

Palm Beach county School District  
No. 05-0354E  
Initiated by: Parent  
Hearing Officer: Errol H. Powell  
Date of Final Order: October 11, 2005

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

██████████ )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 05-0354E  
 )  
PALM BEACH COUNTY SCHOOL BOARD, )  
 )  
Respondent. )  
\_\_\_\_\_ )

FINAL ORDER

Pursuant to notice, a formal hearing was held in this case on March 29-30 and April 27, 2005, in West Palm Beach, Florida, before Errol H. Powell, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: ██████████  
(Address of Record)

For Respondent: Laura Pincus, Esquire  
Palm Beach County School Board  
Office of the General Counsel  
3318 Forest Hill Boulevard, Suite C-302  
West Palm Beach, Florida 33406-5813

STATEMENT OF THE ISSUE

The issue for determination is whether [REDACTED] should be allowed to use [REDACTED] mobility scooter at school.

PRELIMINARY STATEMENT

On January 27, 2005, the parent of [REDACTED] requested a due process hearing from the Palm Beach County School Board (School Board). On January 27, 2005, this matter was referred to the Division of Administrative Hearings.

On February 8, 2005, a pre-hearing conference was held. During the pre-hearing conference, the parties agreed on the scheduling of the due process hearing, which was scheduled for February 23 and 24, 2005. Subsequently, the parent of [REDACTED] requested a continuance in order to obtain counsel. By Order dated February 17, 2005, the request was granted and the due process hearing was continued; as a result, the 45-day decision requirement was extended.

The due process hearing was re-scheduled for March 29 and 30, 2005. The hearing was held but was not completed. Another day of hearing was scheduled for April 27, 2005.

At hearing, the parent of [REDACTED] testified, presented the testimony of one witness, and entered four exhibits (Petitioner's Exhibits numbered 1-4) into evidence. The School Board presented the testimony of six witnesses and entered 19 exhibits (Respondent's Exhibits numbered 1, 2, 4, 5, 7-13, and 17-24) into evidence.

A transcript of the hearing was ordered. At the request of the parties, the time for filing post-hearing submissions was set for 30 days following the filing of the transcript, again extending the 45-day decision requirement. The Transcript, consisting of four volumes, was filed on May 24, 2005. An extension of time to file post-hearing submissions was requested and granted up to and including June 27, 2005. Both parties timely filed post-hearing submissions, which were considered in the preparation of this Final Order; following the filing of post-hearing submissions, the undersigned discovered the two of [REDACTED] exhibits had not been forwarded to the undersigned. The parties, having been notified of the absence of the exhibits, subsequently filed the exhibits.

#### FINDINGS OF FACT

1. At the time of hearing, [REDACTED] was an [REDACTED]-year-old, fourth-grade student at [REDACTED] School ([REDACTED]) in the School Board's district.

2. No dispute exists that [REDACTED] is an exceptional student, eligible for Exceptional Student Education (ESE), and that [REDACTED] education is governed by the Individuals with Disabilities Education Act (IDEA). [REDACTED] is eligible for the ESE program based on the following areas of eligibility: Specific Learning Disabled, Language Impaired, Occupational Therapy, and Physical Therapy.

3. ■■■ has been diagnosed with Muscular Dystrophy, in particular, having been diagnosed at various points with either Duchenne Muscular Dystrophy (Duchenne) or Becker Muscular Dystrophy (Becker). Both Duchenne and Becker are progressive in nature, and the prognosis for Duchenne is worse than Becker.

4. In the 2003-2004 school year, ■■■ mobility worsened. As an example, ■■■ individualized education plan (IEP), dated February 18, 2004, indicated in the domain of independent functioning, among other things, that ■■■ was currently walking short distances and using ■■■ wheelchair for longer distances; that, as a educational priority goal, ■■■ would use ■■■ wheelchair for transitions on an as needed basis; and that, as short term objectives/benchmarks, ■■■ would walk or negotiate to designated areas and use a manual wheelchair at the school, as needed. However, ■■■ was unable to walk by August 11, 2004.

5. Craig Lichtblau, M.D., one of ■■■ treating physicians and the Medical Director of the Children's Medical Services (CMS) Clinic, determined and recommended on May 21, 2004 that ■■■ should utilize a motorized wheelchair with a Tilt 'N Space feature. In making his recommendation, Dr. Lichtblau considered ■■■ medical record, diagnosis, clinical presentation, and the right fit for ■■■; reviewed ■■■ spine X-rays; and reviewed the recommendation from the school's physical therapist<sup>1</sup> assigned to

work with [REDACTED] and the mobility equipment vendor. Furthermore, Dr. Lichtblau planned to consult with an orthotist, regarding splints for heel cords, and to follow-up with [REDACTED] parents.

6. The school's physical therapist<sup>2</sup> on May 3, 2004, recommended, as a medical necessity, a motorized wheelchair for [REDACTED], with an elevated power seat and power Tilt 'N Space. The elevated power seat was to allow [REDACTED] "to move closer to the work area even if the table or desk is higher than [REDACTED] wheelchair." The power Tilt 'N Space was "to provide appropriate support, positioning, minimize further progression of musculoskeletal deformities, independence and for interaction in the school and community setting."

7. [REDACTED] assigned paraprofessional at school, Denise Borgen, who works with [REDACTED] one-on-one, observed [REDACTED] use a Tilt 'N Space with his manual wheelchair. Ms. Borgen observed that, when [REDACTED] experienced discomfort in [REDACTED] back and hip in the classroom, [REDACTED] expressed this discomfort to her and [REDACTED] used and maneuvered the Tilt 'N Space independently and appropriately to relieve [REDACTED] discomfort.

8. Dr. Lichtblau's opinion was that the mobility device, i.e., motorized wheelchair with a Tilt 'N Space feature, was a medical necessity for mobility, as well as for positioning. Being a positioning device, the motorized wheelchair was

medically necessary to prevent [REDACTED] from having secondary effects of inappropriate positioning causing curvature of the spine, including scoliosis, and to prevent [REDACTED] hips from coming out, which would cause undue pain and discomfort. No evidence was presented that [REDACTED] had, as yet, developed a curvature of the spine.

9. During the 2004-2005 school year, New Horizons began to notice a change in [REDACTED] transfer while using the bathroom at school. [REDACTED] assigned physical therapist, Amparo Hernandez, had been working with [REDACTED] since August 2004. Ms. Hernandez observed, among other things, that [REDACTED] was having significant difficulty transferring from [REDACTED] manual wheelchair to the toilet seat and to [REDACTED] desk.

10. Ms. Hernandez did not engage in the physical, hands-on manipulation of [REDACTED] body, including [REDACTED] muscles.

11. At the Parent Conference held on December 9, 2004, Ms. Hernandez indicated, among other things, that she observed [REDACTED] having problems transferring from the toilet seat to [REDACTED] manual wheelchair and recommended a two-person transfer from the toilet seat to [REDACTED] wheelchair. [REDACTED] parents disagreed with having a two-person transfer. Further, [REDACTED] parents wanted [REDACTED] to be able to use a scooter rather than a wheelchair at school. In support of the use of a scooter at school, the parents of [REDACTED] submitted a letter, dated November 23, 2004, from W. Douglas

Biggar, M.D., Physician Director, Musculoskeletal Program at [REDACTED] Centre ([REDACTED] Centre) at Toronto, Ontario, Canada.

12. In addition to writing the letter, Dr. Biggar testified at hearing. Dr. Biggar has seen [REDACTED] as a patient, twice at the [REDACTED] Centre; each time comprising a two-day evaluation. Dr. Biggar began a course of treatment involving a drug, Deflazacort, which is not available in the United States and which has proven to be successful in cases that he has treated in that the progression of muscular weakness was slowed, resulting in the time period that a child continues to walk being extended. The treatment began with [REDACTED] when [REDACTED] was unable to walk. The drug is usually started by Dr. Biggar with children of an age earlier than [REDACTED] and children who are mobile; as a result, Dr. Biggar has no data on the success of the drug when used under [REDACTED] circumstances and is unable to predict with any degree of medical certainty [REDACTED] clinical prognosis.

13. Dr. Biggar has no medical basis for recommending a scooter over a motorized wheelchair for [REDACTED]. The primary and main basis for his recommendation is the inclusion of [REDACTED] for [REDACTED] to be included with the non-disabled children and to "look as normal as possible." Dr. Biggar's experience has been that individuals have a preconceived notion of a predictable course for children with Duchenne, which is based on non-treatment. Such preconceived notion, according to Dr. Biggar, has resulted

in children with the disability battling to be included as much as possible, as their capability will permit.

14. [REDACTED] inclusion, according to Dr. Biggar, provides for [REDACTED] overall general well-being and health, for an academic program designed for [REDACTED] to be successful, for a gym program which will allow [REDACTED] to participate consistent with [REDACTED] capabilities, and for a classroom setting which provides for accessibility and in which [REDACTED] is independent as possible, including transferring to a chair and to a toilet seat.

15. In his letter, recommending the use of a scooter by [REDACTED] at school, Dr. Biggar provided several reasons for his recommendation: [REDACTED] self-esteem would be improved and [REDACTED] would feel less disabled; [REDACTED] transfer at [REDACTED] desk from the scooter to the desk and back again would be easier; [REDACTED] would be more comfortable in [REDACTED] scooter; and [REDACTED] would be able to participate in recreational activities, such as kickball.

Dr. Biggar concluded in his letter that, at some point in time in the future, [REDACTED] may benefit more from a motorized wheelchair.

16. Also, in his letter, Dr. Biggar indicated that many schools have liability issues with having children transfer in and out of scooters in that the children may fall and hurt themselves. He admits that accidents may happen but adds that feeling included is better than feeling excluded. According to Dr. Biggar, the parents of [REDACTED] are "comfortable with the risk."



17. In formulating his recommendations and reaching his conclusion in his letter, Dr. Biggar did not consult with [REDACTED] local treatment team, i.e., [REDACTED] teacher and assigned therapist at school, or with any member of [REDACTED] IEP team. Dr. Biggar based his recommendations and conclusion on [REDACTED] medical record, observations of [REDACTED] including [REDACTED] transferring from a chair to the examining table, his consultation with [REDACTED] pediatrician, and his conversations with [REDACTED] parents who informed Dr. Biggar that [REDACTED] could transfer to and from [REDACTED] desk and a toilet seat.

18. At hearing, Dr. Biggar admitted that whether to use a scooter or a motorized wheelchair for [REDACTED] should be made by [REDACTED] local team, consisting of [REDACTED] parents, physical therapist, and teacher; and that he did not intend to overrule any decision made by [REDACTED] team. Dr. Biggar admitted further that he would not suggest [REDACTED] go to the bathroom without supervision.

19. [REDACTED] father [REDACTED] wants [REDACTED] to be as independent as possible, with interactive participation with [REDACTED] peers, wants to achieve maximum normalcy in [REDACTED] life, given [REDACTED] present condition, and wants [REDACTED] to be "treated with respect, dignity, and as an equal," not as a "helpless paraplegic" or a "lost cause." [REDACTED] fears that [REDACTED] being in a wheelchair will focus the attention on [REDACTED] inability to walk and will cause [REDACTED]

aspirations and goals to be no longer considered, which will defeat what [REDACTED] wants for [REDACTED]. The notes to the Parent Conference held on December 9, 2004, indicate, among other things, that the major goal of [REDACTED] and [REDACTED] parents was to be "as independent as [REDACTED] could be"; that [REDACTED] would "not accept that [REDACTED] needs help going to the bathroom"; that safety and independence were a concern; and that [REDACTED] did "not want to see overprotection because of liability issues."

20. [REDACTED] believes that, at school, [REDACTED] can transfer from the scooter to the toilet seat independently, without assistance, and, therefore, [REDACTED] believes that the scooter can be used by [REDACTED] at school.

21. No evidence was presented that [REDACTED] was able to transfer from the scooter to the toilet seat at school independently, without assistance.

22. [REDACTED] has concluded that [REDACTED] scooter is safe and appropriate to use as the method of transportation in the school's environment.

23. [REDACTED] parents did not discuss the use of the scooter with [REDACTED] private physical therapist, who engages in the physical manipulation of [REDACTED] body, including [REDACTED] muscles. A manual wheelchair rather than [REDACTED] scooter is used by [REDACTED] when [REDACTED] visits [REDACTED] private physical therapist. [REDACTED] private physical

therapist has not provided input to [REDACTED] IEP team. [REDACTED] private physical therapist did not testify at the due process hearing.

24. [REDACTED] parents requested [REDACTED] IEP team to consider use of the scooter and to arrange a trial use of the scooter on New Horizon's campus, so that the IEP team could observe [REDACTED] using the scooter, including transfers and independent use of the scooter. The IEP team agreed, and the arrangements were made for December 16, 2004.

25. One of the School Board's personnel observing [REDACTED] on December 16, 2004, was the School Board's resource therapist for occupational and physical therapy, Jean Zimmerman. She was one of the members of [REDACTED] IEP team. Ms. Zimmerman's background includes experience of over 30 years as a physical therapist and, since 1982, a chapter member of the Muscular Dystrophy Association. Her job responsibilities include working with the CMS Clinic and durable medical equipment companies (approximately four companies work with the [REDACTED] Clinic) in prescribing appropriate mobility devices for children. Ms. Zimmerman represents the School Board at the [REDACTED] Clinic's orthopedic clinic, as the liaison between the [REDACTED] Clinic and the school-based physical therapist.

26. The process of prescribing mobility devices for children includes an evaluation of the child's physical ability, the family's transportation needs, the needs of the child's

school, and positioning needs of the child at school. The evaluators include a rehabilitation technology specialist from the durable medical equipment company with which the family is working and a physical therapist.

27. Having observed [REDACTED] on December 16, 2004, Ms. Zimmerman concluded that the scooter was unsafe and unacceptable. Her conclusion was based on the number of children attending New Horizon coupled with the stability of [REDACTED] scooter, which has one wheel in the front and two wheels in the back. Further, Ms. Zimmerman was concerned that, given [REDACTED] condition and the positioning that [REDACTED] would have to do throughout the school day, the scooter would not provide the support, the weight-relief that [REDACTED] would need and would not provide the assistance in his posture. Regarding [REDACTED] ability to participate in recreational activities with [REDACTED] peers, Ms. Zimmerman was of the opinion that the scooter would limit such participation due to the scooter's inability to access grassy areas.

28. Ms. Hernandez also observed [REDACTED] on December 16, 2004. She observed [REDACTED] using both the scooter and a motorized wheelchair. Ms. Hernandez concluded that the scooter failed to provide [REDACTED] with the necessary stability to be safe or necessary comfort to be appropriate in the educational setting at [REDACTED]. The bases for her conclusion were that the

scooter is rear-wheel drive (one wheel in the front and two wheels in the back) and is made to be able to operate outdoors but, because [REDACTED]'s terrain is uneven, one can lose the balance and tip over. She attempted to tip the scooter over and was unable to do so; however, her unsuccessful attempt to tip the scooter over does not negate that the scooter is more susceptible to tipping over than the motorized wheelchair on the terrain of [REDACTED].

29. Ms. Hernandez also concluded that the scooter failed to provide [REDACTED] with the necessary stability or comfort to be safe or appropriate in the educational setting at ..... because [REDACTED] does not have the lower extremity strength to switch the center of gravity to make safe transfers into and out of the scooter. She observed [REDACTED] making transfers, and [REDACTED] was having difficulty with the transfers.

30. Ms. Zimmerman also agreed with Ms. Hernandez that [REDACTED] needed a two-person transfer when using the school's toilet. Ms. Borgen was in agreement with a two-person transfer, not because of safety concerns, but because she did not want to be alone in the toilet with [REDACTED] and possibly be accused by [REDACTED] of any inappropriate conduct by her.

31. Ms. Hernandez last saw [REDACTED] on a regularly scheduled physical therapy basis on December 18, 2004. From the time that she first began working with [REDACTED] to that last visit, she

observed more weakness in [REDACTED] extremities exemplified in [REDACTED] transfers. Additionally, in the classroom, [REDACTED] went from a regular desk with an adaptive chair, which had arms, to two adjustable desks (one in the ESE classroom and one in the main classroom): [REDACTED] was having significant difficulty with transfers when [REDACTED] used the regular desk with the adaptive chair because [REDACTED] was leaning forward; whereas, the two desks were adjusted to being wider and higher, making them accessible to [REDACTED] wheelchair and giving [REDACTED] more of an upper extremity support, essentially giving [REDACTED] more accessibility.

32. The School Board's witnesses, who were familiar with the physical landscape of New Horizons, failed to support the safety and appropriateness aspects of the scooter in the school's environment. The undersigned finds their testimony to be credible.

33. After the trial run with the scooter, [REDACTED] IEP team met again with [REDACTED] parents at a Parent Conference on January 13, 2005, to consider [REDACTED] use of the scooter at school. Ms. Hernandez expressed her concern that the scooter failed to provide [REDACTED] with sufficient support for posture needed for classroom tasks and materials and that [REDACTED] was unable to properly reach the controls of the scooter to properly move the seat around once [REDACTED] was seated at [REDACTED] desk. [REDACTED] made a request at the Parent Conference that [REDACTED] be allowed to transfer

from a wheelchair or scooter to a regular chair at a regular desk. Ms. Hernandez indicated that, earlier in the school year, she had observed [REDACTED] attempt such a transfer and that the transfer was not safe, so she would not recommend that [REDACTED] attempt such a transfer.

34. Further, a mechanical engineer and bioengineer, Douglas Hobson, Ph.D., testified at hearing as to the general comparison of a 3-wheel scooter with a 4-wheel motorized wheelchair. There are two principles of physics in the comparison: (1) the footprint of the vehicle; and (2) the location of the center of gravity of the vehicle. The motorized wheelchair has a larger footprint and a lower center of gravity; whereas, the scooter has a smaller footprint and a higher center of gravity. The higher the center of gravity equates to being less stable. The weight of the person must also be considered; a larger person is more prone to tipping over than a smaller person. The combined center of gravity of both the vehicle and the person influences the probability of tipping over. Generally, regarding [REDACTED], the combined center of gravity for the scooter is greater and, therefore, the scooter becomes less stable; whereas, the combined center of gravity of the motorized wheelchair is lower and, therefore, the motorized wheelchair becomes more stable than the scooter. However, as to the injury to [REDACTED] if [REDACTED] tipped over in the scooter versus the motorized

wheelchair, [REDACTED] would suffer a greater injury with the wheelchair falling on [REDACTED] than with the scooter falling on [REDACTED]. Significantly, Dr. Hobson testified that the decision as to which vehicle was to be used required the recommendation of a team of professionals with the family's input. Dr. Hobson's testimony is found to be credible.

35. [REDACTED] IEP team met and consulted with Dr. Litchblau and all concluded that the scooter was not appropriate and was not safe for [REDACTED]. Even after considering Dr. Biggar's recommendation and the reasons therefore, the conclusion by [REDACTED] IEP team remained unchanged. Both [REDACTED] parents and Dr. Biggar want [REDACTED] to remain as independent and as normal as any student as possible. What is significant is that Dr. Biggar, who is [REDACTED] sole expert, testified that his recommendation does not and should not overrule a decision by [REDACTED] treating team and that Dr. Biggar did not testify that the treating team's conclusion was incorrect. [REDACTED] treating team concludes that the motorized wheelchair, not the scooter, should be used by [REDACTED] in the educational setting.

36. The evidence presented demonstrates and a finding is made that the motorized wheelchair, rather than the scooter, is appropriate and safe for [REDACTED] in [REDACTED] educational/school environment.



37. ██████ IEP team offered, even after having concluded that the motorized wheelchair was safe and appropriate for ██████ at ██████, to have an independent evaluation at public expense performed by an outside physical therapist who would observe ██████ using the scooter at school and who would provide a second opinion. ██████ parents refused the offer and insisted that the IEP Team adopt and implement Dr. Biggar's recommendation. ██████ IEP Team refused to adopt Dr. Biggar's recommendation, but continued to offer the independent evaluation.

38. Also, ██████ parents do not desire ██████ to have a two-person transfer when using the toilet at ██████████. The evidence demonstrates and a finding is made that a two-person transfer is appropriate for ██████

#### CONCLUSIONS OF LAW

39. The Division of Administrative Hearings has jurisdiction of these proceedings and the parties thereto pursuant to Sections 1001.42(4)(1) and 1003.57(5), Florida Statutes (2005).

40. Section 1001.42(4)(1) provides, among other things, that the School Board shall "Provide for an appropriate program of special instruction, facilities, and services for exceptional students . . . ."

41. States must comply with the IDEA in order to receive federal funding for the education of handicapped children. The

IDEA requires states to establish policy which assures that children with disabilities will receive a free appropriate public education (FAPE). Through an IEP, the educational program accounts for the needs of each disabled child.

42. Definitions applicable to the IDEA are set forth at 20 U.S.C.S.<sup>3</sup> Section 1401. "Free appropriate public education" is defined as follows:

- (9) . . . The term 'free appropriate public education' means special education and related services that--
  - (A) have been provided at public expense, under public supervision and direction, and without charge;
  - (B) meet the standards of the State educational agency;
  - (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and
  - (D) are provided in conformity with the individualized education program . . . .

"Related services" is defined as follows:

- (26) . . . (A) In general. The term 'related services' means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, . . . physical and occupational therapy, recreation, including therapeutic recreation, . . . counseling services, including rehabilitation counseling, orientation and mobility services . . .) as may be required to assist a child with a disability to benefit from special education . . . .
- (B) Exception. The term does not include a medical device that is surgically implanted, or the replacement of such device.

"Special education" is defined as follows:

- (29) . . . The term 'special education' means specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including--
- (A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and
  - (B) instruction in physical education.

43. A state meets the IDEA's requirement of a FAPE when it provides personalized instruction with sufficient support services to permit the disabled child to benefit educationally from that instruction. The instruction and services must be provided at public expense, meet the state's educational standards, approximate grade levels used in the state's regular education, and correspond to the disabled child's IEP. Board of Education of Hendrick Hudson Central School District v. Rowley, 102 S. Ct. 3034 (1982).

44. Inquiry in cases involving compliance with the IDEA, which is a de novo inquiry, is twofold: (1) whether there has been compliance with the procedural requirements of the IDEA, including the creation of the IEP, and (2) whether the IEP developed is reasonably calculated to enable the child to receive educational benefits. Rowley, at 3051.

45. A state is not required to maximize the potential of a disabled child commensurate with the opportunity provided to a non-disabled child. Rather, the IEP developed for a disabled

child must be reasonably calculated to enable the child to receive some educational benefit. Rowley, at 3048-3049. The disabled child must be making measurable and adequate gains in the classroom, but more than de minimus gains. J.S.K. v. Hendry County School Board, 941 F.2d 1563 (11th Cir. 1991); Doe v. Alabama State Department of Education, 915 F.2d 651 (11th Cir. 1990). The unique educational needs of the particular child in question must be met by the IEP. Todd D. v. Andrews, 933 F.2d 1576 (11th Cir. 1991) "The importance of the development of the IEP to meet the individualized needs of the handicapped child cannot be underestimated." Greer v. Rome City School District, 950 F.2d 668, 695 (11th Cir. 1991).

46. In examining an IEP, great deference is given to the educators who develop the IEP. Todd, at 1581.

47. The disabled child's education must be provided in the least restrictive environment available. A determination of such environment requires consideration of whether there has been compliance with the procedural requirements of the IDEA and whether the IEP is reasonably calculated to enable the child to receive educational benefits. DeVries v. Fairfax County School Board, 882 F.2d 876 (4th Cir. 1989).

48. A preponderance of the evidence must demonstrate that the School Board is unable to provide ■■■ with a FAPE in the least restricted environment, while ■■■ utilizes the motorized

wheelchair. DeVine v. Indian River County School Board, 249 F.3d 1289, 1292 (11th Cir. 2001).

49. No dispute exists as to [REDACTED] IEP. The sole dispute in this matter is whether [REDACTED] should be permitted to use [REDACTED] scooter or a motorized wheelchair at [REDACTED]. [REDACTED] parents, who requested the due process hearing, contend that [REDACTED] should be allowed to utilize [REDACTED] scooter at [REDACTED].

50. No dispute exists, and the evidence supports, that [REDACTED] should be provided as much dignity and independence and inclusion as much as possible. [REDACTED] parents contend that the scooter, rather than the motorized wheelchair, satisfies all of these factors and considerations.

51. The evidence demonstrates that the School Board is able to provide [REDACTED] with a FAPE in the least restricted environment, while [REDACTED] utilizes the motorized wheelchair. The evidence shows that, in terms of safety, the motorized wheelchair should be utilized by [REDACTED] at [REDACTED]; that, from a medical standpoint, the motorized wheelchair should be utilized by [REDACTED] that, in terms of outside recreation, the motorized wheelchair should be utilized by [REDACTED] that, in terms of inclusion, the motorized wheelchair should be utilized by [REDACTED] and that, in terms of educational benefit, the motorized wheelchair should be utilized by [REDACTED]. Further, the evidence shows that, in terms of independent transfers, [REDACTED] should not

independently transfer from either the scooter or the motorized wheelchair to the toilet or a desk chair at [REDACTED].

52. The School Board suggests that the determination of how the transfers are to be conducted should be the sole decision of the school's physical therapist. The decision should not be the sole decision of any one person on [REDACTED] team; the parents of [REDACTED] should always be involved in the process and consideration should be given to their wishes for [REDACTED]. If a disagreement develops, the procedure of requesting a due process hearing is available to either party.

53. Lastly, to address the parents' concern regarding the dignity that they want [REDACTED] to have and to maintain, the evidence shows that both [REDACTED] and [REDACTED] parents are convinced that [REDACTED] would have less dignity in the motorized wheelchair. Dignity is defined as the "quality or state of being worthy of esteem or respect"; "inherent nobility and worth"; and "poise and self-respect."<sup>4</sup> At hearing, the undersigned had the opportunity to observe [REDACTED] and observe [REDACTED] using [REDACTED] scooter. [REDACTED] appears to be a young [REDACTED] who has self-esteem, self-worth, and self-respect, and these qualities appear to be nurtured by [REDACTED] parents. [REDACTED] also appears to be, and the evidence supports that [REDACTED] is, a young [REDACTED] who has a great deal of determination. Neither the onset of Muscular Dystrophy nor the need to use the manual wheelchair and the scooter appeared to have extinguished

these qualities or [REDACTED] determination, and the evidence presented shows that [REDACTED] parents encouraged, and continues to encourage, [REDACTED] to maintain these qualities and determination. The undersigned is persuaded that the educational, medical, and safety benefits to [REDACTED] from utilization of the motorized wheelchair are necessary and would outweigh the perceived loss of dignity to [REDACTED]. The undersigned is persuaded that [REDACTED] parents will continue to give [REDACTED] the encouragement that [REDACTED] will need to sustain these qualities and determination.

#### CONCLUSION

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

ORDERED that:

1. The request by the parents of [REDACTED] for [REDACTED] to utilize the scooter at school is denied. A motorized wheelchair should be utilized by [REDACTED] while [REDACTED] is attending school.

2. The request by the parents of [REDACTED] that [REDACTED] independently transfer while [REDACTED] is in the school's bathroom and in the classroom is denied. Any change in how the transfers are conducted will be made by the school's physical therapist in consultation with the parents of [REDACTED].

DONE AND ORDERED this 11th day of October, 2005, in Tallahassee, Leon County, Florida.

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Filed with the Clerk of the  
Division of Administrative Hearings  
this 11th day of October, 2005.

## ENDNOTES

- <sup>1/</sup> The physical therapist was Liliana Ansa.
- <sup>2/</sup> Ibid.
- <sup>3/</sup> U.S.C.S. means United States Code Service.
- <sup>4/</sup> The American Heritage Dictionary of the English Language, Fourth Edition (2000).

## COPIES FURNISHED:

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Tallahassee, Florida 32399-0400

NOTICE OF RIGHT TO SEEK JUDICIAL RELIEF

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.