STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY SCHOOL BOARD,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 12-1213E
	)	
[redacted],	)	
	)	
Respondent.	)	
_____	)	

FINAL ORDER

This case came before Administrative Law Judge John G. Van Laningham for final hearing by video teleconference on June 21, 2012, at sites in Tallahassee and Miami, Florida.

APPEARANCES

For Petitioner: Mary Lawson, Esquire
Miami-Dade County School Board
1450 Northeast Second Avenue, Suite430
Miami, Florida 33132

For Respondent: Mr. [redacted], parent
(Address of record)

STATEMENT OF THE ISSUE

Whether lack of parental consent bars Petitioner school district from conducting an initial evaluation to determine whether Respondent is a student with a disability.

PRELIMINARY STATEMENT

On April 6, 2012, Petitioner Miami-Dade County School Board filed a request for hearing with the Division of Administrative

Hearings after Respondent [redacted] parents refused to give consent for an initial evaluation to determine whether [redacted] is a student with an emotional/behavioral disability. The School Board seeks to override the parents' refusal so that lack of consent will not be a barrier to performing the evaluation.

The undersigned scheduled the final hearing for May 9, 2012, 12 days ahead of the final order deadline of May 21, 2012. The parties filed a Joint Motion for Continuance on April 27, 2012, which was granted, resulting in a new final hearing date of June 19, 2012. Pursuant to section II, paragraph 2, of the Case Management Order dated April 9, 2012, the final order deadline was enlarged to July 2, 2012. The parties filed a second Joint Motion for Continuance on June 12, 2012, requesting that the final hearing be rescheduled for June 21, 2012. This motion was granted, continuing the final hearing for two days, and extending the final order deadline until July 5, 2012.

The final hearing took place on June 21, 2012, as scheduled. At the hearing, the School Board called the following witnesses: Kenia Castro, M.D.; Diane Greenfield; Lisa Mallard; Karen Davis; and Sue Buslinger-Clifford. Petitioner's Exhibits 2, 3, 4 (pp. 54-62), 5 (pp. 80-97), 6, 8, and 9 were offered and received into evidence. [redacted] father testified but offered no exhibits.

The final hearing transcript was filed on June 29, 2012. Respondent filed a proposed final order on July 2, 2012, and the School Board did the same on July 3, 2012.

For stylistic convenience, the undersigned will use feminine pronouns in this Final Order when referring to [redacted]. The feminine pronouns are not intended to denote [redacted] actual gender and should not be understood as doing so.

Unless otherwise noted, citations to the Florida Statutes refer to the 2011 version.

FINDINGS OF FACT

1. At all relevant times, Petitioner [redacted] was a high-school student in Miami-Dade County, attending a public school. During the 2011-12 school year, [redacted] was in the [redacted]. As a gifted student, [redacted] is eligible for, and has received, exceptional student education. [redacted] has never been identified as a student with a disability, however, and thus [redacted] has not received special education or related services pursuant to an individual education plan ("IEP").

2. Respondent Miami-Dade County School Board (the "Board") oversees the Miami-Dade County public schools and is responsible for, among many other things, the diagnosis, evaluation, and special instruction of students with disabilities. For clarity and ease of reference, the Board, the Miami-Dade County School District, and their respective personnel will be referred to

collectively in this Final Order simply as the "District" unless it is necessary to identify a specific actor.

3. On Friday, February 24, 2012, [redacted] cut [redacted] in a school bathroom, where [redacted] had hidden in a stall, surrounded by personal items and a suicide note; the evidence does not establish the precise nature and extent of this self-inflicted injury—[redacted]. testified that the cuts were "as superficial as possible"—but [redacted] caused sufficient damage to bloody [redacted]. [redacted] simultaneously sent a text message to a friend, the content of which implied that [redacted] was about to take [redacted] life. The friend promptly alerted others, and in due course [redacted] was taken by ambulance to a local hospital.

4. This incident was the first time that [redacted] had exhibited self-injurious behavior on school grounds. Unbeknownst to the District, [redacted] had a history of mental illness, which had begun when [redacted] was 13 or 14. During the years preceding the suicide attempt at school, [redacted] had been hospitalized, on occasion, after cutting [redacted].

5. [redacted] had been seen by private psychiatrists and other providers at personal expense and was, at the time of the final hearing in this case, continuing to receive psychiatric and psychological services outside of school [redacted] carries the diagnoses of major depression and post-traumatic stress disorder. [redacted] has been treated with psychotropic drugs,

including Pristiq® (an antidepressant), Seroquel® (an antipsychotic, which the undersigned infers is being used to treat depression in this instance), and Lamictil® (a mood stabilizer).

6. Despite suffering from mental illness, [redacted] had been succeeding academically, and [redacted] behavior at school stayed within normal limits, drawing no negative attention to [redacted] (as far as the record shows). The evidence does not show that, at any time before February 24, 2012, the District had reason to suspect that [redacted] might need special education because of an emotional disturbance.

7. Of course, the suicide attempt changed that. As was appropriate under the circumstances, the District moved quickly to convene a meeting of the School Support Team/Problem Solving Team ("SST"). The reason for this meeting was to provide an opportunity for the District and [redacted] parents to discuss the measures that needed to be implemented to ensure [redacted] safety at school plus other interventions that might be appropriate to support [redacted] in the classroom.

8. The SST meeting took place on March 5, 2012. The District wanted the SST to make an immediate referral for a Multidisciplinary Team evaluation, the purpose of which would be to determine whether [redacted] is a student with a disability. To that end, the District partially filled out a "Request for

Assistance (RFA)." The RFA form was not completed because [redacted] parents refused to consent to an initial evaluation.

9. There is no persuasive proof showing that the District designed, developed, or proposed evidence-based interventions that might have allowed [redacted] to succeed in the general education environment prior to seeking an initial evaluation to determine if the student has a disability. There is no evidence that the District attempted to prepare an SST/PST Intervention Plan describing general education interventions that could be provided pending possible placement into special education. There is no evidence that the District collected data demonstrating [redacted] response to intervention.

11. Instead of an SST/PST Intervention Plan, the District prepared a temporary Section 504 Accommodation Plan ("504 Plan") specifying accommodations the District would make for [redacted], and services it would provide [redacted], based on a determination that [redacted] suffered from a mental impairment, namely Depressive Disorder/Anxiety Disorder. Dated March 3, 2012, the 504 Plan called for the following student accommodations:

10. Dr. Buslinger-Clifford——who supervises the District's school psychologists——testified that, in her opinion, when a student is "Baker Acted for various behaviors, that's considered to be extraordinary." She asserted that "we are not required at that point in time to have in place all of the response to

intervention tiers and that progress monitoring associated with it."[1] Based on Dr. Buslinger-Clifford's testimony, the undersigned infers that the District decided to waive [redacted] entitlement to general education interventions and activities on the ground that immediate intervention was required to address an acute onset of emotional disturbance which presented "extraordinary circumstances." The District, however, did not include appropriate documentation in the student's educational record supporting a conclusion that the nature and severity of [redacted] areas of concern make general education intervention procedures inappropriate in this instance.

> Allow student additional breaks or rest time
> Provide short-term feedback
> Allow student more time to complete homework
> Repeat directions
> Provide break/rest time that is adult supervised to and from destination
> Use of positive verbal encouragement of any small accomplishment
> Allow student extended time in which to take tests
> Short breaks between assignments

12. The 504 Plan authorized the District to provide services to [redacted] as well. According to the plan, [redacted] would be accompanied by a paraprofessional throughout the entire school day. This personal escort would keep an eye on [redacted] as a protective measure. In addition, [redacted] would receive counseling from the school social worker once a week, for 30 minutes.

13. In conjunction with the development of the 504 Plan, the District completed an "FAB Structured Interview" form, apparently as part of a functional behavioral assessment. A behavioral intervention plan ("BIP") was developed, too, but [redacted] parents never agreed to it, so the proposed BIP was not implemented.

14. [redacted] received the one-to-one escort service from March 5, 2012, until the end of the school year in early June. [redacted] also regularly saw [redacted] guidance counselor, at least four times per week——although this was done informally, at [redacted] instance, rather than pursuant to a structured intervention. [redacted] seems to have appreciated the services of the paraprofessional, and [redacted] trusted the guidance counselor as a confidant.

15. [redacted] experience with the school social worker was less positive——a "disaster," according to [redacted] father. An incident on April 3, 2012, created something of a rift between [redacted] (and [redacted] parents) and the social worker. On that day, during a counseling session with the social worker, [redacted] shared some memories of cutting [redacted], which caused the social worker to become concerned for [redacted] safety. The social worker contacted the school police officer and requested that the officer evaluate [redacted] to determine if [redacted] met the Baker Act criteria for an involuntary examination. The officer determined

that [redacted] did not meet the criteria, and [redacted] was ultimately released to [redacted] father, who picked [redacted] up from school in the afternoon.

16. [redacted] attendance was poor following the suicide attempt in February 2012. [redacted] was late or absent on a number of days, and frequently left school early after becoming anxious or depressed. [redacted] occasionally had difficulty completing assignments, was unable at times to concentrate in class, and missed some tests, causing [redacted] grades to suffer. Despite all that, [redacted] academic performance ("Bs and Cs") was good enough for [redacted] to progress to the next grade level.

17. Testifying at the final hearing, [redacted] father made it clear that neither he nor [redacted] mother has any present intention of consenting to the District's request for permission to perform an initial evaluation on [redacted] Mr. [redacted] believes that the evaluation would be "traumatic" for his [redacted]; this concern was not supported, however, by any expert testimony, and the undersigned declines to find that [redacted] would be traumatized by undergoing an initial evaluation. In Mr. [redacted] view, moreover, any therapeutic counseling the District might provide would be unnecessary at best (given that [redacted] is already under the care of private providers), ineffective, potentially incompetent, counterproductive, or even harmful. He fears that once started, services which might prove detrimental or

unsatisfactory could never be stopped. Mr[redacted] does not trust the District and does not want it involved in [redacted]'s personal life. In sum, [redacted] wants the District to leave [redacted] alone.

18. Mr. [redacted] indicated at the hearing that he would be willing to waive special education services, if necessary, to prevent the District from conducting an evaluation of [redacted] against his wishes. Mr. [redacted] stopped short, however, of unequivocally and unconditionally relinquishing [redacted]'s right to a free appropriate public education, potentially including specialized instruction and related services, in part owing to his uncertainty about what services such a waiver would forego. This is important because there are some services whose benefit Mr. [redacted] conceded. Mr. [redacted] was, for example, receptive to the possibility of [redacted] continuing to receive one-to-one paraprofessional services, and he hopes that [redacted] would be able to keep seeing [redacted] guidance counselor, as in the past.

19. Notwithstanding the objections to evaluation which [redacted] father has made, the District possesses a reasonable basis for suspecting that [redacted] might be eligible for special education as a student with an emotional/behavioral disability. Giving rise to such suspicion are the facts that [redacted] made a suicide attempt on school grounds; has a history of mental illness (of which the District is now aware); and recently experienced academic difficulties, episodes of anxiety or

depression in the classroom, and attendance problems.[2] This, however, does not mean——and the undersigned does not find——that [redacted] is a student with a disability.

CONCLUSIONS OF LAW

20. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to sections 1003.57(1)(b) and 120.57(1), Florida Statutes, and Florida Administrative Code Rule 6A-6.03311(9)(u).

21. Congress enacted the Individuals with Disabilities Education Act ("IDEA") to "ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A); see also Winkelman v. Parma City Sch. Dist., 550 U.S. 516, 523 (2007). Of import to the instant case, the term "children with disabilities" includes, but is not limited to, children suffering from emotional disturbances. 20 U.S.C. § 1401(3)(A); Fla. Admin. Code R. 6A-6.03016.

22. To ensure that students with disabilities receive the services to which they are entitled, the IDEA requires that school districts enact programs to identify, locate, and evaluate children with disabilities in need of special education

and related services. 20 U.S.C. § 1412(a)(3)(A). In particular, where it appears that a child may be eligible for special education services, and neither the parent nor child has requested a determination of eligibility, the school district may request that an initial evaluation be conducted to "determine if the child is a child with a disability." 20 U.S.C. § 1414(a)(1)(B); Fla. Admin. Code R. 6A-6.0331(3) ("Each school district must conduct a full and individual evaluation before the provision of ESE. Either a parent of a student or a school district may initiate a request for initial evaluation to determine if the student is a student with a disability").

23. In situations where the school district is requesting an initial evaluation, it must first seek consent from the student's parent or guardian. 20 U.S.C. § 1414(a)(1)(D)(i)(I); Fla. Admin. Code R. 6A-6.0331(4)(a) ("[T]he school district proposing to conduct an initial evaluation to determine if a student is a student with a disability . . . must obtain informed consent from the parent . . . before conducting the evaluation"). If such consent is not granted, the school district may initiate proceedings before an impartial hearing officer to obtain an order that requires the student to be present for the evaluation, thereby overriding the parent's lack of consent. 20 U.S.C. § 1414(a)(1)(D)(ii)(I); Fla. Admin. Code R. 6A-6.0331(4)(e) ("If the parent of a student suspected of

having a disability . . . does not provide consent for initial evaluation . . . the school district may, but is not required to, pursue initial evaluation of the student by using the mediation or due process procedures[.]").

24. As the party seeking relief, the burden of proof is on the District to establish grounds for overriding the refusal of [redacted] parents to consent to an initial evaluation. Cf. Schaffer v. Weast, 546 U.S. 49, 62 (2005). This is a relatively light burden: If the District "articulates reasonable grounds for its necessity to conduct [the desired evaluation], a lack of parental consent will not bar it from doing so." Shelby S. v. Conroe Indep. Sch. Dist., 454 F.3d 450, 454 (5th Cir. 2006), cert. denied, 549 U.S. 1111 (2007). The parents, however, hold the trump. If they decline special education under the IDEA, the student cannot be forced to submit to an evaluation. Id. at 455.

25. Here, as found above, the District has shown that it has a reasonable basis in fact for suspecting that [redacted] has a disability. Such a showing is necessary——but not sufficient—— for a determination that reasonable grounds exist to override a parent's refusal to give consent for an initial evaluation. The District must also show, to establish that an initial evaluation is required, that it satisfied all of the prerequisites to seeking such evaluation. For the reasons that follow, the

undersigned concludes that the District failed to articulate reasonable grounds establishing the necessity for conducting an initial evaluation because the evidence does not show that all of the conditions precedent were met.

26. Prior to referring a student for evaluation, school districts in Florida must comply with general education procedures that the State Board of Education has prescribed. These procedures are set forth in Florida Administrative Code Rule 6A-6.0331, which provides in pertinent part as follows:

> (1) General education intervention procedures for kindergarten through grade twelve (12) students suspected of having a disability. It is the local school district's responsibility to develop and implement coordinated general education intervention procedures for students who need additional academic and behavioral support to succeed in the general education environment. In implementing such procedures, a school district may carry out activities that include the provision of educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction and professional development for teachers and other school staff to enable them to deliver scientifically based academic and behavioral interventions and, where appropriate, instruction on the use of adaptive and instructional software. . . . The general education interventions requirements set forth in paragraphs (a), (b), and (e) of this subsection may not be required for students suspected of having a disability if a team that comprises qualified professionals and the parent determines that these general education interventions are not appropriate for a

student who demonstrates . . . severe social/behavioral deficits that require immediate intervention to prevent harm to the student or others, or for students who are not enrolled in a public school.

(a) Parent involvement in general education intervention procedures. Opportunities for parents to be involved in the process to address the student's areas of concern must be made available. In addition, there must be discussion with the parent of the student's responses to interventions, supporting data and potential adjustments to the interventions and of anticipated future action to address the student's learning and/or behavioral areas of concern. Documentation of parental involvement and communication must be maintained.

(b) Observations of the student must be conducted in the educational environment and, as appropriate, other settings to document the student's learning or behavioral areas of concern. At least one (1) observation must include an observation of the student's performance in the general classroom.

(c) Review of existing data, including anecdotal, social, psychological, medical, and achievement (including classroom, district and state assessments) shall be conducted. Attendance data shall be reviewed and used as one indicator of a student's access to instruction.

(d) Vision and hearing screenings shall be conducted for the purpose of ruling out sensory deficits that may interfere with the student's academic and behavioral progress, and additional screenings or assessments to assist in determining interventions may be conducted, as appropriate. The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

> (e) Evidence-based interventions addressing the identified areas of concern must be implemented in the general education environment. The interventions selected for implementation should be developed through a process that uses student performance data to, among other things, identify and analyze the area of concern, select and implement interventions, and monitor the effectiveness of the interventions. Interventions shall be implemented as designed for a reasonable period of time and with a level of intensity that matches the student's needs. Pre-intervention and ongoing progress monitoring measures of academic and/or behavioral areas of concern must be collected and communicated to the parents in an understandable format.
> (f) Nothing in this section should be construed to either limit or create a right to FAPE under Rules 6A-6.03011 through 6A-6.0361, F.A.C., or to delay appropriate evaluation of a student suspected of having a disability.

(Emphasis added).

27. The purpose of these general education intervention requirements is to obligate each school district to take such reasonable steps ("evidence-based interventions") as will allow a student suspected of having a disability to succeed in the general education environment. In most instances, then, referral for an initial evaluation should be a last resort, a measure taken only after the student has failed to respond adequately to evidence-based interventions provided in the regular classroom.

28. Rule 6A-6.0331(3) makes clear that a referral for an initial evaluation must not be made without first giving the student every reasonable opportunity to avoid being placed in line to receive special education. In relevant part, this rule provides as follows:

> (a) Prior to a school district request for initial evaluation, school personnel must make one (1) of the following determinations and include appropriate documentation in the student's educational record to the effect that:
> 1. For a student suspected of being a student with a disability, the general education intervention procedures have been implemented as required under this rule and indicate that the student should be considered for eligibility for ESE; or
> 2. The nature or severity of the student's areas of concern make the general education intervention procedures inappropriate in addressing the immediate needs of the student.

(Emphasis added).

29. The foregoing requirements are echoed and reinforced in rule 6A-6.03016, which specifies the eligibility criteria for the disability category known as emotional/behavioral disability ("E/BD"). Subsection (2) of this rule provides that "[p]rior to referral for evaluation, the [general education intervention] requirements in subsection 6A-6.0331(1), F.A.C., must be met." Paragraph (3)(b) of this rule mandates that the evaluation for determining eligibility on the basis of E/BD "must include documentation of the student's response to general education

interventions implemented to target the function of the behavior as identified in the" functional behavioral assessment.

30. Similar to rule 6A-6.0331(3)(a)2., rule 6A-6.03016(4)(e) provides limited authority to make an immediate referral for an initial evaluation:

> In extraordinary circumstances, general education interventions and activities as described in subsection (2) of this rule . . . may be waived when immediate intervention is required to address an acute onset of an internal emotional/behavioral characteristic . . . .

(Emphasis added).

31. In the present record, there is no evidence showing that the SST and [redacted] parents jointly determined, as required under rule 6A-6.0331(1), that general education interventions would not be appropriate for [redacted] because immediate intervention was required to prevent harm to the student or others. No evidence establishes, either, that the District included appropriate documentation in [redacted] educational record, as required under rule 6A-6.0331(3)(a), of its determination (if such were made) that general education intervention procedures: were implemented but failed to produce an adequate response or, alternatively, would not appropriately address the immediate needs of the student. The District thus failed to prove its compliance with rule 6A-6.0331(1).

32. Because the District failed to establish that the requirements of rule 6A-6.0331(1) were met, it follows that rule 6A-6.03016(2) was not satisfied either. Rule 6A-6.03016(2) sets down a condition that must be satisfied "prior to referral for evaluation" of a student suspected of falling under the disability category E/BD. Having failed to satisfy this condition precedent, the District cannot be allowed to proceed with an evaluation, over the parents' objection, unless it has established grounds for waiving the general education procedures.

33. As mentioned above, rule 6A-6.03016(4)(e) provides that, "in extraordinary circumstances," the general education procedures "may be waived" to allow an immediate referral for evaluation. In applying this rule, it is important to remember that the general education procedures exist to help the student, not to hinder the school district; therefore, what might be waived under paragraph (4)(e) is a benefit to the student, not a burden to the school district, notwithstanding that providing the advantage of general education interventions requires the expenditure of district resources. Simply put, waiving the general education procedures means waiving the student's entitlement to receive evidence-based interventions in the general education setting, which might allow him or her to

succeed in a regular classroom without being classified as a student having a disability.

34. Rule 6A-6.03016(4)(e) is written in the passive voice ("may be waived") and hence fails to identify the person or entity having the authority to waive the student's entitlement to receive general education interventions. Given that the effect of such a waiver is to take away a benefit to which the student otherwise is entitled, it is the parents who should possess this authority. The evidence in this case fails to show that [redacted] parents waived [redacted] entitlement to evidence-based, general education interventions, either expressly or impliedly.

35. Alternatively, assuming the District is authorized under 6A-6.03016(4)(e) to waive general education interventions on the student's behalf, it must establish that "immediate intervention [was] required to address an acute onset of an" emotional disturbance under circumstances that are "extraordinary." This the District has not done.

36. The District's evidence in support of a waiver under paragraph (4)(e) consists of Dr. Buslinger-Clifford's testimony that "[w]hen students are Baker Acted . . . , that's considered to be extraordinary." Putting aside that there is insufficient evidence to support a finding that [redacted] was "Baker Acted" as a result of the incident on February 24, 2012, the undersigned

readily concludes that a student's suicide attempt on school grounds qualifies as an extraordinary circumstance.

37. The District did not, however, present persuasive, direct proof that immediate special-education intervention was required. The undersigned declines to infer the necessity of immediate intervention from the fact of the suicide attempt because the evidence establishes that [redacted] has been receiving treatment (at [redacted] parents' expense) for [redacted] mental illness, including counseling and psychotropic medications.[3] No persuasive evidence demonstrates that [redacted] doctors are unable to control [redacted] symptoms of anxiety, depression, mood lability, and post-traumatic stress or otherwise stabilize [redacted] psychiatric condition. In the absence of evidence to the contrary, the undersigned infers that [redacted] private health-care providers can deliver competent care to [redacted] without the District's assistance. Therefore, immediate special-education intervention is not required.

38. The District likewise failed to prove that [redacted] experienced an acute onset of any emotional disability. The evidence shows, to the contrary, that [redacted] suffers from chronic mental illness, the onset of which predated the in-school suicide attempt by several years. The suicide attempt was, therefore, an acute manifestation of a chronic internal

emotional characteristic, which latter did not suddenly begin on February 24, 2012.

39. In sum, the evidence does not provide a sufficient basis for determining that general education interventions were waivable pursuant to 6A-6.03016(4)(e).

40. The upshot is that, by failing to prove that all conditions precedent to referral for evaluation were satisfied, the District's attempt to articulate reasonable grounds for the need to conduct an initial evaluation of [redacted] falls short.

CONCLUSION

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

ORDERED that the refusal of [redacted] parents to consent to an initial evaluation shall be honored. Notwithstanding past refusals, either parent may initiate a request for initial evaluation if so inclined.

It is further ORDERED that the District shall take such steps as are necessary to fulfill its obligations under rule 6A-6.0331(1) respecting general education interventions; once the requirements of subsection (1) have been met, the District may, but is not required to, initiate another request for initial evaluation under subsection (3) of this rule.

DONE AND ORDERED this 3rd day of July, 2012, in Tallahassee, Leon County, Florida.

S

_____
JOHN G. VAN LANINGHAM
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 3rd day of July, 2012.

ENDNOTES

[1]/ The Florida Mental Health Act is popularly known as the Baker Act. See § 394.451, Fla. Stat. Under the Baker Act, a person may be taken to a receiving facility for an involuntary examination if, in the opinion of a court, law enforcement officer, or licensed mental health services provider, the person meets statutory criteria. § 394.463. In using the term "Baker Act" as a verb, Dr. Buslinger-Clifford most likely was referring to the process by which a person can be compelled to undergo a psychiatric examination pursuant to section 394.463. If the receiving facility determines that the person needs inpatient treatment, a petition for involuntary placement must be filed in circuit court. § 394.463(2)(i)4. If the court finds that the person meets the criteria for involuntary placement, then it must enter an order transferring the person to a treatment

facility, e.g., a state mental hospital, for a period of up to six months. § 394.467(6)(b).

Contrary to the District's proposed finding of fact, see Pet. Sch. Bd. Prop. Final Order at 4, the evidence does not persuasively establish that [redacted] was "Baker Acted" (in the sense of being forced to submit to an involuntary examination) as a result of the incident on February 24, 2012. There is, further, no persuasive evidence showing that [redacted] has ever been involuntarily hospitalized. To be sure, [redacted] has received inpatient psychiatric treatment at Miami Children's Hospital and Southern Winds Hospital and been hospitalized at Sandy Pines Residential Treatment Center. Based on the instant record, however, all of these admissions were as likely voluntary as not. Thus, even if Dr. Buslinger-Clifford were correct that, as a general proposition, a student's being taken to a receiving facility for an involuntary examination always constitutes an extraordinary circumstance for the purpose of waiving the student's entitlement to general education interventions, the evidence fails to establish that such event (involuntary examination) happened in this instance.

[2]/ It should be noted that [redacted] recent difficulties at school——e.g., problems concentrating, tardiness, leaving early, etc.——occurred only during the three months following the suicide attempt. [redacted] did not threaten or attempt to injure [redacted], or actually do so, during this same period.

[3]/ The evidence, further, fails to establish that, at any time on or after March 5, 2012, when [redacted] returned to school, [redacted] caused, attempted, or threatened serious bodily harm to [redacted]. Therefore, the undersigned infers that whatever treatment [redacted] received in the wake of the incident on February 24, 2012, sufficed to resolve [redacted] acute psychiatric episode and kept [redacted] from decompensating for the remainder of the school year. The accommodations and services that the District afforded [redacted] under the 504 Plan likely helped too, a point which reinforces the conclusion that immediate special-education intervention was not required.

COPIES FURNISHED:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

This decision is final unless, within 90 days after the date of this decision, an adversely affected party:

a) brings a civil action in the appropriate state circuit court pursuant to Section 1003.57(1)(b), Florida Statutes, and Florida Administrative Code Rule 6A-6.03311(9)(w); or

b) brings a civil action in the appropriate district court of the United States pursuant to 20 U.S.C. § 1415(i)(2) and Florida Administrative Code Rule 6A-6.03311(9)(w).