also subsequently turned over her information to Attorney Upchurch.

21. On March 2, 2004, Attorney Caldwell sent another letter to Attorney Upchurch, pointing out the School District's failure to conduct a manifestation determination hearing pursuant to IDEA when Petitioner was removed from [redacted] and placed at [redacted] She also requested an expedited evaluation of Petitioner be conducted to determine [redacted] eligibility for special education and related services. There are five specific references to the need for an "expedited evaluation" in this letter. The letter also asked for counseling and any tutoring necessary so that Petitioner could maintain academic progress, and a request for a meeting as set out in her prior letter. Ms. [redacted] also asked for special education and related services at [redacted] thereby effectively waiving any manifestation hearing.

22. However, no further action was taken by [redacted] officials or by St. Johns School District officials on March 2, 2004, because Petitioner already had been unilaterally removed by the parents to [redacted] an out-of-state facility. For approximately two school weeks, the School District had no access to [redacted].

23. Petitioner remained at [redacted] until about March 3, 2004.

24. Following [redacted] two weeks' treatment at [redacted] Petitioner was released, and Dr. [redacted] recommended to the parents that [redacted] not return to the [redacted].

25. At least by this point in time, and possibly earlier, mental health professionals were advising the parents that Petitioner's psychiatric condition, alone, might require residential treatment.

26. However, Petitioner attended [redacted] from approximately Thursday, March 4, 2004, until Tuesday, March 16, 2004. No ESE evaluation was begun during these nine school days.

27. Petitioner was not formally withdrawn from St. Johns County School District, but once again, on March 16, 2004, Petitioner's parents unilaterally, and without prior notice, enrolled [redacted] in [redacted].

28. On March 30, 2004, Dr. [redacted] wrote to whom it may concern, that "[Petitioner] has undergone a complete psychiatric evaluation on February 9, 2004 in my office, also please be advised that [Petitioner] is under my direct care for on-going psychiatric treatment. . . . [Petitioner] was also admitted to [redacted] M/H In-Patient Facility in [redacted] Georgia, as per my advice to the [m]other, where [redacted] also had a complete psychiatric evaluation performed. If you have any questions, please feel free to contact me. . . . " Dr. [redacted] testified that [redacted] gave this item "to mother" for her purposes. It is not clear exactly when anyone within the public school system received it.

29. [redacted] is a small, private school for alternative learners in [redacted] Duval County, Florida. Petitioner remained there for nine weeks, the remainder of the 2003-2004 SY. At [redacted] although [redacted] had to work an extra four or five days beyond the date the school normally closed for the summer, Petitioner successfully completed an eighth grade curriculum, and was "promoted" to the ninth grade.

Therefore, it follows that Petitioner obtained some educational value in that placement.

30. None of the private institutions wherein Petitioner had been unilaterally placed by [redacted] parents up to this point had requested a referral for special education services.

31. On June 20, 2004, Dr. [redacted] wrote to whom it may concern that "[Petitioner] is being treated for Bipolar Disorder" and prescribed that it was "medically appropriate to refer [redacted] for individualized educational planning, which would benefit [redacted] with [redacted] current psychiatric condition." Dr. [redacted] testified that this was the first request for an IEP that [redacted] knew about. It also is not in the least clear when anyone outside the family received [redacted] memorandum.

32. Over the summer of 2004, Petitioner mostly laid in bed at home and cut [redacted] or pierced parts of [redacted] body. [redacted] spent large portions of the summer sitting on the roof of the family home. [redacted] dressed entirely in black and decorated [redacted] in an increasingly and scarily "Goth" manner, with dyed black hair and fingernails painted black. However, [redacted] expressed a desire to return to the public school system and rise with [redacted] colleagues to begin the 2004-2005 SY as a freshman at [redacted].

33. At this point, psychiatric advice to the parents suggested that getting away from [redacted] and maintaining [redacted] self-esteem by a new start at [redacted] might be good for Petitioner. Therefore, the parents began the process of getting [redacted] reviewed and out of the alternative educational placement

at [redacted] and into [redacted].

34. On July 8, 2004, Petitioner's mother wrote to [redacted], the ninth grade guidance counselor at [redacted] informing [redacted] that she was "waiting to hear from you regarding our conversation about beginning the IEP evaluation process for [Petitioner]."

35. On July 20, 2004, the mother again wrote to Mr. [redacted] stating, "[Petitioner] needs to be enrolled in school and to have the process begun for [redacted] to be classified as ESE and have an IEP put into place."

36. On or about July 29, 2004, the mother appeared before the District Discipline Committee and made a case for Petitioner to be released from further attendance at [redacted] and to be permitted to enter [redacted] as a freshman. She indicated that Petitioner had successfully completed [redacted] criminal justice divergence program, that [redacted] had passed [redacted] courses for the eighth grade at [redacted] and that [redacted] bipolarity was now stable on [redacted] current psychotherapeutic medications. All of these limited representations were true, but they hardly gave a full picture of what was going on with Petitioner.

37. Even so, the evidence as a whole demonstrates that the parents had requested an ESE workup (by whatever name: pre-referral, referral, testing, observation, evaluation, staffing, etc.) no later than July 8, 2004, and that both the parents and [redacted] officials expected, as of the date of the alternative educational placement review on July 29, 2004, to do such a workup.

38. The mother expected an ESE assessment to occur before Petitioner's enrollment for the 2004-2005 SY and that an exceptional services program actually would be in place before the start of classes, but as a practical matter, an ESE eligibility assessment could not begin until it was determined which school, [redacted] or [redacted] was to be Petitioner's placement for the 2004-2005 SY.

39. On Monday, August 2, 2004, [redacted] chairman of the District Discipline Committee, notified the parents by letter that the committee had determined that Petitioner would be allowed to attend [redacted] regularly assigned school or appropriate program for the 2004-2005 SY.

40. This made a reasonable transition for Petitioner from middle to high School, without [redacted] having to return to [redacted] or [redacted] neither of which placements was desired by the parents, and both of which would have been contrary to the best advice of Dr. [redacted]

41. Petitioner was enrolled at [redacted] on Friday, August 6, 2004. [redacted] requested of the mother any records that would assist in assessing Petitioner for ESE placement, and placed Petitioner in mainstream ninth grade classes until an ESE identification could be made.

42. From this point on, the testimony and documentary evidence becomes vague or contradictory as to the dates events took place; the chronological order of events; the content and clarity, or lack thereof, of parental requests; and the cooperation, or lack thereof, of the parents in providing medical

records. Assessing the weight and credibility of the testimony of all witnesses, and choosing to believe one witness over another only where their respective versions of events cannot be reconciled upon all the evidence, it appears that upon [redacted] August 6, 2004, enrollment there, [redacted] educators began attempts to get Petitioner's cumulative record from [redacted] and [redacted] that only a very loose dialogue with the mother was initiated by school officials in August 2004; that school officials expected the mother to directly provide all past medical reports without providing her a release to sign so that school personnel could get the medical records themselves; and that the following events then occurred.

43. About August 20, 2004, the mother was informed orally about St. Johns County School District's referral process for ESE.[5/]

44. The September 6, 2004, Labor Day holiday in Florida was followed by a series of hurricanes stretching at least through September 16, 2004, and probably beyond.

45. Not until about September 13, 2004, did conferencing begin for the creation of an ESE IEP. The record is vague as to what school or District ESE officials were doing from August 20 to September 13, 2004, except talking to the mother, mostly by telephone. Conversations centered on the mother's seeking to have Petitioner identified as an emotionally handicapped (EH) student, and hospital/homebound services were negotiable.

46. On September 14, 2004, the parents completed a social/developmental history interview.

47. During the fall of 2004, school attendance for all St. Johns County students was suspended at various times for a total of eight to ten days, due to hurricanes, and during these "days out," nothing concerning ESE assessment could be accomplished.

48. Even when school was in session in the fall of 2004, and part of January 2005, Petitioner was seldom there. (See Findings of Fact 53, 56, 61, 69, and 71.) [redacted] rarely attended [redacted] first class of each day, and did not always attend for a full day in most of [redacted] other classes. Petitioner's attendance was erratic, at best. At some point, there was an attempt to switch Petitioner's first period from the core subject of math to art and schedule [redacted] for math later in the day, when [redacted] was more likely to come to school. The mother's testimony, school officials' testimony, and some records reflect that Petitioner was hardly ever in class. The overall official records show Petitioner had only 6-9 full day absences per month. Whichever version is accurate, Petitioner clearly was missing a lot of classes, and normal opportunities for the referral process for ESE did not exist during this period. When Petitioner was not in school, the parts of the ESE assessment that required [redacted] cooperation, observation of [redacted] in a regular classroom, or trial interventions could not be carried out.

49. With regard to Petitioner's poor attendance at [redacted], the mother testified that the school provided a recorded telephone message to alert her that [redacted] was not in school, a fact she usually already knew because she was at home with [redacted] a lot of the time. However, she complained that the school never

sent a truant officer. She also related that she could not make Petitioner go to school on a regular basis, but there is no indication the parents did anything to prevent Petitioner from going to school.

50. Accordingly, Petitioner did not make educational progress at [redacted]

51. About October 15, 2004, Petitioner suffered a significant emotional setback, and [redacted] "decompensated" over the next few days.[6/]

52. On or about October 18, 2004, after a series of telephone conferences, Petitioner's parents and the School District began discussions related to providing hospital/homebound services to Petitioner.

53. On October 20, 2004, Petitioner had to be "Baker-Acted" (involuntarily committed) to [redacted] psychiatric hospital, due to self-injurious behavior.

54. On October 29, 2004, Petitioner's mother sent an e-mail to sappd2 [redacted] Dean of Freshmen), osbeckd [redacted] [redacted]), and [redacted] Freshman Guidance Counselor) at stjohns.k12.fl.us, telling them that Petitioner had returned to school from being hospitalized and it was imperative that the ESE IEP staffing she had initially requested "in August" take place.

55. An initial meeting at the school followed on November 3, 2004.

56. Petitioner had not been in school at all the four school days from October 29, 2004 to November 3, 2004. [redacted] was reluctant to return to school and face [redacted] peers after the

October 15, 2004, incident. Educational personnel encouraged the mother to accept homebound services because such services could be provided immediately outside the school, without awaiting the more lengthy evaluation required for EH status.

57. On November 3, 2004, the mother signed a Consent for Formal Evaluation. The consent was for intellectual assessment, academic performance, vision screening/evaluation, hearing screening/evaluation, social/developmental history, behavioral observations/ratings, speech screening/evaluation, process test, records from other agencies, and language screening/evaluation. This consent would permit a full evaluation for any exceptionality, including identification of Petitioner as EH, severely emotionally disturbed (SED), or in need of hospital/homebound services.

58. On November 3, 2004, Guidance Counselor [redacted] created a behavior contract for Petitioner, targeting modification of two of [redacted] inappropriate behaviors: avoidance/depression and self-injury/aggressiveness toward others. The behavior contract was to be administered by a teacher, [redacted] but the contract stated it could not be implemented because Petitioner would not come to school on a regular basis so that adults at school could monitor [redacted] success.

59. Class observation forms were filled out on November 3, 2004, by teachers, [redacted] and [redacted] Their observations were the result of their entire, but limited, experience with Petitioner in their classes, not upon observing [redacted] on that particular day. Without quoting them at length, it

is found that they are sufficient to describe Petitioner as a child who performed adequately when [redacted] actually came to class but who had an inability to build interpersonal relationships and a general pervasive mood of unhappiness or depression. These observed behaviors are identifiers of EH status under the applicable rules and statutes.

60. Dr. [redacted] signed a form required by the District to render Petitioner eligible for hospital/homebound services, and the mother acquiesced in that placement by signing a second consent form for those services.

61. On November 11, 2004, Petitioner still had not come to school, and [redacted] was determined in a staffing to be eligible for hospital/homebound services.

62. At a meeting on November 14, 2004, an IEP was created for the homebound services, and on that same date, homebound services were made available to Petitioner through a homebound-certified teacher, [redacted]

63. This IEP lists the most recent evaluation as, "[Petitioner] has been diagnosed with bipolar disorder and depression." Other related contemporaneous papers show Petitioner was reported as having post traumatic stress syndrome arising from the October 15, 2004, incident and [redacted] subsequent hospitalization. Therefore, by November 14, 2004, at the very latest, school officials had copies of Petitioner's psychiatric diagnoses, either via the discharge summaries from [redacted] and [redacted] or from Dr. [redacted]'s previously quoted memoranda. (See Findings of Fact 28 and 31.)

64. On at least four separate documents between October 28, 2004, and November 14, 2004, the mother acknowledged by her signature that she had received a parents rights brochure and/or had read and understood her due process rights.

65. With the exceptions noted hereafter, from November 14, 2004, until late January 2005, Mr. [redacted] came to Petitioner's home two days per week, for two hours each day, except when Petitioner had to cancel or be hospitalized due to [redacted] psychiatric condition. (See Findings of Fact 69-70.) However, Mr[redacted] sometimes turned in [redacted] proposed hours in advance so as to meet School District timesheet requirements, and as a result, some of the hours [redacted] logged are not accurate. That means the most educational time Petitioner got during this period was four hours per week. Mr. [redacted] did section reviews of work indicated by Petitioner's regular teachers. [redacted] got along well with Petitioner but noticed that Petitioner was reticent, taciturn, introverted, very quiet, "Goth," and practicing avoidance mechanisms. Petitioner was without any interest in, or respect for, the work product [redacted] turned in to Mr. [redacted] Based on Mr. [redacted]'s testimony as a whole and [redacted] candor and demeanor while testifying, it is found that Mr. [redacted] misunderstood the meaning of "bipolar," in that [redacted] incorrectly believed the term refers only to the "up" cycle of manic-depression. [redacted] only observed depression in Petitioner.

66. On the same basis, it is found that Mr. [redacted] who had health problems of [redacted] own, was unable to be an enthusiastic teacher during this period. [redacted] admitted [redacted] did not follow

Petitioner's IEP. Mr. [redacted]'s tests and observations revealed a clear math deficit in Petitioner. This deficit was never quantified. Also, due to Petitioner's lack of cooperation, Mr. Segal saw [redacted] own role primarily as giving Petitioner some academic success that Petitioner could build on. Therefore, Mr[redacted] gave Petitioner some devalued grades of "C" to keep Petitioner going, even though Petitioner never reached the eighty percent competency goal of [redacted] homebound IEP. Mr. [redacted] admittedly did not grade Petitioner according to the standards of the homebound IEP. Just because Petitioner did not attain the IEP goals is not necessarily evidence that [redacted] received no educational benefit from this homebound experience, but upon all the evidence, it is found that [redacted] received only a de minimus educational benefit.

67. Petitioner did not want to be classified as another type of ESE student.

68. In early December 2004, Petitioner's parents informed the School District that Petitioner wanted to try returning to [redacted] without being labeled an ESE student. [redacted] District Staffing Specialist, interpreted this statement as a possible withdrawal of parental consent for ESE testing, but she did not cancel the ESE referral request and proceeded to begin evaluating Petitioner for whatever services [redacted] might be eligible.

69. Sometime in January 2005, Petitioner was back in [redacted] for a week. This caused a gap in [redacted] homebound services. Mr. Segal knew where Petitioner was during this week, but District and [redacted] personnel were not informed until much

later that Petitioner was in [redacted] during this period.

70. Hospital/homebound educational services are not performed by St. Johns County teachers in hospitals outside of county borders. Such extra-territorial services were not contemplated by Petitioner's existing hospital/homebound IEP. However, Mr. [redacted] continued homebound services to Petitioner once Petitioner returned to St. Johns County in January 2005.

71. On January 24, 2005, Petitioner returned to mainstream classes at [redacted] This time, [redacted] did not make educational progress at [redacted] mostly because [redacted] stopped going to school after two or three days. On February 14, 2005, Petitioner still was not going to school. This represents a gap in Petitioner's education of perhaps two weeks. Educators did nothing to get [redacted] to school during this period.

72. On February 14, 2005, Petitioner's parents requested the School District resume homebound services. Homebound services were resumed only on paper as of that date. Mr. [redacted] was no longer available, and another homebound teacher, [redacted], was assigned as of February 22, 2005.

73. Petitioner's vision and hearing screening for [redacted] ESE assessment was performed at [redacted] on or about February 25, 2005, after [redacted] and the mother had missed one appointment.

74. On February 25, 2005, the mother sent an e-mail to John Winn, State of Florida Commissioner of Education: "requesting an immediate multi-disciplinary evaluation to determine the extent of [Petitioner's] educational disability and determine [redacted]

eligibility for special education and related services, as defined in federal IDEA statutes." She informed Commissioner Winn that she now believed that Petitioner required residential care. In this communication, she further stated,

> At this point in time, since my [redacted] is currently on hospital homebound and quite simply, refuses to attend school, is cycling rapidly, is participating in highly self-destructive behavior and is increasingly non-compliant with [redacted] treatment, we feel that the only reasonable alternative for [redacted] is residential care. [redacted] doctors agree. In my understanding of IDEA and No Child Left Behind, the state of Florida is obligated to educate my [redacted]. This is currently impossible in a traditional day school.

75. During February, Petitioner had not come to school as scheduled so that the speech/language screening portion of the referral process could be performed in a timely manner. The speech pathologist went to [redacted] home to complete this screening approximately a week after the February 25, 2005, vision and hearing screening.

76. Ms. [redacted] testified that on or about March 1, 2005, Petitioner's ESE referral process was completed, only because she elected to waive some of the administrative rules requirements.

77. District personnel testified that for an EH or SED determination, 30 consecutive days of notated observations are required to comply with administrative rules or School District policy, so as to analyze the "persistence and consistence" of Petitioner's problems.

78. After many attempts to reach the parents, beginning February 22, 2005, and only reaching Petitioner, at the telephone numbers provided by school officials, the new homebound teacher,

[redacted] finally reached the mother on March 4, 2005, to discuss continuation of hospital/homebound services. At that point, Petitioner had been without homebound services from the February 14, 2005 date of request until March 4, 2005, or approximately three weeks.

79. The mother informed Mr. [redacted] over the telephone on March 4, 2005, that a family decision had been made to remove Petitioner to an out-of-state lock-down residential treatment facility the next morning.

80. The mother testified that she only made the residential treatment facility decision the previous weekend, February 26-27, 2005, when she became convinced Petitioner might successfully run away from home and not be found.

81. On March 5, 2005, Petitioner was neither attending [redacted] nor receiving hospital/homebound services.

82. By March 5, 2005, a vision screening, a hearing screening, and a speech and language screening of Petitioner had been completed, but a total evaluation was not yet completed.

83. On March 5, 2005, Petitioner was transported, by surprise and against [redacted] will, to [redacted] near Knoxville, Tennessee, per prior arrangements made privately by [redacted] parents.

84. Petitioner has never been formally withdrawn from the St. Johns County School District. Despite the mother's February 25, 2005, e-mail to the State Commissioner, expressing her opinion of what type of care Petitioner needed (see Finding of Fact 74), the parents did not give St. Johns County School

District officials or [redacted] school officials any prior notice that they actually intended to remove Petitioner to an out-of-state residential treatment facility.

85. After the fact, on March 7, 2005, the parents informed the School District that they had placed Petitioner in a private, out-of-state, lock-down facility, after they had learned [redacted] intended to run away from home.

86. On March 7, 2005, Petitioner's current attorney, [redacted] wrote to Dr. Joyner, Superintendent of St. Johns County School District, notifying the District that Petitioner had been placed in a residential treatment center because the School District had not made FAPE available to [redacted] in a timely manner and that action was now required immediately to prevent physical and serious emotional harm to [redacted]. The attorney requested that the district pay for the educational expenses, including tuition, housing, living and medical expenses that are all educationally relevant. Further, she suggested a negotiated settlement or a due process hearing and requested the district make its position known within a week.

87. On March 14, 2005, Bambi J. Lockman, Chief of the Bureau of Exceptional Education and Student Services, Florida Department of Education, wrote that she was replying to the e-mail to Commissioner Winn, 17 days earlier. She stated that, "the district had determined [Petitioner] was in a residential placement and that the district will be most willing to work closely with you on planning for an appropriate educational placement upon [Petitioner's] return home."

88. On March 30, 2005, Attorney Raskin wrote a second letter to Dr. Joyner, requesting a due process hearing, pursuant to IDEA and Florida law.

89. The March 30, 2005, request was transmitted to the Division of Administrative Hearings on April 12, 2005.

90. The School District refused mediation.

91. [redacted] where Petitioner has remained since March 5, 2005, includes a private school approved by the Tennessee State Department of Education. The school works with the student's home school to provide continuity of studies or, if needed, to remedy educational deficits through an individual approach. The educational staff have endorsements in all the major academic areas, including special education and music.

92. [redacted] accepts males and females, ages 13 to 18, who are experiencing psychopathology of severe affective symptom disordered conduct, substance abuse or chemical dependency, attention deficit, hyperactivity, and/or brief psychotic episodes. Admittees typically have a dual diagnosis of a mood disorder and a substance abuse disorder. The facility provides short- and long-term residential treatment for adolescents. The average stay is nine to twelve months.

93. Since March 5, 2005, Petitioner's parents have been paying $8700.00 per month for multi-disciplinary care of Petitioner at [redacted] For this price, [redacted] is cut off from, and counseled concerning, street drugs, like "pot," and gets room, board, medical oversight (including monitoring of [redacted]

psychotherapeutic medications), individual and group psychotherapy, behavior modification, and an educational component.

94. As of the date of the due process hearing, most of the evaluations performed by [redacted] Village for Petitioner have been psychological in nature. [redacted] has taken a California Achievement Test and an MMPI, but no psycho-educational testing, like Woodcock-Johnson or an IQ test, have been performed.

95. Petitioner has no formal IEP at Peninsula. Students at Peninsula, including Petitioner, are educated under a "504 disability plan," which is more general than the average IEP. [redacted] clinical supervisor of the boys' program at [redacted] is a licensed clinical social worker. She deferred to Petitioner's special education teacher to explain the difference between [redacted] 504 plan and an IEP, but the special education teacher did not testify.

96. The treatment modality at Peninsula is predominantly group therapy. Most of the classes in which Petitioner had been involved from March 5, 2005, up to the date of the May 24-26, 2005, due process hearing revolved around resisting chemical dependency and working "Twelve-Step" programs in substance abuse.

97. Approximately ten weeks after [redacted] admission, Petitioner still remains in the lock-down, in-take, processing and assessment area, where the focus is on stabilizing [redacted] and assessing [redacted] for safety and orientation. During this period, [redacted] has been receiving two-and-a-half hours, four days per week, of academic education. [redacted] has recently read one book

for pleasure.

98. The average stay in the lock-down, admissions assessment area of [redacted] is 12 weeks. Due to [redacted] lack of cooperation and psychological condition so far, Petitioner is expected to remain in the assessment area longer than 12 weeks. However, Petitioner made some, but inconsistent, progress in the month immediately preceding the due process hearing. A week before the hearing, [redacted] had achieved sufficient confidence to believe that [redacted] could graduate from high school.

99. When, and if, Petitioner is transferred out of the lock-down assessment unit, [redacted] will be placed in an outside cabin with a group of other boys. There, [redacted] education component will become a tutorial setting with individual instruction at the ratio of one teacher for every six to eight students, who work at their own pace for three full school days per week.

100. [redacted] anticipates that Petitioner will require 12 months of multidisciplinary treatment. She assesses Petitioner as needing to be in a residential treatment center for [redacted] substance abuse and psychological problems "no matter what," and that [redacted] cannot be educated in a regular public school setting.

101. Petitioner's private psychiatrist, Dr. [redacted] has not seen Petitioner since January 18, 2005. [redacted] believes, on the basis of [redacted] somewhat dated information, that a residential treatment center is necessary for psychiatric monitoring of Petitioner, and that psychiatric monitoring will help fulfill

Petitioner's educational needs as well as help [redacted] personality symptoms; that Petitioner's bipolarity is actively interfering with [redacted] day-to-day functioning in mainstream classes; that Petitioner probably will not be safe in any lesser special education classroom; and that Petitioner's substance abuse problems are one reason Petitioner must be held against [redacted] will in a residential treatment center.

102. Petitioner's private psychologist, [redacted] testified that Petitioner needs a residential treatment center because Petitioner currently cannot function in a mainstream class and that Petitioner's psychological problems must be addressed in order to educate [redacted] at all. Also, in and of itself, Petitioner's chemical dependency requires residential treatment.

103. Petitioner's March 31, 2005, psychological evaluation at Peninsula rates all of the following diagnoses, in order, on Axis I as: "mood discorder NOS; oppositional defiant disorder; cannabis dependence; alcohol abuse; and parent-child relational problem." Axis II is "None. Borderline features."

104. At all times material, the St. Johns County School District had available a contract for residential treatment of emotionally disturbed students in St. Johns County. However, that contract was due to expire one month after the due process hearing in this case, and St. Johns educators admitted its scholastic component when it was available was "very weak." Another option was a special classroom with a small class and specialized instruction.

105. The mother acknowledged that she had investigated the

foregoing potential placements and other alternatives available in St. Johns County and would have rejected all of them if they had been offered by the School District in response to her evaluation requests before Petitioner was placed in [redacted] Village.

CONCLUSIONS OF LAW

106. The Division of Administrative Hearings has jurisdiction of the parties and subject matter of this cause. See § 1003.57(5), Fla. Stat. (2004) and the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Chapter 1400, et seq.

107. By stipulation, the burden of proof in all respects is upon Petitioner. In accord on the burden of proof in unilateral private placement cases, see Weast v. Board of Education of Montgomery County, 377 F.3d 449 (4th Cir. 2004), now set for oral argument next month before the United States Supreme Court. Petitioner seeks approval of [redacted] placement in [redacted] Village until [redacted] discharge, whenever that may occur at some undefined date in the future; reimbursement of all costs of [redacted] residential treatment at [redacted] from March 5, 2005, until [redacted] is returned to St. Johns County; and creation of a suitable IEP by St. Johns County School District prior to [redacted] return.

108. Respondent School District claims that it is not being challenged herein because it failed to follow all IDEA requirements, but because it followed all IDEA, state, and local requirements. The District also submits that circumstances beyond its control, like hurricanes and lack of cooperation by

the parents, excuse any failings that may be found.

109. Florida Administrative Code Rule 6A-6.03016, provides that a student who is merely disruptive is not necessarily EH; defines an EH child; and sets out how a child becomes qualified for EH services, as follows:

> 6A-6.03016 Special Programs for Students who are Emotionally Handicapped.
>
> (1) An emotional handicap is defined as a condition resulting in persistent and consistent maladaptive behavior, which exists to a marked degree, which interferes with the student's learning process, and which may include but is not limited to any of the following characteristics:
>
> (a) An inability to achieve adequate academic progress which cannot be explained by intellectual, sensory, or health factors;
>
> (b) An inability to build or maintain satisfactory interpersonal relationship with peers and teachers;
>
> (c) Inappropriate types of behavior or feelings under normal circumstances;
>
> (d) A general pervasive mood of unhappiness or depression; or
>
> (e) A tendency to develop physical symptoms or fears associated with personal or school problems.
>
> (2) Criteria for eligibility. Students with disruptive behavior shall not be eligible unless they are also determined to be emotionally handicapped. A severe emotional disturbance is defined as an emotional handicap, the severity of which results in the need for a program for the full school week and extensive support services.
>
> (3) A student is eligible for a special program for emotionally handicapped if there is evidence that:
>
> (a) The student, after receiving supportive educational assistance and counseling

services available to all students, still exhibits an emotional handicap;

(b) An emotional handicap exists over an extended period of time, and in more than one situation;

(c) The emotional handicap interferes with the student's own learning, reading, arithmetic or writing skills, social-personal development, language development or behavioral progress and control; and

(d) When intellectual, sensory or physical deficits exist, they are addressed by other appropriate interventions or special programs.

(4) Criteria for eligibility for programs for severely emotionally disturbed. A student is eligible for a special program which:

(a) Serves the student for the full school week in a special class;

(b) Provides a highly structured academic and affective curriculum, including but not limited to art, music, and recreation services which are specifically designed for severely emotionally disturbed students;

(c) Provides for a lower adult to pupil ratio than programs for emotionally handicapped are designed to accommodate;

(d) Provides extensive support services specifically designed for severally emotionally disturbed students. These services include but are not limited to:

1. Individual or group counseling,

2. Parent counseling or education, and

3. Consultation from mental health, medical or other professionals; and

(e) Cannot be provided in a less restrictive environment.

(5) Procedures for referral. Prior to the referral for student evaluation, the following procedures are required for

students enrolled in public school programs. If a student is transferring from an agency which provides services to emotionally handicapped students, the requirements in paragraphs 6A-6.03016(4)(a), (b), (c), (d), and (e), F.A.C. shall be waived.

(a) Conferences concerning the student's specific problem. These conferences shall include the parents or guardian, administrative personnel, teaching personnel and student services personnel, as appropriate;

(b) Anecdotal records or behavioral observations made by more than one (1) person and in more than one (1) situation which cite the specific behavior indicating the need for referral;

(c) A minimum of two (2) interventions and adjustments that have been tried with the student. These interventions shall include, but not be limited to, change in student's class schedule or teacher; change in student's curriculum; change in techniques of instruction; interventions provided by student services personnel; community agency intervention; or health and rehabilitative services agency intervention;

(d) Review of social, psychological, medical and achievement data in the student's educational records;

(e) Review of attendance records, and where appropriate, investigation of reasons for excessive absenteeism; and

(f) Screening for vision, hearing, speech and language functioning.

(6) Procedures for student evaluation.

(a) The minimum evaluation for determining eligibility for emotionally handicapped or severely emotionally disturbed shall include all information collected in subsection 6A-6.03016(4), F.A.C. and the following:

1. A medical evaluation when determined by the administrator of the exceptional student program or designee that the behavioral problem may be precipitated by a physical

problem;

2. A comprehensive psychological evaluation conducted in accordance with subsection 6A-6.071(5), F.A.C., or by a psychiatrist which shall include the following information: an individual evaluation of intellectual ability and potential, an evaluation of the student's personality and attitudes, and behavioral observations and interview data relative to the problems described in the referral;

3. An education evaluation which includes information on the student's academic strengths and weaknesses; and

4. A social or developmental history which has been complied directly from the parent or guardian.

(b) For students enrolled in programs for emotionally handicapped, the minimum evaluation for determining eligibility for special programs for severely emotionally disturbed shall include evidence of the following procedures;

1. Conferences concerning the student's specific problem in the program for emotionally handicapped;

2. Anecdotal records or behavioral observations made by more than one (1) person in more than one(1) situation which cite the specific problems causing the need for program for severely emotionally disturbed;

3. Interventions and adjustments have been tried with the student while enrolled in the program for emotionally handicapped;

4. An update of the social history required by paragraph 6A-6.03016(5)(a)4., F.A.C.; and

5. Additional psychological, psychiatric or other evaluations deemed appropriate by the administrator of the exceptional student education programs.

(7) Parent education. Each district shall make provisions for a parent education program for all parents of students placed in full-time special classes for emotionally handicapped and severely emotionally

disturbed. (Emphasis supplied)

110. Florida Administrative Code Rule 6A-6.0331 sets out the State's student evaluation policy, absolving a district of performing some parts of the normal pre-referral and referral process for hospital/homebound services and for severe social/behavioral deficits, and provides, in pertinent part, as follows:

* * *

> (2) Kindergarten Through Grade Twelve. It is the local school board's responsibility to address through appropriate interventions and to the extent possible, resolve a student's learning or behavioral areas of concern in the general education environment prior to the referral for evaluation to determine eligibility as a student with a disability. . . . [P]rior to the submission of a referral for evaluation to determine eligibility as a student with a disability, the activities in paragraphs (2)(a)-(f) of this rule must be completed. <u>The general education interventions described in paragraph (2)(f) of this rule are not required for students who demonstrate speech disorders, severe cognitive, physical or sensory disorders, or severe social/behavioral deficits that require immediate intervention to prevent harm to the student or others. The activities described in paragraphs (2)(a)-(f) are not required for students considered eligible for specially designed instructions for students who are homebound or hospitalized as defined in Rule 6A-6.03-20, F.A.C.</u>
>
> (a) Parent conferences. Two (2) or more conferences concerning the student's specific learning or behavioral areas of concern shall be held and shall include the parents, the student's regular education teacher, and may include other educators with special expertise in the areas of concern such as special education teachers, administrators, and student service personnel. The initial

conference with the parents must include discussion of the student's learning or behavioral areas of concerns, the general education interventions planned, and the anticipated effects of the interventions. Other conferences must include discussion of the student's responses to interventions and anticipated further actions to address the student's learning and/or behavioral areas of concern.

(b) Anecdotal records or behavioral observations made by at least two (2) persons, one (1) of whom is the student's classroom teacher, in more than one (1) situation which cite the specific behaviors indicating the need for a referral for evaluation shall be reviewed.

(c) Social, psychological, medical, and achievement data in the student's educational records shall be reviewed.

(d) Attendance records shall be reviewed, and where appropriate, investigation of reasons for excessive absenteeism shall be conducted.

(e) Screening for speech, language, hearing, and vision for the purpose of ruling out sensory deficits that may interfere with the student's academic and behavioral progress shall be conducted. Notwithstanding the provisions of Rules 6A-6.03011 through 6A-6.03018, 6A-6.03021 through 6A-6.03023, and 6A-6.03027, F.A.C., screening for speech, language, hearing, and vision screening shall be required prior to conducting an evaluation to determine the student's eligibility as a student with a disability.

(f) A minimum of two (2) general education interventions or strategies shall be attempted. These general education interventions or strategies may include: supplemental academic instruction; change in Student's class schedule or teacher; change in instructional strategies and techniques; interventions provided by student services personnel or state or community agency. For students with academic learning problems, the general education interventions must include the use of an academic improvement plan, as required by Section 1008.25(4)(a)-(c),

> Florida Statutes, and the provision of remedial instruction for a reasonable period of time. Pre-and post-intervention measures of the academic and/or behavioral areas of concern must be conducted to assist in identifying appropriate interventions and measuring their effects. (Emphasis supplied).

111. Florida's Department of Education places on the local School District (in this case, St. Johns), the burden of identifying, locating, and evaluating children with special educational needs. However, each school district may establish its own procedures for evaluating the children in need within its borders and providing the necessary services to the children identified.

112. St. Johns County School Board has adopted a "Special Programs and Procedures Manual" which provides, in pertinent part, as follows:

> PART II. GENERAL PROCEDURES
>
> C. PROCEDURES FOR PRE-REFERRAL
>
> Definition: As defined by Rule 6A-6.03411(2)(c), FAC, prereferral activities are those activities which address student learning problems at the school level prior to referral for evaluation, whenever appropriate or as required by Rules 6A-6.03011 through 6A-6.03027, FAC. These activities may include the use of an academic improvement plan as required by s. 232.245(3), F.S.
>
> The following activities are recommended prior to referral for evaluation of any student and are required before a student who is enrolled in basic education programs may be considered as an eligible student with an emotional handicap or specific learning disability. The prereferral activities are also required before a student who has been enrolled in basic education programs for more than six weeks may be considered as an

eligible student with mental handicaps.

1. Conferences

At last two conferences concerning the student's specific problem are held. These conferences include the parent(s) or guardian(s), and administrative personnel, or teaching personnel, and may include student services personnel as appropriate.

2. Anecdotal records/behavioral observations

At least two anecdotal records or behavioral observations are made which indicate the learning problem. If a student is being evaluated to determine eligibility as a student with a specific learning disability, then at least one of the observations is to be conducted by a member of the multidisciplinary evaluation team other than the child's regular teacher. If a student is being evaluated to determine eligibility as a student with an emotional or mental handicap, then the observations should be made by more than one person and in more than one situation which cite specific behaviors indicating a need for referral.

3. Interventions

A minimum of two (2) interventions and adjustments, or educational alternatives, are tried with the student that are appropriate for the learning problem at the student's current level of functioning. These interventions may include, but are not limited to, change in student's class schedule or teacher; change in the student's curriculum; change in the techniques of instruction, interventions provided by student services personnel; or community agency intervention.

4. Review of records

Records of social, psychological, medical, and achievement date in the student's cumulative folder are reviewed. Records of attendance are reviewed, and where appropriate, investigation of reasons for excessive absenteeism is conducted. Records are viewed to verify that screening for vision, hearing, speech, and language

functioning has been completed with referral for complete evaluations where the need is indicated, and the results are in the student's record.

PART III. PROCEDURES FOR SPECIFIC PROGRAMS

G. PROGRAMS FOR STUDENTS WHO ARE IDENTIFIED AS EMOTIONALLY HANDICAPPED AND SEVERELY EMOTIONALLY DISTURBED

Definition - An emotional handicap is defined as a condition resulting in persistent and consistent maladaptive behavior, which exists to a marked degree, which interferes with the student's learning process, and which may include but is not limited to any of the following characteristics:

1. An inability to achieve adequate academic progress which cannot be explained by intellectual, sensory, or health factors;

2. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

3. Inappropriate types of behavior or feelings under normal circumstances.

4. A general pervasive mood of unhappiness or depression; or

5. A tendency to develop physical systems or fears associated with personal or school problems.

Students with disruptive behavior shall not be eligible unless they are also determined to be emotionally handicapped.

A severe emotional disturbance is defined as an emotional handicap, the severity of which results in the need for a program for the full school week and extensive support services.

Eligibility criteria:

Emotionally Handicapped - A student is eligible for a special program for emotionally handicapped if there is evidence that:

1. The student, after receiving supportive educational assistance and counseling services available to all students, still exhibits an emotional handicap;

2. An emotional handicap exists over an extended period of time, and in more than one situation;

3. The emotional handicap interferes with the student's own learning, reading, arithmetic or writing skills, social-personal development, language development, or behavioral progress and control; and

4. When intellectual, sensory or physical deficits exist, they are addressed by other appropriate intervention or special programs.

5. Students are eligible for services from their third birthday until they graduate with a standard diploma or G.E.D., or until age 22. Please reference the "Provision of Services" section of this document for the district's option concerning services during the school year in which the student turns 22.

Severely Emotionally Disturbed - A student is eligible for a special program for severely emotionally disturbed if:

1. The student meets the criteria above, and

2. There is evidence that the student requires a program which:

a. Serves the student for the full school week in a special class;

b. Provides a highly structured academic and effective curriculum, including but not limited to art, music, and recreation services which are specifically designed for severely emotionally disturbed students;

c. Provides for a lower adult to pupil ratio than programs for emotionally handicapped are designed to accommodate;

d. Provides extensive support services specifically designed for severely emotionally disturbed students. These services include but are not limited to:

(1) individual or group counseling,

(2) parent counseling or education, and

(3) consultation from mental health, medical, or other professionals; and

e. Cannot be provided in a less restrictive environment.

3. Students are eligible for services from their third birthday until they graduate (receive a standard diploma or G.E.D.) or through the school year in which they turn 22. Please reference the "Provision of Services" section of this document for the district's option concerning services during the school year in which the student turns 22.

Prereferral and referral

Prior to the referral for student evaluation, the following procedures are required in addition to those in the General Section, for students enrolled in public school programs. If a student is transferring from an agency which provides services to emotionally handicapped students, the requirements in Rule 6A-6.0301(5), FAC, are waived.

1. Review of social, psychological, medical, and achievement data in the student's education records;

2. Review of attendance records, and where appropriate, investigation of reasons for extensive absenteeism; and

3. Screening for vision, hearing, speech and language functioning.

Student evaluation

1. The minimum evaluation for determining eligibility for emotionally handicapped or severely emotionally disturbed shall include all information collected in Rule 6A-

6.03016(5), FAC, and the following:

a. A medical evaluation when determined by the administrator of the exceptional student program or designee that the behavioral problem may be precipitated by physical problem;

b. A comprehensive psychological evaluation conducted in accordance with Rule 6A-6.0331(1)(a), FAC, or by a psychiatrist which shall include the following information: an individual evaluation of intellectual ability and potential, an evaluation of the student's personality and attitudes, and behavioral observations and interview data relative to the problems described in the referral;

c. An educational evaluation which includes information on the student's academic strengths and weaknesses; and

d. A social or developmental history which has been compiled directly from the parent or guardian.

e. For students enrolled in programs for emotionally handicapped the minimum evaluation for determining eligibility for special programs for severely emotionally disturbed include evidence of the following procedures:

(1) Conferences concerning the student's specific problem in the program for emotionally handicapped;

(2) Anecdotal records or behavioral observations made by more than one person in more than one situation which cite the specific problems causing the need for a program for severely emotionally disturbed;

(3) Interventions and adjustments that have been tried with the student while enrolled in the program for emotionally handicapped;

(4) An update of the social history required by Rule 6A-6.03016(6)(a)4, FAC; and

(5) Additional psychological, psychiatric or other evaluations deemed

> appropriate by the administrator of the exceptional student education programs.
>
> 2. Evaluations or tests administered may include but are not limited to:
>
> a. Medical evaluation (See A. above) Qualified Evaluator: psychiatrist or other physician
>
> b. Comprehensive psychological evaluation Qualified Evaluators: psychologist or psychiatrist
>
> c. Intellectual Functioning: Qualified Evaluators: Psychologist

113. St. Johns County School District's ESE Manual also requires that 30 consecutive days of detailed observations be recorded on specific data sheets.

114. The provisions of IDEA, 20 U.S.C. Section 1400 et seq., especially Section 1412(a)(1)(A), are satisfied if the local district's policies and procedures comport with their respective provisions. St. Johns County's procedures do comport with that federal law and with the State rules. However, all courts dealing with the IDEA have seen fit to leave the determination of the "reasonableness" of the implementation of federal, state, and local procedures to the independent hearing officer. Thus, determination of invalidity of a state rule or of a local district policy is not a necessary antecedent to applying the federal "reasonable under the circumstances" test, and the foregoing regulations can only be applied to the facts as found chronologically.

115. With regard to residential or other private placements by a parent, 20 U.S.C. Section 1412 (a) (10), provided, between July 1, 1998 and June 30, 2005, as follows:

Children in private schools

(C) Payment for education of children enrolled in private schools without consent of or referral by the public agency.

(i) In general

Subject to subparagraph (A), this subchapter does not require a local educational agency to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made a free appropriate public education available to the child and the parents elected to place the child in such private school or facility.

(ii) Reimbursement for private school placement

If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private elementary or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment.

(iii) Limitation on reimbursement

The cost of reimbursement described in clause (ii) may be reduced or denied--

(I) if--

(aa) at the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

(bb) 10 business days (including any

holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in division (aa);

(II) if, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in section 1415(b)(7) of this title, of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for such evaluation; or

(III) upon a judicial finding of unreasonableness with respect to actions taken by the parents.

***

(iv) Exception.

Notwithstanding the notice requirement in clause (iii)(I), the cost of reimbursement may not be reduced or denied for failure to provide such notice if--

***

(II) compliance with clause (iii)(I) would likely result in physical or serious emotional harm to the child;

***

(IV) the parents had not received notice, pursuant to section 1425 of this title, of the notice requirement in clause (iii)(I).[7/]

116. 34 C.F.R. Sections 300.403-405 are similar.

117. In other words, if a child has been designated an ESE student, and the parents challenge the appropriateness of a program or placement offered to their disabled child by a school district, a twofold inquiry is required: (1) Has the School District complied with the procedures set forth in IDEA,

including advising the parents of their due process rights and the notice requirement for private placements? and (2) Is the school district providing FAPE? Even if the public school district is not determined to be providing FAPE, the cost of private placement will not be reimbursable at public expense, or may be reduced, unless the parents gave notice to the district of the intended unilateral private placement at the last IEP meeting, or in writing, a minimum of 10 business days before the private placement. The parents' prior statement of intent to remove the child must contain three parts: (1) a statement that the parents are rejecting the school district's proposed or existing placement; (2) a statement of the concerns the parents have concerning the child and the school district's proposed or existing placement; and (3) a statement of their intent to enroll the child privately at public expense. The failure of the parents to make the timely prior notice/statement of intent to remove their child to a private placement is only excused if the school district has failed to adequately inform the parents of their IDEA rights or there is a likely threat of immediate harm to the child if the notice is given. Loren F. ex rel Fisher v. Atlanta Independent School System, 349 F.3d 1309 (11th Cir. 2003). A school district does not even have to demonstrate prejudice due to the lack of notice, in order to prevent or reduce reimbursement. Pollowitz v. Weast, 90 Fed Appx. 483; 2001 WL 390035 (4th Cir. Md. 2001). Finally, even if the parents' failure to give timely notice is excused, Petitioner bears the burden of establishing that the private placement constitutes an

"appropriate" educational placement. Otherwise, the school district cannot be required to pay for the private placement. Berger v. Medina, 348 F.3d 513 (6th Cir. 2003) and cases cited infra.

118. By any standard, Petitioner's situation is tragic, but a fair analysis of Respondent School District's responsibilities under IDEA requires attention to the precise sequence of events.

119. On November 3, 2003, Petitioner was enrolled for the first time in St. Johns County School District. [redacted] was enrolled without any prior designation from West Virginia as an ESE student. Therefore, there was no existing ESE IEP for St. Johns County to implement upon enrollment.

120. The fact that [redacted] officials did not include in Petitioner's cumulative file any notation regarding the mother's transitioning concerns is not controlling. The mother is credible that two such conversations took place, but she is similarly credible that she emphasized truancy and poor grades, neither of which is a clear and unequivocal indicator of a learning exceptionality, of a classification as EH or SED ESE status, or of a request for such services.

121. Therefore, when Petitioner was involved in the school bus altercation on February 3, 2004, was arrested on February 4, 2004, was suspended for 10 days, and was assigned to an alternative educational placement on February 8, 2004, Respondent School District had no obligation to hold a "manifestation" hearing to assess whether an educational handicap contributed to

Petitioner's offense, before assigning [redacted] to [redacted] Also, the fact that [redacted] school suspension was not "more than 10 days" absolves the School District from conducting a manifestation hearing on the suspension under IDEA. See, 20 U.S.C. Section 1415 (k)(1)(A)(i). In any case, herein, a manifestation hearing was waived on March 2, 2004. (See Finding of Fact 21.)

122. Attorney Caldwell's February 23, 2004, letter was the first specific request with regard to ESE services, and her March 2, 2004, letter was the first clear request for a manifestation hearing. However, Ms. Caldwell's understanding and her statements in her letters of past events was once-removed. Likewise, Principal [redacted]'s letter in response only puts forth [redacted] construction of [redacted] few minutes' visit with Petitioner and the mother on January 21, 2004. [redacted] was not present for the rest of the meeting. Therefore, neither Ms. Caldwell's letters nor Mr. [redacted]'s representation on this score is entirely credible, and they are therefore discounted. Even giving the mother's version of the January 21, 2004, meeting the benefit of the doubt, it remains that truancy, common adolescent depression about popularity at school, and some arm cuts were the focus of that meeting.

123. Truancy and common adolescent depression from lack of friends and lack of school involvement are not unequivocal indicators of a learning exceptionality or of an ESE classification of EH or SED. Without more, such as psychiatric input, the cuts Petitioner had made on [redacted] as of January 21, 2004, could have been construed either as evidence of "a phase"

or of a psychosis, but they were not necessarily a clear indicator of a need for an ESE evaluation, and the mother made no specific request for an ESE evaluation or services on January 21, 2004.

124. Therefore, contrary to both parties' positions, it is concluded that the February 23, 2004, Caldwell letter constituted both the first request, and a clear request, for formal evaluation under IDEA and/or Florida Administrative Code Rule 6A-6.0331. The concept that a parental request for ESE evaluation cannot be made through an attorney or to local school officials, rather than to district ESE personnel, is simply wrong. However, it is likewise concluded that at least until February 23, 2004, Respondent was affording FAPE and appropriate due process to Petitioner.

125. However, without an ESE designation and without prior notice to [redacted] or the School District, Petitioner's parents unilaterally moved [redacted] to Focus, a private psychiatric facility located at [redacted] Georgia, before the February 23, 2004, Caldwell letter. Petitioner's legal domicile may have been with [redacted] parents in St. Johns County, Florida, but [redacted] removal to a hospital in another state, where District school personnel had no access to [redacted], absolved the School District from pursuing [redacted] there for an ESE evaluation. The District also was not required to provide Petitioner with extra-jurisdictional educational services.

126. After the Caldwell letters, events occurred so that it was impossible for St. Johns County School District to meet all

the statutory and rule requirements to evaluate Petitioner in a timely manner.

127. Under IDEA, Petitioner could have legitimately remained in [redacted] current educational placement by St. Johns County School District at [redacted] until the completion of the evaluation requested in the Caldwell letters, but [redacted] did not.

128. After [redacted] return from [redacted] Petitioner was at [redacted] barely nine school days when the parents again unilaterally, and without prior or appropriate notice, placed [redacted] in [redacted] in Duval County, Florida. There has been no adequate demonstration that the School District failed to provide the parents with adequate information about their due process rights, and the fact that Petitioner and [redacted] parents were represented by an attorney at that point in time renders moot any requirement that the School District educate them as to their due process rights. Likewise, there has been no adequate demonstration that the child would have been in imminent danger if, and because, the parents or attorney had notified school officials that they were planning to remove [redacted] to a private school. It was speculative at that point that continuing [redacted] at [redacted] might have had a bad psychological effect. The parents may not be reimbursed. 20 U.S.C. Section 1412(a)(10)(C); M.S.M. v. Portland School Committee, 360 F.3d 267 (1st Cir. 2004); Berger v. Medina City School District, supra.; Kingsway Regional High Board of Education, 103 LRP 54990 (New Jersey SEA 2003); Pollowitz v. Weast, supra.; Patricia P. v. Board of Education of Oak Park, 203 F.3d 462 (7th Cir. 2000); Warren G. ex rel Tom G.

v. Cumberland County School District, 190 F.3d 80 (3rd Cir. 1999).

129. Under the circumstances, St. Johns County school officials were not required to pursue Petitioner into another county to evaluate [redacted]. To be blunt, the parents' action made Petitioner Duval County's problem.

130. Therefore, it is concluded that Petitioner was not denied due process or FAPE for the 2003-2004 SY. See 20 U.S.C. § 1415(f)(3)(E), and cases cited supra.

131. What obligation, if any, St. Johns County School District had to Petitioner in the early summer of 2004, while Petitioner was neither attending [redacted] nor [redacted] both of which schools were closed until August, is something of a mystery. For instance, a school district is only required to continue developing IEPs for a disabled child no longer attending its schools when a prior year's IEP is under judicial review. M. M. ex rel D. M. v. School District of Greenville County, 303 F.3d 523, 536 (4th Cir. 2002). That also is a moot point, however, because until July 8, 2004, Petitioner did not notify St. Johns School District that [redacted] would be attending school in St. Johns County for the 2004-2005 SY or that any educational services, whatsoever, were still being sought in St. Johns County.

132. Indeed, during the summer of 2004, Petitioner was still bipolar, still dressing "Goth," and still self-mutilating, but [redacted] had successfully completed the eighth grade at [redacted] and had successfully completed [redacted] court-ordered divergence program. Thus, one might legitimately

question what learning impediment had existed at any time up to that point other than [redacted] failure to show up for school.

133. However, as of July 8, 2004, the mother, with the concurrence of Petitioner's treating psychiatrist but unrepresented by legal counsel, was clearly seeking a placement for Petitioner at [redacted] and an ESE evaluation to determine if [redacted] required any special educational services. The IDEA requires that school districts respond to such clear requests.

134. Therefore, the next stage of this analysis must be to determine if the School District responded in a timely manner, so as to deliver FAPE and due process from July 8, 2004, to March 5, 2005, and once again, that determination is driven by the chronology of events.

135. Cutting through the legitimate emotion of the parents and the inevitable defensive posture of educational personnel, the critical timeline is as follows: Sometime shortly before July 8, 2004, the mother requested ESE evaluation of Petitioner by [redacted] a counselor at [redacted] However, only on August 2, 2004, was it clear that Petitioner would be permitted to attend [redacted] On August 6, 2004, Petitioner was enrolled as a mainstream student because [redacted] had not yet been determined eligible for ESE. At that point, all concerned were on notice that an expedited evaluation was requested. On August 20, 2004, the mother was given an oral overview of the evaluation process. On September 14, 2004, the parents provided a social/developmental history. Between September 6 and 16, and

possibly for awhile thereafter, the School District experienced a series of hurricanes and "days out." Petitioner had poor or no school attendance until October 20, 2004, when [redacted] spent a week out-of-state in Focus. On October 29, 2004, Petitioner was back in school. On November 3, 2004, Petitioner again was not coming to school. That day, the mother signed a Consent for Formal Evaluation, and St. Johns County educators created, virtually on the spot, a behavior contract and classroom observations and provided a standard form for Petitioner's treating psychiatrist to sign. At this stage, educators knew Petitioner had been medically diagnosed bipolar and that [redacted] had been repeatedly hospitalized for that condition. They also knew all of the information contained in the teachers' observations and that the pro forma behavior contract would not be effective because Petitioner was not in school. Moreover, the teachers' observations showed that Petitioner met two or more identifiers of an EH student. (See Finding of Fact 59 and Conclusions of Law 109-113.) On November 11, 2004, Petitioner was determined eligible for hospital/homebound ESE services. From November 14, 2004 to January 24, 2005, St. Johns School District provided Petitioner with homebound services at all times [redacted] was not in a psychiatric facility. Because [redacted] again was in Focus for one week in January 2005, because there were intervening Thanksgiving and Christmas holidays, and because Mr. [redacted]'s recorded hours of teaching are not accurate, the number of hours of homebound services provided Petitioner is impossible to calculate. However, the most that can be said of Petitioner's educational

experience with homebound study is that [redacted] received a de minimus educational benefit. The IEP was not followed by the home school teacher, and scholastic testing did not show any education was taking place. From January 24, 2005, to March 4, 2005, Petitioner received no educational services whatsoever from the District, partly because [redacted] three days in [redacted] produced no grades; partly due to [redacted] non-attendance at school from January 27, 2005, forward; and partly due to there being no homebound services in place after they were again requested. On March 5, 2005, the parents removed Petitioner from St. Johns County, without 10 days' prior notice to the School District. [redacted] was sent to a private, out-of-state residential facility, which apparently cannot provide [redacted] with an educational component unless it simultaneously deals with [redacted] substance abuse and psychological problems.

136. The elaborate evaluation system, pursuant to IDEA and State and local rules, is in place for a purpose. It is used to identify educational exceptionalities as defined therein and to devise the "least restrictive" educational (LRE) placement possible for each exceptional child. See 20 U.S.C. Section 1412 (5) (A); Weiss v. School Board of Hillsborough County, 141 F.3d 990, 994 (11th Cir. 1998). THIS pre-referral, referral, and evaluation system cannot, does not, and should not focus solely on how a child is medically diagnosed, i.e. depressed or bi-polar,[8/] or on what a child does, i.e. truancy and self-mutilation. Reid v. Petaluma Joint Union High School District, 2000 WL 1229059 (N.D. Cal. 2000). Nor does it focus on what the

parents hope and fear, such as a residential treatment placement, which, absent some evidence to the contrary, is the most restrictive placement. Also, "failure to make adequate progress in the past generally has not been sufficient to warrant residential treatment." See D.B. v. Ocean Township Board. Of Education., 988 F. Supp 457 (D.N.J. 1997). Nor do satisfactory grades prove that an educational benefit is being conferred, particularly where they are based on effort rather than achievement. See Montgomery Township Board of Education v. C. C. ex rel D. C., 43 IDELR 186 (2005). Rather, the statutes and rules force the process to focus on educating the child, not containing [redacted] other problems. To do so, the process must rule out sensory deficits and processing distractions which can deter learning, but which can be corrected in a regular or specialized classroom by methods such as behavior modification, individualized teaching, and counseling, before more restrictive placements are considered. To do this, multi-disciplinary expertise is applied to answer the question, "How can this child be best educated in the least restrictive environment?" Therefore, school districts are entitled to time to assemble all the pre-referral, referral, and evaluation data. However, the time a school district takes to do this must be reasonable in light of each child's individual needs.

137. Due to the parents' clear request to begin the ESE process at [redacted] it is concluded that August 2, 2004, when all concerned knew that Petitioner was assigned to [redacted] was the true trigger date for school officials to begin the

assessment process for Petitioner. An expedited evaluation ideally should have begun in August 2004.

138. It is noted that failure of the parents, institutions, or medical personnel to provide records thereafter was, in part, at least, traceable to the educators' failure to get proper releases from the parents in a timely manner. Likewise, Respondent's witnesses' protestations that no pre-referral, referral, or evaluation could begin until a parent signed a valid consent form are unavailing, given the facts as found. School districts regularly evaluate children without any more explicit parental consent than Petitioner's mother's summer 2004 correspondence and provide printed consent forms only prior to the first staffing or IEP meeting. See Justin G. v. Board of Education of Montgomery County, 148 F. Supp. 2d 576 (U.S. Dist. Ct. Md. 2001).

139. Petitioner rightfully points out that in normal circumstances, an IEP is required to be developed before the commencement of the school year (see Justin G. supra.), but the four days from Monday, August 2 to Friday, August 6, 2004, were not adequate for the School District to comply with the elaborate rules in place. Moreover, there were extenuating circumstances why the process could not begin immediately. The mother did not come to the school until September 14, 2004; there was the unique situation of multiple "days out" due to hurricanes at least until September 16, 2004; Petitioner did not regularly attend school for most of September and October 2004, and it was

reasonable for school personnel to wait awhile to see if the parents would be successful in getting Petitioner to attend regular classes; and Petitioner was hospitalized outside of the state for a week in October 2004. Therefore, it is concluded that it would not have been unreasonable for the District to not begin assessing/evaluating Petitioner until October 1, 2004, and it would not have been unreasonable for the District to have completed the assessment by November 3, 2004, particularly due to the week's hospitalization in October. In reaching this conclusion, the undersigned has relied on both the facts as found and on the Code of Federal Regulations provision, which until very recently has permitted a school district to take up to 30 days after an ESE designation before convening an IEP meeting. See Justin G. supra.

140. However, beginning November 3, 2004, when there was a parental consent in place and full disclosure by the parents of sufficient medical information under the rules, there was no excuse for the District to drag out the assessment and delay its designation of Petitioner the way it did. Admittedly, Petitioner's truancy made school classroom observations over the appropriate period of time in compliance with the quoted rules impossible, and at least delayed [redacted] vision/hearing and speech/language screenings, but it was demonstrated that when screeners made an effort, they could go to the child's home or get the mother to bring [redacted] to the school for screenings. No affirmative efforts of the parents to prevent the child from attending school, no parental refusal to bring [redacted] to school,

and no parental resistance to the school's seeking Petitioner out have been demonstrated. Mr. [redacted] was on the scene during the homebound teaching period from November 14, 2004, to January 24, 2005, except for one week in January 2005, when Petitioner was again hospitalized outside Florida. Mr. [redacted] could have rendered teacher observations over a period of time, or the District could have sent other teachers, testers, or educational psychologists to observe Petitioner's homebound performance. Specific educational assessment tests could have been administered there. THIS sort of accommodation is not unheard of for autistic or developmentally disabled children seeking ESE, so the precedent for a home evaluation exists. Finally, it is clear that St. Johns County ESE personnel believed they could waive some requirements of the rules, and did waive them, on or about March 1, 2005. Therefore, in the face of the parents' clear request for an expedited evaluation, a psychiatric diagnosis of bipolarity, knowledge of frequent hospitalizations for a behavior disorder, and teacher and parental notations of self-mutilation and rule-specified identifiers of EH status, an assessment that took from November 3, 2004, until on or about March 1, 2005, (four months) took an unreasonable and excessive amount of time. That unreasonable and excessive amount of time denied Petitioner FAPE for that period.

141. It is clear that Petitioner was educable under some circumstances in June 2004, when [redacted] passed [redacted] eighth grade courses at [redacted] under alternative one-on-one learning techniques. Neither party has contended that these

grades were not valid or that The [redacted] promotion was not properly accepted by St. Johns County in August 2004.

142. Therefore, the child was obviously damaged by Respondent School District's delay. There is no way to allot what educational losses Petitioner suffered from other factors or as a result of the School District's delay between October 1, 2004 and March 5, 2005. Accordingly, the School District should be held accountable for its errors and omissions under IDEA. There should be consequences for the District under the circumstances of its unreasonable delay. See Ozark City Board of Education 34 IDELR 55 (SEA Alabama 2001).

143. The period of homebound education, November 14, 2004, to January 24, 2005, was understood by everyone to be no more than a "stop-gap" measure while the full assessment of Petitioner for EH status (or whatever designation might be demonstrated) went forward. The fact that the parents agreed to try homebound status on November 3, 2004, and requested that Petitioner not be designated in a different ESE category before [redacted] had given a return to mainstreaming at [redacted] another try on January 24, 2005, should not preclude appropriate relief in this proceeding. Cf.- Loren F. ex rel Fisher v. Atlanta Independent School System supra. The homebound experience, while qualifying Petitioner as an ESE student, actually was no more than a failed intervention. When an attempt was made by Petitioner to return to school in January 2005, Ms. [redacted] did what she was supposed to do; she proceeded with the evaluation process, while granting the request for a trial return. Unfortunately, the District's identification

process continued to proceed in slow motion.

144. From November 14, 2004 to January 24, 2005, the homebound IEP was not followed. Petitioner did not derive any measurable educational benefit from homebound study. The undersigned need not analyze the IEP as written. From its inception, the homebound IEP was implemented in such a way that it provided only a trifling educational benefit. Failing classes is not enough to show no educational benefit is being conferred, and school districts have some flexibility in implementing IEPs, but they are nonetheless "accountable" for material failures and for providing the disabled child with a meaningful educational benefit. Houston Independent School District v. Bobby R., 200 F.3d 341, 349 (5th Cir. 2000). The IDEA does not demand that the District cure the disability which impairs a child's ability to learn, but it does require a program of remediation which would allow the child to learn, notwithstanding [redacted] disability. 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 303 (1982). See also Hendry County School Board v. Kujawski, 498 So. 2d 566 (Fla. 2nd DCA 1986). The educational benefit, to meet the IDEA standard, must be "likely to produce progress, not regression or trivial educational advancement." Cypress-Fairbanks Independent. School District v. Michael F., 118 F.3d 245 (5th Cir. 1997). A student must receive at least "the basic floor of opportunity."

J. S. K. v. Hendry County School Board, 941 F.2d 1563 (11th Cir. 1994). Educational benefits under IDEA must be more than trivial or de minimus, J.S.K. v. Hendry County School District, supra.; Doe v. Alabama State Dept. of Educ. 915 F.2d 651 (11th Cir. 1990).

145. For the foregoing reasons, it is concluded that Petitioner was denied FAPE from November 14, 2004 to January 24, 2005.

146. Also, Petitioner was not required to come to school from January 27, 2005 onward, and after requesting homebound services on February 14, 2005, [redacted] was not provided even homebound services until March 4, 2005.

147. Putting together all the periods when FAPE was not provided, Petitioner was denied FAPE from November 3, 2004, to March 4, 2005. Because [redacted] was denied FAPE from November 3, 2004, to March 4, 2005, Petitioner is minimally entitled to have St. Johns School District provide [redacted] with compensatory education for that time period, except for weekends, holidays, and [redacted] periods of private hospitalization. It does not appear that St. John's School District can provide that compensatory education at present.

148. [redacted] tuition of $8700.00 per month is the only educational cost figure either party has provided. If compensatory education, regardless of ESE status, for the errors and omissions of the School District is appropriate, that figure may be reasonably apportioned. However, residential treatment is not supposed to be equated with compensatory education. Mrs. M.

v. Portland School Committee, 360 F.3d 267 (1st Cir. 2004). On the other hand, determining how the tuition figure might be apportioned between educational and non-educational services is quite another matter.

149. The facts as found also show that although the referral process was completed on or about March 1, 2005, no IEP has been produced by the School District. Even the School District's Proposed Final Order acknowledges that, ". . . the referral process was completed in February 2005 and the School District was prepared to determine whether Petitioner was eligible for ESE services; however, due to the unilateral placement of Petitioner in the out-of state facility, no final determination was made."

150. There has never been a determination by St. Johns County educators that Petitioner is eligible for any ESE services other than hospital/homebound services, and there has been no other IEP in place since November 14, 2004.

151. No educator testified herein as to whether Petitioner is, or is not, eligible for EH services. Were such an opinion in evidence, the undersigned would be required at law to defer to that opinion or to weigh and select from among several expert opinions if others were offered. Justin G. v. Bd. Of Education of Montgomery County, supra.; School District of Wisconsin v. Z. S. ex rel Littlegeorge, 295 F.3d 671 (7th Cir. 2002); Gill v. Columbia 93 School District, 217 F.3d 1027 (8th Cir. 2000); Johnson v. Metro Davidson School System, 108 F. Supp. 2d 906 (M.D. Tenn 2000); and Brooks v. St. Tammany School Board, 510 So.

2d 51 (La. App. 1987).

152. That said, there is no such expert opinion to defer to, and the evidence presented at the due process hearing is sufficient for the undersigned to determine, pursuant to the rules cited, that Petitioner is, at least for the present, qualified to received EH services in whatever physical location [redacted] is placed.

153. However, the undersigned is not empowered by the applicable law to establish an IEP. See School Board of Martin County v. A. S., supra. Because Petitioner has now been determined to be entitled to receive EH services, it is incumbent upon the School District to develop an IEP that provides such services in LRE within St. Johns County.

154. The parties presented this case for a determination of whether Petitioner's parents are entitled to be reimbursed by St. Johns School District for all of Petitioner's detention and multi-disciplinary treatment at Peninsula from March 5, 2005, until the School District develops an appropriate IEP and whether the parents are entitled to continue to be reimbursed for Petitioner's treatment at [redacted] until [redacted] is discharged, whenever that may be. To do that, the statute (see Conclusion of Law 115) and the case law again require systematic and sequential inquiries.

155. First, the question must be asked if there was appropriate prior notice by the parents to the School District. Here, there was no appropriate prior notice to the School District before the March 5, 2005, private placement. Therefore,

the parents' unilateral private placement without prior notice to the School District permits denial, or reduction, of reimbursement of the cost of that residential placement, unless the failure of notice may be excused. See 20 U.S.C. § 1412(a)(10)(C), Conclusions of Law 115-117, and cases cited at Conclusion of Law 128.

156. The evidence herein does not support a conclusion that the parents were unaware of their due process rights or of the requirement that they give prior notice. (See Finding of Fact 64.) Specifically, it is concluded that the February 25, 2005, letter to the State Commissioner of Education (see Findings of Fact 74 and 80) was addressed to the wrong entity and failed in other statutory aspects as well. (See Conclusion of Law 117.) Moreover, there is insufficient evidence to find that mere notice to the School District itself would have imperiled Petitioner. Therefore, there is no statutory excuse for the parents' failure to give prior notification. Accordingly, reimbursement to the parents by the School District for the cost of the private residential treatment may be denied or reduced. It is further noted that the purpose of prior parental notice is to allow the School District to meet the parents' concerns with an IEP proposal that will satisfy them, and the mother herein would not have accepted any placement available in St. Johns County on March 4, 2005. (See Finding of Fact 105.) THIS unreasonable position is further cause to deny, or at least reduce, the amount of reimbursement sought.

157. By and large, cases preceding the enactment of the

federal prior notice requirement discussed entitlement to full reimbursement to the parents for private placement costs in terms of "equitable" entitlement due to a school district's prior delays in creating an IEP or its failures to otherwise provide FAPE, and attempted to make the child whole as a result of educational losses or deterioration of [redacted] psychological condition. Without labeling the educational losses as "compensatory services" or "remedial education," the cases in this period generally tended to equate "equity" with a "make whole" concept. Consider the "Hobson's Choice" presented in Babb v. Knox County School System, 965 F.2d 104 (6th Cir. 1992): the school's choice of inaction, which would ultimately have resulted in truancy discipline and continued trivial or non-existent educational progress for the child, or the parents' choice of a residential program with counseling and educational services, which resulted in much-needed multi-disciplinary care of the child that at least held out the hope of an educational benefit. Babb's total reimbursement was granted on equitable grounds, and the case was decided before prior notice requirements were part of the Federal Act. Similar full reimbursements occurred in other cases cited by Petitioner in that period. See Burlington School Committee v. Massachusetts Dept. of Education 471 U.S. 359 (1985) and Florence County School District Four v. Carter, 510 U.S. 7 (1993). For instance, in Mrs. B. v. Milford Board of Education, 103 F.3d 1114 (2nd Cir. 1997) held, "the fact that a residential placement may be required to alter a child's regressive behavior at the home as well as within the classroom,

or is required, due primarily to emotional problems, does not relieve [a school district] of its obligation to pay for the program. . . so long as [the program] is necessary to insure that the child can be properly educated." See also Abrahamson v. Hershman 701 F.2d 223 (1st Cir. 1983), which considered round-the-clock care as necessary so that the child could achieve any educational benefit whatsoever. Other cases of the pre-amendment period tried to "parcel out" non-educational elements of parentally-selected private placements, thereby creating a kind of apportionment of educational and non-educational services even when the goal was equitable remediation.

158. However, since the enactment of the federal prior notice requirement, the cases have become reasonably consistent that parents' unexcused failure to give prior notice will defeat outright, rather than merely reduce, any reimbursement of private placement costs which parents have undertaken "at their own economic risk." See cases supra, at Conclusion of Law 128. Indeed, no case clearly sets out a formula as to how one would go about not denying, yet calculating a reduction of, costs/tuition reimbursement where there has been an "unexcused lack of notice" situation such as exists in this case.

159. As well as being subject to denial or reduction due to the failure to give timely notice, parents also are required to bear the burden of proof to show that the private placement, in this case Peninsula, is an appropriate educational placement. Even a properly noticed private placement may have reimbursement amounts denied or reduced because of the non-educational portions

of the private program, if those portions can be separated out.

160. [redacted] Village's principal purpose and goal is not education. The facility is primarily a residential psychiatric and drug treatment center, with an educational component which complies with the guidelines established by Section 504 of The Rehabilitation Act. Like St. John's County, [redacted] has never developed an IEP for Petitioner. Putting that problem aside for a moment, under no theory of law is a School District required to pay for a child's medical care and drug rehabilitation unless there is some educational component being provided. Even if there were an IEP, the School District could only be obligated for care and rehabilitation if the parents have demonstrated

that those services are integral, or at least clearly related to, the educational benefit being provided.

161. The public school system has never been required to act as an absolute guarantor of its students' physical health or psychiatric equilibrium, and it should not be placed in the position of being required to rehabilitate every student who falls prey to the vicissitudes of the current street drug culture. See N.W. v. Palm Beach School Board, DOAH F.O. 00-2418E (December 4, 2000). Reimbursement should be denied if there is no educational benefit. Kerkam v. Superintendent, District of Columbia Public Schools, 17 EHLR 808 (D.C. Cir. 1991), and Board of Education, Arlington Heights School District, No. 25 v. Illinois State Board of Education, 351 IDELR 6 (N.D. Ill. 2001).

162. The sentiments of the opinion in Austin Independent

School District v. Robert M., 168 F. Supp. 2d 635 (U.S. Dist. Ct. W. D. Texas 2001), are valid. That case dealt with a high school student with attention deficit disorder (ADD) who enrolled in a magnet program for gifted children, but who also had skipped class, failed to do homework, smoked dope, and neglected to take [redacted] ADD medication. The decision determined that Robert M. did not need special education, and thus, [redacted] was not a "child with a disability," within the meaning of IDEA, "but was one who had squandered [redacted] opportunities," and that "if emotional disturbance were enough, it would be the rare teenager that would not meet the definition of 'other health impairment'" contained in 20 U.S.C. Section 1401(3)(A)(i). However, in that case, it was clearly proven that the child was gifted; that [redacted] could do the work and had deliberately omitted [redacted] ADD medication; and that the entire special education scenario had been a scheme for college admission engineered by [redacted] parents. Therein, the court declined to reward the parental scheme with reimbursement for the private placement. There also were no reimbursement rewards for parental manipulation in R. D. by Kareem v. District of Columbia, 43 IDELR 194 (DDC 2005).

163. Robert M.'s situation, however, is very different from the case at bar. In the 2004-2005 SY, there is no clear evidence of parental collusion in Petitioner's truancy or [redacted] unavailability for testing. It was not demonstrated that Petitioner was a superior, or even average, student before illegal drug use. There is no indication Petitioner has been non-compliant in taking [redacted] prescribed psychotherapeutic

medications for bipolarity. Petitioner presently has two clear psychiatric diagnoses (bipolar disorder and post traumatic stress syndrome) in addition to illicit chemical dependency. Herein, a homebound IEP was tried by the School District and was woefully lacking in implementation. The second try at homebound study was improperly delayed, and there is no way to calculate the educational loss to Petitioner from these IEP defects and delays.

164. Petitioner's situation is distinguishable from Robert M. which denied any reimbursement, and also from Blickle v. St. Charles Community Unit School District No. 303, 1993 WL 286485 (N.D. Ill. 1993), wherein the parents condoned truancy, actively resisted the school district's assessment, and prevented the school district's contact with the child. Further, in Blickle the local school district had a day program available that would fit the addicted child's needs. Herein, it is not clear that St. Johns County can currently provide a suitable program for Petitioner, but it should be afforded the opportunity to try. The present situation is also distinguishable from In Re: Board of Education of Harlem Consolidated School District No 122, 44 IDELR 18 (July 26, 2005), where a grandparent would not support the school's requirements, and Sanger v. Montgomery County Board of Education, 916 F. Supp. 518 (Dist. Md. 1996), where all delays were the sole result of a parent's behavior.

165. Nonetheless, triers of facts should be resistant to opening the door to reimbursement based on illicit drug use, truancy, and just the plain "lack of motivation" decried in Robert M.

166. The IDEA continues to define FAPE as "special education and related services." 20 U.S.C. § 1401(18). It permits educational services in "hospitals and institutions," 20 U.S.C. Section 1401(17), but [redacted] clearly is not a hospital, and "institution" is a vague directive, at best. As to the "appropriateness" of any private placement, the cases in the applicable time period are remarkably inconsistent as to when or how reimbursement may be made on the basis of "appropriate" versus inappropriate services. For instance, the whole tuition amount was reimbursed in Gabel ex rel L. G. v. Board of Education of Hyde Park Central School District, 134 (S.D.N.Y. 2005), where real educational progress was demonstrated as arising from the placement of the child in the residential treatment facility. In Dale M. v. Board of Educaion of Bradley-Bourbonnais High School District No. 307, 33 IDELR 266 (7th Cir. 2001), the court concluded that the residential facility "was just a boarding school for difficult children," and merely served as a "jail substitute," further remarking that the residential placement was inappropriate because "it stretches the statute too far" to classify confinement as a related service. In Wolfe v. Tacoma Hills Central School District, 351 IDELR 186 (N. D. N. Y. 2001), full reimbursement was awarded on equitable grounds due to the school district's failure to identify the child as ESE. In the case of Board of Education of City School District of City of New York v. Gustafson, 361 IDELR 98 (S.D.N.Y. 2002), a reimbursement originally limited to 20 percent of the tuition award on the basis that some services were more than the child actually

required was struck down and full tuition reimbursement was substituted. In the case of Manhattan Beach Unified School District (SEA Calif. 2001), only fifty percent reimbursement was granted because the IHO was not fully convinced of a need in the first place.

167. Finally, the case law does not provide any clear formula for determining which residential treatment costs may be awarded as "appropriate" because they are necessary to stabilize a child so that [redacted] can function in a placement's educational component or which support services are otherwise so integral to the educational component of the program that they should be reimbursed as if part of an acceptable IEP.

168. Applying the foregoing analysis to the instant case, it is concluded that St. Johns County School District did not provide Petitioner FAPE from November 3, 2004 to March 4, 2005, because it took an egregiously long time to complete the identification/assessment process and because the homebound services it did provide were either delayed or of de minimus educational value. Because [redacted] did not receive FAPE from St. Johns County School District from November 3, 2004 to March 4, 2005, Petitioner herein is entitled to compensatory or remedial education. Because it is clear that Petitioner has actually lost educational and psychological ground as a result of the District's actions or inaction during that period, as opposed to just not progressing forward with [redacted] education during that period, Petitioner is entitled to additional compensatory or remedial educational benefits beyond just counting out the school

days between November 3, 2004 and March 4, 2005. IDEA contemplates that there should be consequences for the District due to its lengthy denial of FAPE and Petitioner's resultant deteriorating condition.

169. In addition to owing the child compensatory/remedial education for its past failings, the District now also is obligated to develop an appropriate IEP for Petitioner because this Final Order has determined [redacted] to be qualified for EH services. The evidence shows that a residential treatment facility is the only appropriate and feasible educational setting for this child at this time, and the District has not demonstrated that it has such a placement currently available.

170. On March 5, 2005, the parents unilaterally and without prior notice, removed the child to an out-of-state private residential facility. There was no statutory excuse for the parents' lack of prior notice to the District that the child was going to be privately placed and that the parents would be seeking tuition reimbursement at public expense. The School District is not even required to prove prejudice due to the lack of notice in order to have the reimbursement request denied, but clearly, the District cannot now test or educate Petitioner while [redacted] is inaccessible in another state. The law is clear that once a child is physically removed from the District, the District is not required to evaluate [redacted] where it cannot reach [redacted].

171. Purely as a result of the parents' lack of prior notice, they may be denied all or a part of the reimbursement

they seek, even if the private placement is appropriate. Also, even if the private placement is deemed appropriate, the reimbursement amount would be subject to reduction on the basis of any private services unrelated to Petitioner's education.

172. The purely educational services provided by Peninsula to Petitioner in the lock-down assessment unit portion of the private placement currently amount to 10 hours per week. (Two-and-a-half hours, four days per week.) Expert testimony and Petitioner's progress thus far demonstrate that, while on this unit, all services (therefore all tuition) are necessary so that the child can benefit in any way at all from the educational component. It is of concern that there is no IEP in place at the private placement, but that is not a controlling circumstance.

173. The purely educational services offered by Peninsula's group living level will never amount to more than 15 hours per week (estimated at five hours per day, three days per week). At the point Petitioner is transferred to that group living level, the 24 hours per day, every day, support services, which include but are not limited to locking [redacted] up against [redacted] will, monitoring [redacted] psychotherapeutic drugs, rehabilitating [redacted] street drug and alcohol addictions, and multiple group therapies, etc., become less integral to the delivery of an educational benefit to Petitioner. Therefore, under every theory espoused in the case law, when Petitioner enters group living, Peninsula's support services are subject to elimination or reduction from any cost reimbursement unless they are clearly related to the educational services being provided by Peninsula. Under the

facts presented in this case, when or if Petitioner will improve sufficiently to reach this cabin-style group living stage is purely speculative, and there is no clear evidence which services in that stage can be apportioned to the educational component, out of all the other services which are not principally educational.

174. The request for "reimbursement" of all or any part of Petitioner's private placement costs at Peninsula should be denied due to the unexcused lack of prior notice.

175. However, Petitioner should receive appropriate compensatory/remedial education as described in Conclusion of Law 168, as a consequence of the District's delay and failure to provide FAPE. Weighing all the evidence, the result least disruptive to Petitioner's continued educational progress should be sought in making such an award.

ORDER

Having considered the foregoing findings of fact, conclusions of law, the evidence of record, the candor and demeanor of the witnesses, and the pleadings and arguments of the parties, it is

ORDERED:

(1) Petitioner was not denied due process or FAPE by Respondent for the 2003-2004 school year, and as a result, [redacted] recovers nothing.

(2) Petitioner was denied FAPE by Respondent from November 3, 2004 until March 4, 2005.

(3) At the present time, Petitioner is a child with a disability entitled to IDEA protection and to FAPE. Petitioner is qualified for Emotionally Handicapped services.

(4) Petitioner's claim for reimbursement of all costs associated with [redacted] private placement at [redacted] Village is denied due to the unexcused failure of the parents to give timely and appropriate prior notice to St. Johns County School District of that intended private placement.

(5) Nonetheless, as consequences of St. Johns County School District's denial of FAPE between November 3, 2004 and March 4, 2005, and because there is no certainty that the District can currently provide the compensatory/remedial education to which Petitioner has been found to be entitled, St. Johns County School District shall pay all costs associated with Petitioner's stay in the [redacted] Village lock-down assessment unit from March 5, 2005, until Petitioner either "graduates" to a cabin group living unit at [redacted] or professional social workers or psychologists at [redacted] Village determine that [redacted] will never graduate from the lock-down assessment unit. Upon either of those contingencies, St. Johns County School District will cease to have any monetary obligation to Petitioner or [redacted] parents.

(6) In order to accomplish the compensatory and remedial requirements of paragraph (5) above, and in order to be reimbursed for past costs of this compensatory/remedial care for which St. Johns County School District is now responsible, the parents shall provide the District with itemized [redacted]Village invoices, showing the services rendered and

proof that the parents have paid for those services. The District shall reimburse the parents upon receipt of the foregoing items.

(7) In order to accomplish the compensatory and remedial requirements of paragraph (5) above, in the event that Petitioner remains in the lock-down assessment unit at [redacted] Village as of the date of this Order, all future invoices for [redacted] care in that unit shall be provided directly to St. Johns County School District for direct payment to [redacted] Village.

(8) In order that all parties may be fully aware of when Petitioner either graduates from [redacted] Village's lock-down assessment unit or is determined to be unable to graduate, legal counsel for the parents herein is charged, as an officer of this forum, with providing St. Johns County School District written reports by [redacted] Village professionals covering Petitioner's psychological and educational progress and clearly setting out [redacted] unit assignment. These reports shall be provided at the same time each [redacted] Village invoice is provided to the District directly by [redacted] Village. THIS procedure shall be followed until Petitioner graduates to a cabin group living unit or a professional report indicates that [redacted] will never graduate from the lock-down assessment unit. The District is not responsible for any costs associated with Petitioner's assignment to [redacted]'s group living unit because at that point, Petitioner will be medically stabilized so that [redacted] can learn in a less restrictive environment than the lock-down unit and any past educational losses which can be

compensated for will have been compensated for at District expense. To continue any reimbursement beyond that point would be contrary to IDEA's denial of reimbursement for unexcused failures to make timely notification and contrary to paragraph (4), above.

(9) Any monetary obligation of St. Johns County School District to Petitioner having ended when Petitioner graduates from the lock-down assessment unit, or it is clear from professional advice that [redacted] will never graduate therefrom, the parents may continue Petitioner at [redacted] Village thereafter, but they do so at their own economic risk, due to their unexcused failure to give prior notice of the private placement.

(10) The parents shall notify St. Johns County School District in writing when Petitioner is ready to return to a public placement in St. Johns County.

(11) Upon written notification to the St. Johns County School District that Petitioner will be returning to St. Johns County, the District and the parents shall create an appropriate IEP for Petitioner. The parents shall participate in the IEP process by conferences upon reasonable notice and permit St. Johns County School District personnel reasonable access to Petitioner within St. Johns County for testing and evaluation. They shall also execute all medical and other releases to permit St. Johns County School District to assess Petitioner's educational placement, and [redacted] medical and psychological progress at [redacted].

(12) Petitioner is the prevailing party herein, but the issue of attorneys' fees and costs is not within the jurisdiction of the Division of Administrative Hearings.

DONE AND ORDERED this 28th day of September, 2005, in Tallahassee, Leon County, Florida.

S

ELLA JANE P. DAVIS
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Filed with the Clerk of the
Division of Administrative Hearings
this 28th day of September, 2005.

ENDNOTES

[1/] The new title for the Act as amended July 1, 2005, is "The Individuals With Disabilities Education Improvement Act." THIS case is governed by the preceding Act.

[2/] THIS Order has been delayed due to the parties' insistence on an unusual exhibit numbering system and due to considerable independent research by the undersigned, because Petitioner has cited and relied on cases predating the applicable version of 20 U.S.C. Section 1412 (1)(10)(c), (July 1, 1998 to June 30, 2005) dealing with the duty of notice before private placement and excuses for lack thereof, and because Respondent has cited no cases whatsoever.

[3/] Petitioner's "Goth" dress and make-up were not new. Bloody towels and a knife in Petitioner's bed at home were new. The mother described [redacted] activities as "[Petitioner] takes, preferably knives, and cuts [redacted] arms and [redacted] legs, sometimes

carves words into [redacted] arms and [redacted] legs. [redacted] has taken lighters and held the button down until the metal of the lighter has gotten very, very hot and branded [redacted] arm, [redacted] biceps, with the lighters. [redacted] -- even when every sharp thing in our home has
been locked up, [redacted] has sharpened [redacted] fingernail with [redacted] teeth in order to cut [redacted]. Cutting is sort of an underestimate of what [Petitioner] does. [Petitioner] carves [redacted] skin."

[4/] Petitioner's Proposed Final Order claims that this letter constituted a request for a manifestation hearing, but probably Petitioner meant to refer to Ms. Caldwell's March 2, 2004 letter, described at Finding of Fact 21.

[5/] THIS process has been formally adopted as a School District rule and is discussed at length in the conclusions of law. Written due process materials were subsequently provided. See Finding of Fact 64.

[6/] One of Petitioner's friends from middle and high school arrived one night at Petitioner's home with a girlfriend. THIS individual only told Petitioner that [redacted] had hurt [redacted] grandmother, but the next day Petitioner was questioned in a criminal investigation concerning [redacted] friend's probable murder of the grandmother and escape across the State line with the underage girlfriend.

[7/] In the interest of space, two exceptions which cannot possibly relate to this case have been omitted.

[8/] Although Petitioner's bipolar diagnosis alone might make [redacted] eligible as a student with a disability pursuant to Section 504 of the Rehabilitation Act, that issue has not been submitted by the parties for determination in this case. See also Yankton School District v. Schramm, 900 F. Supp. 1182 (D.S.D. 1995) and Farmersville (Ca.) Elem. Sch. Dist., 18 IDELR 157 (1991), on how a child may be eligible for 504 benefits but not IDEA. Peripherally, see Finding of Fact 95.

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); [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.