

Brevard County School District
No. 05-1735E
Initiated by: Parent
Hearing Officer: Lawrence P. Stevenson
Date of Final Order: December 28, 2005

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

██████,)
)
Petitioner,)
)
vs.) Case No. 05-1735E
)
BREVARD COUNTY SCHOOL BOARD,)
)
Respondent.)
_____)

FINAL ORDER

A final hearing was held by the Division of Administrative Hearings before Lawrence P. Stevenson, Administrative Law Judge, Division of Administrative Hearings, in Viera, Florida, on August 15 through 18, 2005. The following appearances were entered:

APPEARANCES

For Petitioner: Jillian Bonnington
Qualified Representative
Tim Jon Runner
Qualified Representative
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Laguna Beach, California 92651

For Respondent: Melinda Baird, Esquire
Qualified Representative
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STATEMENT OF THE ISSUES

At issue in this proceeding is whether the Brevard County School Board (the "School Board") has provided a free appropriate public education ("FAPE") to Petitioner [REDACTED], in accordance with the requirements of the Individuals with Disabilities Education Act, 20 U.S.C. Section 1400 et seq. (hereinafter referenced generally as the "IDEA") and Section 1003.57, Florida Statutes (2005).

PRELIMINARY STATEMENT

On or about April 7, 2005, Petitioner's representative sent a written request for a due process hearing to the Florida Department of Education in Tallahassee, Florida. In the request for hearing, Petitioner alleges that the School Board did not provide a FAPE to [REDACTED] during the 2003-2004 school year, thus necessitating [REDACTED] placement in a private educational institution. Petitioner's parents seek reimbursement from the School Board for the private school tuition.

Due to clerical error, the Department of Education did not forward the request to the School Board until May 11, 2005. On May 13, 2005, the School Board forwarded the request to the Division of Administrative Hearings ("DOAH") for assignment of

an Administrative Law Judge and conduct of a formal hearing. Following a telephonic pre-hearing conference pursuant to Florida Administrative Code Rule 6A-6.03311(11)(c)2., the hearing was scheduled for June 13 through 15, 2005. Two continuances were granted to allow for an orderly discovery process, with the hearing ultimately re-scheduled for August 15 through 18, 2005. The parties stipulated to an extension of the 45-day requirement for issuance of a final order.

Each party filed a motion for the admission of a qualified representative. Both motions were granted at the outset of the hearing, without objection by either party.

At the final hearing, Petitioner presented the testimony of: Dr. Karen Palladino, director of administrative support services for the School Board; Dr. Stephanie Scott, ■■■'s current mental health counselor; Cathi Campbell, ■■■'s guidance counselor at ■■■ School; Jill Small, a guidance counselor at ■■■ School; Linda Cheney, special education staffing specialist for the School Board; Pam Treadwell, resource teacher and staffing specialist for the School Board; Barbara Bailey, assistant principal at ■■■ School; Lisa Wisham, academic director of ■■■, Inc. ("■■■"), a residential educational and treatment facility in Draper, Utah; Daniel Johnston, learning needs coordinator at ■■■; Curt Pollock, primary therapist at ■■■; Barbara Roddenberry, school social worker for the School Board; Nicole

Burks, a speech/language pathologist and staffing specialist for the School Board; ■■■, the ■■■ of ■■■; and ■■■, the ■■■ of ■■■¹ Petitioner's Exhibit Nos. 1 through 50 and 53 through 78 were admitted into evidence. Petitioner's Exhibit Nos. 32, 49, 50, 61, and 65 were admitted as hearsay exhibits subject to the limitations set forth in Florida Administrative Code Rule 28-106.213(3).

The School Board presented the testimony of: Dr. Malcolm Roberts, a physician accepted as an expert in child and adolescent psychiatry; Catherine Halbuer, assistant principal for curriculum at ■■■ School; Judith Hernandez, math teacher at ■■■ School; William Henley, history teacher at ■■■ School; Christine Zieres, English teacher at ■■■ School; Jeanne Hilton, French teacher at ■■■ School; Betty Walden, biology teacher at ■■■ School; and Dr. Joan Adamson, school psychologist for the School Board and accepted as an expert in her field. The School Board's Exhibit Nos. 1 through 38 were accepted into evidence.

A seven-volume Transcript was filed at DOAH on September 6, 2005. The School Board filed its Proposed Final Order on September 15, 2005. Petitioner filed her Proposed Final Order on September 19, 2005.

FINDINGS OF FACT

1. At the time of hearing, ■■■ was a ■■■-year-old ■■■, born on ■■■. ■■■ is the eldest of three sisters. ■■■ was

enrolled at [REDACTED] School as a [REDACTED] grader during the second semester of the 2003-2004 school year, from January through May 2004. During the 2004-2005 school year, [REDACTED] attended school in various private placements, as will be detailed below. In August 2005, [REDACTED] re-enrolled at [REDACTED] School, where [REDACTED] currently attends classes.

2. The School Board is the governing body of the local school district for Brevard County, Florida.

3. [REDACTED] was born in San Diego, California. [REDACTED]'s family moved to the state of Washington when [REDACTED] was [REDACTED] old. Before moving to Florida in 2003, [REDACTED] lived in Washington for most of [REDACTED] life. In 1995, when [REDACTED] was in the [REDACTED] grade, [REDACTED] lived for a time in North Dakota with [REDACTED], [REDACTED], who moved there to care for [REDACTED] terminally ill [REDACTED]. After [REDACTED] died during the summer of 1996, [REDACTED] and [REDACTED] moved back to Washington. Unless otherwise noted, [REDACTED] attended public schools.

4. In May 1996, at the end of [REDACTED] [REDACTED] grade year in North Dakota, [REDACTED] was diagnosed as having Attention-Deficit Hyperactivity Disorder ("ADHD") and severe depression. Based on a psychologist's recommendation, [REDACTED]'s parents placed [REDACTED] on Ritalin. [REDACTED] noticed immediate improvement in [REDACTED] affect and [REDACTED] concentration. Nonetheless, [REDACTED] had behavior problems during the second grade in Washington. [REDACTED] was aggressive toward other

children and had occasional violent outbursts, in a regular classroom with no accommodations for ■■■ condition.

5. From the third through the fifth grade, ■■■ attended ■■■ School, in the North Kitsap School District, Kingston, Washington. ■■■ was enrolled in a multi-age "Options" program that was more creative and less structured than the typical classroom. ■■■, ■■■, testified that ■■■ did well in this program, though ■■■ continued to experience difficulties with peer interaction. ■■■ was unable to sustain friendships with other children. Throughout these early years, ■■■ demonstrated strong academic skills, offset somewhat by inattention, poor organization, impulsivity, and defiance. ■■■ was not able to easily transition from one task to the next, which led to frustration and acting out.

6. In February 2000, when ■■■ was in the ■■■ grade at ■■■ School, ■■■ was referred for an eligibility evaluation by ■■■ teacher, due to concerns regarding ■■■ social skills, emotional status, communication skills, and academic performance. The teacher believed ■■■ needed a smaller, more structured classroom, because the open, freewheeling "Options" classroom was beyond ■■■'s ability to interact positively with other children.

7. ■■■ was evaluated and identified as a "student with disabilities" under the IDEA, though there was disagreement as

to ■■■ diagnosis. One evaluator, a Ph.D. psychologist who spent two months evaluating ■■■ in late 1999, diagnosed ■■■ with Asperger's Disorder. The school district's examining physician believed ■■■ exhibited ADHD with secondary deficits in socialization and self-esteem.

8. The initial Individualized Education Program ("IEP") developed for ■■■'s sixth grade year described ■■■ condition and its effect on ■■■ involvement and progress in the general education curriculum as follows:

[■■■] has issues with sensory over-stimulation on an inconsistent basis. That is [sic] low tolerance for auditory and tactile overstimulation and hypersensitivity to crowding. Stress from overstimulation leads to overwhelming stress on her capacity to self regulate states of arousal. This leads to severe social communication difficulties which have an adverse affect [sic] on ■■■ interpersonal development, peer interactions, academic engaged time, and overall classroom behavior. [■■■] exhibits very strong cognitive and academic skills. When not overstimulated, ■■■ quickly learns and imitates the social behavior of ■■■ peer group.

9. The IEP set forth a behavior management plan and academic goals and objectives to be implemented and achieved within a full-time placement in a regular education class. The IEP further set forth a sequential "crisis response" plan, outlining the steps to be taken by teachers when ■■■ displayed behaviors that, if not effectively countered, could lead to what

■■■■ parents referred to as emotional "meltdowns", during which ■■■■ became a danger to ■■■■ self and those around ■■■■. Finally, the IEP provided for one hour per week of occupational therapy, one hour per week of speech/language therapy, and two 30-minute counseling sessions per week with a psychologist. ■■■■ signed the IEP to indicate that ■■■■ was given the opportunity to participate in its development.

10. ■■■■ received the services outlined in the IEP during ■■■■ ■■■■ and ■■■■ grade years at ■■■■ School in Kingston, Washington. ■■■■ ■■■■ grade IEP, written on November 7, 2002, described ■■■■'s strengths related to school performance and ■■■■ parents' concerns as follows:

[■■■■'s] cognitive abilities are in the Superior Range and ■■■■ does not demonstrate a need for academic skills intervention in core subjects. ■■■■ parents are concerned that ■■■■ continue to receive high academic challenge while receiving specially designed instruction to help support ■■■■ social and communicative growth.

[■■■■] has demonstrated excellent progress in ■■■■ social communication within therapy sessions and is beginning to generalize these skills to a widening variety of situations.

11. This IEP set forth the following description of ■■■■'s disability and its effect on ■■■■ involvement and progress in the general education curriculum, in relevant part:

[■■■■] was referred by ■■■■ fifth grade teacher for concerns pertaining to social

skills, emotional status, communication skills, and academic performance (with regard to interactive/cooperative learning). Social/emotional and adaptive skills assessment of [REDACTED] was significant for broad deficits in social development, along with corresponding affective issues (e.g., depression).

[REDACTED] has variously been diagnosed with Attention Deficit Hyperactivity Disorder (with secondary deficits in socialization and self esteem) and with Asperger's Disorder.

Age appropriate social communication skills, while steadily improving, continue to be [REDACTED]'s deficit area. While [REDACTED] effectively demonstrates empathy and self control in role playing situations, [REDACTED] reportedly has difficulty using [REDACTED] communication skills when faced with peer upheavals and frustration. Currently, [REDACTED] is managing her frustration by withdrawing from difficult situations, which is an improvement over past responses which tended to be out of control. Communication difficulties continue to interfere with [REDACTED] social development and need to be targeted via specially designed instruction.

12. The IEP noted that [REDACTED] was not exhibiting behavior that impeded [REDACTED] learning or that of other students. The IEP reduced [REDACTED]'s speech/language therapy to one 25-minute session per week. Aside from that session, [REDACTED] was placed full-time in a general education classroom, with accommodations including preferential seating, reduced auditory distractions, and extra prompting from teachers regarding assignments. A plan was established to help [REDACTED] deal with transitions, and a hierarchy

of point persons within the school was established to assist [REDACTED] should [REDACTED] become confused or emotionally upset during the school day.

13. On March 13, 2003, speech/language pathologist Judy Bryant of the North Kitsap School District conducted a reevaluation of [REDACTED] "as part of the regular cycle of required 3-year reevaluations to verify continuing eligibility for special education services. [REDACTED] is currently receiving direct, individual speech/language therapy once per week." [REDACTED] was given the Peabody Picture Vocabulary Test--IIIB (a standardized vocabulary test) and the Adolescent Test of Problem Solving to assess [REDACTED] "language-based critical thinking skills." [REDACTED] scored at the top of the average standard score range for each test. Ms. Bryant noted:

[REDACTED] successfully enacts scenarios demonstrating appropriate social language and problem solving skills for a variety of situations including interactions with adults and peers. [REDACTED] is also able to participate in formulating scenarios for a variety of purposes. [REDACTED] discusses occasional difficulties with peers and is able to work through possible solutions with the therapist. More often than not, [REDACTED] indicates that [REDACTED] is not experiencing any particular problems in school or at home.

14. Ms. Bryant summarized the comments of [REDACTED]'s teachers as follows:

Each of [REDACTED]'s classroom teachers was asked for feedback regarding [REDACTED] ability to cope

with frustration, [redacted] communication with peers and adults, and [redacted] work completion/study skills. Comments indicated that [redacted]'s overall communication skills with both peers and adults is good, with occasional days when [redacted] appears withdrawn and noncommunicative. Frustration did not appear to be a significant issue in [redacted]'s non-academic classes. Mr. Haag, band teacher, indicated that [redacted] will speak to him directly if [redacted] has a problem and this has been an effective way to head off problems at the outset. To date, [redacted] has not had any difficulties in [redacted] P.E. class. In [redacted]'s academic classes, [redacted] sometimes registers frustration when [redacted] feels challenged or confused by an assignment. [redacted] occasionally displays impatience with peers when working in a group or with teachers when they are not able to immediately answer [redacted] questions. When excessively frustrated, [redacted] becomes angry or has cried. Some teachers have been successful in alleviating [redacted] anger by speaking calmly to [redacted] and redirecting [redacted] attention to tasks [redacted] able [sic] to complete. Likewise, it was noted that [redacted]'s anger does not linger from day to day, but appears to dissipate fairly quickly. Classroom teachers indicated that [redacted]'s work completion/study skills is [sic] above average.

[redacted]'s academic success is reflected in [redacted] semester grades, when [redacted] earned a 3.617 grade point average. Additionally, [redacted] received only positive comments from [redacted] classroom teachers.

15. The "Summary and Conclusions" of the reevaluation stated as follows:

Based on the results of this reevaluation, [redacted] is demonstrating a high degree of success in all of [redacted] classes. [redacted] has improved greatly in [redacted] ability to handle

frustration, though this continues to be a weak area for ■■■, which is being successfully addressed via classroom accommodations. [■■■] no longer qualifies for direct language therapy, but should continue to be served via the 504 accommodations program.^[2]

16. By a "notice of action" dated March 18, 2003, the North Kitsap School District informed ■■■'s parents that it proposed to dismiss ■■■ from direct language therapy, the only special education and related service pursuant to the IDEA that ■■■ was still receiving, on April 18, 2003. Commencing on April 18, 2003, ■■■ would be served through the Section 504 accommodations program. The notice of action stated:

A current reevaluation reveals language skills which are in the superior range. In formal testing and in structured communication settings, [■■■] demonstrates the ability to identify and solve problems within a variety [of] scenarios. [■■■] is maintaining a high degree of success in all of ■■■ classes this school year, earning a grade point average of 3.6 at semester.

17. On May 8, 2003, ■■■'s parents signed a document consenting to ■■■'s dismissal from the special education program and concurring with the development of a Section 504 regular education accommodation plan instead.

18. On May 1, 2003, ■■■'s parents met with a counselor, a school psychologist, and a Section 504 coordinator to develop ■■■'s plan. The Section 504 plan written on that date noted that ■■■ is "easily frustrated when ■■■ hits academic difficulty

or other challenging situations (i.e., social interactions that don't go [REDACTED] way)."

19. The Section 504 plan's instructional accommodations included: an attempt to schedule math and science classes early in the day, because [REDACTED] found it easier to focus during those hours; the development and management of "organizational strategies" that work for [REDACTED]; redundant oral instructions and visual and written cues to be certain that [REDACTED] understands [REDACTED] assignments; and giving [REDACTED] warning signals to indicate that an activity is coming to a close.

20. The Section 504 plan's environmental accommodations included: preferential seating near the front of the classroom; weekly e-mail contacts between [REDACTED]'s parents and teachers regarding [REDACTED] progress, completion of assignments, and any other concerns; attempt to reduce auditory distractions; and support opportunities for [REDACTED] to have "positive social interactions."

21. The Section 504 plan did not cite any behavioral, physical, or mental health deficits, needs, or accommodations, aside from providing "positive reinforcement around success, initiating work." It listed [REDACTED]'s "strengths" as follows:

Has grown in ability to do what [REDACTED] needs to take care of [REDACTED] emotional needs-- managing frustrating situations. Very articulate. Growing in self-awareness, self reflective, willing to risk, eagerness to learn-- intellectual curiosity, enjoys helping others.

22. ■ testified that, after the withdrawal of special education supports, ■'s grades began to suffer, though ■ displayed no immediate behavioral regressions. At the time, ■ agreed that ■ did not seem to need special education. However, ■ also believed that ■ needed more support than the North Kitsap School District appeared able or willing to provide. ■ testified that, without the prior supports, ■ appeared lost in the large middle school classroom and was allowed to slide.

23. ■'s parents withdrew ■ from the public school system and, in August 2003, enrolled ■ for ■ ■ grade year in a private school, the ■ Academy in Poulsbo, Washington. ■ testified that, although the school did not provide special education services, his interview with the headmaster convinced him that the school could effectively work with ■. ■ Academy had smaller classes than did the public school and had successfully worked with children who had Asperger's Disorder.

24. ■ started the year well, but after about a month began displaying verbal and physical aggression against her classmates. Following an argument and physical confrontation with a teacher, ■ fled the school. The headmaster commenced a search for ■, who returned on ■ own some time later. ■ did not seem to understand the concern caused by ■ flight from the campus. ■ also attempted to minimize the seriousness of

■ confrontation with the teacher, which had included ■'s swearing at the teacher before walking out of the classroom.

25. ■ was expelled from ■ Academy on November 12, 2003. ■ received no academic credits for the semester ■ attended the school.

26. In the fall of 2003, ■ accepted a position with Lockheed Martin in Cocoa Beach, Florida. ■ planned to move to Florida in January 2004 with his second-eldest daughter. ■ would stay in Washington to finish her contract as a special education teacher. She would arrange the sale of the family home, then move to Florida with ■ and the youngest daughter. However, after ■ was expelled from ■ Academy, the family decided that ■ would move to Florida with ■ and ■ in January 2004.

27. ■, the sibling who moved to Florida with ■ and their ■, was enrolled in a private parochial school during the week of January 5, 2004. ■ was not enrolled at ■ School until January 12, 2004, about eight days after the commencement of the second semester, because of the need to schedule a physical examination and immunizations prior to her registration.

28. On January 12, 2004, ■ met with Cathi Campbell, the ■ grade guidance counselor at ■ School. ■ testified that he provided Ms. Campbell with ■'s academic history, including

the fact that ■■■ had a current Section 504 plan. ■■■ did not recall whether he directly asked for an eligibility assessment for special education services, but stated that Ms. Campbell gave him the understanding that the Section 504 plan would be implemented and that there would be an eligibility assessment performed on ■■■.

29. Ms. Campbell testified that ■■■ did not ask for an assessment referral and that he did not provide her with a copy of ■■■'s Section 504 plan. Ms. Campbell stated that she had some difficulty in obtaining the Section 504 plan. It was not included in the cumulative file sent by ■■■'s school in Washington. At length, Ms. Campbell requested the plan directly from the North Kitsap School District, which provided the document to her in February 2004.

30. Ms. Campbell testified that she informed ■■■'s teachers, via e-mail, that ■■■ had a Section 504 plan that the teachers should review. A copy of that e-mail, dated February 26, 2004, was introduced as evidence. English teacher Christine Zieres recalled receiving the e-mail and viewing ■■■'s Section 504 plan in the guidance office. However, math teacher Judith Hernandez, history teacher William Henley, French teacher Jeanne Hilton, and biology teacher Betty Walden all testified that they had no recollection of ■■■'s Section 504 plan, though they were all listed as recipients of Ms. Campbell's e-mail.

31. ■■■ attended ■■■ School from January 2004 through the end of the 2003-2004 school year. ■■■ took the Florida Comprehensive Assessment Test ("FCAT") and scored a 4 on a scale of 5 in both reading and mathematics, scoring above ■■■ grade level in both areas. ■■■ passed all of ■■■ classes, though ■■■ grades were not outstanding. ■■■ earned C's in Life Management, Geometry, English I, World History, and French I, and a D in Biology.

32. ■■■'s teachers at ■■■ School noted no behavior, discipline or attendance problems. Ms. Hernandez, the math teacher, testified that ■■■ seemed happy, always had ■■■ hand up to answer questions, and asked for extra work. Fellow students wanted to work with ■■■, because ■■■ was one of the better students in the class. Ms. Hernandez believed that ■■■ was very capable of making an A in ■■■ class. ■■■ tended to work too quickly and make careless mistakes. Ms. Hernandez acknowledged that a C was below ■■■'s ability, but testified that it is not unusual for ■■■ graders to perform below their abilities.

33. ■■■'s math class was scheduled for seventh period, the last period of the day. No evidence was presented as to whether the school attempted to schedule this class early in the day for ■■■, as specified in ■■■ Section 504 plan.

34. Ms. Walden, the biology teacher, described ■■■ as a bright student who participated in class and was not a

disciplinary problem. Ms. Walden stated that ■■■'s test grades reflected B's and C's and that ■■■ made a D for the semester only because of missing homework assignments.

35. ■■■'s biology class was scheduled for fifth period, just before lunch, from 11:45 a.m. to 12:45 p.m. No evidence was presented as to whether the school attempted to schedule this class early in the day for ■■■, as specified in ■■■ Section 504 plan.

36. Mr. Henley, ■■■'s history teacher, testified that ■■■ appeared to be an average high school kid. ■■■ did what ■■■ was asked and caused no discipline problems. Other students wanted to be in ■■■ study group, because ■■■ paid attention and answered questions in class.

37. Ms. Zieres, the English teacher, testified that ■■■ was outgoing and smart but not well organized. ■■■ did well in acting a role from "Romeo and Juliet" during a class project. Like Ms. Hernandez, Ms. Zieres believed that ■■■'s middling grades were not unusual for a ■■■ grader. Ms. Zieres testified that she had taught children with Asperger's Disorder, but was never concerned that ■■■ had a disability that was interfering with ■■■ performance in class.

38. Ms. Hilton, the French teacher, noted no behavior problems or emotional outbursts from ■■■. She did note that ■■■ needed help with organization, and that ■■■ was a little

frustrated because ■ did not have the same French vocabulary as the students who had been in Ms. Hilton's class all year.

■ was "very mature" about asking for help and trying to catch up with the class.

39. ■ testified that, despite the impressions of the teachers at ■ School, ■ was in crisis during the months of March through May 2004. ■ was becoming aggressive and physically threatening at home, so much so that ■ called 911 to have a police officer come out and explain to ■ that ■ had the right to discipline ■.³ ■, ■'s younger sister, told ■ that ■ had hit ■.⁴ ■ was beginning to exhibit "cutting behaviors", i.e., cutting ■self. ■ contacted ■ insurance company to attempt to arrange an emergency residential placement. ■ began seeing a psychiatrist, who modified ■ ongoing medications.

40. On April 27, 2004, ■ requested a referral for special education services. In response, Ms. Campbell made a referral to the School Board's Child Study Team ("CST") for evaluation. The School Board's Exceptional Student Education ("ESE") representative, Michelle Hoolsema, informed Ms. Campbell that it was too late in the regular school year to initiate an evaluation.

41. At the hearing, ESE staffing specialist Linda Cheney testified that Ms. Hoolsema's statement to Ms. Campbell was

incorrect and that the School Board performs assessments of students for ESE services throughout the year, including the summer. Ms. Cheney believed that [REDACTED] was not immediately assessed because the CST was overwhelmed at the end of the school year with children who had difficulty during the school year. In contrast, [REDACTED] "had done very, very well in the school year and was passing everything, had no behavioral issues that were any different than anybody else's." Thus, as the School Board saw matters, there was no urgent need to assess [REDACTED] for ESE services before the end of the school year.

42. On April 28, 2004, Ms. Campbell informed [REDACTED] that the ESE evaluation of [REDACTED] would take place at the beginning of the 2004-2005 school year. Ms. Campbell reported to Ms. Hoolsema that [REDACTED] "understands" that the evaluation could not be scheduled immediately, but had been "hoping that plans could already be in place for next year." [REDACTED] was "very concerned about [REDACTED] and feels [REDACTED] is not adjusting well at all." [REDACTED] inquired about residential programs for [REDACTED].

43. On May 10, 2004, [REDACTED] filed a request for a Section 504 planning meeting to discuss [REDACTED]'s summer school needs and for a formal evaluation for ESE services. [REDACTED] wrote:

With the exception of last summer, [REDACTED] has been involved in summer school since 5th grade. We found that [REDACTED] seriously

backslides on interpersonal communications without it and has a very difficult time restarting a school year. In addition, [REDACTED] disability has prevented [REDACTED] from earning credits towards graduation in addition to a cross-country move due to parental job change.

This year has been VERY difficult at home and [REDACTED] performance at school is substandard. [REDACTED] tested in the 95th percentile in mathematical reasoning in the 2nd and 4th grades on standardize [sic] testing. [REDACTED] disability is seriously affecting [REDACTED] future.

44. [REDACTED] testified that he made this inquiry after receiving a letter from [REDACTED] School informing him that [REDACTED] had failed English and math and should apply for summer school.

45. The letter was a form letter sent over Ms. Campbell's signature. The letter stated: "As of this date, a review of your student's academic record indicates that he/she could be classified into the [REDACTED]th grade for the 2004-2005 school year for the reason(s) indicated below." The reasons checked off by Ms. Campbell were "required courses failed" (English and math) and "minimum number of credits not earned."

46. Ms. Campbell testified that the letter was inaccurate in stating that [REDACTED] failed English and math. The letter was intended to convey that [REDACTED] was at risk for retention in the [REDACTED] grade only because [REDACTED] had not received English and math credits for [REDACTED] first semester, due to [REDACTED] expulsion from [REDACTED] Academy in Washington. School Board policy provided that summer school was

available only for students who had failed a class or failed to pass the FCAT. Ms. Campbell informed [REDACTED] that [REDACTED] was ineligible for summer school. Ms. Campbell testified that she did not act on [REDACTED]'s request for a formal evaluation for ESE services, because [REDACTED] had already referred [REDACTED]'s April 27, 2004, request to the CST.

47. [REDACTED] testified that [REDACTED] was becoming increasingly belligerent to him and to [REDACTED] sister. [REDACTED]'s cutting behavior appeared to be worsening. [REDACTED] testified that, where previously he noted scratches, he was now seeing deeper cuts and scabs. On June 21, 2004, [REDACTED]'s parents admitted [REDACTED] to a residential treatment center operated by [REDACTED] Behavioral Health Services ("[REDACTED]") in Orange County, Florida.

48. Pursuant to Florida Administrative Code Rule 6A-6.03020, the Orange County Public Schools drafted a "Hospital/Homebound IEP" to provide educational services to [REDACTED] for the period of [REDACTED] residential treatment. The IEP identified [REDACTED]'s present level of educational performance as follows:

Based on input from the physician and guardian, [REDACTED] is unable to participate in a traditional school setting because of the current effects of Asperger's. [A] small group instructional setting with a therapeutic component infused throughout the school day is needed.

49. On August 5, 2004, [REDACTED] phoned Pam Treadwell, an ESE staffing specialist for the School Board, and asked if the

School Board would pay for the educational cost of [REDACTED]'s residential placement at [REDACTED]. Ms. Treadwell explained that, because the placement had been made unilaterally by [REDACTED]'s parents rather than by an IEP team, the School Board was not financially responsible for the costs of the placement.

Ms. Treadwell told [REDACTED] that the Orange County School Board would be responsible for addressing educational concerns for as long as [REDACTED] was a patient at [REDACTED].

50. Ms. Treadwell informed the counselor, Ms. Campbell, of this conversation and advised Ms. Campbell to contact [REDACTED] and plan a course of action for [REDACTED] upon [REDACTED] discharge from [REDACTED] and [REDACTED] return to the Brevard County school system. Ms. Campbell testified that she took no immediate action because [REDACTED] was not then a student at [REDACTED] School.

51. [REDACTED] was discharged from the [REDACTED] facility on October 15, 2004. ** treatment summary on discharge stated:

[REDACTED] was admitted . . . with a history of mood swings, aggressive acting out behaviors, academic decline, and a previously diagnosed developmental disorder. [REDACTED] has made significant progress in all treatment areas, and has demonstrated improvement in family relationships as well. [REDACTED] denies any self harm ideation, and appears sufficiently stable to step down to outpatient treatment.

52. ■■■'s academic report card for ■■■ stay at ■■■ included A's in Geometry, English II, World History, Reading, Peer Counseling, and Psychology I, and a B in Biology.

53. In mid October 2004, ■■■ "stepped down" to Cedars Academy, a boarding school in Delaware specializing in a college preparatory education for children with Attention Deficit Disorder and ADHD. Within two weeks, ■■■ was expelled from Cedars Academy. The circumstances of ■■■ expulsion were not made explicit at the hearing. ■■■ testified that ■■■ "had a major incident of threatening and cutting and using a knife." In any event, ■■■'s parents were given 24 hours to remove ■■■ from ■■■ Academy.

54. On October 26, 2004, ■■■ phoned Jill Small, a guidance counselor at ■■■ School, to request a meeting regarding ■■■'s evaluation and placement. ■■■ informed Ms. Small that ■■■ was en route from ■■■ Academy back to ■■■, but that ■■■ would soon be discharged from residential placement and return to ■■■ School. Ms. Small responded to ■■■ via an e-mail that listed the participants whom Ms. Small proposed for the meeting and that scheduled the meeting for November 1, 2004, at ■■■ School.

55. On November 1, 2004, ■■■ met with: Ms. Small; Assistant Principal Catherine Halbuer; Ms. Hoolsema, the ESE department head; and Pamela Treadwell, a staffing specialist. At this meeting, ■■■ signed a "Consent for Formal Individual

Evaluation" form to allow the School Board to evaluate [REDACTED] for ESE eligibility.

56. The conference report of the November 1, 2004, meeting stated:

The team met at parent request to review the [Hospital/Homebound] IEP developed by Orange County for medical homebound services.

[REDACTED] was placed at [REDACTED]^[5] by parent following attendance at [REDACTED] in the spring of (Jan.-May) 2004. In the fall of '04 [REDACTED] attended a private placement in Conn.^[6] [REDACTED] is presently on [REDACTED] way back to [REDACTED]. Parent reported on current insurance [REDACTED] will only have 9 days there.

The team reported to parent their responsibility to provide for [REDACTED] educational day. Brevard Schools would want to evaluate for eligibility under IDEA. Currently [REDACTED] is a 504 student based on records from Washington. If eligible following an evaluation, placement decisions would be considered by the IEP team.

Upon release from [REDACTED], the District would implement a parallel program to [REDACTED] medical homebound in Orange County. The other option is to complete the evaluation before she is discharged and consider placement at time of release. . . .

The team decided the best option is to evaluate [REDACTED] as soon as [REDACTED] [is] discharged from [REDACTED]. We ask parent to present [REDACTED] for a district team evaluation when discharged. Lynn Cheney should be contacted to schedule this.

Lynn Cheney will work with [REDACTED] to obtain any psychoeducational reports and evaluations prior to discharge.

Mom reported [REDACTED] may not return to Brevard County. Brevard County may not be able to evaluate [REDACTED] if [REDACTED] does not appear here. We will attempt to obtain their data and evaluations as parent requested.

Parent shared educational history and emotional needs. Bipolar, Asperger's syndrome.

Parent shared her concerns over delay in requesting evaluations. The team reviewed [REDACTED]'s progress in the Spring '04 term. Passing FCAT, earned all of [REDACTED] credits, no discipline or attendance concerns, while in attendance at [REDACTED]. Parent stated she asked for an evaluation in Spring '04.

57. On the morning of November 5, 2004, Ms. Cheney sent an e-mail to School Psychologist Monica Best and Social Worker Carey Dixon detailing preparations for [REDACTED]'s return to the public school system:

Yesterday [REDACTED] faxed a referral to each of you for the above referenced student. This student has been living at [REDACTED] and will shortly be discharged ([REDACTED] might have been discharged already). [REDACTED] can be reached via email, as she is a teacher with our school system.^[7] I will place her email address on each of your desks this morning. The student has two psychiatric diagnoses, and I have faxed releases and written requests to both [REDACTED], the psychiatrist and a school in the Connecticut [sic], where the student attended briefly.

The student is currently a non-ESE student with a medical HH IEP. The goal is to evaluate [REDACTED] and identify [REDACTED] educational needs, determine an appropriate educational setting for [REDACTED], so that [REDACTED] can enter school with necessary support.

■■■■'s mom has called to indicate Thursday or Friday would be a day she could bring the student to ESE, while the two of you evaluate and develop a social history.

When you receive my second email, please contact this parent. When I receive any written reports from the hospitals and schools, I will see that they get to you.

58. On the afternoon of November 5, 2004, ■■■■ sent the following e-mail to Ms. Cheney:

[■■■■] has been sent to a school in Utah, where ■■■■ will receive medical attention and 24 hour care, as well as an education in all areas of development. ■■■■ has been in special education before and the services were never enough for ■■■■ to master or even attain enough social skills to manage ■■■■. ■■■■ has had several regressions socially and emotionally. ■■■■'s academic history has been at the 80 to 90 percentile since ■■■■ was in Kindergarten, but ■■■■ performs poorly academic [sic] in the public educational environment compared to ■■■■ potential.

59. The School Board was unable to conduct its evaluation of ■■■■ due to her parents' unilateral decision to place ■■■■ at ■■■■, a residential treatment facility in Draper, Utah, on November 2, 2004. On December 17, 2004, the CST met and issued an "Informed Notice of Child Study Team Action" to ■■■■'s parents. The notice informed the parents that the CST was not continuing its formal evaluation of ■■■■. However, the notice also stated: "The district is prepared to evaluate the student in order to provide a free appropriate public education, when the parents make the student available for the evaluation."

60. ■■■ testified that after picking up ■■■ at ■■■ Academy in Delaware, she contacted ■■■ to ask if ■■■ could be readmitted. ■■■ suggested that the family contact Dr. Richard Mickelson, a psychiatrist and the medical director at ■■■. During his meeting with the family, Dr. Mickelson advised that ■■■ should be admitted for a stay of at least one month at ■■■. The family decided that ■■■ had the proper medical facilities to stabilize ■■■'s medications, as well as a good academic and therapeutic environment to provide ■■■ with the social, behavioral, and educational services ■■■ required. Both ■■■ and ■■■ believed that the ■■■ was in crisis, which required them to place ■■■ at ■■■ immediately, despite their pending plans to have ■■■ evaluated by the School Board's CST.

61. ■■■ remained at ■■■ until her discharge on June 14, 2005. On admission, ■■■ was diagnosed by Dr. Mickelson as having Asperger's Disorder, bipolar disorder, oppositional defiant disorder, and a history of ADHD. Under the category of social problems and stressors, Dr. Mickelson noted poor peer relationships, family conflicts, frequent moves, and multiple recent living conditions.

62. At the time of Dr. Mickelson's initial observation, ■■■ was taking: Ritalin for ADHD; Trileptal and Zonegran, anti-epileptic medications prescribed as mood stabilizers; Abilify, an anti-psychotic prescribed for pervasive developmental

disorders such as Asperger's; and Lexapro, an anti-depressant. Dr. Mickelson testified that upon discharge ■■■ was taking the same medications, with some dosage adjustments.

63. Dr. Mickelson testified that ■■■ could have benefited from a longer stay at ■■■, but he did not believe ■■■ was an acute safety risk at the time of ■■■ discharge.

64. Lisa Wisham, the academic director at ■■■, testified that ■■■'s classrooms are small, with two teachers assigned to every 14 students. Each week, students receive three individual therapy sessions with a licensed therapist, one family therapy session, and five group therapy sessions. Therapy sessions and academic classes are held in the same large house in which the students reside, providing stability and continuity for students with Asperger's.

65. Ms. Wisham stated that ■■■'s educational needs were addressed as part of a master treatment plan co-authored by the therapists, nursing and medical staff, teachers, residential staff, and administrators.

66. ■■■'s treatment plan set as ■■■ long term goal to "exhibit skills that may help ■■■ succeed in an educational setting." The plan also set four short term objectives: ■■■ will complete a list of five things ■■■ can do to succeed in school; ■■■ will participate in school activities and discussions 90 percent of the time; ■■■ will submit assignments

in a complete and timely manner 90 percent of the time; and [REDACTED] will achieve an 80 percent accuracy rate on [REDACTED] school work. The treatment plan updates chronicled [REDACTED] academic progress as follows:

Date: 12/15/04: [REDACTED] does not seem involved in schoolwork. [REDACTED] has not met [REDACTED] objectives of participation, accuracy, timeliness, or completion and processing of [REDACTED] list.

Date: 1/12/05: [REDACTED] has not achieved objectives of participation, accuracy, timeliness, or a list of things that might help [REDACTED] in school. Teachers are encouraging [REDACTED] and examining ways in which to help with completion objectives.

Date: 2/16/05: [REDACTED] has not achieved targeted rates of participation, timeliness, accuracy, or a list of things that might help [REDACTED] in school. [REDACTED] severe disorganization seems to hamper [REDACTED] progress. Teachers attempt to help [REDACTED] in all objectives. [REDACTED] responds to teacher assistance with behaviors that range from disinterest to angry, name-calling outbursts. [REDACTED] has achieved 80% accuracy during this reporting period. More time is needed to show achievement of [REDACTED] accuracy objective.

Date: 3/16/05: [REDACTED] has recently increased [REDACTED] participation. [REDACTED] has shown less anger outbursts and uses less caustic comments toward peers and staff. [REDACTED]'s accuracy has decreased during this reporting period. [REDACTED] has not completed [REDACTED] list of things that might help [REDACTED] in school. [REDACTED] still refuses help with organization or school work, stating that [REDACTED] doesn't need the help. All objectives are extended.

Date: 4/20/05: [] has begun to demonstrate [] previous behaviors of disrespect and apparently intentional opposition to the mildest suggestions or prompts. [] has not achieved her target objectives of timeliness, accuracy, participation, or a list of things [] can do to help [] self succeed in school. Teachers continue to encourage [] to reach [] objectives.

67. Ms. Wisham testified that [] was struggling in the classroom when [] arrived at []. [] did not want to participate in class, refused to do schoolwork, and would not accept direction from teachers. [] often refused to come to class at all. [] fell behind in [] classes, and [] poor organizational skills and lack of motivation made it difficult for [] to catch up.

68. Daniel Johnston was the special education coordinator and an occasional teacher at []. He testified that he was not able to work much in a counseling capacity with [] due to [] resistance to accepting assistance. [] did not believe that [] belonged at []. [] was angry and "absolutely rigid" in refusing help. Mr. Johnston testified that []'s behavior and affect were consistent throughout [] stay at []: "just angry, totally... very inflexible."

69. Mr. Johnston noted that []'s peers seemed afraid of [] because of [] volatility. At least twice, [] made physical threats against a peer, and, on one occasion, [] threw

a book at another student. ■ wanted to dominate and control ■ peers and often had to be removed from the classroom. ■ roommates tried to avoid ■, because they could never be sure what would "set ■ off."

70. Mr. Johnston testified that several strategies were attempted to entice ■ to complete academic assignments, including the withholding of leisure activities. Nothing seemed to work on more than a short-term basis.

71. ■ attended ■ through three grading periods. ■ was enrolled in five academic classes, as well as physical education, art, and life skills. The following were ■ grades in each academic class for each of the three grading periods:

| | | | |
|---------------|----|----|----|
| Geometry | D+ | D+ | B+ |
| World History | F | F | A- |
| Biology | C- | D+ | B |
| Psychology | B- | C | C |
| English | D- | D | A |

72. Curt Pollock, a licensed clinical social worker, was ■'s primary therapist at ■. He conducted the individual, family, and group therapy sessions in which ■ participated. Mr. Pollock described ■ at the time of arrival as "very angry, socially inept, volatile, potentially dangerous" to ■ and others. He described a situation early in ■ treatment in which ■ threw a "commercial duty, very heavy three hole punch"

at another student, who was quick enough to duck before it hit him in the head. ■ quickly became "infamous" at ■ for ■ volatility.

73. Mr. Pollock testified that ■ was also profoundly depressed. ■ was intelligent enough to have some insight into the way in which ■'s Asperger's deprived ■ of human connections. This insight caused ■ to feel hopeless and inadequate and to lash out at others as a defensive mechanism. ■ bipolar condition would at times cause ■ to withdraw completely from ■ peer group, further lessening any opportunity to establish friendships or even normal acquaintances with ■ peers. For a period of time, ■ was placed on line-of-sight precautions because ■ would cut ■ arms with staples, furniture tacks, or plastic eating utensils.

74. Mr. Pollock testified that at first ■ was completely resistant to his interventions. ■ repeatedly said that ■ hated ■, hated Mr. Pollock, and constantly demanded a new therapist. ■ took a perverse pride in ■ lack of organization and refused all assistance.

75. Mr. Pollock stated that in April 2005, ■ finally realized that he was not going anywhere. He was going to be ■ therapist, and ■ would need to deal with that fact. ■ began working with him and showing enough improvement in ■ behavior that ■ was able to concentrate on ■ school work. This

improvement was evidenced by █ grades for the third grading period, listed above.

76. Mr. Pollock and the entire treatment team at █ believed that █ should continue to receive intensive therapeutic and educational services at █ for an additional year:

I think the best thing we could do for [█] and █ family is to place █ in a highly structured environment, mainly a residential setting, with intensive mental health services and support, where there's . . . behavior management that's ongoing, and in a peer environment where █ can continue to work on █ social skills. . . . I think an intensive residential treatment center where █ can receive specialized academic instruction, intensive psychotherapy, behavior management, [recreational] therapy, psychiatric services. . . . It is imperative . . . if we want to see █ thrive.

77. Dr. Stephanie Scott, who has a Ph.D. in marriage and family services, began treating █ as █ primary care therapist during █ stay in █ and is █'s current therapist in Florida. She testified that █ has seen regression in █ since █ return from █ and agrees that █ should have stayed at █ for another year. Dr. Scott opined that █ would regress very quickly if █ was placed in a regular education classroom.

78. However, Dr. Scott's understanding of █'s previous experience in public schools generally and █ School in

particular was based solely on reports from ■■■'s parents. Dr. Scott was unaware that ■■■ had been moved out of special education during ■■■ last year in Washington. Dr. Scott believed that ■■■ had frequent emotional "meltdowns" at ■■■ School, in which ■■■ was unable to deal with functioning or sitting still in a classroom; would "flip out" because of the way someone looked at ■■■; and would be sent away from the classroom.

79. The credible testimony of ■■■'s teachers, summarized above, demonstrates the inaccuracy of Dr. Scott's impression of ■■■'s experience at ■■■ School. There is no direct evidence that ■■■ suffered the "meltdowns" described by Dr. Scott while ■■■ attended ■■■ School, or was a disciplinary problem of any kind at the school.

80. Dr. Joan Adamson is a school psychologist for the School Board, assigned to ■■■ School as well as two elementary schools. On July 22, 2005, Dr. Adamson conducted a psychological evaluation of ■■■ To measure ■■■'s cognitive skills, Dr. Adamson administered the Reynolds Intellectual Assessment Scales ("RIAS"), which contains several individual tests of intellectual problem solving and reasoning ability to establish a Verbal Intelligence Index ("VIX") and a Nonverbal Intelligence Index ("NIX"). These two indices are combined to form an overall Composite Intelligence Index ("CIX"). The

indices are adjusted for age and expressed as a score scaled to a mean of 100. [REDACTED] earned a VIX of 122 and a NIX of 125, and a CIX of 126. [REDACTED] level of performance was "moderately above average," exceeding the performance of 96 percent of individuals of [REDACTED]'s age. Dr. Adamson noted that a CIX of 130, only four points above [REDACTED]'s score, is considered "gifted" under the School Board's standards.

81. Dr. Adamson administered the Woodcock-Johnson III Tests of Achievement to assess [REDACTED]'s academic functioning in reading, mathematics, and written language. Dr. Adamson's psychological report summarized the results as follows:

[REDACTED] broad reading standard score was 101, which was in the average range and at the 52nd percentile. This corresponds to a grade equivalency of 2 months into the eleventh grade. [REDACTED] demonstrated much success in word calling and passage comprehension (both at the college level), but had some difficulty with reading fluency (9th grade, 4th month). On the broad mathematics portion of the WJ-III, [REDACTED] achieved at a 12th grade, 9th month level with a standard score of 104 at the 59th percentile. [REDACTED] performance in applied problems was [REDACTED] highest score (college level) in the math area. Math calculation was adequate (10th grade, 8th month). However, some difficulties were evident in math fluency which was at the 7th grade level. Written language was the area of greatest success for [REDACTED]. [REDACTED] broad written language standard score was 112, which is in the high average range and at the 79th percentile. The subsequent grade equivalency is college level. [REDACTED]'s ability to compose a narrative consisting of

appropriate and logical thought content was measured at the 7th grade, 6th month level. However, ■■■ grammar, spelling and punctuation skills are strengths with ■■■ performance in this area equating to that of a college student.

82. Dr. Adamson administered the Beery-Buktenica Developmental Test of Visual-Motor Integration to assess ■■■'s fine motor and visual processing abilities. ■■■ scored well below average in these areas, indicating "significant difficulties with visual-motor integration." Dr. Adamson termed this area a "significant concern."

83. Dr. Adamson used the Behavior Rating Inventory of Executive Function to measure ■■■'s "ability to engage in purposeful, goal-directed, problem-solving behaviors." This test involved a questionnaire to be completed by ■■■ ■■■. Dr. Adamson summarized the results as follows:

This profile indicates that [■■■] has significant problems with ■■■ ability to control ■■■ impulses, to transition from one situation to another, and to appropriately stop ■■■ own behavior at the proper time. However, ■■■ greatest area of difficulty was in the metacognition domain. Specifically, weaknesses were reported in holding information actively in working memory, getting started on tasks, strategic planning and organization of activities and materials, and monitoring ■■■ performance (e.g., "Does not check work for mistakes" and "Makes careless errors" both rated as Often by [■■■]). [■■■]'s profile is consistent with executive/organizational dysfunction that is associated with a

diagnosis of Attention Deficit/Hyperactivity Disorder.

[REDACTED] completed the Brown Attention-Deficit Disorder Scales (adolescent version). [REDACTED] responses resulted in an overall score indicating that a diagnosis of Attention Deficit/Hyperactivity Disorder is highly probable. [REDACTED] admittedly has significant difficulty with organizing and initiating tasks, focusing, sustaining effort, modulating emotions, utilizing working memory, and monitoring and self-regulating [REDACTED] actions.

84. Dr. Adamson's report summarized her testing of [REDACTED]'s emotional/behavioral functioning as follows:

PARENT EVALUATION:

At this examiner's request, [REDACTED] objectively rated a variety of [REDACTED] concerns about [REDACTED]'s behavioral issues by completing the Achenbach Child Behavior Checklist, the Asperger Syndrome Diagnostic Scale, and the Adaptive Behavior Assessment System-- Second Edition. These instruments give a rating of [REDACTED]'s overall behavioral patterns (CBC), [REDACTED] behaviors that are specific to a diagnosis of Asperger Disorder (ASDS), and an estimate of [REDACTED] daily living skills (ABAS-II). On the CBC, [REDACTED]'s responses resulted in a majority of the categories scoring in the clinical range. The highest (most pathological) scores pertained to concerns about social problems, difficulties with attention, and aggressive behaviors.

On the ASDS, areas that were significantly aberrant (occurring at a rate that is statistically significant more than in the average person) pertained to social skills and maladaptive behaviors. In other words, [REDACTED]'s [REDACTED] is very concerned that, in [REDACTED]

opinion, [REDACTED] does not "fit in" with [REDACTED] same age peers.

Also, many of [REDACTED]'s concerns for [REDACTED] are expressed in [REDACTED] responses on the questionnaire named the Adaptive Behavior Assessment System-- Second Edition. Overall, [REDACTED] responses resulted in a score that suggests that [REDACTED] cannot function independently with regards to daily living activities. Possible ratings of items are as follows: "is not able", "never when needed", "sometimes when needed", and "always when needed". The ratings of daily activities, such as "uses up-to-date information to discuss current events", "reads classified ads for purchases and services", and "plans ahead to allow enough time to complete big projects", resulted in an overall adaptive behavior score that is more than two standard deviations below average. These responses indicate that [REDACTED] has serious concerns about [REDACTED]'s ability to be successful at becoming a productive person who is capable of having a job and taking care of [REDACTED]. However, it is notable that none of the items on this entire questionnaire received an "is not able" response.

[REDACTED]'S SELF-EVALUATION:

[REDACTED] objectively rated [REDACTED] own behaviors using the Achenbach Youth Self-Report, the Multidimensional Anxiety Scale for Children, and the Children's Depression Inventory. These instruments reflect [REDACTED]'s overall view of [REDACTED] behaviors (YSR) and [REDACTED] reported levels of anxiety and depression (MASC and CDI). On the YSR, [REDACTED] expressed significant concerns about [REDACTED] attention problems. [REDACTED] gave credence to exhibiting behaviors such as acting too young for [REDACTED] age, failing to finish [REDACTED] work, having difficulty concentrating and sitting still, impulsivity, inattentiveness, and poor school performance.

[]'s responses on the MASC showed adequate consistency and were not indicative of clinically elevated anxiety symptoms. In fact, some of the lower scores suggested that [] is trying to present [] in a positive manner. []'s highest scores (areas of greatest concern) were in the area of social anxiety. Examples of items in this category are as follows: "I worry about other people laughing at me", "I worry about getting called on in class", "I'm afraid other people will think I'm stupid", "I get nervous if I have to perform in public", "I have trouble asking other kids to play with me", and "I feel shy."

Also, according to []'s answers on the CDI, overall, [] is not suffering from clinically significant symptoms of depression at this time. On this instrument, the only clinically elevated category was "Ineffectiveness". This category included items such as "It is hard to make up my mind about things", "I have to push myself all the time to do my schoolwork", "My schoolwork is not as good as before", and "I can be as good as other kids if I want to."

Projective techniques employed with [] involved the House-Tree-Person drawings and the Rotter Incomplete Sentences Blank. [] responses indicated that [] experiences excessive sensitivity to criticism from others. Therefore, because [] fears rejection, [] may react with defensiveness and hostility. In order to avoid the possibility of perceived rejection, [] may also tend to be self-absorbed, withdraw, and depend on thinking and fantasy for the satisfaction that is denied [] in reality. [] exhibits signs of social/emotional immaturity and feelings of dependency towards [] parents that are unusual for an individual of [] chronological age. []'s feelings of anxiety appear to

pertain to home stress and tensions and interpersonal conflicts. While [REDACTED] drawings indicate some sexual preoccupation, [REDACTED] also appears to experience guilt over repressed desires for sexual gratification. These indications are not unusual in drawings of adolescent [REDACTED].

85. Dr. Adamson's summary and recommendations were summarized in her reports as follows:

Based on the current information, [REDACTED] is functioning in the upper end of the Moderately Above Average range of cognitive ability. When compared to others at [REDACTED] age level, [REDACTED]'s academic skills and fluency with academic tasks are both within the average range. [REDACTED] ability to apply academic skills is high average. Regarding specific academic areas, [REDACTED]'s performance is high average in written language and average in reading, mathematics, math calculation skills and written expression. While [REDACTED]'s academic skills appear to be adequate, [REDACTED] is exhibiting a delay in [REDACTED] development of visual-motor integration.

[REDACTED]'s emotional/behavioral profile indicates that [REDACTED] has significant concerns in the areas of attention and concentration, inhibiting responses and emotional control, initiating tasks and transitioning from one task to the other, and planning and organizing materials.

It is recommended that the staffing committee consider this information when determining [REDACTED]'s educational needs. Since [REDACTED] is transitioning from a residential treatment program, it would be appropriate for the 504 committee to convene to address [REDACTED] transition needs.

86. Dr. Adamson offered the opinion that [REDACTED] does not currently meet the eligibility criteria for ESE services

pursuant to the IDEA. Despite ■■■'s various diagnoses, ■■■ has not shown a need for ESE services by either working below grade level or by failing classes.

87. Dr. Adamson's opinion was not changed by the fact that ■■■'s grades at ■■■ School were lower than might be expected of a child of ■■■ intelligence. Dr. Adamson noted that very bright children, even children in the gifted program, often make poor grades because they do not like the subject, or do not want to do the homework, or for any number of other reasons unrelated to a disability.

88. Dr. Adamson believed that ■■■ should continue to have medication management and should be placed in a regular classroom where ■■■ can see behaviors that are modeled appropriately. Dr. Adamson agreed that ■■■ shows many symptoms of Asperger's. If ■■■ does have Asperger's, ■■■ should not be placed in a residential setting with a pathological population, because ■■■ would be likely to model the inappropriate behavior ■■■ sees there.

89. Dr. Malcolm Roberts, a physician board-certified in child and adolescent psychiatry, conducted an evaluation of ■■■ on July 29, 2005, at the request of the School Board. He performed his standard interview and evaluation, consisting of a 40-minute interview with ■■■, one hour with ■■■, and a review of the relevant documents from ■■■, Cedars Academy, ■■■, and ■■■

School regarding [REDACTED]'s educational and psychological/psychiatric evaluations.

Dr. Roberts also met with Ms. Zieres, Ms. Walden, and an ESE counselor.

90. Dr. Roberts concluded that [REDACTED] displayed "no psychiatric diagnosis at this time." [REDACTED] had problems with [REDACTED] primary support group, specifically [REDACTED] and 14-year-old [REDACTED], with [REDACTED] social environment because [REDACTED] was new to the area, and educational concerns. When asked how his diagnosis could be so different from that of the psychiatrist at [REDACTED], Dr. Roberts stated:

Well, [REDACTED] presented in such a fashion that at one point, I had to remind myself that I was interviewing somebody who had this many psychiatric diagnoses in the past. [REDACTED] was conversant. [REDACTED] made great eye contact. [REDACTED] had appropriate conversational trains of thoughts. [REDACTED] communicated well with me. [REDACTED] understood nuance and sarcasm, understatement, overstatement, made jokes appropriately, made a rapport quite quickly with me.

We talked about [REDACTED] musical interests. We talked about a whole range of things about [REDACTED] life. And [REDACTED] denied any psychiatric symptoms at the time. It could be that [REDACTED] medications are working quite well for [REDACTED] at this point. I certainly hope that.

And so, when I saw [REDACTED], I didn't see any signs or symptoms of psychiatric illness. [REDACTED] had a clear mental status examination.

91. Dr. Roberts acknowledged [REDACTED]'s history of Asperger's Disorder, ADHD, bipolar, oppositional defiant disorder, and conduct disorder. He found it highly unlikely that [REDACTED] was currently suffering from one or more of these conditions and was simply "keeping it together" for the one hour [REDACTED] was in his office. Dr. Roberts stated that "all of these are pretty heavy-hitter mental illnesses," particularly in combination, and that it was unlikely that [REDACTED] could disguise their effects during the interview.

92. Dr. Roberts testified that his advice would be to make no changes in [REDACTED]'s medications,⁸ continue individual counseling with Dr. Scott, initiate family outpatient counseling, and go back to [REDACTED] School. [REDACTED] told Dr. Roberts that [REDACTED] liked going to the school, and Dr. Roberts believed it preferable because it was close to [REDACTED]'s family and thus would facilitate family therapy sessions. Dr. Roberts did not believe that [REDACTED] required special education services at the time he interviewed [REDACTED].

93. Dr. Roberts was also asked about the contrast between [REDACTED]'s teachers at [REDACTED] School, who described [REDACTED] as well-behaved and largely unremarkable, and [REDACTED] teachers and therapists at [REDACTED], who described serious misbehaviors and adamant failures to cooperate. Dr. Roberts stated:

Well, part of it is going to be based on what [REDACTED] told me. . . . [REDACTED] told me [REDACTED] was pissed. Told me that [REDACTED] didn't-- [REDACTED]

was tired of being transferred around. Didn't like all the changes that [REDACTED] 'd been through. [REDACTED] wanted to give Brevard County a chance. [REDACTED] wanted to stay with [REDACTED] family. [REDACTED] knew that [REDACTED] mom was going to be moving over from Washington state, and [REDACTED] felt like [REDACTED] had done well enough at [REDACTED], and [REDACTED] wanted to do the transition out of [REDACTED] to the day program, or even to Dr. Scott's outpatient practice. And [REDACTED] was . . . moved from Washington to Florida. Now I got to go from Florida to Delaware, then back to Florida and now back over to Utah. . . .

[M]ost patients with Asperger's don't do well with change of any kind. But moving approximately 3,000 miles one way and then 1,500 north, 1,500 back, and then about 2,500 back across the country, all in a span of roughly nine, ten months, I don't know many people without Asperger's disorder who wouldn't, at some point, get pretty fed up with all the moving.

94. Petitioner alleges that [REDACTED] was denied a FAPE by the School Board's failure to timely evaluate [REDACTED] to determine [REDACTED] eligibility for ESE services, thus necessitating [REDACTED]'s placement in a series of private therapeutic and educational institutions. The facts establish that the School Board fell short of the ideal in its dealings with [REDACTED] and [REDACTED]'s parents. However, the facts do not support the contention that [REDACTED]'s parents are entitled to reimbursement for [REDACTED]'s private placements.

95. [REDACTED] entered the Brevard County school system not with an IEP but with a Section 504 plan. Without question, [REDACTED] School did not effectively implement [REDACTED]'s Section 504 plan.

Only one of ■■■'s teachers was even aware that ■■■ had a Section 504 plan. Though it is admittedly a matter of speculation whether ■■■'s performance in school would have been better had all of the Section 504 plan's accommodations been systematically implemented, ■■■ performance surely would not have been hampered by scheduling ■■■ math and science classes early in the day, teacher follow-up on oral instructions, or weekly e-mail contact with ■■■'s parents regarding ■■■ progress.

96. However, even without the Section 504 accommodations, ■■■ passed all of ■■■ classes and had no notable behavior problems while ■■■ attended ■■■ School. Given the behavioral and disciplinary history set forth in the Findings of Fact above, both prior to and after ■■■ attended ■■■ School, it is notable that ■■■'s teachers at ■■■ School recalled ■■■ as happy, participating in class and causing no disciplinary problems.

97. ■■■'s parents credibly testified that, despite ■■■ performance at school, ■■■'s behavior was deteriorating at home between March and May 2004. On April 27, 2004, ■■■ requested a referral for ESE services, the first such request made by ■■■'s parents to the School Board. Michelle Hoolsema, the School Board's ESE representative, informed ■■■, via ■■■'s guidance counselor, that it was too late in the regular school year to initiate an evaluation.

98. At the hearing, ESE staffing specialist Linda Cheney frankly admitted that Ms. Hoolsema was wrong. Ms. Cheney provided a plausible explanation for Ms. Hoolsema's statement: ■■■'s performance in the classroom gave school personnel no reason to believe it was urgent that ■■■ be evaluated for ESE services before the end of the 2003-2004 school year. ■■■'s parents did not contest the decision to postpone the evaluation.

99. On May 10, 2004, ■■■ filed a request for a formal evaluation for ESE services, asking for a response no later than May 12, 2004. Guidance counselor Cathi Campbell testified that she did not act on ■■■'s request for a formal evaluation because she had already referred ■■■'s request for ESE services to the CST on April 27, 2004. Ms. Campbell's failure to act was reasonable. Nothing in the record points to an intervening act or event in the two weeks between April 27 and May 10, 2004, that increased the urgency that ■■■ be evaluated for ESE services before the end of the school year. ■■■'s parents took no further action with the School Board regarding ■■■'s May 10, 2004, request.

100. As of June 21, 2004, the School Board knew that ■■■ was a student with an active Section 504 plan who had received ESE services in the past. ■■■ had scored well on both sections of the FCAT and passed all of ■■■ courses for the one semester ■■■ attended ■■■ School. The School Board was aware that ■■■'s

parents were alarmed at ■■■ substandard performance in school. ■■■'s parents had informed the School Board that unspecified "difficulties" related to ■■■ "disability" were occurring at home. The School Board had determined that ■■■ was not eligible to attend summer school and that the CST would evaluate ■■■ for ESE eligibility before the commencement of the 2004-2005 school year.

101. Given this base of knowledge, the School Board cannot be charged with failure to anticipate that ■■■ would require admittance to ■■■ on June 21, 2004. The School Board had no actual knowledge that ■■■'s parents unilaterally admitted her to ■■■ until August 5, 2004, when ■■■ contacted the School Board to ask if it would pay the educational cost of ■■■'s placement. ■■■'s parents did not contest the determination that the School Board was not responsible for the costs of a placement not recommended by an IEP team.

102. In mid October 2004, ■■■ was discharged from ■■■ and admitted to ■■■ Academy, the boarding school in Delaware. Within two weeks, ■■■ had been expelled and was on ■■■ way back to ■■■. As soon as ■■■ contacted the School Board to inform it that ■■■ would be returning to ■■■ School, guidance counselor Jill Small began organizing the team to evaluate ■■■ for ESE eligibility. The team met with ■■■ on November 1, 2004, and was prepared to evaluate ■■■ as soon as ■■■ was discharged from ■■■.

103. However, the School Board never had the opportunity to conduct this evaluation, because ■■■'s parents unilaterally placed ■■■ at ■■■ in Utah, where ■■■ remained until June 2005. Thus, throughout the period at issue, ■■■ was never evaluated by the School Board for ESE eligibility. The only IEP ■■■ had during the relevant period was ■■■ "Hospital/Homebound" IEP at ■■■, developed by the Orange County School Board.

104. The evidence produced at the hearing was insufficient to establish that ■■■ had a disability that affected ■■■ academic performance in such a way as to interfere with ■■■ ability to learn in the general education curriculum during the 2003-2004 school year.

105. The evidence produced at the hearing was insufficient to establish that ■■■'s parents should be reimbursed for their unilateral decisions to place ■■■ at ■■■, ■■■ Academy, and/or ■■■.

CONCLUSIONS OF LAW

106. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding pursuant to Subsection 1003.57(5), Florida Statutes (2005), and the assigned Administrative Law Judge has final order authority.

107. Subsection 1003.57(5), Florida Statutes (2005), requires that the School Board provide for an "appropriate

program of special instruction, facilities, and services for exceptional students," including provisions that:

(5) No student be given special instruction or services as an exceptional student until after he or she has been properly evaluated, classified, and placed in the manner prescribed by rules of the State Board of Education. The parent of an exceptional student evaluated and placed or denied placement in a program of special education shall be notified of each such evaluation and placement or denial. Such notice shall contain a statement informing the parent that he or she is entitled to a due process hearing on the identification, evaluation, and placement, or lack thereof. . . .

108. The above-referenced statute implements the federal IDEA, 20 U.S.C. Section 1401 (as amended in 2004), which provides in pertinent part:

(8) Free appropriate public education. 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 [IEP] program required under section 614(d)[20 U.S.C. § 1414(d)].

See Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176, 188 (1982).

109. Federal law and regulations promulgated thereunder provide that in order to be eligible for services pursuant to the IDEA, it must be determined that a child is a "child with a disability," 20 U.S.C. Section 1401(3)(A)(i), and requires that special education and related services be based on the impairment. 20 U.S.C. § 1401(3)(A)(ii).

110. Under federal and Florida law, a parent and/or school board may initiate an impartial due process hearing on matters relating to, inter alia, determination of eligibility of a child, the educational placement of a child with a disability, or the provision of a FAPE to the child. 20 U.S.C. § 1415(f); 34 C.F.R. § 300.507; § 1003.57(5), Fla. Stat. (2005).

111. Each party in a due process hearing is entitled to be accompanied and advised by counsel and/or by individuals with special knowledge or training with respect to the problems of children with disabilities; present evidence and confront, cross-examine, and compel the attendance of witnesses; prohibit an introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing, and other rights, as provided in 20 U.S.C. Section 1415(f)(2) and (h), 34 C.F.R. Section 300.509, and Florida Administrative Code Rule 6A-6.03311(5)(h).

112. The parents of █████ requested a due process hearing to determine whether their child had been denied a FAPE during the

2003-2004 school year. The parents contend that the School Board's repeated failures to evaluate ■■■ for eligibility for ESE services necessitated the parents' unilateral decision to place ■■■ in a series of private institutions and that the School Board should be required to reimburse ■■■'s parents for those private placements. The parents of ■■■ have the burden of proving that the School Board failed to provide ■■■ with a FAPE. Devine v. Indian River County School Board, 249 F.3d 1289, 1292 (11th Cir. 2001).

113. To be eligible for ESE services under the IDEA, a student must satisfy both parts of a two-part test. First, a student must be a "child with a disability" by meeting the definition of one or more of the categories of disabilities set forth in the federal regulations. Second, the student must be shown to be in need of special education services as a result of that disability. IDEA, 20 U.S.C. § 1401(3)(A); 34 C.F.R. § 300.7(c).

114. Special education means "specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability. . . ." 34 C.F.R. § 300.26(a)(1).

"Specially designed instruction" means

. . . adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction --

(i) To address the unique needs of the child that result from the child's disability; and

(ii) To ensure access of the child to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the public agency that apply to all children.

34 C.F.R. § 300.26(b)(3).

115. To qualify as a "child with a disability" under the IDEA, ■■■ must need "specially designed instruction" in order to have access to the general curriculum and meet the educational standards that apply to all children. The facts of this case did not establish that ■■■ required specialized instruction to succeed in the general education curriculum. ■■■ passed all of ■■■ classes, scored well on the FCAT, and caused no behavior problems while at ■■■ School. This is notable given that ■■■ had just moved across the country, was separated from ■■■, and was entering a large public high school in a new state. It is even more notable in light of ■■■'s educational and behavioral history before and after ■■■ semester at ■■■ School.

116. Even if ■■■ were proven to have a disability identified in the IDEA, ■■■ would still have to meet the IDEA's second requirement for ESE services: that as a result of and because of the disability, the student is in need of ESE services. The disability must affect ■■■'s academic performance in such a way as to interfere with ■■■ ability to learn in the

general education curriculum. ■■■'s classroom performance and ■■■ scores on the state mandated FCAT achievement tests strongly militate against such a finding. If a child does have a specific learning disability or other health impairment, a "resulting need for special education instruction would still be necessary to establish eligibility." Conrad Weiser Area School District, 27 IDELR 100 (SEA PA 1997).

117. There is ample authority to support the School Board's position that a child who exhibits behavioral problems in the home, but not at school, is not "a child with a disability" as defined by IDEA. In Katherine S. v. Umbach, 2002 WL 226697, at *11-12 (M.D. Ala. 2002), the court summarized the relevant case law and the conclusion to which it leads:

In Norton v. Orinda Union Sch. Dist., 168 F.3d 500 (9th Cir. 1999), cert. denied, 528 U.S. 825, 120 S.Ct. 74, 145 L.Ed.2d 62 (1999), the Ninth Circuit held that a student who met the eligibility criteria for "learning disabled" was ineligible for special education and related services because the student was successful in the regular classroom with minor classroom modifications. And in Sylvie M. v. Bd. Of Educ. Of Dripping Springs Independent School Dist., 48 F.Supp.2d 681 (W.D. Tex. 1999), aff'd, 214 F.3d 1351 (5th Cir. 2000), cert. denied, 531 U.S. 879, 121 S.Ct. 190, 148 L.Ed.2d 131 (2000), the district court held that a student with emotional and behavioral problems, who performed at or above grade level in every subject at her original school, was ineligible for special education because she was receiving educational benefit from her public education program.

Similar to Katherine, Sylvie M.'s behavior problems were mainly manifested at home, and her

private therapy focused on her turbulent relationship with [REDACTED].

Numerous other administrative and federal court decisions have denied IDEA eligibility (or disability status under the Rehabilitation Act) to students with emotional or behavioral problems which were either not primarily manifested at school or otherwise did not give school personnel reason to suspect that the student had a disability that required special education and related services. See T.J.W. v. Dothan City Sch. Bd., 26 IDELR 999 (M.D.Ala.1997) (fighting, emotional outbursts, and speaking out of turn did not create a reason to suspect that the student was disabled under § 504 of the Rehabilitation Act); Hoffman v. East Troy Comm. Sch. Dist., 38 F.Supp.2d 750 (E.D. Wis. 1999)(falling asleep, poor classroom performance, and failing one class was not enough reason to suspect that the student was emotionally disturbed); West Chester Area Sch. Dist., 32 IDELR 275 (SEA PA 2000) (there was no reason for school to suspect that student with depression and behavior problems at home was disabled simply because her grades had fluctuated and declined); Bd. of Educ. of the Midland Pub. Schs., 25 IDELR 669 (SEA MI 1996) ("emotionally disturbed" classification and residential placement at the Elan School was not appropriate for a teenager who developed severe behavior problems at home and whose grades dropped from As and Bs to Cs and Ds); Springer v. Fairfax County Sch. Bd., 134 F.3d 659 (4th Cir. 1998)(student who was truant, abused alcohol and drugs, and had been convicted of burglary and theft, but who also maintained satisfactory relationships with teachers and peers and did not manifest a pervasive mood of unhappiness and depression, was not

emotionally disturbed under the IDEA); Doe v. Board of Educ., 753 F.Supp. 65 (D. Conn. 1990)(student placed in a psychiatric hospital for depression and violence, but whose grades and achievement tests were satisfactory and who had no behavior problems in the classroom, was not emotionally disturbed).

The fact that Katherine's problems were not as drastic as many of the children at issue in these cases is relevant, yet it is not the key reason behind the hearing officer's decision or this court's affirmation of that decision. Rather, it is key that none of the evidence, especially including reports and testimony from the experts who evaluated Katherine, supports a finding that her emotional difficulties caused her to be disabled in an educational context or in need of special education or related services. (Emphasis added.)

118. When [REDACTED] was in the fifth grade in Washington, [REDACTED] was evaluated and identified as a student with disabilities. Though there was no apparent dispute as to [REDACTED] eligibility, its basis was variously stated to be ADHD and/or Asperger's Disorder. An IEP was developed and [REDACTED] received ESE services during [REDACTED] sixth and seventh grade years, including one hour per week of occupational therapy, one hour per week of speech/language therapy, and two 30-minute counseling sessions per week with a psychologist.

119. [REDACTED]'s eighth grade IEP noted [REDACTED] significant progress and limited [REDACTED] ESE services to one 25-minute speech/language therapy session per week. By the end of her [REDACTED] grade year, [REDACTED]

was dismissed from the special education program, with [REDACTED] parents' consent and cooperation, and provided with a Section 504 accommodation plan. This plan was still in effect when [REDACTED] moved to Florida and enrolled at [REDACTED] School. Thus, during the 2003-2004 school year, [REDACTED] was a student with a history of being categorized as a "child with a disability," but with no current evaluation or classification as a "child with a disability."

120. [REDACTED]'s parents contend that the School Board's refusal to evaluate [REDACTED] for eligibility at the end of the 2003-2004 school year, and its failure to find [REDACTED] eligible for summer school, forced them to place [REDACTED] at [REDACTED]. However, the facts established that the apparent crisis that led [REDACTED]'s parents to place [REDACTED] at [REDACTED] entirely involved [REDACTED] behavior at home. The facts also gave no indication that [REDACTED]'s parents made it clear to school officials exactly how bad the situation was at home, aside from [REDACTED]'s reference to things being "VERY difficult" in his May 10, 2004, request for evaluation.

121. There was no showing that the failure to evaluate [REDACTED] for eligibility at the end of the 2003-2004 school year caused any harm to the student. On the information available to the School Board, there was no basis for a rushed evaluation of [REDACTED]. According to [REDACTED]'s teachers, [REDACTED] was a happy, well-behaved student who, at worst, underachieved in [REDACTED] academic classes in a fashion not uncommon to [REDACTED] graders. At most, delaying the

evaluation until the commencement of the 2004-2005 school year was a technical procedural violation that resulted in no harm to ■■■. See School Board of Collier County, Florida v. K.C., 285 F.3d 977, 982 (11th Cir. 2002), quoting Weiss v. School Board of Hillsborough County, 141 F.3d 990, 994 (11th Cir. 1998) (to determine whether FAPE has been denied, court must assess the impact of any procedural defect, not merely the defect per se).

122. The School Board did not place ■■■ in private schools pursuant to 20 U.S.C. Section 1412(a)(10)(B). Thus, ■■■'s parents must seek reimbursement for a private placement made without the consent of the School Board, pursuant to 20 U.S.C. Section 1412(a)(10)(C), which provides, in relevant part:

(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. . . .

123. ■■■'s parents failed to demonstrate that ■■■ is a "child with a disability," because they did not wait for the School Board to evaluate ■■■ for eligibility before they unilaterally placed ■■■ in a private facility. Thus, 20 U.S.C. Section 1412(a)(10)(C) is simply inapplicable to the situation presented by this case.

124. Even if it were assumed that ■■■ is eligible for ESE services, ■■■ parents would still be ineligible for reimbursement because they failed to give the School Board notice of their intent to make a unilateral private placement at public expense. See 20 U.S.C. § 1412(a)(10)(C)(iii). See also Ms. M. v. Portland School Committee, 360 F.3d 267 (1st Cir. 2004); Berger v. Medina City School District, 348 F.3d 513, 523-526 (6th Cir. 2003)(school board's failure to comply with technical requirements of IDEA do not relieve parents of notice requirement of their intent to withdraw child from public school).

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, therefore,

ORDERED that the Petition of █████ is dismissed.

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

S

LAWRENCE P. STEVENSON
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 28th day of December, 2005.

ENDNOTES

1/ █████ has kept her maiden name, hence the different initials for █████ and █████. As detailed below, █████'s parents are married and the family is intact and living together.

2/ "Section 504" is the common term for the nondiscrimination statute codified at 29 U.S.C. § 794(a), which provides, in relevant part:

No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall,

solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. . . .

3/ [REDACTED] explained that [REDACTED] had several times in the past called 911 to complain that [REDACTED] parents were "abusing" [REDACTED] when they attempted to discipline [REDACTED]. [REDACTED] believed that [REDACTED] was about to make another such call, and, therefore, he phoned 911 to preempt [REDACTED].

4/ The record indicates a long history of conflict between [REDACTED] and [REDACTED]. James Carey, a psychologist at [REDACTED], reported that [REDACTED] reported, "It was good when I was younger. But, then [REDACTED] grew up and things got bad. [REDACTED] became a stupid b----. I hate [REDACTED]." [Elision in original]

5/ The term "[REDACTED]" was misspelled as "[REDACTED]" throughout the document. For ease of reading, it has been corrected in the quotation.

6/ This is a reference to [REDACTED] Academy in Delaware.

7/ The record is unclear as to the date when [REDACTED] finally moved to Florida from Washington and commenced work as a teacher for the School Board. [REDACTED] was still teaching in the Brevard County school system at the time of the hearing.

8/ Dr. Roberts was questioned as to whether there was a contradiction between his finding that [REDACTED] showed no psychiatric diagnosis and his advice that she continue taking [REDACTED] medications. Dr. Roberts replied that [REDACTED] seemed to be doing well on [REDACTED] current combination of medications, and that [REDACTED] symptoms could have merely been in remission. He stated that he would never "yank" a patient off of medications simply because [REDACTED] symptoms were in remission. Only after the patient had functioned well and "almost seamlessly integrated" into society would he consider weaning the patient off each medication, one at a time.

COPIES FURNISHED:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

This decision is final unless an adversely affected party:

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