

Hernando County School District  
No. 04-1916E  
Initiated by: Parent  
Hearing Officer: P. Michael Ruff  
Date of Final Order: December 28, 2004

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

██████████, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 04-1916E  
 )  
HERNANDO COUNTY SCHOOL BOARD, )  
 )  
Respondent. )  
\_\_\_\_\_ )

FINAL ORDER

Pursuant to notice this cause came on for Final Hearing before P. Michael Ruff, duly-designated Administrative Law Judge in Brooksville, Florida, on September 2, 2004. The appearances were as follows:

APPEARANCES

For Petitioner:

██████████  
██████████  
██████████

For Respondent:

Kathleen A. Sullivan, Esquire  
The Weatherly Law Firm  
Monarch Plaza Suite 450  
3414 Peachtree Road, Northeast  
Atlanta, Georgia 30326

STATEMENT OF THE ISSUES

The Petitioner has requested a due process proceeding in effort to establish that ██████████ should be sent to a 45-day inpatient evaluation and/or treatment program; that ██████████ be sent

to "an environment that has the experience and the know how to deal with [REDACTED] special needs."

By separate Petition or hearing request dated August 18, 2004,, the Respondent Hernando County School System (School System) raised the issue of whether the School System had offered a free appropriate education (FAPE) to [REDACTED] during the 2003-2004 school year and whether it continues to offer [REDACTED] a FAPE such that no inpatient evaluation, or treatment is necessary. These issues were consolidated for purposes of the hearing.

#### PRELIMINARY STATEMENT

[REDACTED] is an [REDACTED]-year-old [REDACTED], who is deaf and has autism. The Petitioner has requested that [REDACTED] be placed in an environment which has the experience and knowledge to deal with [REDACTED] special needs or more specifically that [REDACTED] be given a minimum of a 45-day inpatient evaluation and/or treatment program. The School Board, in turn, by its own Petition raised the issue of whether the educational services provided in the 2003-2004 school year, and the services it continues to offer [REDACTED] are adequate in terms of FAPE, such that no inpatient evaluation or treatment is necessary. The due process hearing request was granted and the issues raised in the Petitioner's request for hearing and that of the school system were consolidated for purpose of hearing them. The 45-day period for rendition of a decision was waived.

The cause came on for hearing as noticed at which time evidence and testimony was presented by both parties. The

Petitioner ██████ presented one witness and no exhibits. The Respondent School System presented six witnesses and 336 exhibits in four bound volumes, all of which were admitted into evidence. Upon concluding the proceeding a transcript thereof was requested and the parties were given the right to submit proposed final orders which were timely submitted and have been considered in the rendition of this Final Order.

FINDINGS OF FACT

1. ██████ is an ██████-year-old ██████, who is deaf and has autism. During the 2003-2004 school year, ██████ was identified and served as eligible for special education based on ██████ diagnosed disabilities.

2. ██████ resides in the School System (District) with ██████ paternal grandparents. ██████ ██████ is active in ██████ life, but currently resides out of state. Accordingly, ██████ grandparents are authorized to make educational decisions for ██████

Evaluations

3. At the beginning of 2003-2004 school year, the School System completed evaluations of ██████ In order to secure comprehensive information, the School System coordinated an assessment including psychological evaluations by Dr. ██████ ██████ (focusing on the possible diagnosis of autism) and Dr. ██████ (focusing on the implications of ██████ deafness); an assistive technology and communication evaluation by Dr. ██████ an occupational therapy evaluation by ██████; and an educational assessment by ██████.

4. Dr. [REDACTED] is a psychologist in private practice with particular expertise in working with deaf children and children with autism. Specifically, Dr. [REDACTED] has done extensive research regarding the development of social skills in deaf children. Dr. [REDACTED] has conducted approximately 5,000 evaluations in [REDACTED] career with more than half of those of deaf persons. A proportionate share (compared to the incidence of autism in the general population) of more than 100 of those evaluations has been of persons with the dual diagnosis of autism and deafness. In addition, Dr. [REDACTED] has participated in more than a thousand IEP meetings and has significant expertise in educational programming for students with deafness, autism and other multi-handicapping conditions. Dr. [REDACTED] was admitted without objection as an expert in the diagnosis, assessment and treatment of, including educational programming for deaf children, including deaf children with autism.

5. Dr. [REDACTED] is a clinical psychologist and an emeritus Professor of Medical Psychology in the Department of Psychiatry and Biobehavioral Science at the University of California at Los Angeles School of Medicine and former Director of Clinical Services for Children with Autism at the University of California at Los Angeles. [REDACTED] was a faculty member at UCLA for 30 years before [REDACTED] retirement in 2003. As a member of the faculty, Dr. [REDACTED] ran the outpatient autism evaluation clinic, coordinated services for children with autism, and ran an autism training clinic for postgraduate psychology and psychiatry trainees.

6. Dr. [REDACTED] has researched, published and lectured extensively on autism spectrum disorders. At the request of Autism Society of America in the 1970s, Dr. [REDACTED] formulated a definition for the diagnosis of autism contained in the Diagnostic and Statistical Manual of the American Psychiatric Association. Dr. [REDACTED] long career in research resulted more recently in her appointment as the principal investigator on a grant from the National Institute of Mental Health in which [REDACTED] will be conducting the assessment portion of research directed at creating centers of excellence for the treatment of children with autism.

7. With respect to practical experience in assessing individuals with autism, Dr. [REDACTED] has participated in more than ten thousand evaluations over her thirty-year career. In addition, Dr. Freeman regularly participates in IEP meetings to discuss student eligibility and appropriate goals, objectives and placements for children with autism. Dr. [REDACTED] was recognized without objection as an expert in the diagnosis, assessment and treatment, including educational programming and interventions, for children with autism.

8. [REDACTED] is an educational diagnostician with particular expertise in assessing children with severe and multiple disabilities, including deaf-blindness, autism, severe orthopedic impairment and visual impairments. [REDACTED] has extensive educational training, including graduate work at Vanderbilt University Peabody Educational College and at Georgetown University. [REDACTED] has participated in the

development of several assessment instruments for children with multiple disabilities and has published extensively in this area. In addition, [REDACTED] has clinical experience in assessing children with multiple disabilities, participating in at least a thousand evaluations. [REDACTED] was accepted without objection as an expert in the educational assessment, diagnosis of and educational programming for children with multiple disabilities, including specifically autism and deafness.

9. Each of the School System's expert witnesses had assessed [REDACTED] reviewed all of [REDACTED] educational records, and had an opportunity to observe [REDACTED] at home and in the school setting.

10. The purpose of assessment for a child with autism is to look at the child's strengths, weaknesses, and behaviors in different environments. In the educational context, the information is used to determine if the child has special education needs and how and in what kind of placement those needs could be met. Because children with autism behave differently in different environments, the standards of professional practice require evaluators to include information from multiple sources, multiple observations, multiple measurers and multiple times.

11. The assessment process of [REDACTED] was affected by [REDACTED] additional diagnosis of deafness. First, in order to evaluate [REDACTED] the evaluators had to assess [REDACTED] intact capabilities to ensure that the testing would yield a reliable response and then communicate effectively in [REDACTED] chosen mode of communication. Second, as very few tests are standardized for the deaf

population, the evaluators were required to use professionally accepted modifications to secure reliable results. With [REDACTED] some testing instruments were modified to allow use of multi-modal communication, e.g. sign language, gestures, modeling and other methods, to communicate the demands of the test and give [REDACTED] an opportunity to demonstrate [REDACTED] abilities. Also, [REDACTED] was allowed frequent reinforcers and breaks. All of the modifications made in [REDACTED] evaluations were consistent with the standard of practice in working with deaf and multi-handicapped children.

12. In completing the assessments, [REDACTED] [REDACTED] [REDACTED] and [REDACTED] worked cooperatively. As [REDACTED] is fluent in sign language, he facilitated the administration of some of the testing instruments. [REDACTED] is also able to communicate in sign language. [REDACTED] role in the assessment process was to facilitate administration of the testing instruments and to complete cognitive and attention testing for use in considering eligibility and programming issues. [REDACTED] directly administered the Wechsler Intelligence Scale for Children-III (WISC-III) and the Test of Variables of Attention-Revised (TOVA-R). [REDACTED] role in the assessment process was primarily to look at whether the diagnosis of autism was appropriate for [REDACTED] [REDACTED] participated in the cognitive testing with [REDACTED] observed the testing of the other evaluators, and completed the Vineland Adaptive Behavior Scale with [REDACTED] [REDACTED] and [REDACTED] [REDACTED] evaluation focused on discovering the strategies and conditions that will support

■■■■■ ability to learn. ■■■■■ directly administered the Hiskey-Nebraska Test of Learning Aptitude.

13. Consistent with the standards of professional practice for assessment, the School System's evaluations encompassed significant amounts of information from multiple sources. As part of the assessment process, the evaluators met with ■■■■■ and ■■■■■. They also conferred with ■■■■■ teachers and reviewed ■■■■■ educational records, including prior testing. The evaluators, with the exception of ■■■■■ also observed ■■■■■ both at school and home.

14. The evaluations yielded diagnoses of deafness and autism.

15. Autism may be understood as a social communication learning disability. Florida recognizes that a student who is autistic is "[o]ne who has a disability reflected in severe disorders of communication, behavior socialization and academic skills, and whose disability was evident in the early stages of childhood." A hallmark of autism is the inconsistency and the cyclical nature of the disorder. This inconsistency can manifest itself in terms of the skills and/or behaviors that a child might demonstrate on a day-to-day basis.

16. A student who is deaf has a hearing impairment that "interferes in processing linguistic information and which adversely affects communication, developmental skills, academic achievement, vocational career skills or social/emotional adjustment." Fl. State Bd. of Educ. R.6A-6.03013.

IEP Process



17. In August 2004, the School System convened an IEP meeting that lasted two consecutive days to develop a program for ██████ for the 2003-2004 school year. The School System ensured the participation of between nine and eleven staff members and independent consultants for approximately 18 to 20 hours of meeting time. Furthermore, the family had the assistance of an attorney and an educational consultant in deaf education and ██████ of the National Deaf Academy.

18. In October, the School System convened another IEP meeting to finalize ██████ new IEP. ██████ ██████ and ██████ participated in person and their attorney participated by telephone. Between the August and October meetings, Ms. ██████ ██████ the speech language pathologist, ██████ ██████ the deaf education teacher, and ██████ met every other week to ensure that ██████ program was running smoothly, and to complete proposals for the new IEP--proposals that were sent home to the family to review in preparation for the October IEP meeting. Prior to completion of a new IEP for ██████ in October, the School System had in place an IEP developed in January 2003. The IEP was appropriate for ██████ and provided sufficient information to allow the teacher to implement it for ██████ until the updated IEP could be prepared based on the new evaluations.

19. During the August and October meetings the IEP team reviewed all of the evaluations that had been completed and discussed information available from ██████ family and teachers. The team had sufficient information regarding ██████

and [REDACTED] educational needs in order to program effectively for [REDACTED]. Moreover, the meeting participants --including the family and its representatives -- discussed fully [REDACTED] educational needs and abilities, and had every opportunity to ask questions and express opinions.

20. At the August meeting, the IEP team, including [REDACTED] and [REDACTED], agreed upon [REDACTED] eligibility and statements regarding [REDACTED] present levels of performance. At the conclusion of the October meeting, the team had agreed upon an IEP and placement for [REDACTED] [REDACTED] [REDACTED] and [REDACTED], with the assistance and advice of their counsel, signed, indicating their agreement to the IEP.

21. In order to ensure that [REDACTED] IEP was appropriate for [REDACTED] and continued to meet [REDACTED] needs, the School System convened an additional six IEP meetings during the 2003-2004 school year to review and revise as necessary [REDACTED] educational programming. In February 2004, the IEP team, including both [REDACTED] [REDACTED] and [REDACTED], agreed to change the delivery model of [REDACTED] occupational therapy ("OT") from direct to consult services because [REDACTED] had mastered [REDACTED] goals and objectives. In April, the IEP team agreed that [REDACTED] would be offered extended school year services, including direct instruction in the classroom, speech language therapy, and OT.

22. At the May 20, 2004, IEP meeting, the family reported that [REDACTED] private psychiatrist had recommended an inpatient evaluation to stabilize [REDACTED] medications. The School System reported on good progress that [REDACTED] was making at school and

understood the family to be informing the school about medical treatment rather than requesting any change in services. Subsequently, █████ spoke with both █████ █████ and █████ and learned that they were requesting that the School System fund an inpatient evaluation. Accordingly, the School System noticed an additional IEP team meeting to consider the family request.

23. At the May 25, 2004, IEP meeting, the School System again reported on █████ progress. In response to the family's expressed desire for additional information about █████ academic performance, the School System offered to complete additional evaluation and requested the family consent. The family declined to sign their consent to the evaluation request. The IEP team determined that an inpatient evaluation was not necessary for █████ to make education progress.

24. The School System properly noticed each and every IEP meeting during the 2003-2004 school year. Each and every IEP meeting was constituted properly with all of the necessary participants. In addition, the School System ensured that the █████ or █████ participated in every meeting.

25. At all times during the 2003-2004 school year, the IEP team had sufficient information regarding █████ and █████ educational needs in order to program effectively for █████.

26. As a part of these proceedings, █████ communicated █████ refusal to consent to the evaluations to the School System's counsel. Subsequently, the School System secured the evaluations of █████ with the cooperation of the family pursuant to the Administrative Law Judge's Order. Ms. █████ and Dr.

█████ completed the evaluations in August 2004 and presented their findings as part of this proceeding.

27. In response to the family's expressed desire to place █████ in an inpatient facility, the School System did make the family aware of the McKay Scholarship and Medicaid Waiver. The McKay Scholarship is a state program that allows families of children with special needs to take their state funding to private schools. The Medicaid Waiver program is a State program that allows families of persons with developmental disabilities to receive additional services including behavior specialist assistance in the home and respite care. Neither of these programs supplants the IEP process, but rather are alternative State programs that parents may access to secure services outside of the public school system.

28. Though █████ is deaf, █████ primary educational needs arise from █████ autism. Deafness obstructs a child's ability to pick up information auditorially and impacts the child's acquisition of language and communication skills. Autism obstructs a child's ability to understand how language works. Thus, deaf children with autism will not acquire language and signing skills by modeling other children or with simple exposure to sign. Accordingly, when developing educational interventions for a child with a dual diagnosis of autism and deafness, autism must be considered the primary diagnosis and the interventions must be focused on addressing the impact of the autism on the child's overall abilities to learn and function.

29. In response to a request from the U.S. Department of Education's Office of Special Education Program (OSEP), the National Academy of Sciences evaluated and integrated existing scientific information in order to provide recommendations regarding what constitutes appropriate programs for children with autism and published its results in "Educating Children with Autism."

30. As presented by the National Academy, the relevant characteristics of effective intervention include: use of a set of individualized, specialized objectives and plans that are systematically implemented; active engagement in intensive instructional programming for a minimum of an equivalent of a full school day, five days, at least 25 hours a week, with full year programming varied according to the child's age and developmental level. They also include planned teaching opportunities, including sufficient amounts of adult attention in one-on-one and small group instruction to meet individualized goals; family improvement; and a mechanism for on-going program evaluation. (Educating Children with Autism, pp. 220-221) Also, as consistent with specified educational goals such as development of social skills and generalization of learned skills, students should "receive specialized instruction in settings in which ongoing interactions occur with typically developing children." Id.

31. Further, effective programming should prioritize six types of educational interventions. Id. First, functional spontaneous communication should be the primary focus and should

be vigorously encouraged across settings. Second, social instruction directed at specified age-appropriate goals should be delivered using specific activities and interventions throughout the day across school settings. Third, children must be taught play/leisure skills, particularly skills that will allow them to play with peers, as well as instruction on the appropriate use of toys and other materials. Fourth, as students with autism have difficulty "generalizing" or exhibiting learned skills in different settings or with different people or materials, instruction on goals for cognitive development should be taught in the natural learning environment, so that the child may learn the skills where they are expected to demonstrate those skills. Fifth, behavioral interventions should be developed through functional assessment and should incorporate positive approaches and corrective strategies, including, for example, reinforcement of alternative behaviors. Sixth, children should be taught functional academic skills as appropriate to their individual needs.

32. The evaluations conducted in August 2003 showed that [REDACTED] had a wide scatter of skill development, as is typical for a child with autism. [REDACTED] had significant disruptions in language, including understanding the function of language. In August 2003, [REDACTED] did not demonstrate use of any formal signs and evidenced little ability to use language to convey [REDACTED] needs, wants, and feelings or to make social connections. In order to communicate what [REDACTED] wanted, [REDACTED] usually required significant coaxing to use pictures and then usually would only

respond to a direct request. [REDACTED] was not able to engage in any conversation. Accordingly, [REDACTED] primary educational need was to improve functional language.

33. [REDACTED] also evidenced significant problems with attention. [REDACTED] was not able to stay on task for longer than two to five minutes and then only with significant prompting. [REDACTED] was not able to manage [REDACTED] frustration or delay gratification. As a result, [REDACTED] needed systematic positive behavioral supports to elicit desired behaviors.

34. Finally, [REDACTED] generally did not interact with [REDACTED] peers. [REDACTED] did not demonstrate the social skills or interest in developing a relationship with [REDACTED] peers and participating as a member of the class.

35. The IEP prepared for [REDACTED] in August and October 2003 properly identified [REDACTED] educational needs based on the evaluation results and input of the IEP team. Based on [REDACTED] identified needs, [REDACTED] IEP included goals and objectives in the areas of communication, independent functioning, curriculum, and social/emotional skills. [REDACTED] IEP satisfied the National Academy's identified characteristic of effective intervention in its inclusion of a set of individualized, special objectives.

36. The IEP provides for [REDACTED] placement in a self-contained exceptional student education classroom in order to receive specialized instruction in academics and assistance with social/emotional and communication skills development. In addition, the IEP provides [REDACTED] with speech language therapy services twice a week for 30 minutes each time and OT services

twice a month for 30 minutes each time. In February, the IEP team changed the delivery of occupational therapy services to consultation after ██████ mastered all of ██████ goals and objectives in this area. Ultimately, the family made a unilateral decision to give ██████ "a break through the summer because ██████ didn't have to be there." ██████ IEP also offered ██████ ESY services, including direct instruction in the classroom, speech language therapy, and OT. ██████ IEP satisfied the identified characteristic of effective intervention in its provision for ██████ full time active engagement in intensive instructional programming for a minimum of an equivalent of a full school day, five days, at least 25 hours a week, with full year programming.

37. In the 2003-2004 school year, ██████ was served in a self-contained classroom taught by ██████ ██████ class had a total of ten students and was staffed by four adults. ██████ placement for the 2004-2005 school year remains in ██████ classroom. ██████ receives additional adult assistance in communication, social/economic needs, academics and independent functioning through a paraprofessional who is fluent in sign. The small student-teacher ratio and additional assistance from the paraprofessional ensures that ██████ receives sufficient direct instruction, both in one-to-one and small group settings.

38. ██████ IEP also provides opportunities for ██████ to socialize, communicate and interact with typical peers during recess and a 45 minutes special class of either music, art, PE,



or media. [REDACTED] is supported in [REDACTED] regular education participation by a signing paraprofessional. [REDACTED] IEP satisfies the identified characteristic of effective intervention in that it is implemented to allow [REDACTED] ongoing interactions with typically developing children.

39. [REDACTED] holds current certification as an exceptional student education teacher in the State of Florida and has more than 12 years of special education teaching experience. [REDACTED] has had extensive training to address the needs of students with disabilities, including children like [REDACTED]. In addition to her formal teaching training, she has participated in numerous in-service training in behavior modification, learning strategies, and educating children with autism. Id. She receives annual training and certification in crisis prevention intervention that focuses on de-escalating students in crisis and using appropriate physical restraint as a last resort.

40. In addition, [REDACTED] received extensive additional supports as provided in [REDACTED] IEP. Those supports included the services of at least five different providers offering on-site technical assistance in the areas of assistive technology, deaf education, social skills, teaching children with autism and sign language.

41. In the area of assistive technology, Ms. [REDACTED] received assistance from [REDACTED] who visited the classroom on a weekly basis during the 2003-2004 school and continuing this school year to assist in making materials and training the classroom staff on various computer programs. In the area of

social skills, ██████ received assistance from Dr. Eric Rosen who visited the classroom on a bi-weekly basis during the 2003-2004 school, and continuing this year, to provide direct instruction to the class and consultation to ██████ on communication and social skills. In the area of deaf education, Michelle Shefflo initially consulted once per week, and then as needed, to address instruction of learning readiness and vocabulary. In the area of educating children with autism. Ms. ██████ participated in a mentoring program offered by the Center for Autism and Related Disabilities ("CARD"). The CARD consultant visited the classroom five times during the year to present lessons and consult with ██████ and the class about issues related to autism.

42. In addition to the full-time paraprofessional in the class who is fluent in sign, a school system consultant visited the classroom at least once per week for thirty minutes to instruct the classroom staff and children in communication and sign language skills. The additional supports, as implemented, ensure that ██████ already a highly skilled teacher, had sufficient training and instruction to equip her to implement ██████ IEP.

43. Prior to receiving ██████ into her classroom, Ms. ██████ reviewed ██████ educational records, including ██████ IEP, and conferred with ██████ previous teacher and paraprofessional. She also reviewed all of the assessment reports prepared in August 2003 and met with the evaluators and other educators both in preparation for and as part of IEP

meetings regarding [REDACTED]. From the first day that [REDACTED] was in her class and continuing through the present time, Ms. Panopoulos had extensive information available about [REDACTED] and was well-prepared to understand [REDACTED] educational needs and implement [REDACTED] IEP.

44. [REDACTED] IEP reflects appropriate prioritization of education interventions. (See Educating Children with Autism, pp. 221-222) As recommended by experts, the primary focus of [REDACTED] education has been the development of functional communication. Communication skills are imbedded throughout [REDACTED] school experience. [REDACTED] teacher and service providers communicate effectively with [REDACTED] using a multimodal program that combines different communication systems. As recommended for [REDACTED], [REDACTED] instruction focuses on using this multimodal program to help [REDACTED] acquire functional communication skills. [REDACTED] classroom teacher, speech language pathologist, and other educators instruct [REDACTED] directly on signs and the use of communication systems and also teach signs to the other children in the classroom so that they can communicate with [REDACTED]. During the past school year, [REDACTED] educators implemented [REDACTED] goals and objectives according to the hierarchy of creating language for an autistic, deaf child and began working to move [REDACTED] from using pictures to communicating with sign.

45. In terms of social skills, the School System implemented [REDACTED] IEP using direct instruction delivered both by Ms. [REDACTED] and by [REDACTED]. They provided instruction to [REDACTED] in turn-taking, game playing and offering compliments.

They worked to help ██████ communicate ██████ feelings and understand the feelings of others. As is appropriate, ██████ program prioritized instruction on these social communication skills and implemented the instruction in the classroom-the natural environment in which ██████ is expected to begin demonstrating the skills. This instruction also included direct instruction in learning the skills necessary to participate in leisure and play activities with peers.

46. With respect to cognitive and functional academic skills, ██████ receives direct instruction in academics and in the areas identified in ██████ IEP. In addition to ██████ specific goals and objectives, ██████ was instructed according to a developmentally appropriate curriculum. ██████ educational interventions in this area focused on improving ██████ attention span and learning to work independently. In addition, ██████ worked on developmentally appropriate reading and math skills.

47. With respect to behaviors, ██████ receives direct instruction on self-regulation such as introducing a sign that signaled being calm and using that sign when ██████ was calm. The next step will be to use the sign with ██████ when ██████ is escalating to help ██████ apply the skill to avoid a behavior disruption. In addition, ██████ participated in the school-wide and classroom programs designed to elicit positive behavior. In the school-wide program, ██████ received, about once a month, a slip noting a positive behavior that ██████ had demonstrated and then was able to get an award. In the classroom program, ██████ participated in a token economy and was able to earn ears money

for positive behaviors, such as staying on task, and then use the money to buy certain rewards.

48. To enhance [REDACTED] ability to effectively address [REDACTED] behavioral needs in a functional way, the School system utilized the services of an Independent Certified Behavior Analyst, [REDACTED]. In addition to educational training and certification in the State of Florida, Ms. [REDACTED] has extensive practical experience working directly with individuals with behavioral challenges, including children with autism.

49. Beginning in November 2003, Ms. [REDACTED] began working with the School System to conduct a functional behavioral assessment ("FBA") of [REDACTED] and, if necessary, to develop strategies to address [REDACTED] behaviors. In order to gather the information necessary to the FBA, [REDACTED] observed [REDACTED] in the classroom and at home, reviewed [REDACTED] educational records, including data, and watched a videotape created by [REDACTED] teacher of a behavioral incident at school. In addition, [REDACTED] interviewed [REDACTED] caretakers and [REDACTED] teachers.

50. When [REDACTED] began her work with [REDACTED] [REDACTED] was not exhibiting any high frequency of high intensity behaviors in the school. The primary behaviors that [REDACTED] did exhibit were occasional temper tantrums and incidents of physical aggression. [REDACTED] target behaviors, i.e. behaviors of concern, functioned to allow [REDACTED] to escape demand situations and get preferred activities and items.

51. As a consultant, [REDACTED] visited the classroom at least three times per month. She would confer with [REDACTED] and [REDACTED]

the paraprofessional, to exchange information and get feedback regarding [REDACTED] behaviors and the success of the strategies in place for [REDACTED]. Together, [REDACTED] and the classroom staff developed and refined strategies. (Id.) Both [REDACTED] and [REDACTED] were adept at implementing the behavioral strategies for [REDACTED] and worked actively with [REDACTED].

52. Working with [REDACTED] the School system developed several strategies to put in place to address [REDACTED] behavior. To the extent possible, the behavior plan for [REDACTED] focused on using reinforcers to increase positive behaviors. Generally, a reinforcer is an item or activity for which a person will change [REDACTED] behavior.

53. First, [REDACTED] worked with the classroom teacher and aide to focus on communication by developing pictures, schedules, communication tools and reinforcement schedules. A reinforcement schedule operates by providing the student a visual schedule that shows what [REDACTED] needs to do in order to receive [REDACTED] desired object or activity. The reinforcement schedule is used to teach a student that [REDACTED] can access the things that [REDACTED] wants through appropriate, rather than inappropriate, behaviors.

54. After appropriately identifying [REDACTED] reinforcers as movies, sweet tarts, and breaks from tasks, [REDACTED] classroom teacher and paraprofessional prepared materials with [REDACTED] guidance. The School System used both scheduled and intermittent reinforcers in order to increase [REDACTED] time on task and other desired behaviors.

55. In addition to the strategies put in place to increase ██████ positive behaviors, ██████ worked with the classroom teacher and paraprofessional to put in place strategies to address the target behaviors. Initially, the teacher would adjust instructional demands to optimize ██████ opportunity for success. As necessary, ██████ was given a verbal reprimand and re-directed back to task. If ██████ refused to work, ██████ might be denied access to a reinforcer.

56. In December and January, ██████ responded well to the strategies that the team had put in place for ██████. Beginning in February and through the spring, ██████ experienced some periods where ██████ inappropriate behaviors occurred more frequently and became more intense. ██████ negative behavior peaked in April. In charting the behaviors and reviewing the information provided by the family, it is apparent that ██████ behavioral difficulties occurred when ██████ home or school environments were disrupted--on one occasion by ██████ teacher's absence and on several others by ██████ ██████'s necessary absence from home. During the periods when ██████ exhibited increased behaviors, the School System responded immediately and was able to develop strategies to address ██████ behaviors and employ effective crisis intervention for ██████ safety and the safety of others.

57. Periods of increased behaviors are part of the nature of autism. Moreover, as will be discussed in ore detail infra, ██████ evidenced significant progress in terms of behaviors over the course of the school year. Despite the cyclical problem

behaviors that arose, the placement was always appropriate for [REDACTED] "Even when [REDACTED] was having the behavior problems, [REDACTED] was still making progress, it was just at a slower pace."

58. For the 2004-2005 school year, the School System continues to have appropriate behavioral interventions and strategies in place for [REDACTED]. Those strategies and interventions are reasonably calculated to enable [REDACTED] to continue to make progress.

59. The IEP prepared for [REDACTED] in August and October and as revised through the 2003-2004 school year appropriately incorporates the evaluators information and recommendations. The IEP was reasonably calculated to allow [REDACTED] to make educational progress. Moreover, the IEP for the 2004-2005 school year continues to be appropriate for [REDACTED].

60. During the 2003-2004 school year and continuing, the School System has offered [REDACTED] an appropriate placement in which [REDACTED] IEP has been implemented. The classroom environment met and continues to meet [REDACTED] unique educational needs. As recommended by the experts and in accordance with characteristics of effective programming for children with autism, [REDACTED] teacher provided a highly structured, behaviorally-oriented, consistent educational environment for [REDACTED]. [REDACTED] found that [REDACTED] teacher is "very good at doing the reinforcement schedules and keeping track of those kinds of schedules. . . [REDACTED]e's been allowed to be very much a part of this classroom. And I think that's significant with children with [REDACTED] disabilities. . . [T]hey've done a lot to integrate [REDACTED] into



making friends and interacting with the others in that classroom, which is important." Finally, the other children in [REDACTED] classroom are appropriate peer models for [REDACTED] and [REDACTED] functions as an integrated member of [REDACTED] class.

#### Progress

61. [REDACTED] found that [REDACTED] had made "impressive" progress under [REDACTED] current IEP. [REDACTED] had made progress on [REDACTED] IEP goals and objectives. [REDACTED] mastered 13 of 20 benchmarks. [REDACTED] is making progress on an additional four, with three remaining to be reached during the current school year.

62. In terms of communication, [REDACTED] has made considerable progress. During the last school year, [REDACTED] moved from using pictures to increasing use of sign. [REDACTED] has improved [REDACTED] sign vocabulary. [REDACTED] has made powerful gains in terms of the variety and function of [REDACTED] communicative intent. Rather than simply communicating a need or desire, [REDACTED] is communicating at a school level with peers as well as adults and is starting to communicate more abstract concerns such as feelings and emotions.

63. In terms of social skills, using an established model resembling a "bulls-eye" for understanding the development of social skills and social competence for deaf children, [REDACTED] has moved from the inner circle--reflecting extremely basic function--to exhibiting development on the outer circle in terms of learning to be part of [REDACTED] peer group and demonstrating an understanding of social relationships. [REDACTED] also demonstrates foundational social skills in evidencing a sense of humor and awareness of others. [REDACTED] has developed significant affect--

showing tenderness towards people and compassion towards [REDACTED] peers. By the end of the year, [REDACTED] was able to identify the expressions for happy or sad from pictures or other peers' facial expressions. In addition, [REDACTED] has improved in [REDACTED] social attachment and connection with peers and adults.

64. At the beginning of the 2002-2003 school year [REDACTED] did not interact with [REDACTED] peers at all, even to respond if they initiated communication with [REDACTED]. At this time, [REDACTED] has learned to respond when a peer initiates communication, [REDACTED] will ask a peer for help, and [REDACTED] will interact with peers in unstructured activities such as on the playground. [REDACTED] is also much more involved with the classroom as a group and will sit within the group. [REDACTED] will sit alongside a peer at the computer for several minutes playing a game and watching them and interacting with them, which [REDACTED] did not do at the beginning of the 2003-2004 school year. [REDACTED] will communicate using sign with a peer in order to perform basic functions in the classroom. One of the important manifestations of [REDACTED] social growth is evidenced by [REDACTED] approval-seeking, where [REDACTED] actually looks for success experience.

65. Further, [REDACTED] progress in the area of functional skills over the last school year had been "impressive." [REDACTED] is learning self-sufficiency in terms of selecting and managing [REDACTED] own food and brushing [REDACTED] teeth. Also, [REDACTED] demonstrates increased readiness skills in [REDACTED] ability to approach, attend and complete tasks. Moreover, [REDACTED] demonstrates intrinsic motivation and is able to sustain [REDACTED]

attention and repeat tasks until [REDACTED] is successful. Since the beginning of the 2003-2004 school year, [REDACTED] has extended [REDACTED] time on task from two to five minutes with lots of prompting to working for up to an hour. As [REDACTED] educators describe, "it]s remarkable to me how long [REDACTED]'s able to stay on tasks. And [REDACTED]'s actually looking for tasks to do, appropriate academic-based tasks."

66. [REDACTED] has also made overall academic gains, moving from simple math facts to borrowing and carrying, demonstrating reading skills in identifying signs and symbols and connecting them to graphic words and making sign/word associations.

67. [REDACTED] has also made meaningful progress with respect to behaviors. [REDACTED] is less dependent on tangible and edible reinforcers, instead working to be successful. [REDACTED] is able to wait for preferred activities without evidencing difficult behaviors by using self-regulation and the picture and reinforcement schedule.

68. [REDACTED] progress has been reported to the family regularly. At each IEP meeting, [REDACTED] teacher Ms. [REDACTED] reported progress. Every four and half weeks, Ms. [REDACTED] worked with the other providers to prepare progress reports regarding [REDACTED] progress on [REDACTED] IEP goals and objectives. She also sent daily notes home to the family.

69. In addition to reporting progress, Ms. [REDACTED] sent home resources in communication and strategies that they were using at school. In addition, both [REDACTED] the special education director, and [REDACTED] [REDACTED] special education teacher,

communicated frequently with the family between IEP meetings. The ongoing communications with the family, as well as numerous IEP meetings and input of consultants, ensured that [REDACTED] family was involved with [REDACTED] education and that [REDACTED] program was subject to ongoing monitoring, thereby satisfying the remaining two criteria of effective programming for children with autism.

#### Inpatient Treatment/Evaluation

70. [REDACTED] family has requested that [REDACTED] be removed from [REDACTED] home and placed in an inpatient treatment program for evaluation and/or treatment. The family has identified the [REDACTED] as one institution that would provide the inpatient evaluation/treatment that they have requested.

71. Beyond the family's request, the only support for this recommendation comes from a May 2004 recommendation by [REDACTED] private psychiatrist, [REDACTED] [REDACTED] has treated fewer than 10 children with autism in her career and [REDACTED] is her only current patient diagnosed with autism. [REDACTED] is the only patient she has ever treated who is both deaf and autistic. Dr. [REDACTED] has no familiarity with the School System's educational programming for [REDACTED]. She has never visited the school, never requested information from [REDACTED] teachers or educators, and never spoken with anyone at the school about [REDACTED] educational program. Her contact with the school has been limited to responding to the school's request for information or receiving one phone mail message about a behavioral episode. Dr. [REDACTED] has conducted no

testing of ██████ nor reviewed ██████ medical records. The only information source that she has accessed about ██████ is ██████ ██████ and, with significantly less frequency, ██████ ██████. Primarily, her treatment of ██████ consists of 15-minute appointments for medication management. As a result, her recommendation is not consistent with what Dr. ██████ called "the fundamental problem in autism and what the effect of that [inpatient evaluation/treatment] would be on a child like ██████. Dr. ██████ recommendation cannot be credited.

72. The ██████ operates according to a medical model and does not allow for individualized behavioral interventions, such as prohibiting the use of a time-out-room as has been recommended and implemented for ██████ by the School System. Accordingly, the ██████ program would not be beneficial for ██████

73. Moreover, inpatient hospitalization programs have been found not to be appropriate generally for children with autism. Short-term hospitalization only adds another source of instability for a child and so is contraindicated for treatment of children with autism. In terms of evaluation, the important information for education programming involves how the child functions in ██████ natural environment so any information gained in an inpatient setting is not going to be relevant to ██████ education. It is only appropriate to confine a child to inpatient treatment if that child is a danger to ██████ or others and cannot be brought under control in the natural environment.

74. Importantly, ██████ is very attached to ██████ family. With ██████ disabilities, ██████ does not yet have the language to

understand what a separation from [REDACTED] primary caregiver might mean. As a result, Dr. [REDACTED] explained,

Without the tools to be able to understand it and understand why is [REDACTED] art from [REDACTED] loving family. . . . could be psychologically traumatic for [REDACTED]. . . . Here you have a child who doesn't have the language, [REDACTED] self-regulatory skills are improving but not sufficient enough to handle what that might mean, and so I think it would be very damaging. We could see tremendous regression. . . .

75. None of the experts or School System personnel has suggested that an inpatient evaluation of [REDACTED] is necessary for [REDACTED] to receive FAPE. The IEP team determined, and the experts agree, that an inpatient evaluation/treatment was not necessary any time last year and currently is not necessary to determine [REDACTED] eligibility or [REDACTED] educational needs or to offer [REDACTED] FAPE. Even the family agrees that [REDACTED] has made progress in school under [REDACTED] IEP. Thus, no evidence was presented that an inpatient evaluation/treatment is necessary or appropriate for [REDACTED].

#### CONCLUSIONS OF LAW

76. The Division of Administrative Hearings has jurisdiction of the subject matter of and the parties to this proceeding, in accordance with Subsection 230.23(4)(m)5., Florida Statutes (2004) and Florida Administrative Code Rule 6A-6.03311(5)(e).

77. It is well-settled in the Eleventh Circuit (and others) that where parents are challenging an agreed-upon and implemented IEP, the parents bear the burden of proving that the IEP is

inappropriate. The IDEA "creates a presumption in favor of the education placement established by a child's IEP, and the party attacking its terms should bear the burden of showing why the education setting established by the IEP is not appropriate." Devine v. Indian River County School Board, 249 F.3d 1289, 1291-92 (11th Cir. 2001), quoting Christopher M. V. Corpus Christi Indep. Sch. Dist., 933 F.3d 1285, 1290-91 (5th Cir. 1991) (internal punctuation omitted); see also Doe v. Tullahoma City Schs., 9 F.3d 455, 458 (6th Cir. 1993); Burger v. Murray County Sch. Dist., 612 F. Supp. 434 (N.D. Ga 1984) (where a child is learning in what has been deemed to be an appropriate setting, the party advocating the new placement "should bear the burden of proving its propriety"). At hearing, the School System assumed the burden of going forward in order to facilitate the conduct of the hearing. Nonetheless, the burden of proof remains on [REDACTED] to demonstrate that the School System did not offer [REDACTED] FAPE in 2003-2004 school year and that the IEP that has been implemented for [REDACTED] with the express consent and agreement of [REDACTED] [REDACTED] and [REDACTED] is no longer appropriate.

The IDEA was enacted "to ensure that all children with disabilities have available to them a free appropriate public education. . . . " 20 U.S.C. §1400(d)(1)(A). The "free appropriate public education" ("FAPE") provided by IDEA is defined as special education and related services that: (1) have been provided at public expense, under public supervision and direction, and without charge; (2) meet the standards of the State educational agency; (3) include an appropriate preschool, elementary, or secondary school education in the State involved; and (4) are provided in conformity

with an Individualized Educational Program ("IEP"). 20 U.S.C. § 1401(a)(8).

78. "Special education" is defined as specially designed instruction to meet the unique needs of the student. 20 U.S.C. § 1401(a)(16). Their term "related services" includes transportation and other services that may be required to assist a child to benefit from special education. 20 U.S.C. § 1401(17).

79. In Board of Educ. Of the Hendrick Hudson Central School District v. Rowley, 102 S. Ct. 3034 (1982), the Supreme Court established a standard for determining when a school system has satisfied its obligations to provide FAPE to its students with disabilities. Specifically, the Supreme Court in Rowley established that the appropriateness of an IEP or educational program is to be determined according to the following two-fold standard:

First, has the State complied with the procedures set forth in the Act? And second, is the Individualized Education Program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits?

102 S. Ct. at 3051. If the school district has complied with these two requirements, then it has satisfied its obligations under IDEA and cannot be required to do more. Id.

#### A. Procedural Compliance

80. IDEA sets forth a comprehensive set of procedural safeguards regarding the identification, evaluation and placement of students with disabilities. See generally 20 U.S.C. § 1415. The cornerstone of IDEA's procedural framework is the individual education plan ("IEP"), a document that serves as a blueprint for



a particular child's education for a given school year. See, e.g., Honig v. Doe, 484 U.S. 305, 308-312 (1988) (history and purpose of procedural framework created by IDEA). Under the IDEA, an Individualized Education Plan (IEP) must be developed for every child with a disability who is receiving special education services. 20 U.S.C. § 1414(d); 34 C.F.R. § 300.342. Thus, as established in Rowley the first part of the inquiry here is to determine whether the School System followed the contemplated process for developing ██████████ challenged IEP and whether that document contained the necessary components.

#### 1. Process

81. The purpose of IDEA's procedural safeguards, as set forth initially in Rowley is the "full participation of concerned parties throughout the development of the IEP." Doe 915 F.2d at 661. An IEP is to be developed jointly by the local school district and the parents at a formal meeting for which the parents are to be given adequate notice and opportunity to attend and participate. 20 U.S.C. § 1414(d); 34 C.F.R. § 300.501; Florida Administrative Code Rule 6A-6.03028(7)(a)(1).

82. The School District is required to ensure the participation of specific knowledge persons, known as the IEP team, at each IEP meeting. 20 U.S.C. § 1414(d)(1)(B); 34 C.F.R. § 300.344, 300.345; Florida Administrative Code Rule 6A-6.03028(4). Specifically, the IEP team must include: (1) one or both of the child's parents; (2) at least one general education teacher of the child (if the child is, or may be, participating in the general education environment); (3) at least one of the

child's special education teacher(s) or certified/licensed service provider; (4) at least one representative of the local school system, other than the child's teacher; and (5) an individual who can interpret the instructional implications of evaluation and assessments results.

83. Here, the School System adduced undisputed evidence that it properly noticed and properly constituted every meeting. It far exceeded the basic requirement of how often the team is supposed to meet. The School System complied with all of the procedural requirements in the IEP process.

## 2. IEP Contents

84. The plain language of the statutes requires an IEP to include those annual goals, including short-term objectives, related to meeting the child's education needs resulting from the child's disability and those needs that will "enable the child to be involved in and progress in the general curriculum." 20 U.S.C. § 1414(d)(1)(A)(ii). "The purpose of both is to enable a child's teacher(s), parents, and others involved in developing and implementing the child's IEP, to gauge, at intermediate times during the year, how well the child is progressing toward achievement of the annual goal." 34 C.F.R. Part 300, Appendix A, Question 1.

85. Yet, the plain language of the statute's reference to "general curriculum" establishes that not all of a child's educational program is to be represented in an IEP. Rather, the IEP is to outline only the specialized instruction and needs that a child may have in order to access the remainder of their

educational program as established for all children--the curriculum. See 34 C.F.R. Part 300, Appendix A (1). ("The term 'general curriculum,' as used in these regulations, including this Appendix, refers to curriculum that is used with non-disabled children.")

86. For ██████████ IEP goal and objectives flowed directly from ██████████ areas of need as identified in the present levels of performance and provided ██████████ with the specialized instruction that ██████████ required to gain skills necessary to access the general curriculum and achieve independent function. The remainder of ██████████ educational program, including academic content, comes from the regular curriculum. The un-rebutted testimony of experts and School System personnel established that the goals and objectives were sufficiently comprehensive to address ██████████ areas of need and that they appropriately prioritized ██████████ educational needs. All the evidence shows that the IEP developed for ██████████ satisfied the standards for specificity of its contents.

### 3. Harm

87. Even assuming arguendo that a procedural defect is found, it is well-settled in the Eleventh Circuit that "[i]n evaluating whether a procedural defect has deprived a student of FAPE, the Court must consider the impact of the procedural defect, and not merely the defect per se." Weiss, 141 F.3d at 994 (emphasis added); Doe v. Alabama State Dept. of Education, 915 F.2d at 661-62; see also Devine v. Indian River County Sch. Bd., 249 F.3d 1289 (11th Cir. 2001). In Weiss, though the

parents alleged that the challenged IEP lacked specificity, the Eleventh Circuit ruled that for parents to obtain a remedy for the alleged denial of FAPE, they must show harm to the student as a result of the procedural violation. Weiss 141 F.3d at 996. Likewise, in Doe v. Alabama, the Court rejected the parents' procedural challenges based on the school's failure to provide written notices of IEP meetings because the parents attended each meeting. 915 F.2d at 661-62. In both Weiss and Doe v. Alabama, the Eleventh Circuit unequivocally concluded that alleged procedural deficiencies, absent impact upon parents' participation in the IEP process, do not warrant relief under the IDEA. Id. Here, the un-rebutted evidence establishes that the School System has complied with all procedural requirements. Thus, no evidence of any resultant harm has been presented.

#### B. Substantive Compliance

88. Under the second and substantive prong of Rowley, and IEP must be reasonably calculated to offer a child access to FAPE. 102 S. Ct. at 3051.

89. As part of its obligation to offer FAPE and develop an IEP that is reasonably calculated, the School System is required to ensure that the IEP team has sufficient evaluative information on which to make its decisions. As established, evaluations must be sufficiently comprehensive to determine.

1. Whether the child continues to have a disability;
2. The present levels of performance and educational needs of the child;

3. Whether the child continues to need special education and related services; and

4. Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals written in the IEP and to participate, as appropriate, in the general curriculum.

34 C.F.R. § 300.533(a)(1); Florida Administrative Code Rule 6A-6.0331.

90. Once the need for additional information has been identified and parental consent has been obtained, then the School System has an obligation to ensure that those assessments are completed in accordance with the State and Federal standards.

34 C.F.R. § 300.532. In Florida, the evaluations must be conducted by competent evaluation specialists. Fl. St. Bd. Of Educ. R.6A-6.0331(4)(a). Under Florida law, with respect to a psychological evaluation, specialists include psychologists licensed in the professional's field as evidenced by a valid license to practice such profession in Florida. Id. Clearly, the evidence establishes that all of the School system's evaluators are more than qualified to conduct the evaluations in this matter. The Petitioner raised no question regarding the qualifications of the School System's evaluators.

91. Also, the evaluations must include a variety of assessment tools and strategies to gather relevant functional and developmental information about the child, including information provided by the parent. 34 C.F.R. § 300.532; Florida Administrative Code Rules 6A-6.0331(2)(a)-(f) and 6A-

6.0331(4)(n)(1). In administering standardized tests, the instruments must be validated for the specific purpose for which they are used and must be administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the test. 34 C.F.R. § 300.532; Florida Administrative Code Rule 6A-6.0331(4)(a)(1). Finally, the tests and other evaluation materials must include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient. 34 C.F.R. § 300.532; Florida Administrative Code Rule 6A-6.0331(4)(i). Here, the School System's evaluators used multiple sources of information across settings in accordance with professional standards to ensure that the IEP team had available comprehensive information about [REDACTED] and all of [REDACTED] areas of educational need. The un-rebutted evidence established that the evaluators were highly qualified to administer the various testing instruments and they used them properly in accordance with professional standards to derive reliable results.

92. Once re-evaluations are completed, it is the IEP team's responsibility to meet and determine whether the information is sufficient to make the necessary educational decisions for the child. Florida Administrative Code Rules 6A-6.03411(2)(i)(2) and 6A-6.0331(7)(a). Here, the un-rebutted evidence establishes that the IEP team had sufficient information at all times during the 2003-2004 school year, and continuing, to make determinations regarding [REDACTED] eligibility, [REDACTED] educational needs, and

█████ educational program. As the IEP team was able to develop an IEP for █████ based on the information provided by the assessment reports, the School System complied with its obligation to evaluate █████ Florida Administrative Code Rule 6A-6.03028, et seq.

93. As the Supreme Court made clear, the substantive FAPE requirement imposes on school systems "no additional requirement that the services so provided be sufficient to maximize each child's potential 'commensurate with the opportunity provided other children.'" Rowley, 458 U.S. at 198. In interpreting and applying Rowley, the Eleventh Circuit has held that the "education benefit" requirement is satisfied by providing and education that is reasonably calculated to provide "some" or "adequate" educational benefit. J.S.K. v. Hendry County School Board, 941 F.2d 1563, 1572 (11th Cir. 1991). Thus, the proper inquiry is not whether the School System maximized █████ potential, devised the best IEP, or whether █████ evidenced challenging behaviors. Rather, the question is whether the IEP was designed to meet █████ unique educational needs.

94. All of the evidence shows that the members of █████ IEP team were very familiar with █████ abilities, █████ disabilities, and █████ educational needs. █████ IEP was designed to support █████ special education needs arising from █████ primary disability of autism and also █████ deafness. For █████ the School System offered placement in a classroom with experienced and certified educators and service providers. The teachers and service providers were able to incorporate and

implement ██████ goals and objectives in a highly structured, behaviorally-oriented classroom in a setting that facilitated ██████ instruction in a wide variety of settings including individual, small group and large group instruction. Further, ██████ program and placement provided and ensured ██████ on-going interaction with ██████ typical peers.

95. Moreover, though IDEA guarantees no particular result, evidence of a student's success is evidence of its appropriateness. Here, the evidence established that the School System's program resulted in meaningful and important progress for ██████ ██████ has made progress in every area, including academics, functional skills, behavior, socialization and communication. Based upon this progress, the only reasonable conclusion is that the School System's program not only offered FAPE but also ensured that ██████ received educational benefit.

#### C. In-Patient Evaluation/Treatment

96. Petitioner appears to challenge the adequacy of the School System's program by asserting that it has failed to benefit ██████ in the home environment -- an objective Petitioner assumedly asserts would be accomplished by an in-patient residential placement. Petitioner's argument fails to recognize the binding Eleventh Circuit precedent that specifically establishes, in two cases concerning the adequacy of programs for children with autism, "that generalization across settings is not required to show an educational benefit." Devine v. Indian River County School Board, 249 F.3d 1289, 1293 (11th Cir. 2001); see also J.S.K., 941 F.2d at 1573. In fact, the Eleventh Circuit



specifically defined "'appropriate education' as making measurable and adequate gains in the classroom." J.S.K., 941 F.2d at 1573. Further, in Devine, the Court made clear that services in the home must be shown to be educationally necessary to the child before a school system is required to provide them. 249 F.3d at 1294.

97. Petitioner's argument must be rejected because it would require more of the School System under the IDEA that the educational program is required to provide. There simply is no precedent for Petitioner's "FAPE plus" standard for [REDACTED] IEP, and such an interpretation would undermine the statutory interpretations provided by the Eleventh Circuit in Devine and J.S.K., as well as the Supreme Court's analysis in Rowley.

98. Even assuming that the School System's program could somehow be seen to be deficient in its provision of FAPE, it is beyond cavil that parents are not entitled to public funding for their unilaterally change or "choice" of their child's educational placement outside of the IEP process, unless a hearing officer or court ultimately determines that the school placement did not offer a free appropriate public education ("FAPE") and that the private placement was proper. Florence County Sch. Dist. Four v. Carter, 510 U.S. 7 (1993); Burlington v. Dept. of Educ., 471 U.S. 359 (1985); M.C. v. Voluntown Bd. of Educ., 226 F.3d 60 (2d Cir. 2000); 226 F.3d 60 (2d Cir. 2000); Doe v. Metropolitan Nashville Pub. Schs., 133 F.3d 384 (6th Cir. 1998); Cypress-Fairbanks Indep. Sch. Dist. v. Michael F., 118

F.3d 245 (5th Cir. 1997). Here, Petitioner presented no evidence that they relief that [REDACTED] seeks would be appropriate.

99. Moreover, while it is clear that an administrative law judge may determine whether the School System has satisfied its procedural and substantive obligations under IDEA and, applying the appropriate analysis, institute a remedy for any past failures, an administrative law judge may not order specific prospective relief. Sch. Bd. of Martin County v. A.S., 29 IDELR 964 (Fla. D.Ct.App. 1999) (ALJ overstepped . . . . authority by ordering the school board to provide fifteen hours of one-to-one therapy); Hendry County Sch. Bd. v. Kujawski, 498 So. 2d 566, 568 (Fla. D.Ct.App. 1986) (After hearing officer determined that the school district's proposed placement was not appropriate, the hearing officer must remand the matter to the school district, and in the instant case, "[t]he hearing officer . . . exceeded [REDACTED] authority by sua sponte ordering a residential placement."); Davis v. District of Columbia Bd. of Educ., 530 F. Supp. 1209, 1215 (D.C.D.C. 1982) ("The Hearing Officer determines appropriateness, not financial responsibility, and he may not place a child directly into a program not proposed by the school authorities."); see also Rettig v. Kent City Sch. Dist., 720 F.2d 463, 466 (1983) (courts are "not free to choose between competing educational theories and impose that selection upon the School System"; only the Rowley analysis should be used to determine whether the school district's program was appropriate). The policy reasons for this restriction are made plain where, as

here, Petitioner's requested placement would be harmful to [REDACTED].

100. In summary, because the School System offered [REDACTED] FAPE in the 2003-2004 school year and continues to do so, the Petitioner does not have the right to an inpatient evaluation/treatment at public expense.

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 seeking on in-patient evaluation and treatment at public expense is denied. It is determined that the School System offered FAPE in the 2003-2004 school year and continues to do so.

DONE AND ORDERED this 28th day of December, 2004, in Tallahassee, Leon County, Florida.

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Filed with Clerk of the  
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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.