

**Palm Beach County School District
No. 07-5097E
Initiated By: Parent
Hearing Officer: Robert E. Meale
Date Of Final Order: July 23, 2008**

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

█,)
)
Petitioner,)
)
vs.) Case No. 07-5097E
)
PALM BEACH COUNTY SCHOOL BOARD,)
)
Respondent.)
_____)

FINAL ORDER

Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings, conducted the final hearing in West Palm Beach, Florida, on May 19-21 and 28-30, 2008.

APPEARANCES

For Petitioner: Dennis D. Bailey
Schiller, Kessler & Gomez, P.L.C.
7501 West Oakland Park Boulevard
Suite 201
Fort Lauderdale, Florida 33319

For Respondent: Iola T. Mosley
Associate Counsel, Academics
Palm Beach County School Board
Post Office Box 19239
West Palm Beach, Florida 33416-9239

STATEMENT OF THE ISSUES

The issues are whether Respondent failed to identify and evaluate Petitioner, as a student eligible for exceptional student education (ESE) services, prior to [REDACTED] enrollment in three private educational programs starting midway through the 2004-05 school year ([REDACTED] grade); if so, whether the education and related services provided Petitioner at each of these three programs was appropriate; if so, whether any claim for the cost of enrollment at any of these programs is barred by the statute of limitations; whether either of two individual education plans (IEPs) that Respondent prepared for Petitioner in August 2007 and September 2007 provided Petitioner with a free appropriate public education (FAPE) in the least restrictive environment (LRE); and, if not, whether the education and related services provided Petitioner during the 2007-08 school year ([REDACTED]th grade) at [REDACTED] School in Boca Raton was appropriate.

Depending on the resolution of the above-stated issues, additional issues may require the determination of the cost of enrollment at all or some of these four private educational programs and whether the Administrative Law Judge has the jurisdiction to award such costs.

PRELIMINARY STATEMENT

On November 5, 2007, Petitioner filed a Request for Due Process Hearing, which Respondent transmitted for filing with the Division of Administrative Hearings on the following day.

Completed by an "advocate" for the child, Dr. Elle Furlong, the Request for Due Process Hearing identifies the child and states only that Respondent "failed to provide FAPE" and the case would not be necessary if Respondent provided "Reimbursement."

On November 14, 2007, Dr. Furlong filed a Request for Designation as Qualified Representative. By Order entered seven days later, the Administrative Law Judge then assigned to the case accepted Dr. Furlong as Petitioner's Qualified Representative.

On November 15, 2007, Respondent filed a Notice of Insufficiency to Request for Due Process Hearing. Following a prehearing conference on November 20, 2007, at which the Administrative Law Judge ruled that the due process request was insufficient, Petitioner filed a First Amended Due Process Hearing Request on the next day.

On November 15, 2007, Respondent filed a Response to Request for Due Process Hearing. In the response, Respondent stated that Petitioner is a [REDACTED]-year old [REDACTED] functioning intellectually in the high-average range. Respondent stated that it classified [REDACTED] as gifted in [REDACTED] grade and placed [REDACTED] in the gifted program the following year, but [REDACTED] was not otherwise eligible for ESE services at that time.

The response notes that Petitioner experienced physical and emotional abuse from [REDACTED] biological parents, whose parental

rights have been terminated. The response states that the state of Florida has custody of Petitioner and [REDACTED] two siblings, but their grandmother, who is prosecuting this case, serves as the guardian of the three children, who live with her.

Briefly summarizing Petitioner's academic history, which involves attendance at Respondent's schools in elementary and early middle school and attendance at private schools thereafter, the response states that Respondent believes that Petitioner has returned to Florida and intends to re-enroll in one of Respondent's schools.

The response confirms that Respondent received, from the [REDACTED] ([REDACTED]), in West Palm Beach, a copy of a psycho-educational evaluation conducted by a licensed psychologist in Massachusetts, Miriam DeFant, Ph.D., and dated April 10, 2007. The response also notes that Cleopatra Ortiz, M.D., conducted an evaluation in August 2007.

The response states that, based in part on the information contained in the reports of Drs. DeFant and Ortiz, Respondent conducted an IEP meeting in September 2007, determined that Petitioner met the criteria for emotional/behavioral disabilities (EBD), determined that Petitioner's anxiety, depression and anger would impede [REDACTED] progress in the general education curriculum, and developed an IEP that would provide Petitioner with ESE services at Respondent's [REDACTED] school.

On November 30, 2007, Respondent filed a second Notice of Insufficiency to Petitioner's First Amended Request for Due Process Hearing. By Order entered December 4, 2007, the undersigned Administrative Law Judge required Petitioner to file a more detailed due process hearing request.

On December 17, 2007, Petitioner filed a Second Amended Request for Due Process Hearing. By Order entered December 17, 2007, the Administrative Law Judge identified the issues apparently presented for hearing in the Second Amended Request for Due Process Hearing and tentatively set the final hearing for January 10 and 11, 2008, subject to several conditions.

On December 21, 2007, Respondent filed a Motion to Dismiss the Second Amended Request for Due Process Hearing and another Notice of Insufficiency. By Orders entered December 27 and 28, 2007, the Administrative Law Judge denied the Motion to Dismiss, but required Petitioner to file a more detailed due process hearing request. The latter Order specified, by item, what the next amended due process request must contain and canceled the final hearing.

On January 18, 2008, Petitioner filed a More Definite Statement and Request for Due Process Hearing. On January 28, 2008, Respondent filed another Notice of Insufficiency. On January 30, 2008, the Administrative Law Judge conducted a telephone conference, and, on February 14, 2008, he issued an

Order denying the Notice of Insufficiency and setting the hearing, as had been announced during the telephone conference, for March 24-28, 2008.

On March 13, 2008, Dr. Furlong filed a Notice of Withdrawal and a Motion for Continuance. On the next day, Respondent stipulated to the continuance. On March 18, 2008, Respondent filed a Motion to Disqualify Petitioner's Qualified Representative for Gross Misconduct and Abuse of Judicial Process.

By Orders entered March 17 and 18, 2008, the Administrative Law Judge continued the case and required Dr. Furlong to show cause why she should not be disqualified as the Qualified Representative.

On March 24, 2008, Dr. Furlong filed a Motion to Withdraw as Qualified Representative for Petitioner. After numerous other filings, the Administrative Law Judge entered an Order dated April 10, 2008, granting Respondent's Motion To Disqualify Dr. Furlong. After a telephone conference on April 14, 2008, with counsel for Respondent and new counsel for Petitioner, the Administrative Law Judge reset the hearing for May 19-21, 2008.

On April 18, 2008, with leave of the Administrative Law Judge, Petitioner filed a Third Amended Due Process Hearing Request. This pleading alleges details of Petitioner's schooling, as far back as the 1998-99 school year (█ grade),

at which time Petitioner allegedly attended Broward County School District's [REDACTED] School. The Third Amended Due Process Hearing Request alleges that Petitioner attended [REDACTED] grade at [REDACTED] School, [REDACTED] grade at [REDACTED], the first half of [REDACTED] grade at [REDACTED], the second half of fourth grade and fifth grade at an unidentified school, [REDACTED] grade at Respondent's [REDACTED] School, the [REDACTED] Center during the summer between [REDACTED] and [REDACTED] grades and the first half of [REDACTED] grade, the second half of [REDACTED] grade and first half of [REDACTED] grade at a private school known as The [REDACTED] [REDACTED], two months at the start of the second half of [REDACTED] grade at Respondent's [REDACTED] School, the remainder of [REDACTED] grade at [REDACTED] in Utah, [REDACTED] grade (starting in May 2006) and almost one month of the start of [REDACTED] grade at [REDACTED] in western Massachusetts, and the remainder of [REDACTED] grade at [REDACTED] School in Boca Raton.

The Third Amended Due Process Request alleges that Petitioner suffers from posttraumatic stress disorder (PTSD), oppositional defiant disorder (ODD), attention deficit hyperactivity disorder--not otherwise specified (ADHD), and learning disorder--not otherwise specified (NOS), as well as the symptoms of bipolar disorder--NOS. The Third Amended Due Process Request alleges that these conditions manifest themselves by executive function impairments, cognitive impairments (especially in memory), attention deficits, chronic emotional disequilibrium, impulsivity, and aggressive and

oppositional behaviors--all of which allegedly impede Petitioner's academic progress and contribute to maladaptive behavior.

The Third Amended Due Process Request alleges that, in the fall of [REDACTED] grade, after Petitioner had received several disciplinary referrals, Respondent developed an education plan for placement of Petitioner in the gifted program.

The Third Amended Due Process Request alleges that, for the first quarter of [REDACTED] grade, Petitioner received three Ds, two Cs, and a B in physical education, for a 1.666 grade point average. Petitioner's grandmother allegedly requested that Respondent evaluate [REDACTED] as a student suspected to have an ESE-qualifying disability, but Respondent refused or failed to do so. Instead, Respondent allegedly sent Petitioner's grandmother to the school psychologist to arrange, at her expense, educational testing, which allegedly resulted in the removal of Petitioner from the gifted program in the second semester.

The Third Amended Due Process Request alleges that Petitioner continued to receive disciplinary referrals and, in April 2004, Respondent received a report from Diana Fischer, M.D., diagnosing Petitioner with ADHD and stating that [REDACTED] would benefit from specialized services.

The Third Amended Due Process Request alleges that Respondent convened a Section 504 meeting in May 2004, but

failed to request an evaluation of Petitioner for eligibility for ESE services.

The Third Amended Due Process Request alleges that Petitioner's tenure at the [REDACTED] ended with [REDACTED] arrest for an unspecified offense in early December 2005, but alleges that the educational program at that school was appropriate. The Third Amended Due Process Request alleges that Petitioner's grandmother returned Petitioner to West Palm Beach and had a meeting with the principal of [REDACTED] School in late December 2005. Notwithstanding a full discussion of Petitioner's many academic and behavior problems, the principal and Respondent's other employees allegedly failed to identify and evaluate Petitioner as a student with qualifying disabilities, but instead merely returned [REDACTED] to a general education curriculum.

The Third Amended Due Process Request alleges that Petitioner returned to [REDACTED] School in January 2006, immediately began to suffer behavioral problems, and was suspended from school for ten days in early March 2006 for purchasing marijuana from another student.

The Third Amended Due Process Request alleges that Petitioner's grandmother enrolled [REDACTED] at that time in the [REDACTED] program, which provided academic and therapeutic support. Upon completion of that program, which was allegedly appropriate for Petitioner, [REDACTED] grandmother allegedly transferred [REDACTED], in May

2006, to ■■■, a therapeutic boarding school that was also allegedly appropriate for Petitioner.

The Third Amended Due Process Request alleges that, for financial reasons, the grandmother decided to re-enroll Petitioner in Respondent's schools. Pursuant to this decision, Respondent allegedly conducted an IEP meeting in August 2007. The Third Amended Due Process Request alleges the insufficiency of the August 2007 IEP, but, perhaps due to an erroneous compilation of the September 2007 IEP by Respondent, many of the allegations actually pertain to the latter IEP. Essentially, though, Petitioner complains that the August 2007 IEP does not provide FAPE for several reasons, including procedural deficiencies, such as failing to describe accurately present levels of performance, identify appropriate goals and objectives and adopt a behavioral intervention plan (BIP; also used to identify behavior management plan or program). The Third Amended Due Process Request mostly alleges deficiencies of the September 2007 IEP, which proposed implementation of the plan at the ■■■ school, but the request omits any mention of this IEP by date. However, the September 2007 IEP is clearly at issue because prior due process requests clearly complain of both IEPs; the Order of December 28, 2007, identifies the issues to include whether the August 2007 IEP provides FAPE and whether the September 2007 IEP provides FAPE in the LRE (paragraph 3a

and 3b of the Order); and the Order of December 17, 2007, identifies the issues to include whether the August 2007 IEP provides FAPE and whether the September 2007 IEP provides FAPE in the LRE (paragraphs 3 and 4 of the Order).

The Third Amended Due Process Request alleges that, upon receipt of an IEP attempting to implement Petitioner's education at the highly restrictive [REDACTED] school (actually, pursuant to the September 2007 IEP), Petitioner's grandmother discontinued efforts to enroll her [REDACTED] in Respondent's schools and enrolled [REDACTED] at [REDACTED] School, which Petitioner alleged is appropriate.

Anticipating the defense of the statute of limitations as to the claims of the costs of enrollment for various private schools, Petitioner alleged that all claims are timely based on when Petitioner's grandmother should have known that she had a claim; applicable Florida law, which applies a four-year limitations period; and the principle of continuing wrongdoing by Respondent.

Among the claims for relief included in the Third Amended Due Process Request are reasonable attorneys' fees, reimbursement of the costs of enrollment at the above-named private schools, the performance of evaluations to determine Petitioner's present level of performance academically and behaviorally, the performance of a functional behavior

assessment (FBA), the preparation and implementation of an appropriate IEP, the preparation and implementation of an appropriate BIP, and the implementation of Petitioner's educational program in a less restrictive setting than [REDACTED] school or a self-contained unit for EBD students at a comprehensive high school.

During the first week of the hearing, the parties agreed to allow the record to extend to facts taking place after November 5, 2007, which is the date on which Petitioner filed [REDACTED] due process request, although the parties did not establish a new cut-off date. During the second week of the hearing, Respondent asked to revisit this agreement, seeking instead to limit the facts to those in existence as of November 5, 2007. After hearing argument and over the objections of both sides, the Administrative Law Judge established a cut-off date of January 17, 2008, which was the end of the first semester of the 2007-08 school year at [REDACTED] School, but extended this date to January 25, 2008, to allow the admission into evidence of the first-semester report card, which was issued on this date.

At the hearing, Petitioner called 17 witnesses and offered into evidence 28 exhibits: Petitioner Exhibits 1-28. Respondent called 11 witnesses and offered into evidence 23 exhibits: Respondent Exhibits 1-20 and 22-24. The Administrative Law Judge admitted pages 7-24 of Respondent's

Policies and Procedures for the Providing of Specially Designed Instruction and Related Services for Exceptional Students (2004-07 edition) as ALJ Exhibit 1. All exhibits were admitted except Respondent Exhibits 17 and 23, the former of which was stricken after the ruling establishing January 17, 2008, as the cut-off date for facts and the latter of which was proffered.

The court reporter filed the Transcript on June 23, 2008. On June 24, 2008, the Administrative Law Judge entered an Order granting a second specific extension of the original 45-day deadline. The first specific extension was by Order Following Telephone Conference of January 30, 2008, which was entered on February 14, 2008. The February 14 Order noted that the 45 days for issuance of a Final Order began with the filing of a sufficient due process request, which was January 18, 2008. The February 14 Order granted a specific extension of 66 days on the assumption that the final hearing would take place, as then scheduled, on March 24-28, 2008, so as to require the issuance of the Final Order by May 8, 2008. However, the attempted withdrawal, then disqualification, of Petitioner's Qualified Representative necessitated the continuance of the final hearing to the dates set forth above, and another specific extension. After consideration of the time required for the court reporter to file the Transcript and the parties to file proposed final orders, the June 24 Order granted a second specific extension of

76 days, so as to require the issuance of this Final Order by July 23, 2008.

The parties filed Proposed Final Orders by July 3, 2008.

FINDINGS OF FACT

I. Background

1. Petitioner was born on [REDACTED]. [REDACTED] is of [REDACTED] and [REDACTED] descent. Until the age of [REDACTED] years, Petitioner lived with [REDACTED] biological parents, where [REDACTED] witnessed substance abuse and domestic violence and [REDACTED]self was subjected to physical and emotional abuse and neglect.

2. Petitioner has an older brother and younger sister, who also resided with their parents during this time. One of these siblings has reported that the sibling and Petitioner were victims of sexual abuse from a close family member, but Petitioner has denied any recollection of such events.

3. In 1999, Petitioner and [REDACTED] two siblings were placed temporarily with their paternal grandmother, who has initiated this proceeding. In 2002, Broward Circuit Court entered an Order on Long Term Custody and Terminating Protective Supervision. The Order places the children permanently with Petitioner's grandmother, their legal custodian, with the consent of both biological parents, who are now divorced and living in Oklahoma. Petitioner and [REDACTED] siblings have no contact with their biological parents. The Order directs the

grandmother to protect the children and provides that any violation of any Order of the Court may subject the children to removal from her custody. The grandmother has consistently interpreted this provision to mean that, if she fails to ensure that the children are attending school, the court may take them away from her.

4. Generally, Petitioner's physical health has been unremarkable except for intermittent obesity, hearing and vision problems, and some speech delay, but none of these conditions, except possibly the hearing deficit, persists presently. However, [REDACTED] recently was diagnosed with high blood pressure, but no additional information was available at the time of the hearing, except that [REDACTED] is not presently taking blood-pressure medication.

5. Petitioner's family history is remarkable for several reasons in addition to those stated above. [REDACTED] mother and maternal grandmother have been diagnosed with mental illnesses. Two of [REDACTED] aunts lost custody of their children, apparently due to mental illnesses. Petitioner's sister has been in psychotherapy for PTSD.

6. The record contains little detail of Petitioner's early behavior when placed in [REDACTED] grandmother's home. However, rather than join [REDACTED] siblings and grandmother, [REDACTED] would hide under a bed or in a corner, and, at mealtimes, Petitioner would take [REDACTED]

food from the table and hide in a closet to eat it, leaving the remnants of the meal in the closet after ■■■ was finished.

7. Three mental health care providers have evaluated Petitioner in a little over three years from 2004-2007, and each of them has diagnosed ■■■ with major mental health disorders. A fourth, employed by Respondent, examined their work and reached the same conclusions.

8. In May 2004, a clinical psychologist, Francis Crosby, Ph.D. evaluated Petitioner for behavior disorders. In her report (Crosby Report), Dr. Crosby diagnosed Petitioner with ODD, PTSD (rule out--because she had not had a sufficiently long therapeutic relationship to establish this diagnosis), and bipolar disorder--NOS.

9. In early 2007, a licensed psychologist, Miriam DeFant, Ph.D., conducted an evaluation of Petitioner and issued a report based on testing dates of January 30 and March 31, 2007 (DeFant Report). The diagnostic hypotheses in the DeFant Report include PTSD and ADHD.

10. In August 2007, a psychiatrist, Cleopatra Ortiz, M.D., who serves as a consultant to Respondent at ■■■ school, examined Petitioner and reviewed available file materials. Dr. Ortiz's report, which is dated August 29, 2007 (Ortiz Report) diagnoses Petitioner with, among other conditions, PTSD, ADHD, and bipolar disorder (rule out).

11. At the hearing, Dr. Sue Jobe, a school psychologist with a doctorate in counseling and an employee of Respondent, testified that she had examined in detail the DeFant Report and found that Petitioner had exhibited "significant and acute" PTSD symptoms. Dr. Jobe added that, based on the multiple traumas that Petitioner had endured, █████ would need some long-term intensive help, and, at least as of the summer of 2007, █████ looked like a child who would not necessarily be able to hold things together.

12. Underscoring the persistent jeopardy to Petitioner from PTSD and █████ rigid coping structures, Dr. Jobe emphasized that, according to Dr. DeFant, Petitioner had invalidated the Minnesota Multiphasic Personality Inventory by presenting █████self in an excessively favorable light and repeatedly displayed █████ determination not to talk about or even recall █████ personal history--an effort requiring such vigor that it may have even impaired █████ working memory. Dr. Jobe noted Dr. DeFant's findings of dissociation--another prominent feature of PTSD--as well as Petitioner's hypervigilance and anger, but opined that Petitioner's ability to compartmentalize and act appropriately in certain settings would probably motivate █████ to do well in a program that █████ liked.

13. Dr. Jobe also testified that PTSD has a tendency to recur, and it is a condition that is best described as managed,

rather than cured. She testified that a child suffering from PTSD could enjoy periods of stable behavior, especially if ■■■ found ■■■self in a satisfactory setting. After being presented with the details of Petitioner's success after one semester at ■■■, Dr. Jobe opined that ■■■ would meet dismissal criteria from ESE. In particular, Dr. Jobe suggested that the intense physical activity that Petitioner undertook at ■■■ new school would dissipate a lot of mental stress and tend to "suppress" a lot of PTSD symptoms. Dr. Jobe advised that not all children suffering from PTSD would meet the restrictive EBD criteria.

II. Elementary School

A. Prior to Entering Palm Beach County School System

14. For the 1998-99 school year, Petitioner attended ■■■ grade at ■■■ School, which is part of the Broward County School System. Petitioner resided with ■■■ biological parents during this school year. However, ■■■ grandmother is aware of at least one disturbing behavioral incident. On May 12, 1999, unable to contact the parents, the school guidance counselor called the grandmother and told her that Petitioner was having trouble controlling ■■■ anger.

15. In August 1999, the Broward Circuit Court removed Petitioner and ■■■ siblings from their home and placed them temporarily with the grandmother. At the same time, a court-appointed psychologist began to treat Petitioner.

16. For the 1999-00 school year, Petitioner attended █ grade at the █. Early in the year, a teacher reported that Petitioner seemed to have trouble hearing normal sound levels, but, if she spoke loudly, █ would hide under █ desk. A referral for auditory screening revealed some unspecified hearing or auditory-processing deficits.

17. Although Petitioner had begun talking at 12 months, █ also had some speech problems, and █ apparently received auditory and speech therapy at █ School to deal with hearing and articulation deficits. Petitioner received counseling from unidentified persons at Henderson Mental Health, which had been appointed by the court, and was evaluated by Cheryl Gotthelf, Ph.D. and a licensed psychologist. Although the findings of these professionals are not part of the present record, Dr. Gotthelf told Petitioner's grandmother, according to testimony contained in the latter's deposition, that the Broward County School District representatives had failed to identify Petitioner as a child with qualifying disabilities. Petitioner's grandmother testified that this conversation took place at the start of the 1999-00 school year.

18. Early in that school year, the teachers determined that Petitioner required a "tutorial action plan" for reading and language arts. Pursuant to this plan, which is entirely

academic in nature, ■ School provided Petitioner with a reading and learning resource specialist.

19. At ■ School, Petitioner received all "satisfactories" in the second semester, after receiving several "needs improvements" in the first semester. Teacher comments traced improvement in Petitioner's reading, ability to stay on task, and work effectively during independent classwork time. For "learning resource," the teacher comment states:

[Petitioner] attends Learning Resource twice each day to reinforce ■ grade reading and language arts skills. ■ is capable of doing many activities . . . independently. . . . [Petitioner] needs to continue practicing all basic reading and language arts activities each day in an individualized program.

20. For the 2000-01 school year, Petitioner attended ■ grade at ■ School, a Catholic school in Broward County. In June 2000, prior to the start of the ■-grade school year, the grandmother registered Petitioner for the school's "Wings" program, which is for students with a "learning problem." The grandmother described Petitioner's difficulties as problems with reading due to poor word attack and sounding-out skills and failing to see words in their correct order. The grandmother described Petitioner's difficulties with writing due to an inability to memorize certain vowels and consonants.

21. At ■■■, Petitioner received Bs and Cs, except for straight As in physical education. Typical among the teacher comments on Petitioner's report card is: "[Petitioner] completes ■■■ work only on a one-to-one [basis]. ■■■ cannot work independently. ■■■ is too social in class."

22. In a separate handwritten note dated July 5, 2000, a ■■■-grade teacher stated that Petitioner had participated in the Wings program, which she described as small-group teaching. The note states that Petitioner received reading and math in a "small group setting and was able to function in this environment. However, ■■■ needs consistent guidance with copying and completing both classroom and homework assignments."

23. For the first semester of the 2001-02 school year, Petitioner attended ■■■ grade at ■■■ School, a Broward County public school, where ■■■ continued to receive counseling, speech therapy, and special reading assistance. The grandmother could not recall whether Petitioner was still receiving vision therapy, although she testified in her deposition that Petitioner finished ■■■ vision therapy in 2001, probably in the latter half of the year.

24. At the end of the first reporting period, Petitioner had earned a B average and was working at grade level, although other information suggested that ■■■ was reading at a mid-third-grade level. Petitioner had an "A+ Student Growth Plan" to

assist [REDACTED] in developing reading skills, but the plan was entirely academic in nature. Petitioner worked in small groups for additional reading and writing instruction.

25. When asked at the hearing whether she had paid for all the therapy in terms of vision, hearing, and speech, the grandmother testified that she had paid for all such services. Except for the counseling provided by Henderson Mental Health, nothing in the record suggests that, by this point, Petitioner had received specialized instruction or related services for which a public agency had paid.

B. Palm Beach County Schools: [REDACTED] School

26. For the second semester of the 2001-02 school year, Petitioner attended [REDACTED] grade at [REDACTED] School, a Palm Beach County School. Petitioner arrived at the school a couple of weeks into the semester. At the time, about 750 students attended [REDACTED], of whom about 160 were ESE students. Of these, about 50 were in the gifted program.

27. Petitioner's grandmother completed a registration form for new students to Respondent's school district. The form discloses that Petitioner is transferring from [REDACTED] School in Broward County and reports that a court order bars the parents from removing or contacting the student during the school day. However, the registration form contains nothing that would cause Respondent's representatives to suspect that Petitioner has an

ESE-qualifying disability or that the grandmother or anyone else believed that Petitioner might require an IEP.

28. Although, by the time that Petitioner entered Respondent's school system, ■■■ had had received speech, auditory, and visual therapy, as well as psychological counseling from the court-appointed counselor, nothing in the record suggests that any of these services were ongoing when Petitioner entered ■■■ School. These ESE-like services are essentially undocumented in the present record, and it is impossible to infer that Petitioner's grandmother supplied documentation as to any of these services to any of the staff at ■■■ at the time of Petitioner's initial enrollment or at any time thereafter.

29. Prior to Petitioner's arrival at ■■■, ■■■ grandmother had separate meetings with Ann Faraone, who was the principal, and Hope Gordon, who, at the time of Petitioner's arrival, was the school guidance counselor. (Hope Gordon is not to be confused with Chari Gordon, who was the teacher of pre-K developmentally delayed students during Petitioner's first semester at ■■■ and, in June 2002, became the ESE coordinator for ■■■.) Petitioner's grandmother is the sole source of information concerning these undocumented meetings. Ms. Hope Gordon, who is now retired, did not testify, and Ms. Faraone,

who recalled meeting the grandmother several times, did not recall whether she had had a pre-enrollment meeting with her.

30. At the initial meeting with Ms. Faraone, Petitioner's grandmother identified the schools that her [REDACTED] had attended and explained that [REDACTED] had required extra help in reading. She explained briefly Petitioner's family history, including the circumstances surrounding [REDACTED] placement with her, and mentioned that [REDACTED] had undergone counseling. The grandmother also mentioned the speech therapy, auditory therapy, and visual therapy that Petitioner had received, but, more likely than not, did not advise anyone at [REDACTED] that Petitioner was still receiving counseling or therapy of any kind, if, in fact, [REDACTED] was.

31. Instead, the focus of the grandmother's meeting with Ms. Faraone was academic. Petitioner's grandmother showed Ms. Faraone the academic paperwork, largely described above, and Ms. Faraone asked her to bring the paperwork back at a subsequent meeting. The grandmother signed a release so Respondent's representatives could obtain Petitioner's records from other schools, and Ms. Faraone assured the grandmother that they would get Petitioner the help that [REDACTED] needed and not to worry.

32. Not more than two weeks later, Petitioner's grandmother returned to [REDACTED] for a second meeting, this time with Ms. Hope Gordon and possibly Ms. Faraone. During this meeting,

which was longer than the first meeting, the grandmother and Ms. Gordon examined some of the paperwork that the grandmother had brought with her to the first meeting. Petitioner's grandmother expressed her concern that her [REDACTED] obtain the help that [REDACTED] needed, and Ms. Gordon undertook the responsibility of ensuring that the proper person would get in touch with her. Consistent with the documentation and conversations concerning Petitioner's current problems, which were academic in nature, the person to whom Ms. Gordon referred was a learning facilitator, not an ESE specialist. Consistent with the documentation and conversations, Ms. Gordon and Ms. Faraone planned to pull Petitioner out of classes to ensure that [REDACTED] continued to get the extra help in reading and other areas in which [REDACTED] had had trouble and for which [REDACTED] had received extra help while in [REDACTED] previous schools.

33. The record suggests that the academic interventions fashioned by Mses. Faraone and Hope Gordon were sufficient. Ms. Faraone testified that Petitioner did quite well and fit in nicely at [REDACTED] during [REDACTED] first semester there. Likewise, Petitioner's [REDACTED] grade teacher testified that Petitioner read on grade level and assimilated into the classroom quite well. Petitioner was pulled out for intensive reading and writing instruction. Petitioner's grandmother testified that the classroom teacher had reported to her that Petitioner had

problems staying in [REDACTED] seat, but the record is devoid of evidence of serious behavioral or academic problems during the second semester of [REDACTED] grade.

34. For the 2002-03 school year, Petitioner attended [REDACTED] grade at [REDACTED], the first time that [REDACTED] grandmother allowed [REDACTED] to return to the same school that [REDACTED] had finished the preceding school year. On August 22, 2002, at the start of the school year, Petitioner's grandmother signed a consent for evaluation of Petitioner. The consent form recites that the proposal to evaluate is based exclusively on the request of the grandmother and not on such matters as classroom performance, perceived needs, out-of-district information, medical records, or school-based assessment data. The consent form states that the grandmother received a Summary of Procedural Safeguards, which she acknowledges having received. The consent form bears the handwritten notation at the top, "gifted," but the grandmother cannot recall whether this notation was present when she signed the document.

35. The grandmother testified, though, that she had intended to have Petitioner tested for difficulties in school, not for inclusion in the gifted program, which is a program that offers academic enrichment for children with exceptionally high intellectual aptitude. Concerned with delay due to the waiting list for testing with the school psychologist, the grandmother

took Petitioner to a private psychologist, who administered the necessary tests and submitted the results to Respondent's representatives.

36. The intelligence test administered by the private psychologist reported an intelligence quotient of 141--a result that neither party endorses and that Petitioner has never approached in other such tests. Based on what is likely an unjustifiably high test score and other information, Respondent classified Petitioner as gifted. It is impossible to credit the grandmother's claim that she wanted to have Petitioner evaluated for an ESE-qualifying disability, given the absence in this record of academic or behavioral problems at school at this time and the grandmother's failure to revisit the need for ESE services at the subsequent planning meeting, described below, that placed Petitioner in the gifted program.

37. Petitioner's grandmother paid \$375 to the private psychologist, which is the first expenditure for which Petitioner seeks reimbursement.

38. As noted above, the ESE coordinator at [REDACTED] was Cheri Gordon. Ms. Gordon testified that, although she only "vaguely remembered" Petitioner, her involvement with Petitioner was limited to examining the report of the private psychologist as part of the process of qualifying Petitioner for the gifted program. Determining that Petitioner met the admission criteria

for the gifted program, Ms. Gordon arranged an education planning meeting.

39. On November 19, 2002, Ms. Gordon participated in an education planning meeting for Petitioner. In attendance were Petitioner's grandmother; [REDACTED], the gifted teacher; the classroom teacher; and Ms. Gordon. Ms. Gordon distributed a copy of the procedural safeguards and recorded the minutes of the meeting. Noting the IQ score, satisfactory achievement scores, and a satisfactory score from [REDACTED] classroom teacher, Ms. Gordon documented Petitioner's satisfaction of the eligibility criteria for the gifted program. The group prepared an education plan, which included the teacher observation, "[Petitioner] is a great student. [REDACTED] does an excellent job on hands-on activities." The education plan contained a check in the box for specialized enrichment instruction, but contained no check in the box for "Counseling/Guidance/Behavior contracts-- understanding exceptionalities, address behavior, gifted/emotional issues." The education plan provides for the commencement of participation in the gifted program on November 21, 2002.

40. Petitioner's behavior in [REDACTED] grade was not exceptionally good, but not exceptionally bad, as determined by school staff. [REDACTED] classroom teacher described [REDACTED] as a C student, capable of better grades. She described Petitioner as very intelligent. The classroom teacher issued four

disciplinary referrals on Petitioner that school year, but testified that this was not an unusual number for a [REDACTED]-grade student. In October 2002, Petitioner earned a referral by rubbing tweezers along the ground to heat them up and then applying them to a classmate to cause a burn. Although potentially alarming, this act, as characterized by the classroom teacher, who was the adult with the most direct knowledge of the incident, was the product of clowning around and not a serious attempt to injure someone. Consistent with this testimony was the classroom teacher's recommendation, which took place shortly after the tweezers incident, to include Petitioner in the gifted program.

41. Another referral issued by the classroom teacher involved Petitioner's utterance of a vulgarity for [REDACTED] genitals, in the presence of younger students. Another referral was for tripping another student, causing [REDACTED] to suffer a broken wrist. But the classroom teacher, again with the most direct involvement with these acts and Petitioner generally, described [REDACTED] merely as mischievous, loving and friendly toward her, and guilty of no more than the usual behaviors typical of a child [REDACTED] age and gender. Apparently in accord with this view was the gifted teacher, who noted in a progress report dated February 26, 2003, that Petitioner was meeting academic standards with an education plan, instead of grade level academic standards, and

declined the opportunity to request a conference with Petitioner's grandmother.

42. On May 5, 2003, Ms. Gordon conducted another education planning meeting to prepare an education plan for [REDACTED] grade. Petitioner's grandmother received another Summary of Procedural Safeguards. The ensuing education plan placed Petitioner in the gifted program in middle school, which, unlike the gifted program in elementary school, was a full-time program. As before, nothing in the documentation suggests that the grandmother objected to the failure to include ESE services in her [REDACTED]'s education plan.

III. Middle School

A. Palm Beach County Schools: [REDACTED] School

43. For the 2003-04 school year, Petitioner attended [REDACTED] grade at [REDACTED] School, which is also in Respondent's school system. At the time, [REDACTED] had over 3000 students. At present, about 25-30 students are classified emotionally handicapped (EH); it is unknown how many such students attended [REDACTED] at the time Petitioner was there.

44. At the start of the first semester, Petitioner took a full load of four gifted classes, but [REDACTED] was struggling. By the end of the first nine-week reporting period, at which time [REDACTED] had received mostly Ds and Fs, Respondent, with the consent of all concerned, withdrew Petitioner from all of the gifted

courses except social studies. By the end of the first semester, again with the consent of all concerned, Petitioner was withdrawn from gifted social studies, so that, by the start of the second semester, Petitioner was taking all regular-education classes.

45. Two of Petitioner's regular-education teachers and the gifted social-studies teacher testified that they had no unusual disciplinary problems with Petitioner. The assistant principal testified that ■■■ did not recall Petitioner as a chronic disciplinary problem. However, maladaptive behaviors emerged during this school year, and, despite attempts by school staff to minimize the gravity of this misbehavior, Petitioner's public insubordination in particular was troubling.

46. For instance, on October 13, 2003, the regular-education science teacher twice told Petitioner to quit talking during class. Another student reported that Petitioner had spit on the floor. When the teacher told ■■■ to clean it up, Petitioner picked up the spit and threw it on another student. The assistant principal assigned Petitioner an after-school detention.

47. Petitioner's behavior deteriorated quickly during the second semester of ■■■ grade. Two incidents took place on January 21, 2004. In the morning, Petitioner kept harassing another student, even after being told by the teacher to stop.

At the end of class, Petitioner resumed the harassment, and the teacher ordered Petitioner to the back of the line exiting the classroom. Petitioner became disrespectful to the teacher, saying ■■■ was not going to put up with this. The assistant principal imposed a work detail on Petitioner.

48. In the afternoon, before physical education, another boy hit Petitioner with a bottle cap. Petitioner kicked the boy and threw a punch, but missed. The boy then punched Petitioner in the nose, breaking it, and necessitating a trip to the hospital. The assistant principal suspended Petitioner for three days for this incident.

49. After serving ■■■ suspension, Petitioner returned to school, but, on February 13, 2004, ■■■ earned another disciplinary referral from the science teacher, who cited Petitioner for disruptive and insubordinate behavior, the latter for ■■■ refusal to sign a detention and turning ■■■ back and walking out of class when the teacher tried to talk to ■■■. Petitioner received a Saturday detention.

50. As one of Respondent's witnesses phrased the issue, the question, at least during ■■■ grade, was whether Respondent was dealing with a bad ■■■ or a sick ■■■. The ■■■-grade teacher-witnesses and assistant principal uniformly described a typical ■■■ grade ■■■, either explicitly or by their inability to recall specific details about Petitioner. This testimony

tends to support a finding that Petitioner was neither sick nor bad, but, if either, only bad. However, Petitioner proved that, not only was [REDACTED] behavior bad, even as compared to [REDACTED] peers, but Respondent was aware of sufficient facts to support a reasonable suspicion that Petitioner was sick or, more formally, might be suffering from an ESE-qualifying disability.

51. One teacher who distinctly recalled Petitioner was [REDACTED]-grade regular-education language arts teacher, Regina Johnson. Although Ms. Johnson testified that Petitioner's behavior was "fine" and she did not tolerate much "foolishness" in her classroom, she also stated that, on certain days, Petitioner did not want to do much work, and, on those days, Ms. Johnson did not press Petitioner.

52. On first impression, Ms. Johnson's willingness to accommodate Petitioner's moodiness and her unwillingness to tolerate foolishness seem mutually exclusive, but they are not. Ms. Johnson had a good relationship with Petitioner, who had told her of problems at home that were bothering [REDACTED]. Among other things, Petitioner confided in Ms. Johnson, who is black, that [REDACTED] felt alienated from the part of [REDACTED] family, including [REDACTED] paternal grandmother, who does not share Petitioner's [REDACTED] heritage and darker complexion. Petitioner told Ms. Johnson that [REDACTED] wanted to be a chef, but [REDACTED] grandmother, who is [REDACTED], did not approve. Petitioner also told Ms. Johnson of domestic

trauma, including [REDACTED] feelings of guilt for specific abuse that [REDACTED] had inflicted on one of [REDACTED] siblings--an act of such seriousness that Ms. Johnson testified that she was surprised because she had not seen that side of Petitioner.

53. It is evident that Ms. Johnson is a compassionate teacher who displayed considerable sensitivity to Petitioner and thus gained [REDACTED] trust. From what she knew about Petitioner, Ms. Johnson recognized that [REDACTED] would have trouble controlling [REDACTED] anger on certain days, so, on these days, she tried to avoid agitating [REDACTED]. Sufficiently concerned about Petitioner, Ms. Johnson suggested to [REDACTED] and to [REDACTED] grandmother, separately, that each obtain counseling.

54. However, Ms. Johnson did not contact the ESE coordinator or guidance counselor herself. Perhaps due to her approach, Ms. Johnson had little trouble with Petitioner; she could recall issuing only one disciplinary referral to [REDACTED] that year. It is abundantly clear that Respondent encourages its teachers to handle disciplinary matters within the classroom and trains its teachers to distinguish between behaviors that may be handled in the classroom and those that require referral to the administration.

55. It is less clear whether, and how, Respondent trains its classroom teachers to recognize the facts that would support a referral to the administration of a student suspected of

having an ESE-qualifying disability, rather than for discipline. The principal testified that annually the ESE coordinator showed teachers how to fill out the ESE referral packet and told teachers what to look for, but no [REDACTED] teacher who testified had any clear idea of what he or she was to look for in a student with Petitioner's ESE-qualifying disabilities. The widespread ignorance of [REDACTED] teachers as to such matters suggests inadequate training, rather than shortcomings in the individual teachers themselves.

56. Regardless of whether she was trained, Ms. Johnson, who, perhaps more than any of Petitioner's other teachers, made the effort to build and maintain a special relationship with Petitioner, learned of circumstances that, when combined with the bad behavior described above, gave rise to a reasonable suspicion that the child had an ESE-qualifying disability. Unfortunately, Ms. Johnson failed to notify the administration of this information, even when presented with an excellent opportunity to do so.

57. This opportunity was a 504 conference that Respondent conducted on Petitioner May 10, 2004. The reference to "504" is to Section 504 of the Rehabilitation Act, 29 United States Code Sections 794 et seq. Such conferences are uncommon. The [REDACTED]-grade science teacher testified that, over seven years, [REDACTED] has attended only 20 such conferences.

58. At Petitioner's 504 conference, which was attended by Petitioner's grandmother, several classroom teachers, and the school guidance counselor, the grandmother reported that a psychiatrist had tried Petitioner on three different medications, evidently to rule out or control ADHD, since the inception of [REDACTED] academic difficulties in the fall of the 2003-04 school year. However, the grandmother reported that Petitioner was still having behavioral problems.

59. Ms. Johnson stated that Petitioner needed to make choices, presumably better ones, and 504 accommodations would encourage bad behavior. Another teacher said that Petitioner stopped bad behavior when asked to, and academics were more of a problem than behavior. The conclusion of the teachers was that Petitioner did not qualify for 504 accommodations at that time, but the grandmother could ask for another evaluation in [REDACTED] grade.

60. Evidently, Ms. Johnson did not deem that the 504 conference was a suitable forum to share with the group what she knew of the trauma from which Petitioner had suffered. It is difficult to determine exactly what the grandmother told the group, but, once she mentioned the use of behavior-controlling medications, especially with mixed results, the teachers and guidance counselor should have advised the administration of the need for a professional screening and evaluation. In other

words, the teachers and guidance counselor should have suspected the existence of one or more ESE-qualifying disabilities.

61. This record is unusual because it is easily determined that, at the precise time of the 504 conference, Petitioner in fact suffered from one or more ESE-qualifying disabilities. Dr. Francis Crosby, a clinical psychologist, evaluated Petitioner for behavioral problems in May 2004--evidently after the 504 conference. After noting that Petitioner was taking antidepressants and psychostimulants, Dr. Crosby reported a history of depression in Petitioner's parents with alcohol and drug abuse on both sides of the family. Reported learning disorders also afflicted both sides of the family, and one side of the family had reports of mental retardation. Dr. Crosby identified four Axis I working diagnoses: victim of neglect and abuse by history, ODD, PTSD (rule out), and bipolar disorder--NOS. Dr. Crosby ruled out any processing deficits, including those visual or auditory in nature, and learning disabilities.

62. Dr. Crosby found that Petitioner displayed repressed hostility, feelings of rejection, and an unreal sense of entitlement. She found that [REDACTED] did not easily trust others and had trouble communicating effectively in words, especially about negative feelings. Dr. Crosby found that Petitioner resorted to repressing and avoiding unpleasant situations until [REDACTED] was

unable to continue to hold in [REDACTED] feelings, at which time [REDACTED] acted out and became defiant and aggressive.

63. Dr. Crosby concluded that Petitioner's profile was consistent with ODD and depressive disorder--NOS. Although Petitioner's profile presented traits consistent with bipolar disorder--NOS, not all criteria were present at the time of the evaluation. To rule out PTSD, Dr. Crosby suggested a longer-term therapeutic relationship.

64. The Crosby Report warns that Petitioner was "dangerous to [REDACTED]self and to others when angry as [REDACTED] has [the] potential for explosive and violent behavior." Noting the "signs and symptoms" of possible "personality problems," the Crosby Report recommends monitoring "for possibly more involved psychopathology as [Petitioner] enters puberty, given that there is a family history and therefor likely a genetic vulnerability or pre-disposition for mood, behavior and violence problems."

65. Dr. Crosby recommended that Petitioner and [REDACTED] caregivers understand mood disorders and that Petitioner continue with psychiatric treatment. She also recommended that the interventions focus on the symptoms and sources of ODD, which could involve focusing on the issues of power and control in Petitioner and [REDACTED] grandmother. The Crosby Report concludes:

[It should] also be considered by the multidisciplinary team working with [Petitioner] that the severity, intensity

and frequency of [REDACTED] behaviors warrant consideration for residential type services, for example [REDACTED] youth camp or another long term facility where [Petitioner] can be contained, counseled, and taught basic regard for societal norms, rules and regulations while helping [REDACTED] with trust issues, rejection and while helping [REDACTED] build a sense of family relations and living in a controlled environment. Safety is an issue and [Petitioner] is to be monitored at all times given [REDACTED] explosive and aggressive nature, until a time when [REDACTED] can be determined that [Petitioner] has demonstrated internalization of controls necessary to ensure [REDACTED] and the safety of others around [REDACTED]. . . .

66. The Crosby Report is credited in its entirety. Her findings, conclusions, and recommendations are exactly what the 504 conference missed when deciding that Petitioner had no disability requiring an accommodation, but was instead merely misbehaving.

B. Palm Beach County: [REDACTED] Facility

67. From July 19 to November 24, 2004, Petitioner attended [REDACTED] Center, which is funded by Palm Beach County, not by Respondent or user fees. It is a short-term residential facility, accessible to Respondent's students, that targets children from the ages of 11-15 years who are at high risk of involvement with the juvenile justice system. Typically, a child resides at [REDACTED] for 12 weeks, but Petitioner resided there for about 17 weeks.

68. ■■■ is an unsecured, voluntary facility where children reside through the week, returning home to their families on weekends. ■■■ accommodates about 60 students, who are admitted at anytime during the year. Respondent provides four onsite teachers and a paraprofessional for educational services.

69. Petitioner's grandmother provided the ■■■ staff with a copy of the Crosby Report, which they used in preparing a treatment plan for ■■■. Petitioner completed ■■■ first nine weeks of ■■■ grade while at ■■■. ■■■ earned Bs in geography and peer counseling and Cs in math, language arts, computer science and reading.

70. The therapeutic regime at ■■■ is cognitive behavioral therapy. Licensed family therapists with master's degrees conduct individual, family, and group therapy on a regular basis. ■■■ supplies one bachelor-level counselor per six children per day and associate-level technicians for nights and classrooms during the day.

71. During the typical day, a student attends four core classes and an elective from 7:30 to 11:30 a.m. and then peer counseling to develop the ability to control anger and tolerate frustration and group therapy in the afternoon to address any problems that arose that morning. Once a week, counselors conduct family therapy sessions.

72. The admissions criteria of [REDACTED] preclude admission for any child who is already involved with the Department of Juvenile Justice or who is on psychotropic medications. The focus is on prevention, not treatment, so the therapists examine each child's behavior at home and school and try to give him or her skills to build upon.

73. Petitioner generally did well at [REDACTED] and progressed through the various steps of the program, although [REDACTED] regressed the weekend before discharge. The discharge report, which is dated November 24, 2004, states that, while in the [REDACTED] program, Petitioner "projected a positive image in treatment by conforming to the structured learning environment." However [REDACTED] exhibited inconsistent behavior at home and, based on the reversion to old behavior during the home visit, the grandmother decided to send Petitioner to a boarding school.

C. Private Facility: [REDACTED] Academy

74. Two days after Petitioner was discharged from [REDACTED], [REDACTED] applied for admission to the [REDACTED] [REDACTED] in Melbourne, Florida. Petitioner's grandmother decided to enroll Petitioner at this military school on the advice of a counselor at [REDACTED] who had worked with Petitioner.

75. Prior to starting at the [REDACTED] [REDACTED], Petitioner returned to [REDACTED] School for 18 days. Nothing remarkable seems to have taken place during this brief period at [REDACTED]. Although she

testified that she was giving her [REDACTED] one more chance to try to succeed at living at home, it is at least as likely that the grandmother had already decided on the [REDACTED] [REDACTED] and temporarily placed [REDACTED] at [REDACTED] to avoid the loss of the child through judicial intervention due to a failure to educate [REDACTED].

76. The [REDACTED] is a military school with emphases on discipline and character-building. For the right child, such as Petitioner's older brother, who enrolled after Petitioner enrolled, the [REDACTED] provides a good program for academic and behavioral development. However, the [REDACTED] was not equipped, such as with therapists, to deal with children whose behaviors are attributable to ESE-qualifying disabilities.

77. Petitioner attended the [REDACTED] for [REDACTED] grade from January 2005 to June 2005, for the summer of 2005, and for [REDACTED] grade from August 2005 to December 2005. During [REDACTED] tenure at the [REDACTED], Petitioner engaged in repeated, presumably rage-induced self-injurious behavior that resulted in two fractures of [REDACTED] hand. [REDACTED] tenure ended with [REDACTED] expulsion associated with an arrest, never prosecuted, and brief incarceration for some unspecified offense involving seriously maladaptive behavior.

78. Petitioner's grandmother paid over \$30,000 to the [REDACTED] [REDACTED], which is the second expenditure for which Petitioner has sought reimbursement.

D. Palm Beach County Schools: [REDACTED] School

79. After Petitioner's expulsion from the [REDACTED], the grandmother decided to re-enroll Petitioner at [REDACTED] School, so she and Petitioner had a meeting with the [REDACTED] principal on December 21, 2005. During the meeting, which lasted 15-30 minutes, Petitioner's grandmother said that her [REDACTED] had had problems adjusting to the [REDACTED] and she wanted to give [REDACTED] another chance at [REDACTED] home school. Petitioner's grandmother did not disclose the arrest and expulsion, although [REDACTED] officials had allowed Petitioner to withdraw rather than suffer a formal expulsion.

80. More importantly, the grandmother did not disclose the Crosby Report. It is conceivable that she may not have provided the principal a copy of the report because she would have assumed that he would have it, or obtain it without delay, from [REDACTED], but it is odd that the grandmother failed even to mention the report or its findings. This is a material fact for two reasons. First, this nondisclosure undermines the grandmother's repeated testimony about telling school officials at various times of her [REDACTED] psychological and behavioral problems. To the contrary, perhaps due to embarrassment, there is a distinct possibility that the grandmother engaged in a pattern of concealing most details of her [REDACTED]'s traumatic life, instead revealing no more than that the parental rights had been

terminated and, until ■■■, moving ■■■ from school to school in the vain hope of finding the right combination. Second, this nondisclosure requires a careful analysis of its effect on Respondent's liability for failing to identify and evaluate Petitioner.

81. On January 9, 2006, Petitioner began attending ■■■-grade classes at ■■■ School. But for two dramatic incidents, the record does not describe what transpired during Petitioner's short second stay at ■■■ School. On February 14, 2006, the grandmother attended a conference with all of Petitioner's teachers, evidently due to poor grades. The conference record following this meeting records the comments of three of the six teachers who disclosed Petitioner's grades: they were a 71% C, a 65% D, and a 36% F. The conference record also discloses that three of the teachers reported that Petitioner was "not a behavior problem."

82. However, within one week of the conference, the first dramatic incident took place when Petitioner consumed alcohol at school. ■■■ was not disciplined because ■■■ told ■■■ grandmother and identified for the administration the boy who had brought the alcohol to school.

83. One to two weeks later, though, on or about March 1, 2006, Petitioner was suspended for ten days for the possession of marijuana on school grounds. Upon learning of the marijuana

incident, Petitioner's grandmother spoke with the principal and stated that this was the second "red flag" with police involvement. She asked [REDACTED] if there was anything that [REDACTED] could do to help. [REDACTED] replied that, if the child were charged with a felony, [REDACTED] would not be permitted to return to [REDACTED] School. According to the principal, the grandmother said that she was going to have to send Petitioner somewhere. The grandmother immediately withdrew Petitioner from [REDACTED] School. The principal testified that possession of marijuana at school is not a typical offense; in a typical year, [REDACTED] imposes only a couple of suspensions for this offense.

E. Private Facility: [REDACTED]

84. Possibly explaining why the grandmother did not reveal the Crosby Report to the [REDACTED] principal, on the same day that Petitioner started the second semester of [REDACTED] grade, a licensed clinical social worker in Melbourne, Terry Clowney, called Bernie Zimmerman, an educational consultant. Unaffiliated with the [REDACTED], Mr. Clowney had seen Petitioner several times while [REDACTED] attended the school, although the record does not reveal anything concerning these meetings or the therapy that took place.

85. Petitioner's grandmother paid \$1235 to Mr. Clowney, which is the third expenditure for which she seeks reimbursement.

86. An educational consultant, Mr. Zimmerman has a master's degree in school counseling and professional experience working with persons with addictions and persons in residential treatment centers. Mr. Zimmerman also has a master's degree in psychology. He has been employed as the clinical director of a psychiatric residential facility for adolescents.

87. Mr. Clowney contacted Mr. Zimmerman, at the grandmother's request, to see if he might serve as an educational consultant for the grandmother, who was trying to decide where to place Petitioner next. The reason for the meeting and its timing suggest that the grandmother may have intended only to leave her [REDACTED] at [REDACTED] long enough to avoid problems with the court that had placed [REDACTED] with her and to find another educational program that would be more suitable for [REDACTED]. The grandmother's testimony supports this finding. For the two- or three-week enrollment at [REDACTED] immediately prior to the [REDACTED] [REDACTED], the grandmother explained that she wanted to give her [REDACTED] another chance to see if [REDACTED] could live at home. For the six-week enrollment at [REDACTED] immediately prior to [REDACTED], the grandmother mentioned only her concern about keeping her [REDACTED] in school so as to avoid judicial intervention that might result in [REDACTED] being taken from her.

88. At an unspecified point, almost certainly while Petitioner was in attendance at [REDACTED], Mr. Zimmerman met with

Petitioner and the grandmother for a full day, during which time, he conducted an evaluation of Petitioner to determine an appropriate educational placement. The failure of the record to indicate the day of this evaluation precludes any findings as to the effect of the knowledge upon Petitioner that another, presumably disfavored educational placement was imminent. Based on his evaluation of Petitioner and [REDACTED] educational and behavioral needs, Mr. Zimmerman consulted with the grandmother in the selection of an appropriate program.

89. As Mr. Zimmerman explained it in his deposition, the intensity of residential facilities varies, based on such factors as the frequency of a child's contact with a licensed behavioral professional and the frequency of updating a child's treatment plan. For instance, a medical residential treatment center would mean more contact between licensed behavioral professionals and students than would take place at a therapeutic boarding school. The respective ratios of therapists to students at both kinds of facilities are approximately 7:1 and 11:1. Another difference between the medical and boarding facilities is that, at the former, the student is learning new skills, such as anger management and mood stabilization, while at the latter, he or she is practicing these skills in a more normalized setting.

90. Wilderness programs engage in considerable behavioral-skill building, so as to resemble medical residential facilities in this respect, but vary from medical and boarding facilities, where the focus is evenly divided between academics and therapy, because the focus in wilderness programs is more on therapy than academics. Wilderness programs also vary from medical residential programs because the former are typically shorter than the latter.

91. Based on his evaluation, Mr. Zimmerman found Petitioner to be moderate to severe in emotional volatility. He found Petitioner to be on grade level in language arts, history, and math. Mr. Zimmerman determined that Petitioner's behavior at the [REDACTED] precluded [REDACTED] attendance at therapeutic boarding schools at that time. Mr. Zimmerman concluded that Petitioner thus needed a program where [REDACTED] could acquire some skills before placement in a therapeutic boarding school. Mr. Zimmerman identified the [REDACTED] program as a suitable for Petitioner at the time.

92. After placement of a child in a program, Mr. Zimmerman speaks weekly with the program's clinician to monitor the child's progress and eventually prepare for the next placement of the child.

93. Petitioner's grandmother paid Mr. Zimmerman's \$3800, which is the fourth expenditure for which Petitioner's

grandmother seeks reimbursement. This was a flat fee for all services from Mr. Zimmerman, including those described below.

94. Petitioner arrived in Utah for the [REDACTED] program on March 3, 2006, two days after [REDACTED] was found with marijuana at [REDACTED] School. In [REDACTED] initial interview, Petitioner spoke with [REDACTED] clinical director, Gillan Smith, who holds a doctorate in counseling and psychology and is a licensed psychologist. Completing a questionnaire, Petitioner admitted that [REDACTED] had been physically abused. [REDACTED] admitted [REDACTED] had been emotionally abused by [REDACTED] parents. And [REDACTED] did not respond to the question of whether [REDACTED] had been sexually abused, although, in response to a followup question from Dr. Smith, Petitioner again denied sexual abuse.

95. Dr. Smith prepared a treatment plan for Petitioner on the day following the initial interview. The sole Axis I diagnosis that he included in [REDACTED] plan was PTSD. The plan was to help Petitioner increase [REDACTED] coping skills, such as muscle relaxation, breath control, visualization, role playing and cognitive thought-stopping, to reduce anxiety related to the trauma. The plan was to encourage Petitioner to talk about the trauma to reduce its effect on [REDACTED]. The plan recommends individual, group, and family therapy.

96. The [REDACTED] program takes adolescents of common gender for eight months for a wilderness experience in which, with no

contact with the outside world, except as noted below, they hike from campground to campground, make their food, prepare their campsite, and take responsibility for their own equipment. By taking responsibility for one's equipment and meals, eventually the student learns to take responsibility for [REDACTED] behavior.

97. The clinical director joins the group twice weekly to conduct individual therapy with every student. At all times, the [REDACTED] were accompanied by other behavior professionals, who conducted group therapy and helped the [REDACTED] as needed.

98. When Petitioner arrived at [REDACTED], [REDACTED] was distracted and distant from [REDACTED] feelings. [REDACTED] was unable to process [REDACTED] early traumas. Interventions included assigning Petitioner books to read, including Les Miserables by Victor Hugo and Man's Search for Meaning by Victor Frankl; having Petitioner keep a log of [REDACTED] feelings; exposing Petitioner to the positive peer culture of the group, most of whom had succeeded in taking responsibility for their lives and encouraged other [REDACTED] to do the same; and engaging Petitioner in guided imagery to overcome the mindset into which [REDACTED] had been locked since the early trauma.

99. The [REDACTED] program included academics. Each day, the [REDACTED] worked on homework for about an hour after setting up a new camp. Once each week, two teachers affiliated with [REDACTED] School, an accredited school in Utah, hiked out to the group and

conducted class for two hours in the open. The curriculum covered four subjects: Utah history, English, math, and physical education.

100. After four or five days in the wilderness, Petitioner assumed personal responsibility for ■■■ equipment, meals, and behavior. One month into the program, Petitioner failed to complete an assignment in completing ■■■ feelings log. ■■■ failed to do so because of ■■■ fear of unearthing ■■■ anger toward ■■■ mother. Dr. Smith tried, but failed, to induce Petitioner to deal with these feelings. A couple of weeks later, Dr. Smith spoke with Petitioner's grandmother, who expressed dissatisfaction with the direction of treatment. Two and one-half weeks after the problem with the feelings log, Petitioner again expressed reluctance to complete the entries, and Dr. Smith opined that he might be expecting too much of Petitioner by asking ■■■ to do these log entries on a regular basis.

101. At the end of two months, Petitioner had completed the ■■■ program. As to Petitioner's disruptive behavior, the discharge summary notes that Petitioner ceased arguing with adults and decreased the incidents of losing ■■■ temper. ■■■ "began" to comply with rules and requests from the program, "stopped" blaming others for ■■■ mistakes, and "began" to curtail anger and reflect on how to control ■■■ impulses toward

anger. The recommendations noted "significant" growth in self-control and reducing disruptive behavior, but, because it had been accomplished in such a "dynamic setting," the potential for relapse was "strong."

102. As to Petitioner's mood disorder, the discharge summary notes that Petitioner had gained an understanding of the symptoms and criteria of depression. ■■■ had examined "maladaptive schemas, misinterpretation of events, and unrealistic expectations." ■■■ had also "beg[un]" to build strategies to improve the management of ■■■ emotions, particularly ■■■ anger. The recommendations included a transition to a "therapeutic boarding school" so that Petitioner could develop a "continued strong consistency of mood and presentation."

103. The discharge summary explains that the reason for discharge was that Petitioner had consistently reached beyond ■■■self and established personal growth, taken responsibility for the reasons for placement, and made vast improvement in reducing negative behaviors and negative internal dialog, developing respect for authority, and taking responsibility for ■■■ actions.

104. Among Petitioner's accomplishments, the discharge summary states that ■■■ had stayed connected to ■■■ feelings, actively participated in group therapy, showed motivation toward

change, learned and practiced effective communication skills, and become a real leader in the group.

105. The discharge summary adds that Petitioner "tackled [REDACTED] academic struggles in an effective way" and, "[n]ear the end of [REDACTED] stay[,] [REDACTED] was generally accomplishing homework on a regular basis." Unfortunately, this is the only description of Petitioner's academic progress while in [REDACTED], as Dr. Smith, who testified, could not recall Petitioner's academic achievements in the program. While tackling academic struggles is important and generally accomplishing homework is generally commendable, the record offers no support for a finding of significant academic progress during the two months that Petitioner was in the [REDACTED] program.

106. However, there was clear behavioral progress, as evidenced, in part, by Petitioner's achievements in [REDACTED] next placement, described below. By the time that Petitioner had started the [REDACTED] program, behavioral progress was a condition precedent to academic progress--and not a matter that could be undertaken simultaneous with a substantial academic program. In other words, in March 2006, Petitioner's behavior so interfered with [REDACTED] academics, that the two could not be addressed at the same time; [REDACTED] behavior required exactly the kind of relatively short-term residential therapy that [REDACTED] provided in order to set the stage for the academic achievements that immediately

followed. This finding is supported by Mr. Zimmerman's report that no therapeutic boarding school would have taken Petitioner immediately after ■■■ departure from ■■■.

107. Petitioner's grandmother paid ■■■ \$27,645, which is the fifth expenditure for which she seeks reimbursement.

108. Dr. Smith testified at length about holding onto the gains hard won in the wilderness program. ■■■ stated that children often lack the "scaffolding" to make the transition from the wilderness to daily western life, especially at home, where old scripts tend to re-emerge. Thus, an important part of the ■■■ program is determining where the child should go after discharge.

109. After working with Petitioner, Dr. Smith determined that Petitioner's emotional volatility was more moderate than severe. Dr. Smith did not believe that Petitioner required the more clinically intense setting of a medical residential treatment center, as opposed to a therapeutic boarding school. On the other hand, Dr. Smith was not ready to recommend that Petitioner be discharged to home or even a less intense transitional boarding school, whose student enrollment is typically less than 150 students and whose clinicians typically are on consulting contracts. Mr. Zimmerman, who was still working with Petitioner's grandmother, agreed with Dr. Smith's recommendations, so ■■■ and the grandmother focused on

therapeutic boarding schools, eventually settling on [REDACTED] on 160 acres in rural western Massachusetts in the Berkshire Mountains.

110. To reduce the risk of behavioral problems, Mr. Zimmerman recommended that an escort service accompany Petitioner as [REDACTED] was transported from [REDACTED] to [REDACTED] next facility. Petitioner's grandmother agreed to this service. Petitioner's grandmother paid the escort service \$3200, which is the sixth expenditure for which she seeks reimbursement.

IV. High School

A. Private Facility: [REDACTED]

111. On May 4, 2006, Petitioner arrived at [REDACTED], a therapeutic boarding school that occupies an old ski lodge. At the time, the school had about 90 students, of whom 20-25 were girls. All of the students were 14-18 years old. [REDACTED] provides a college prep academic program that is designed to prepare the student for [REDACTED] next placement. At the time of [REDACTED] admission, Petitioner was projected to spend 16-18 months at [REDACTED], which is typical.

112. A large percentage of [REDACTED]'s new students come from 30- to 90-day wilderness programs. Many [REDACTED] students have learning disabilities or other problems in academic settings, and all of them have some sort of emotional or behavioral issue. Accordingly, [REDACTED] provides a therapist to each student, who

undergoes one individual session and three group sessions per week.

113. One building at ■■■ is an academic center with a library and classrooms. Another building is devoted to art and activities, such as indoor basketball and weightlifting. The ■■■ are all housed in the main building, which has a great room and dining facilities. The school is unsecured, but, if a child leaves the campus without approval, a staffperson will call the police and follow the student, until ■■■ is apprehended.

114. While at ■■■, Petitioner was assigned to therapist Thomas Moore, who saw ■■■ 1-5 times weekly in individual and group sessions. Early in ■■■ time at ■■■, Petitioner exhibited considerable emotional and behavioral problems, including angrily punching a wall, engaging in outbursts with staff, leaving classrooms without permission, being asked to leave classrooms after creating disruptions, and entering into dissociative states when pushed emotionally. At one point, Mr. Moore spoke with Petitioner's grandmother about whether Petitioner was suitable for ■■■ due to escalating aggression.

115. In October 2006, Petitioner's grandmother spoke with Don Bartel, Director of ■■■, and Frank Bartholmeo, the supervisor of counselors. They asked Petitioner's grandmother for ■■■ IEP, which was the first time that she learned what an IEP was and that her ■■■ should have had one.

116. Petitioner's early academic experiences at [REDACTED] were impeded by [REDACTED] psychiatric vulnerabilities, heightened emotional lability, and cognitive disorganization, leaving [REDACTED] with extreme executive function difficulties relative to [REDACTED] overall intellectual capabilities. [REDACTED] frequent dissociation contributed to amnesiac episodes. Petitioner often reported intrusive traumatic memories impinging on [REDACTED] classroom performance, leaving [REDACTED] disorganized and confused. Petitioner's early grades were Cs, Ds, and Fs.

117. Dr. DeFant prepared her report as Petitioner was approaching one year at [REDACTED]. Material excerpts of the DeFant Report are cited above. The DeFant Report cites "case records" suggestive of sibling abuse by Petitioner at age [REDACTED] years. The DeFant Report notes that the treatment goals at [REDACTED] focused on improving academic performance, reducing PTSD reactivity, and resolving grief and loss issues. The DeFant Report cites widespread inadequacies in Petitioner's "personal competencies" in the classroom, such as initiative, self-control, listening, conflict management, note-taking, homework completion, and problem solving.

118. The DeFant Report also notes that Petitioner's reading comprehension was three grades above grade level, [REDACTED] math reasoning was two grades above grade level, and [REDACTED] numerical operations were at grade level. However, [REDACTED] word

reading and pseudoword decoding were two grades below grade level, and [REDACTED] spelling was five grades below grade level. Dr. DeFant determined that significant discrepancies existed between Petitioner's general cognitive ability and achievement in reading composite, word reading, pseudoword decoding, and spelling, such that [REDACTED] would be expected to have achieved higher levels in the three tasks in which [REDACTED] was below grade level.

119. Addressing her diagnosis of PTSD, Dr. DeFant stated:

[Petitioner] clearly meets the diagnostic criteria for [PTSD]. [REDACTED] experiences intense intrusive memories, autonomic nervous system hyperarousal, extreme avoidance responses to triggering stimuli, and a host of dissociative/numbing symptoms. When stressed, [REDACTED] re[s]orts to compulsive self-injurious behaviors (punching walls to injure [REDACTED] hands). [REDACTED] appears depressed although [REDACTED] denied this symptom. There are clear indicators of derealization, amnesia, and transient "trance-like states.["] . . . Although [REDACTED] is somewhat disruptive and oppositional in the classroom, [REDACTED] mood and PTSD symptoms are primary foci of concern . . . [REDACTED] daily functioning is organized around fluctuations between dissociative numbing states and intrusive, hyperaroused emotional states.

120. The DeFant Report asserts that Petitioner's past emotional difficulties and multiple educational placements do not account for the discrepancies between [REDACTED] cognition and achievement. If these difficulties and placements had caused these discrepancies, they would affect all areas of academic

achievement evenly, but they do not. Instead, Dr. DeFant hypothesized that Petitioner's superior reasoning capabilities had enabled ■■■ to develop compensatory mechanisms, such that ■■■ reading and writing deficits have gone unnoticed. Based on her findings, including a pronounced deficit on orthographic awareness, Dr. DeFant determined that Petitioner would encounter difficulties with fluency and comprehension, absent accommodations, and ■■■ met the criteria for reading disorder (orthographic dyslexia).

121. Dr. DeFant determined that Petitioner's

cognitive disorganization, forgetfulness, and inattention are debilitating at times, requiring frequent interventions and support to continue academic progress. ■■■ academic performance is inconsistent because of ■■■ processing difficulties and fluctuations in ■■■ mental status. Currently, ■■■ receives intensive academic and mental health services in a year-round residential/boarding school setting that enables [Petitioner] to sustain academic progress. ■■■ requires organizational coaching and management, a small classroom instructional environment, extensive in-class accommodations, and responsive mental health services in order to remain within routines. Without this level of intervention, it is not likely ■■■ would succeed. . . .

[Petitioner] is a young ■■■ with great potential who has had to devote a great deal of emotional and cognitive resources in ■■■ life to coping with very difficult life circumstances. ■■■ is currently in an acute state of PTSD symptomatology where it is not possible for ■■■ to perform at ■■■ peak

potential. With improved emotional stability in the future, [Petitioner's] cognitive and memory profile may improve a great deal.

122. The DeFant Report offers numerous specific recommendations, including:

1. [Petitioner] qualifies for and is in need of special education based on dual disabilities: [EH] and specific learning disabled. Without specific therapeutic and educational supports, [REDACTED] would be unable to make effective academic progress. [REDACTED] requires reduced class size with increased adult assistance and intensive behavioral support within the school setting in order to perform optimally.

2. Ideally, [Petitioner] should be in a classroom with an 8:1 student to teacher ratio. Placement in a self-contained special education or therapeutic program is advised to assist [Petitioner's] academic performance.

3. An extended school year program is recommended to prevent academic regression and to provide additional social-emotional support.

4. Daily organizational tracking and coaching is necessary to accommodate [Petitioner's] memory and executive function impairments. [REDACTED] requires assistance for the following tasks: recording assignments, collecting material necessary to complete assignments, developing plans for papers/projects, breaking larger tasks into sequential steps, creating timetables for assignments, ensuring that [REDACTED] completed assignments are turned in. . . . The program at [REDACTED] appears to be meeting [REDACTED] needs quite effectively. . . .

5. Behavioral management with [Petitioner] via a system of consequences and positive reinforcement is likely to be fraught with difficulty because of [redacted] effective function difficulties and [redacted] dissociative capabilities. [T]he emphasis should be, whenever possible, to prevent and manage behaviors through antecedent manipulations and environmental arrangements. In other words, it is better to attempt to predict and prevent problems than to attempt to manage behavior by controlling [Petitioner's] actions with rewards and punishments.

6. [Petitioner] continues to be highly trauma-reactive and phase-oriented trauma treatment is recommended to reduce [redacted] hyperarousal and intrusive symptoms. [redacted] cannot begin to process and "metabolize" [redacted] traumatic experiences into a meaningful life narrative until [redacted] has developed sufficient coping skills and cognitive "scaffolding." While [redacted] has made great therapeutic strides in the past year, [redacted] continues to be all too easily paralyzed by relatively minor triggers and stressors. [DeFant suggests that Petitioner's psychiatrist consider medications to reduce anxiety and intrusive re-experiencing and eye movement desensitization and reprocessing to reduce the PTSD symptoms.]

7. [Petitioner] has responded positively in the past to wilderness-oriented therapeutic programming such as the [redacted] Treatment Program. These kinds of therapeutically oriented adventure programs can be particularly helpful for traumatized youth with a predisposition towards dissociation because they provide whole-body-oriented, sensory integration experiences that are at once grounding, self-esteem and master-building, and anxiety-desensitizing. . . . Physical outlets that enable [Petitioner] to feel a sense of control and mastery over [redacted] internal experience are essential for [redacted]

trauma recovery process. ■■■ treatment and educational planning should include a variety of opportunities for ■■■ to explore ways to develop competence and control in body/sensory ways. . . .

8. Specific academic accommodations may aid [Petitioner's] ability to learn and perform. The following may be of use:

a. To reduce [Petitioner's] organizational challenges, attempts should be made to reduce the amount of material ■■■ is required to manage[, such as by assigning ■■■ a separate set of textbooks to keep at home.]

b. Extra time (50%) should be provided for all examinations, . . . in-class writing assignments and homework assignments. Extended time will accommodate [Petitioner's] executive function difficulties. . . .

c. [Petitioner] should be allowed the option of taking examinations in a low-distraction environment. . . .

d. Access to a word-processor with spell-check and grammar-check enabled should be provided for all written assignments, including essays for standardized examinations. . . .

e. [Petitioner] should be excused from note-taking in class. . . . Note-taking services will eliminate [Petitioner's] need to multi-task during lectures and allow ■■■ to attend more closely to the instructional material being presented. . . .

f. Access to calculator in class and on math tests is recommended to relieve working memory demands.

g. Given [Petitioner's] organizational challenges, ■■■ would benefit from focused

instruction in organizational strategies to strengthen [REDACTED] writing and studying skills. . . .

h. Given [Petitioner's] attentional and memory deficits, structured instruction in note-taking and research skills is recommended. . . .

i. [Petitioner's] auditory processing issues are likely to have an adverse effect on [REDACTED] ability to learn foreign languages. . . .

9. [Petitioner] would benefit from using assistive computer technology to improve [REDACTED] reading comprehension and reading/writing fluency. . . . Given [REDACTED] cognitive issues and ADHD, [Petitioner] is more likely to become familiar with these technologies and to use them consistently if they are conveniently available and do not require many logistical steps to access for [REDACTED] work.

10. Once [Petitioner] makes the transition to post-secondary education, . . . [u]se of a writing center for academic support is recommended, particularly in [Petitioner's] first year of college. . . .

123. Petitioner's grandmother paid Dr. DeFant \$2500, which constitutes the seventh expenditure for which Petitioner seeks reimbursement.

124. Over time while at [REDACTED], Petitioner quit acting out impulsively regarding [REDACTED] anger. [REDACTED] talked back less to staff. From lashing out at [REDACTED] peers initially, Petitioner transitioned to becoming a student leader. Petitioner played lots of sports, although they were not organized. The only organized sport at

█ was basketball, and Petitioner was on the team the last couple of months that █ attended the school.

125. Petitioner also began to earn better grades; by the end, █ was earning As, Bs, and C+s. Classes were held from 8:00 a.m. to 3:00 p.m. on Mondays, Tuesdays, Thursdays, and Fridays. On Wednesday mornings, the students attended a two-hour tutorial and, in the afternoon, group sessions and free-time activities. Study halls were scheduled throughout the week, including evenings. Classes ranged from two to 14 students and one teacher, who gave considerable 1:1 time in tutoring. Teachers gave Petitioner's homework assignments to Mr. Moore because Petitioner often lost █ assignments.

126. In August 2007, Petitioner completed the █ program. At that time, █ returned to █ grandmother's home. When the educational planning for Petitioner's return to Respondent's school system failed to produce a result in August and September 2007 that was acceptable to the grandmother, as noted below, Petitioner returned briefly to █ until the end of September, again so that Petitioner's grandmother would avoid the loss of custody of her █ for failing to ensure that █ remained in school.

127. Petitioner's grandmother paid █ \$111,508 in tuition and \$1908.29 in supplies, which constitute the eighth expenditure for which Petitioner seeks reimbursement. The

tuition breaks down into 18 monthly payments of \$5950 and, later, \$6180 plus an initial extra payment of \$2338, which may be an initial registration fee or similar charge. Petitioner's initial enrollment ran 16 months, so it appears that [REDACTED] later enrollment may have run over into a second month, which would account for the final \$12,360 of tuition charges. Of the \$1908.29 in supplies, \$412 was in October 2007, which would be the only such charge during Petitioner's later enrollment; the preceding charge was in July 2007.

B. Educational Planning Process for Petitioner's Return to Respondent's School System

128. The education planning process for Petitioner's return to Respondent's school system began in May 2007. At that time, Dr. Ken Grill, a psychologist employed by Respondent, reviewed the DeFant Report. [REDACTED] completed a form, dated May 11, 2007, stating that the "appropriate ESE assessment components are present" and that an IEP team should consider Petitioner for EH, severely emotionally disturbed (SED), and specific learning disabilities (SLD) eligibilities. (As noted in the Conclusions of Law, the EH and SED eligibilities have been superseded by the EBD eligibility.) Dr. Grill's review notes the presence of behavioral volatility with executive function deficits related to neuro-cognitive impairments.

129. The first meeting took place on June 1, 2007, at [REDACTED] High School. Petitioner's grandmother sought the meeting to obtain an IEP for her [REDACTED], based on her discovery of the existence of IEPs when talking the previous October to two [REDACTED] representatives. The meeting was arranged at the request of the attorney then representing Petitioner's grandmother, Genevieve Cousminer of CIL0. [REDACTED], which is described below, is not Petitioner's home school, but Respondent's employees selected it due to their general understanding of Petitioner's behavior issues, based on the information that was then available to them, which was probably little more than the DeFant Report, Dr. Grill's review of the DeFant Report, the knowledge that Petitioner was attending a therapeutic boarding school, and the knowledge of [REDACTED]' specialized behavioral resources, also described below.

130. In attendance at the meeting, in addition to Ms. Cousminer and Petitioner's grandmother, were Dr. Grill; Debby Morick, Respondent's South Area ESE Coordinator; and other ESE representatives of Respondent. At the start of the meeting, one of Respondent's employees gave Petitioner's grandmother a copy of the procedural safeguards. The conference notes document Petitioner's prior schooling, hearing loss, counselor-diagnosed ADHD, organizational problems, gifted program at [REDACTED] School, and participation in the [REDACTED] program in [REDACTED] grade.

The conference notes state that a [REDACTED] counselor had recommended that Petitioner attend the [REDACTED], and Petitioner did so for one year, but [REDACTED] was expelled after [REDACTED] was arrested. The conference notes report that, after being caught drinking at [REDACTED] School, Petitioner attended for two months the [REDACTED] program, which calmed [REDACTED] down, and a therapeutic boarding school.

131. Petitioner's grandmother brought to the meeting a thick portfolio of paperwork concerning Petitioner. Although none of Respondent's representatives wanted the entire folder, each looked at some part of it. When Petitioner's grandmother said that her [REDACTED] might continue to need a residential placement after leaving [REDACTED] therapeutic boarding school and Petitioner's attorney suggested that the court system might fund all or part of the current placement, Respondent's employees mentioned the SEDNET program and suggested that the meeting participants call Gerald Evans, who is Respondent's SEDNET project manager.

132. SEDNET is a network for SED students. As SEDNET manager, Mr. Evans coordinates mental health services, within and outside Florida, for SED students in Respondent's school district. The meeting participants reached Mr. Evans, who then participated in the meeting by telephone. After listening to a brief description of Petitioner, Mr. Evans suggested a District-level staffing of Petitioner's case with the use of SEDNET resources.

133. As described by Mr. Evans at the hearing, the continuum of services for SED/EH/EBD students in Respondent's school district is typical. From least to most restrictive, within the county, locations for specialized instruction are the home school, the home school with access to the guidance counselor and typical curriculum options; special class in the home school with a lower student-teacher ratio and access to weekly group counseling; a regular-education school (not necessarily the home school) with a cluster site for SED/EH/EBD students offering a crisis intervention teacher or behavior intervention assistant, group or individual counseling, special curriculum, and a lower student-teacher ratio; and a special day school, which, for EH/SED/EBD students, is ■■■■, which is described below.

134. Mr. Evans suggested that Petitioner's grandmother contact ■■■■ so that they could discuss her ■■■■'s staffing through the District office. The conference notes conclude that Petitioner had not previously been found eligible for ESE services (except gifted), but, according to the DeFant Report, ■■■■ "does meet eligibility criteria for [EH], possibly severely emotionally handicapped and [SLD]." The conference notes end by stating that Respondent would conduct another meeting when Petitioner was released from ■■■■ therapeutic boarding school, so the team could consider any new information, determine

eligibilities, prepare an IEP, and identify where the services could be provided.

135. Three days later, Petitioner's grandmother called Mr. Evans. She obtained Mr. Evans' fax number and began to fax him the papers that she had brought to the conference, but he had to ask her to stop due to the volume of materials that she was faxing. These papers included a release so that the [REDACTED] therapist could talk to Mr. Evans. In short order, Mr. Evans received some documents from [REDACTED].

136. Aware that her [REDACTED]'s [REDACTED] enrollment would end in August, in July, Petitioner's grandmother enrolled [REDACTED] at [REDACTED] School, which is a couple of miles from the grandmother's home. [REDACTED] is a comprehensive high school.

137. In late July or early August, Petitioner's grandmother hired an advocate, Dr. Elle Furlong, who telephoned Mr. Evans and told him that he could not talk to the grandmother or the [REDACTED] therapist. Dr. Furlong informed him that Petitioner's grandmother would be filing a due process request.

138. At the request of Dr. Furlong, who said that Petitioner was in the area and needed to be enrolled, Respondent conducted an IEP meeting on August 23, 2007, at [REDACTED]. Petitioner's grandmother was unable to attend the meeting due to a heart attack on August 11, but confirmed by telephone that Dr. Furlong was authorized to represent her and her [REDACTED]. The

grandmother stated that her [REDACTED] had returned to Florida the preceding day, although [REDACTED] was staying at her sister's home in Broward County for a few days due to the recent heart attack, and [REDACTED] was ready to attend school. Respondent's employees at the IEP meeting were Ms. Morick, Dr. Grill, a regular-education teacher, Respondent's associate director of ESE, Mr. Evans, and other ESE representatives. The grandmother remained on the phone for only a few minutes.

139. Dr. Furlong brought with her a large pile of papers, but declined to share them with the group, although she did return the consent of the grandmother to the evaluations that Respondent sought. However, the team had the DeFant Report. Based on their psychologist's out-of-system review of the DeFant Report, Respondent's employees at the meeting agreed on a temporary eligibility for EH/SED, which had been recently changed to EBD.

140. Mr. Evans testified that no one at the meeting knew when Petitioner would be returning to Respondent's school system. However, the conference notes themselves undermine this testimony: "[Petitioner] is ready to attend school." Elsewhere, the notes suggest that Petitioner's return could be as soon as the following day when the notes state: "if [Petitioner] goes to school tomorrow" Clearly, Mr. Evans' testimony is incorrect, and the notes are correct,

which explains the haste with which the IEP team prepared an IEP based on a temporary eligibility.

141. Relying on the information that was available, conference notes state the IEP team "agrees we have enough information to declare temporary eligibility for EBD--emotional behavior disorder, although the team needs an FBA and a social history. The conference notes document that the IEP team prepared an IEP and identified the need for speech and language evaluations and vision and hearing screenings.

142. According to the conference notes, Dr. Furlong told the IEP team that the grandmother wanted a residential placement. The conference notes also indicate that Dr. Furlong informed the IEP team that the grandmother would be filing a due process request. According to the conference notes, Dr. Furlong reported that Petitioner was not stable enough to participate in any IEP meetings. The conference notes state that Petitioner's motivation needs to be monitored.

143. For modifications, the conference notes report that Petitioner's grandmother said that Petitioner needs a structured environment and that ■■■ suffers from a short-term memory loss.

144. Discussing the location of specialized instruction, the IEP team, according to the conference notes, started with ■■■, but the grandmother expressed concern that Petitioner would become involved with substance abuse there, evidently due to the

lack of direct supervision. The IEP team then considered [REDACTED] School because it has a self-contained EBD program and then [REDACTED], which is a special day school that is described below.

145. Among the recommendations contained in the conference notes are the completion of a request for a psychiatric evaluation and placement at [REDACTED] while Respondent obtains psychiatric and other evaluations. The notes add that regular physical education was not appropriate at this time, but, if [REDACTED] chose, [REDACTED] could participate in the lunch room with support and supervision.

146. The August 23, 2007 IEP (August 2007 IEP) is for a temporary assignment under the eligibility of EBD. The IEP describes the student's disability, in terms of its effect on [REDACTED] progress in the regular-education curriculum, as: "symptoms of anxiety & depressed mood & issues with anger management & impulse control issues impede [REDACTED] progress in general educational curriculum." Under medical information, the IEP states ADHD and PTSD. The IEP notes that Petitioner will pursue a regular high school diploma.

147. The August 2007 IEP contains a long list of accommodations, modifications, and supplemental aids and services, including the visual presentation of information, assistance with organization, fifty percent extra time for exams, quizzes and assignments, access to a word processor,

implementation of a BIP, limited classroom materials on student's desk, access to teacher's notes instead of reliance on student's notetaking, written to-do list daily, and access to a calculator. For related services, the August IEP identifies group and individual counseling weekly by the family counselor.

148. The August 2007 IEP states that the student will not require assistive technology (other than the word processor and calculator), but will require an aide. Also, the IEP states that the student is excused from physical education. For support of the school staff, the IEP states that the administration, including guidance and family counselors, will, within one week of Petitioner's arrival at school, review [REDACTED] history, needs, and strategies with ESE staff.

149. In analyzing the LRE, the August 2007 IEP states that relevant factors include the student's frustration and stress, self-esteem, distractibility, need for lower student-teacher ratio, need for extensive instruction in organizational strategies, need for increased supervision for safety, difficulty with emotional control, need for social-skill development, difficulty completing tasks, and need for communication development.

150. The August 2007 IEP states that the IEP team considered the regular classroom, resource class, special class, special school, counseling service, accommodations, and

behavioral interventions. The IEP states that, after considering the continuum of placement options, the IEP team selected a special class, which means 900+ minutes weekly with ESE students. However, the IEP reports that Petitioner would participate with nondisabled peers in clubs, lunch (with a supervisor), and field trips.

151. The special class was the self-contained EBD unit at ■■■, as had been recommended in the DeFant Report. As stated in the conference notes, this temporary placement would facilitate the collection of data important for Petitioner's education planning. Although the conference notes mention the opportunity to obtain a psychiatric evaluation, Respondent accelerated the process for such an evaluation, which took place, as noted below, shortly after the August 2007 IEP meeting.

152. More importantly, though, the temporary placement in the self-contained unit, with low student-teacher ratios and behavioral staff, as described below, would allow Respondent to prepare a detailed FBA. Unlike other behavioral assessments of Petitioner, this one would be in situ, so it would describe the antecedents, behaviors, and the purposes of the behaviors unmediated by Petitioner's self-conscious or self-serving reconstruction of events and would analyze the maladaptive behaviors in real time, as they unfolded. The ensuing FBA--a prerequisite of the EBD eligibility that Respondent waived due

to the exigencies presented by Petitioner's case--would then permit the preparation of a BIP that would have the greatest prospects of success.

153. The August 2007 IEP contains a Post Secondary Transition Plan that addresses Petitioner's social/emotional needs. The IEP notes that, according to the DeFant Report, Petitioner has problems with frustration, anger management and impulse control, which impede █████ progress in the general curriculum. The IEP identifies the goal as demonstrating at least three strategies that will help Petitioner from becoming angry or frustrated in the school setting. Short-term objectives require Petitioner to identify situations that may trigger frustration or anger, seek adult assistance when feeling frustrated or angry, identify strategies to help █████ control █████ frustration or anger, and implement those strategies.

154. A second Post Secondary Transition Plan in the August 2007 IEP addresses Petitioner's needs in terms of instruction, employment, post-secondary adult living, and daily living skills. Noting that Petitioner reportedly has difficulty with memory and organizational skills, the plan states that Petitioner needs to develop independent organizational skills. The goal is to turn in completed assignments and projects 85 percent of the time. Various short-term objectives

appropriately break down this goal into incremental steps. The plan also requires Petitioner to take a drug education class.

155. The August 2007 IEP lacks any provisions concerning academic present levels of performance, goals, or objectives. As noted in the DeFant Report, Petitioner was working at grade level in almost every area, so the IEP team had time to gather data while Petitioner attended the self-contained EBD unit at [REDACTED].

156. The self-contained EBD unit at [REDACTED] features core classes with six students, one teacher, one paraprofessional, and a crisis intervention teacher, who covers two classrooms simultaneously. At the end of the IEP meeting, Respondent's employees offered Dr. Furlong an opportunity for the grandmother to visit [REDACTED].

157. Shortly after the August 23 IEP meeting, Petitioner and [REDACTED] grandmother visited [REDACTED] for Petitioner to undergo a psychiatric evaluation by Dr. Cleopatra Ortiz, a psychiatrist who works as a consultant with Respondent and maintains an office at [REDACTED]. Although Petitioner's grandmother was unaware at the time that [REDACTED] would be a possible placement for Petitioner, she noticed that the school was a secure facility. At one point, Petitioner and [REDACTED] grandmother saw a child in handcuffs being escorted by a uniformed police officer--an infrequent occurrence at the school. While waiting for the evaluation to

be finished, Petitioner's grandmother spoke briefly with a caseworker, who was waiting for another child's lunch period, so the caseworker could speak with the child, who was on probation.

158. The evaluation itself took about an hour. At the conclusion of the evaluation, Dr. Ortiz was cordial to Petitioner's grandmother and stated that [REDACTED] was a wonderful facility and she looked forward to working with Petitioner. Petitioner's grandmother had assumed that her visit to [REDACTED] was solely for the purpose of obtaining a psychiatric evaluation, and, especially after her experiences during her brief time on campus, she was reluctant to consider [REDACTED] as a serious placement.

159. On the afternoon of the same day as the evaluation by Dr. Ortiz, Petitioner and [REDACTED] grandmother met Ms. Morick at [REDACTED] for a tour of the school and the EBD self-contained unit. The EBD self-contained unit is at an end of the school, so as to reduce disturbances from the general student population. At the time of the visit, which lasted 20-30 minutes, the grandmother testified that there were students present.

160. The grandmother was dissatisfied with [REDACTED] and the self-contained EBD unit. She testified that her impression was that there were an excessive number of students "from different walks of life." The grandmother expressed her concern of the long walk from the front entrance through two hallways to the

self-contained unit, and Ms. Morick replied that a security guard could walk Petitioner through this area. Petitioner said that ■■■ was concerned for ■■■ safety and the safety of other students because ■■■ would get into a fight if provoked. The grandmother and Petitioner both felt that the self-contained unit lacked the structure that Petitioner required.

161. On September 6, 2007, the parties participated in a second IEP meeting, which was also conducted at ■■■. Petitioner's grandmother attended the first 20 minutes of the meeting, during which time she ruled out ■■■ and agreed to tour ■■■ with its principal, Sherri Kelty. The grandmother found the IEP experience too intense and, crying and suffering chest pains, left to go home and rest, as she was still recovering from her heart attack less than four weeks earlier. Again, the grandmother authorized Dr. Furlong to represent Petitioner's interests at the meeting.

162. Also in attendance at the September 2007 IEP meeting were Ms. Kelty, the associate director of ESE, Dr. Jobe, Ms. Morick, and another ESE representatives. No regular-education teacher was present at the IEP team meeting because, according to the IEP itself: "general ed not contemplated due to discussion of most restrictive environment/special school." As explained by Ms. Morick, a regular-education teacher assists on regular-education questions and LRE, implying that such

issues were not relevant to the September 2007 IEP meeting. Ms. Morick noted, though, that neither Dr. Furlong nor the grandmother objected to the absence of such a person at the September 6 IEP meeting.

163. Again, Dr. Furlong told the IEP team that the grandmother wanted a residential placement, although, possibly out of the presence of the grandmother, Dr. Furlong expressed interest in an [REDACTED] placement. It is likely that, at this point, the grandmother was willing to consider [REDACTED]. Dr. Furlong had a good relationship with Ms. Kelty, partly because both of them had worked in special education in Maryland.

164. Prior to the meeting, the IEP team was aware that the grandmother had rejected [REDACTED] and knew that, the next more restrictive option--in fact, the most restrictive option operated by Respondent--was [REDACTED], which was also consistent with the recommendation contained in the DeFant Report. A major purpose of the September 6 IEP meeting was thus to obtain the input from Dr. Ortiz.

165. Dr. Ortiz participated at the September 6 IEP meeting by telephone. She had already prepared the Ortiz Report, which is dated eight days prior to the meeting, but evidently it had not yet been typed. Dr. Ortiz essentially informed the IEP team of the contents of her report.

166. Although the Ortiz Report does not so indicate, Dr. Ortiz relied, in part, on the Crosby Report and DeFant Report. The Ortiz Report repeats Petitioner's history, largely as stated above. Dr. Ortiz lists the possible diagnoses of other psychiatrists and psychologists as including ADHD, PTSD, disruptive behavior disorder, ODD, mood disorder, depression, and bipolar disorder. She also notes [REDACTED] history of hyperactivity, impulsivity, and inattention.

167. Dr. Ortiz's mental status examination of Petitioner revealed that [REDACTED] was comfortable during the interview, maintained fair to good eye contact, and remained cooperative while relating fairly well to Dr. Ortiz. She found [REDACTED] affect congruent to [REDACTED] mood and stable, [REDACTED] thought process to be logical, and [REDACTED] thought content to be appropriate. Petitioner told Dr. Ortiz that [REDACTED] main problems involve maintaining good communications and controlling anger. Dr. Ortiz found Petitioner's memory intact and [REDACTED] concentration fairly intact. She found [REDACTED] intellectual functioning to be in the average range and that [REDACTED] had fair insight. However, she found that [REDACTED] judgment and impulse control were fair to poor. When Dr. Ortiz asked [REDACTED] where [REDACTED] should attend school, Petitioner replied, "I don't know for sure but I don't want to be in a regular school because if other kids bother me I'm going to lose it and I might hit them."

168. The Ortiz Report lists five Axis I diagnoses. In order, they are PTSD, rule out bipolar disorder, ODD, ADHD, and learning disorder--NOS. The Ortiz Report recommends individual and family psychotherapy "to deal with past trauma and current family relationships." The Ortiz Report concludes with a brief discussion of medications, such as those that might be effective against the symptoms of PTSD or the phases of bipolar disorder.

169. The IEP team prepared a new IEP dated September 6, 2007 (September 2007 IEP). The September 2007 IEP is the August 2007 IEP with a few changes, such as the re-identification of the qualifying eligibility as EBD, rather than EH. The September 2007 IEP is also a temporary assignment. Almost the only real change from the August 2007 IEP is the location of services: Petitioner would attend [REDACTED], rather than the self-contained EBD unit at [REDACTED]. This meant that Petitioner would attend a special school with only ESE students, not a special class within a regular-education school. However, as established by the testimony of Respondent's associate director of ESE, the IEP team presented the grandmother with the option of sending Petitioner to school under either the August 2007 IEP or the September 2007 IEP.

170. Petitioner and [REDACTED] grandmother visited [REDACTED] for a campus visit on September 19. Ms. Kelty, who conducted the tour, explained that [REDACTED] is a small therapeutic day school of

about 100 students in grades kindergarten through twelfth grade. The building itself is less than 18 months old and places the approximately 58 high-school students on one side, and the remaining middle- and elementary-students on the other side. All of the students are EBD, and the central principle of the school is to integrate therapy with academics throughout the day.

171. Overall, [REDACTED] has 100 staffpersons for its 100 students. [REDACTED] has seven therapists onsite, one fulltime psychologist, one behavior resource teacher, a crisis intervention team, and Dr. Ortiz, who serves as a consulting psychiatrist. The seven therapists, who have master's degrees in clinical social work and are licensed mental health professionals, conduct individual and group therapy at the individual office assigned to each therapist at the school. The behavior resource teacher also has his own office.

172. [REDACTED] provides four classrooms for high-school students pursuing regular high-school diplomas, and five classrooms for high-school students pursuing special diplomas. Of the 58 high-school students attending [REDACTED], only ten are pursuing regular diplomas. [REDACTED] is a ten-month school with six weeks of extended school year. Each classroom has one teacher and one paraprofessional.

173. ■■■ is well equipped with technology. Each classroom contains document cameras, LCD projectors, and other equipment similar to that found in other new high schools in Respondent's school system. The school itself features a media center, television production studio, culinary arts, art, art therapy, music therapy, and industrial arts. Several "opportunity rooms" provide misbehaving students a safe place to go and rethink their behavior, if in-class timeouts are insufficient.

174. The school grounds include playgrounds and beautiful fields, although the school offers no formal extracurricular athletic program. However, ■■■ offers students, who are often socially inept, plentiful opportunities for socialization, such as high-school proms, two-day supervised campouts, field days (such as to the ■■■ Center, the performing arts center in West Palm Beach), and formal graduation ceremonies.

175. ■■■ also focuses on the development of transitional life skills. The school employs one transition liaison teacher, who takes the students, mostly in high school, who are about to transfer to an LRE, on community outings, such as riding the Tri-Rail to Boca Raton, visiting a shopping mall, and taking the Tri-Rail back to school.

176. Ms. Kelty testified that the key admission question is whether a student needs therapy infused throughout the day. She admitted that the academic needs of the incoming student are

secondary to [REDACTED] therapeutic needs. Ms. Kelty and the other employees involved in admissions decisions meet regularly with Dr. Ortiz, who evaluates all prospective students.

177. As Ms. Kelty guided Petitioner and [REDACTED] grandmother through [REDACTED], she determined that the grandmother was interested in the placement, but Petitioner was not. Although there is some conflict on these items, Ms. Kelty told Petitioner's grandmother that [REDACTED] offered physical education, which is important because exercise plays a role in Petitioner's psychological well-being, according to [REDACTED] grandmother, and transportation, which is important because the school is 25-30 miles from the grandmother's home. The grandmother tried to interest Petitioner in attending [REDACTED], but without success. Similar to what [REDACTED] had told Dr. Ortiz, Petitioner told Ms. Kelty that [REDACTED] could not be around mentally ill kids because their emotional distress would cause [REDACTED] emotional distress.

178. In testifying, Ms. Kelty initially stated that [REDACTED] represented the LRE for Petitioner at the start of the 2007-08 school year. When presented with a reasonably accurate hypothetical based on Petitioner's academic experience at [REDACTED] School in Boca Raton, which is described below, Ms. Kelty testified that [REDACTED] would not have represented the LRE, if Petitioner could have done so well at [REDACTED] from the start of the 2007-08 school year. Testifying similarly was Respondent's

associate director of ESE, who, when presented with the same hypothetical, stated that [REDACTED] was more restrictive than Petitioner needed. When given the same hypothetical that was given to Ms. Kelty, one of Respondent's ESE specialists who had attended the August 2007 IEP meeting and specializes in EBD students agreed with Dr. Jobe that Petitioner would not even meet eligibility criteria for EBD.

C. Private Facility: [REDACTED] School

179. After attending [REDACTED] for less than two months, as noted above, Petitioner returned to Florida at the end of September to continue [REDACTED] schooling. In September 2007, Petitioner applied for admission to [REDACTED], which is a Catholic school in Boca Raton.

180. As a condition for admittance, the school referred Petitioner to Dr. Gil Lichtshein, a psychiatrist with the Boca Raton Psychiatric Group, P.A. Dr. Lichtshein met with Petitioner on September 24, 2007, and in a short, handwritten note, which was excluded from evidence on grounds other than relevance, cleared Petitioner for admission. It is possible that Dr. Lichtshein saw Petitioner for a second time, after a brief trial of a medication, but the record does not suggest that any treatment was substantial. Petitioner's grandmother paid the Boca Raton Psychiatric Group \$315, which constitutes the ninth expenditure for which Petitioner seeks reimbursement.

181. From October 20, 2007, through the date of the final hearing, Petitioner attended [REDACTED] grade at [REDACTED]. The school does not offer BIPs or IEPs, but does offer accommodations to students who need them. For this purpose, [REDACTED] employs a learning specialist, who, when needed, will obtain such accommodations as extra time for taking tests or someone to read the test to the student. For its nearly 600 students, the school employs three guidance counselors and offers the services of a psychologist for a few hours each month, but not group counseling.

182. [REDACTED] employs about 40 teachers and its classes number low to mid 20s in terms of students. The campus features open-air hallways and a two-story building. The school offers physical education and extracurricular athletics. Petitioner receives regular tutoring, at [REDACTED] grandmother's expense, at a private learning center near [REDACTED].

183. As noted in the Preliminary Statement above, the record in this case is limited to Petitioner's first semester at [REDACTED]. [REDACTED] has had no serious disciplinary or academic problems. At the end of the first semester, Petitioner was earning As in geometry and physical education (i.e., weight training), Bs in English II and Christian theology, Cs in Spanish I and marine science I, and a D in U.S. history to 1920. Teacher notes in marine science, Christian theology, and U.S. history,

respectively, warn that Petitioner had completed only one of four homework assignments correctly, Petitioner had not kept [REDACTED] classroom materials in order, and Petitioner was missing work.

184. Petitioner testified that [REDACTED] was a different person from the person who had attended [REDACTED] and, by implication, the [REDACTED]. [REDACTED] stated that, at [REDACTED], [REDACTED] worked on anger, family, and school issues in an attempt to get [REDACTED] life back on track. Petitioner testified that the teachers at [REDACTED] and [REDACTED] took the time to figure out why [REDACTED] was not understanding the material.

185. Petitioner testified that, at [REDACTED], there is always a guidance counselor or teacher to whom [REDACTED] can talk. The classes are smaller, ranging from only 11 students in Spanish to 16-23 students in the other classes, except that physical education is 25 students. Petitioner stated that [REDACTED] classes at [REDACTED] were even smaller, with ten students in the largest class. Petitioner reasoned that, with 30 students in each class at [REDACTED], the teacher could not teach the way each student needed to be taught.

186. Petitioner also testified that the students at [REDACTED] behave reasonably well. At [REDACTED], five or six students were always acting out in class, which caused disruption to Petitioner. Petitioner also finds motivation to perform well in school now due to the minimum grade point average required to

participate in extracurricular athletics; ■■■ plays lacrosse during the winter on the school team, which demands three hours every weekday, and during other times of the year on a travel team.

187. Obviously, part of what Petitioner described is the difference between middle and high school. But ■■■ testified frankly about ■■■ own learning challenges and how ■■■ has addressed them. Petitioner explained that courses, such as history and the first part of Spanish, that require more memorization give ■■■ trouble because it takes ■■■ longer to memorize. Also, organization continues to pose a challenge, although Petitioner still applies the lessons that ■■■ learned at ■■■ for keeping organized.

188. Petitioner testified that ■■■ no longer sees ■■■ therapist on a regular basis. If ■■■ needs therapy, ■■■ tells ■■■ grandmother, who arranges an appointment.

189. Petitioner's grandmother signed a contract at the start of the 2007-08 school year, agreeing to pay ■■■ \$8037.50 in tuition and initial registration fees. She paid this at the rate of \$748.75 per month starting October 22, 2007, so she had paid only three payments, plus the initial registration fee of \$550, prior to the cut-off date of January 17, 2008. These payments constitute the tenth expenditure for which Petitioner seeks reimbursement.

V. Ultimate Findings of Fact

A. Failure of Respondent to Timely Identify or Evaluate Petitioner for Suspected ESE-Qualifying Disability

190. At least by the time of the 504 conference in May 2004, Respondent had reason to suspect that Petitioner suffered from an ESE-qualifying disability. The fact that the grandmother requested the conference constitutes sufficient basis for suspicion. However, other factors also establish the necessary suspicion.

191. Disregarding the insubordination, Petitioner's [REDACTED] grade misbehavior could have been just that or an indication of more serious problems. However, a reasonable suspicion of serious emotional or mental causes of the misbehavior necessarily resulted from knowledge that Petitioner has emerged from a tragic personal background of abuse, domestic violence, and drug abuse and shares a portentous family background, including persons with obvious mental or emotional disorders. Ms. Johnson possessed sufficient knowledge of Petitioner's background to support this reasonable suspicion, and, as a classroom teacher, Ms. Johnson was an agent of Respondent for this purpose.

192. Suspicion was also established by what transpired at the 504 conference. The entire 504 conference team unaccountably ignored the facts, related to them by the

grandmother, that a health care professional had seen fit to prescribe psychotropics, with varying results. The absence of any explicit consideration of these pieces of information coupled with the team's insistence merely that Petitioner improve ■■■ behavior suggest that none of the members of this team possessed the expertise required to discharge their responsibilities in Petitioner's case--a premise that advances from suggestion to proof upon consideration of Petitioner's actual condition at the time of the 504 conference.

193. None of the four health-care providers who have examined the case, including two employed by Respondent, has found Respondent to be free of Axis I conditions or symptoms as a result of evaluations taking place in May 2004, early 2007, and August 2007. From these reports, the conclusion is inescapable that Petitioner suffers from PTSD, although the extent to which ■■■ is able to manage ■■■ behavior is variable over relatively long periods of time. What the 504 conference team missed was potentially very serious for Petitioner, ■■■ classmates, and school staff: Dr. Crosby warned that Petitioner was dangerous to ■■■self and others and should be considered for residential placement where ■■■ could be "contained, counseled, and taught basic regard for societal norms."

194. The only close question on the failure-to-identify issue is whether the grandmother's nondisclosures to the ■■■

principal at the start of the second semester of [REDACTED] grade serve as intervening causes that relieve Respondent of the responsibility for its previously identified failures. Any nondisclosures preceding the enrollment at the [REDACTED] are irrelevant because the [REDACTED] was not an appropriate placement, so Respondent would not be responsible for the cost of enrollment at that school under any circumstances. Additionally, the [REDACTED] enrollment was only two or three weeks late in the first semester of the 2004-05 school year--clearly, too short a period for Respondent even to start the process of evaluating Petitioner.

195. However, Petitioner's return to [REDACTED] at the start of the second semester of the 2005-06 school year for about six weeks is potentially relevant because subsequent programs at [REDACTED] and [REDACTED] were appropriate, so Respondent could be responsible for the cost of enrollment in these programs. In general, though, the grandmother's shortcomings cannot relieve Respondent of its responsibility for its shortcomings two years earlier.

196. From the grandmother's point of view, the six-week attendance at [REDACTED] was not so much an educational placement as it was a temporary means of avoiding judicial intervention for failing to attend to the child's education. After trying and failing to obtain relevant help for her [REDACTED] at the 504 conference, the grandmother had given up on Respondent.

Although the timing of the Zimmerman evaluation establishes that the child knew at least that ■■■ might, once again, not complete the educational program at ■■■, nothing in the record establishes that ■■■ knew that ■■■ was not to attend ■■■ for long, that any such knowledge might have contributed to the catastrophic behaviors that immediately preceded ■■■ withdrawal from ■■■ for the last time, or that the grandmother mishandled the situation, such as by revealing to her ■■■ that, regardless of ■■■ behavior, ■■■ would soon be leaving ■■■ and home for a more therapeutic setting.

197. Ultimately, the failure of Respondent in May 2004 to identify and evaluate Petitioner remains the substantial reason for the necessity of ■■■ enrollment at ■■■ and ■■■. The grandmother's failure to exercise good judgment at a critical juncture is excusable for several reasons. As exhibited at the hearing, the grandmother remains seriously stressed by the substantial task that she has assumed, relatively late in life, of raising three very troubled son's children, at least two of whom are themselves very troubled. Doubtlessly, this stress was much greater prior to her ■■■'s successful treatment at ■■■ and ■■■. The grandmother exhibits no more than average intelligence and little understanding of the technicalities of ESE education (with which she probably had little, if any, experience as a parent and surely none as a child). Not surprisingly, the

grandmother has not found the difficult role forced upon her to be particularly easy; as noted in passing by Dr. Crosby, Petitioner and [REDACTED] grandmother both needed to address power and control issues between them. At the same time, the grandmother has struggled with her own health issues, which culminated with a heart attack just as her [REDACTED] was discharged from [REDACTED]. On these facts, it is impossible to assign her such responsibility for her acts and omissions at the time of Petitioner's last enrollment at [REDACTED] so as to relieve Respondent of its responsibility--to Petitioner, not [REDACTED] grandmother--for its acts and omissions two years earlier. Whether due to embarrassment, neglect, or ignorance, the grandmother's acts and omissions during the six weeks that preceded Petitioner's final withdrawal from [REDACTED] were, in the final analysis, the kind of behavior from a parent or guardian that is not to be unexpected when the educational professionals fail to timely discharge their duty to identify and evaluate a child as troubled as Petitioner has been.

198. And, despite her poor judgment in failing to disclose the Crosby Report, the grandmother correctly anticipated her grandson's needs when she promptly began to look for a therapeutic placement, even as [REDACTED] started to attend [REDACTED] for the last time. After five weeks of mediocrity in the classroom, Petitioner engaged in two incidents of highly deviant behavior

at school--the first involving alcohol and the second, ten days later, drugs. Petitioner's grandmother properly responded to this emergency and, having already conducted all or most of the necessary advance planning, which necessarily included financial arrangements, immediately transferred her [REDACTED] to the [REDACTED] program.

B. Claims of Cost of Enrollment: Prior to August 2007 IEP

199. The first expenditure for which Petitioner seeks reimbursement is the \$375 that the grandmother paid to a private psychologist. This is a curious claim because a licensed clinical psychologist called by Petitioner as an expert witness described this test result as "phony." Nothing in the record attaches anything of value to the testing conducted by the private psychologist, so the service was not appropriate.

200. The second expenditure for which Petitioner seeks reimbursement is the substantial amount that the grandmother paid the [REDACTED]. This, too, is a curious reimbursement request. Petitioner has not presented much evidence concerning the [REDACTED]. Nothing in the record would support an inference that the educational program at the [REDACTED] was appropriate for Petitioner, so Petitioner may not recover this cost of enrollment.

201. The third expenditure for which Petitioner seeks reimbursement is the \$1235 that the grandmother paid

Mr. Clowney, the licensed clinical social worker in Melbourne. This claim is only slightly less curious than the two preceding it. The present record offers no description of Mr. Clowney's services, and the expulsion provides scant basis to infer that these services were appropriate.

202. The fourth expenditure for which Petitioner seeks reimbursement is the \$3800 that she paid Mr. Zimmerman, the educational consultant who recommended the [REDACTED] and [REDACTED] programs. These programs themselves were appropriate, and the consultative services appear to have been most useful in finding the grandmother placement options that she never would have found on her own. Additionally, Mr. Zimmerman continued to stay in contact with the grandmother through the course of these two placements and help her interpret the behavioral progress that her [REDACTED] was making--both substantial tasks. The service is thus appropriate, so this expenditure is eligible for reimbursement.

203. The fifth expenditure for which Petitioner seeks reimbursement is the \$27,645 that the grandmother paid the [REDACTED] program. Although academics were clearly subordinated to behavior, the appropriateness of the [REDACTED] program is demonstrated by the short duration of the program, the inability of Petitioner to have undertaken a more intensive academic program or have been admitted to a therapeutic boarding school at the time that [REDACTED] started [REDACTED], and the success that Petitioner later

enjoyed at the therapeutic boarding school that ■■■ attended right after ■■■. The service is thus appropriate, so this expenditure is eligible for reimbursement.

204. The sixth expenditure for which Petitioner seeks reimbursement is the \$3200 that the grandmother paid for a service to escort her ■■■ directly from the ■■■ program in Utah to the ■■■ program in Massachusetts. This is not a mere travel expense, but a secure transport service that precludes elopement. Mr. Zimmerman recommended this escort to safeguard the hard-won gains that Petitioner had made at the ■■■ program. His experience in this type of situation demands deference to his opinion of the necessity of the service. Mr. Zimmerman's advice appears to have been prudent given the fact that Petitioner still displayed moderate volatility during the early part of ■■■ tenure at ■■■. The service is thus appropriate, so this expenditure is eligible for reimbursement.

205. The seventh expenditure for which Petitioner seeks reimbursement is the \$2500 that the grandmother paid Dr. DeFant. The DeFant Report has been useful in identifying Petitioner as a student with ESE-qualifying disabilities and designing an educational program for ■■■ at ■■■ and in Respondent's school system. The service is thus appropriate, so this expenditure is eligible for reimbursement.

206. The eighth expenditure for which Petitioner seeks reimbursement is the money that the grandmother paid [REDACTED]. This expenditure must be divided into two parts: before and after the August 2007 IEP. Petitioner's initial enrollment at [REDACTED], which extended 16 months, ran from May 2006 to August 2007: for this period, the tuition totaled \$99,148 and the supplies totaled \$1496.29, so the total expenditures were \$100,644.29. Although featuring intense behavioral and therapeutic supports, the [REDACTED] program was not more intensively therapeutic than Petitioner required. At first, even [REDACTED] staff questioned whether Petitioner's needs were too intense for their program, but Petitioner gradually adjusted to [REDACTED] new setting, found success, and maintained [REDACTED] success over an extensive period of time. The service is thus appropriate, so this expenditure is eligible for reimbursement.

C. Claim of Cost of Enrollment: After August 2007 IEP

207. As noted above, the eighth expenditure for which Petitioner seeks reimbursement is the money that the grandmother paid [REDACTED]. After the preparation of the August 2007 IEP, Petitioner enrolled at [REDACTED] a second time, briefly, in September 2007: for this period, the tuition totaled \$12,360 and the supplies totaled \$412, so the total expenditures were \$12,772. As before, [REDACTED] was appropriate, but, as noted below, either Petitioner no longer had an ESE-qualifying disability or the

August 2007 IEP provided FAPE in the LRE, so this expenditure is not eligible for reimbursement.

208. The ninth expenditure for which Petitioner seeks reimbursement is the \$315 that the grandmother paid to Boca Raton Psychiatric Group for an evaluation to obtain admission to ■■■. The evaluation is a screening for admission and yielded no information beside a finding that Petitioner would be appropriate for ■■■. Because either Petitioner no longer had an ESE-qualifying disability or the August 2007 IEP provided Petitioner with FAPE in the LRE, this expenditure is not eligible for reimbursement.

209. The tenth expenditure for which Petitioner seeks reimbursement is the ■■■ tuition of \$8037.50, or such lesser sum that she actually paid as of the cut-off date. However, it is unnecessary to address the issue concerning whether she is entitled to the full incurred expense or only the actual payments. Although ■■■ clearly has provided an appropriate program for Petitioner, this expenditure is not eligible for reimbursement because either Petitioner no longer had an ESE-qualifying disability or the August 2007 IEP provided Petitioner with FAPE in the LRE.

D. By August 2007, Petitioner No Longer Had an ESE-
Qualifying Disability or the August 2007 IEP Provided
Petitioner with FAPE in the LRE

210. For the reasons stated in the Conclusions of Law, particularly the new definition of EBD, Petitioner no longer qualified for ESE services as of August 2007, at least when considered in light of [REDACTED] performance at [REDACTED] through the date of the filing of the due process request or the first semester. Assisted greatly by [REDACTED] and [REDACTED] and finding [REDACTED] much to [REDACTED] liking, Petitioner has consistently implemented behavior-control techniques that have permitted [REDACTED] to overcome the symptoms of PTSD and proceed with [REDACTED] education at this time.

211. In the alternative, if the facts were limited to those available in August 2007, the August 2007 IEP provided FAPE in the LRE. The DeFant Report, [REDACTED] materials, and [REDACTED] materials support the education-planning decision of the IEP team, except for Petitioner, to educate Petitioner in an EBD cluster at [REDACTED]. Obviously, the August 2007 IEP omits any provisions of academic present levels of performance, goals, or objectives, but Respondent had no information for such academic planning, and the August 2007 IEP was a temporary plan to be implemented while Respondent gathered relevant data. Except for spelling, Petitioner is evidently near or above grade level, and, except for the possibility of persistent SLDs, behavior was the sole impediment to Petitioner's accessing [REDACTED] curriculum.

212. Perhaps the most critical facts, in preparing the August 2007 IEP, are that it facilitates Petitioner's transition

from the heightened structure of a therapeutic boarding school and provides Respondent with a much-needed opportunity to re-acquaint itself with Petitioner, academically and behaviorally. LRE did not demand that Respondent educate Petitioner in [REDACTED], at least not immediately upon [REDACTED] return to Respondent's school system. The safety of Petitioner and the hard work that [REDACTED] had invested in learning how to manage [REDACTED] behavior authorized the IEP team to select a more restrictive setting than [REDACTED] home school without violating Petitioner's right to FAPE in the LRE. The natural progression, in terms of placing incrementally greater responsibility on Petitioner to manage [REDACTED] behavior in real-world environments following [REDACTED] completion of the [REDACTED] and [REDACTED] programs, suggested the EBD self-contained unit at [REDACTED].

213. The September 2007 IEP provided FAPE, but not in the LRE, even based on the facts in existence in September 2007. However, the failure of the September 2007 IEP to educate Petitioner in the LRE is irrelevant because the latter IEP did not supersede the August 2007 IEP. Respondent prepared two IEPs, two weeks apart, and provided Petitioner with [REDACTED] choice. Under these circumstances, the suitability of the August 2007 IEP moots the unsuitability of the September 2007 IEP.

CONCLUSIONS OF LAW

214. The Division of Administrative Hearings has jurisdiction over the subject matter. § 1003.57(1)(e), Fla. Stat. (2007).

215. Petitioner has the burden of proof in this case because [REDACTED] is the party seeking relief. Schaffer v. Wuest, 546 U.S. 49, 126 S. Ct. 528 (2005).

216. Petitioner alleges two major violations in this case. The first is a violation of Respondent's child-find obligations in or about May 2004 in terms of its failure to identify and evaluate Petitioner as a child with an ESE-qualifying disability. The second, in August and September 2007, is a violation of Respondent's obligation to provide Petitioner with IEPs that offered [REDACTED] FAPE in the LRE.

217. Petitioner's rights to identification and evaluation and FAPE are guaranteed by Florida Administrative Code Rule 6A-6.03311(11), which provides due process hearings "to resolve matters related to the identification, evaluation, or educational placement of the student or the provision of [FAPE]." Likewise, 20 United States Code Section 1415(b)(6)(A) requires each state to adopt procedures that allow a party to present a complaint regarding "any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a [FAPE] to such child," and 20 United States Code Section 1412(a)(3)(A) imposes upon states the

affirmative requirements of "identif[ying], locat[ing], and
evaluat[ing] . . . [a]ll students with disabilities . . ."

218. Florida's child-find requirements are contained in
Florida Administrative Code Rule 6A-6.0331, which provides:

The state's goal is to provide full
educational opportunity to all students with
disabilities ages three (3) through twenty-
one (21). Local school boards have the
responsibility to ensure that students
suspected of having a disability or being
gifted are identified, evaluated, and
provided appropriate specially designed
instruction and related services if it is
determined that the student meets the
eligibility criteria specified in Rules
6A-6.03011 through 6A-6.03023 and
6A-6.03027, F.A.C. . . . The procedures
and criteria for identification, evaluation,
and determination of eligibility of
exceptional students by local school boards
shall be set forth in the school district's
Policies and Procedures for the Provision of
Specially Designed Instruction and Related
Services for Exceptional Students document
consistent with the following requirements.

* * *

(2) Kindergarten Through Grade Twelve
Students. It is the local school board's
responsibility to address through
appropriate interventions and, to the extent
possible, resolve a student's learning or
behavioral areas of concern in the general
education environment prior to a referral
for evaluation to determine eligibility as a
student with a disability. Notwithstanding
the provisions of paragraphs
6A-6.03011(3)(a)-(e), 6A-6.03016(5)(a)-(f),
and 6A-6.03018(3)(a)-(b), F.A.C., prior to
the submission of a referral for evaluation
to determine eligibility as a student with a
disability, the activities in paragraphs

(2)(a)-(f) of this rule must be completed. The general education interventions described in paragraph (2)(f) of this rule are not required for students who demonstrate speech disorders, severe cognitive, physical or sensory disorders, or severe social/behavioral deficits that require immediate intervention to prevent harm to the student or others. . . .

219. The remaining provisions of Florida Administrative Code Rule 6A-6.0331(2) describe the sequential procedures for processing a child suspected of having an ESE-qualifying disability; making a referral, as described in Rule 6A-6.0331(3); and ultimately making an evaluation, as described in Rule 6A06.0331(4), which provides:

(a) The school board shall be responsible for the medical, physical, psychological, social, and educational evaluations of students, who are suspected of being exceptional students, by competent evaluation specialists. Evaluation specialists shall include, but not be limited to, persons such as physicians, school psychologists, psychologists, speech/language pathologists, teachers, audiologists, and social workers with each such person licensed in the professional's field as evidenced by a valid license or certificate to practice such a profession in Florida. . . .

(b) The school board shall ensure that students suspected of having a disability are evaluated within a period of time, not to exceed sixty (60) school days of which the student is in attendance

220. The Florida criterion of a student "suspected" of having an ESE-qualifying disability is also in 34 Code of Federal Regulation 300.111, which requires:

(a) General.

(1) The State must have in effect policies and procedures to ensure that--

(i) All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated[.]

* * *

(c) Other children in child find. Child find also must include--

(1) Children who are suspected of being a child with a disability under Sec. 300.8 and in need of special education, even though they are advancing from grade to grade[.]

221. The cases require little to find that a school district should have suspected that a child had an ESE-qualifying disability. In Wiesenberg v. Board of Education, 181 F. Supp. 2d 1307, 1311 (D. Utah 2002), the court, citing what is now 20 United States Code Section 1415(k)(5)(B), found that knowledge of a disability could be "inferred from written parental concern, the behavior or performance of the child, teacher concern, or a parental request for an evaluation." In Pasatiempo v. Aizawa, 103 F.3d 796, 803 (9th Cir. 1996), the

court held that a parental request, based on a parent's suspicion of an ESE-qualifying disability, was sufficient at least to require the school board to provide notice if it elected not to commence the child find identification process.

222. There are material differences in Florida's rules in May 2004 and August 2007 concerning the ESE-qualifying disability formerly known as EH and now known as EBD. Prior to July 1, 2007, the ESE-qualifying disability was known as EH and was defined by Florida Administrative Code 6A-6.03016 as follows:

- (1) An [EH] is defined as a condition resulting in persistent and consistent maladaptive behavior, which exists to a marked degree, which interferes with the student's learning process, and which may include but is not limited to any of the following characteristics:
 - (a) An inability to achieve adequate academic progress which cannot be explained by intellectual, sensory, or health factors;
 - (b) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
 - (c) Inappropriate types of behavior or feelings under normal circumstances;
 - (d) A general pervasive mood of unhappiness or depression; or
 - (e) A tendency to develop physical symptoms or fears associated with personal or school problems.

- (2) Criteria for eligibility. Students with disruptive behavior shall not be eligible unless they are also determined to be [EH]. A[n SED] is defined as an [EH], the severity of which results in the need for a

program for the full school week and extensive support services.

(3) A student is eligible for a special program for [EH] if there is evidence that:

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

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

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

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

(4) Criteria for eligibility for programs for [SED]. . . .

(5) Procedures for referral. Prior to the referral for student evaluation, the following procedures are required for students enrolled in public school programs. If a student is transferring from an agency which provides services to [EH] students, the requirements in paragraphs 6A-6.03016(4)(a), (b), (c), (d), and (e), F.A.C., shall be waived.

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

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

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

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

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

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

(6) Procedures for student evaluation.

(a) The minimum evaluation for determining eligibility for [EH] or [SED] shall include all information collected in subsection 6A-6.03016(4), F.A.C., and the following:

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

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

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

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

(b) For students enrolled in programs for [EH], the minimum evaluation for determining eligibility for special programs for [SED] shall include evidence of the following procedures:

1. Conferences concerning the student's specific problem in the program for [EH];

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

3. Interventions and adjustments that have been tried with the student while enrolled in the program for [EH];

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

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

(7) Parent education. . . .

223. Around May 2004, Petitioner met all of the eligibility requirements of EH. [REDACTED] had an emotional handicap after the usual classroom interventions, the handicap extended over a "extended period of time" and in more than one situation (i.e., during different classes or between, before, or after classes), and the EH interfered with [REDACTED] behavior and academics.

224. As described by the above-cited rules, the identification and evaluation process comprises two sequential steps. First, the school district identifies a student suspected of having an ESE-qualifying disability. Having done so, the school district attempts classroom interventions and

collects data. Then, using the information developed from this preliminary process, the school district evaluates the student to determine if, in fact, he suffers from an ESE-qualifying disability. See N.G. v. District of Columbia, 2008 U.S. District Lexis 25302 (D.D.C. March 31, 2008). Citing 20 United States Code Section 1412(a)(3)(A), the N.G. court stated:

This mandate is known as the "Child Find" obligation, an affirmative obligation of every public school system to identify students who might be disabled and evaluate those students to determine whether they are indeed eligible. As soon as a child is identified as a potential candidate for services, DCPS has the duty to locate that child and complete the evaluation process. Failure to locate and evaluate a potentially disabled child constitutes a denial of FAPE.

225. In Seattle School District No. 1 v. B.S., 82 F.3d 1493 (9th Cir. 1996), the court considered a case not entirely dissimilar to the present case. The child had a history of early neglect, physical and sexual abuse, abandonment, and foster-home placement. The child's experts identified these issues as the source of her behavioral problems, which included ODD, attachment disorder, and a conduct disorder. At school, the child engaged in tantrums, physical and verbal aggression, attention problems, and inappropriate affection toward adults. In April 1990, the school district assembled a multidisciplinary team to assess the child, but the team, lacking a behavior professional, failed to detect any ESE-qualifying disabilities.

A couple of years later, after attempting fairly modest, relatively unsuccessful classroom interventions, the school district had to place the child in restraints and transfer her to the hospital, after she had become extremely assaultive. The court held that the parents were due an independent educational evaluation at public expense because the school district's multidisciplinary team had failed to include a behavior specialist, as was then required by law, and had failed to account for the recommendation by the parents' expert that the child be placed in a residential therapeutic facility. Even though the diagnoses of the child's expert was not ultimately sustained, the court also ordered that the school district pay for her private placement, which it found was appropriate.

226. N.G., cited above, also resembles the present case in certain respects. In that case, the school conducted a 504 conference and a multidisciplinary team meeting, but neither process resulted in the initiation of an evaluation process, even though the child had been diagnosed with major depressive disorder since age 12 and had attempted suicide in the spring of ninth grade. Stressing that the school district's obligation extends, under child find, to all children suspected of having disabilities, the court held that, upon identifying such a child, the school district must proceed to evaluate her. The court also found that the child's clinical depression

constituted an ESE-qualifying disability. Lastly, the court found that the school district had to have suspected that the child was disabled due to her suicide attempt, her deteriorating school behavior, and a letter from a health care professional diagnosing her with major depression.

227. Notwithstanding the N.G. court's statement that a failure to identify and evaluate a child may deprive a child of FAPE, the child find violation is distinct from the FAPE violation. Thus, at least in a reimbursement case, the court will not permit a finding of educational progress, which is applicable to a FAPE determination, to preclude a determination that the school district committed a child find violation. The court so held in Department of Education v. Cari Rae S., 158 F. Supp. 2d 1190, 1196 (D. Hawaii 2001), in which it found that the school district had failed to meet its child find obligation when, despite numerous behavioral referrals, absences, and eventually failing grades, the school district failed to evaluate the student for ESE-qualifying disabilities.

228. In another respect, though, a FAPE and child find violation are similar. Notwithstanding its suggestion that a child find violation is a subset of FAPE violations, the N.G. court explicitly recognized that reimbursement of private school tuition, although more common for a FAPE violation, was also available for a child find violation. Accord Lakin v.

Birmingham Public School, 70 Fed. Appx. 295 (6th Cir. 2003) (not recommended for full-text publication); New Paltz Central School District v. St. Pierre, 307 F. Supp. 2d 394, 400 (N.D.N.Y. 2004); Wolfe v. Taconic-Hills Central School District, 167 F. Supp. 530, 533-35 (N.D.N.Y. 2001) (tuition reimbursement for FAPE violation and child find violation).

229. In general, the ability to award reimbursement of private school tuition is restricted to the judiciary. Florida Administrative Code Rule 6A-6.03311(11)(j) provides that the "state circuit or federal district court . . . shall grant the relief it determines appropriate." The sole exception to this principle is found in Florida Administrative Code Rule 6A-6.03311(9), which addresses several issues concerning tuition reimbursement:

Placement of students with disabilities in private schools by their parents when the provision of a free appropriate public education by the school district is at issue.

(a) If the school district has made a free appropriate public education available to a student with a disability and the parents elect to place the child in a private school or facility, the school district is not required to pay for the cost of education, including specially designed instruction and related services.

(b) Disagreements between a parent and a school district regarding the availability of a program appropriate for the student, and the question of financial responsibility, are subject to the due

process procedures described in subsection (11) of this rule.

(c) If the parents of a child with a disability, who previously received specially designed instruction and related services under the authority of a public agency, enroll the student in a private preschool, elementary, or secondary school without the consent of or referral by the school district, a court or an administrative law judge may require the school district to reimburse the parents for the cost of that enrollment; if the court or administrative law judge finds that the school district had not made a free appropriate public education available to the student in a timely manner prior to that enrollment, and that the private placement is appropriate. A parental placement may be found to be appropriate by an administrative law judge or a court even if it does not meet the state standards that apply to education by the Department of Education and the school district.

(d) The cost of reimbursement described in paragraph (9)(c) of this rule may be reduced or denied in accordance with the requirements of Sections 300.403(d)-(e) of Title 34 of the Code of Federal Regulations.

230. The Administrative Law Judge lacks the authority to award any of the costs of enrollment in this case for two reasons. First, Rule 6A-6.03311(9)(c) limits the authority of the Administrative Law Judge to award such relief to cases involving a FAPE violation, not a child find violation. Notwithstanding the language in N.G. suggesting otherwise, the presence in the rule of a separate child find requirement, distinct from the FAPE requirement, strongly suggests that these are distinct requirements. Second, even if Rule

6A-6.03311(9)(c) extended to child find violations, there is no evidence in this case that Petitioner ever received specialized instruction or related services from a public agency.

231. Although not defined in Florida law, "public agency" means, according to 34 Code of Federal Regulation Section 300.33, all types of schools and "any other political subdivisions of the State that are responsible for providing education to children with disabilities." As noted in the findings, the grandmother claimed that she paid for all of her ■■■'s therapies, so Petitioner fails to satisfy this criterion for eligibility for tuition reimbursement in this forum.

232. It should be noted that one of the reasons that Petitioner may not recover the costs of enrollment is not due to the reimbursement limits set forth in Rule 6A-6.03311(9)(d). The federal reimbursement limits at 34 Code of Federal Regulation Section 300.148(d) and (e), which are incorporated by Rule 6A-6.03311(9)(d), provide:

(d) Limitation on reimbursement. The cost of reimbursement described in paragraph (c) of this section may be reduced or denied--

(1) If--

(i) At the most recent IEP Team meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to

enroll their child in a private school at public expense; or

(ii) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in paragraph (d)(1)(i) of this section;

(2) If, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in Sec. 300.503(a)(1), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or

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

(e) Exception. Notwithstanding the notice requirement in paragraph (d)(1) of this section, the cost of reimbursement--

(1) Must not be reduced or denied for failure to provide the notice if--

(i) The school prevented the parents from providing the notice;

(ii) The parents had not received notice, pursuant to Sec. 300.504, of the notice requirement in paragraph (d)(1) of this section; or

(iii) Compliance with paragraph (d)(1) of this section would likely result in physical harm to the child; and

(2) May, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if--

(i) The parents are not literate or cannot write in English; or

(ii) Compliance with paragraph (d)(1) of this section would likely result in serious emotional harm to the child.

233. The N.G. case also holds that these notice requirements do not apply if the student had not previously received specialized instruction and related services from a public agency. This is sensible reading of a rule that requires notice to an IEP team. Here, there was no IEP team for the grandmother to notify when she decided to withdraw her [REDACTED] from [REDACTED] for the last time; this was exactly the problem.

234. For the reasons stated above, Petitioner has proved that Respondent committed a child find violation by not identifying [REDACTED] as a child suspected of having an ESE-qualifying disability--namely, EH. This violation occurred at the time of the 504 conference in May 2004. Cases allowing school districts a reasonable period of time to evaluate a student are inapposite because the failure here was a failure to identify Petitioner. Although a failure to identify a student results in a failure to evaluate [REDACTED], a failure to identify a student means that the school district will not even undertake the preliminary process of classroom interventions and data collection that leads up to a formal evaluation. As distinguished from a failure to evaluate, which may not manifest itself for several weeks, a failure to identify is immediately apparent.

235. Findings that certain services, especially at [REDACTED] and [REDACTED] (prior to the 2007-08 school year), are "appropriate" constitutes a finding that Petitioner has met all but one of the

criteria identified in Branham v. District of Columbia, 427 F.3d 7, 12 (D.C. Cir. 2005):

the nature and severity of the student's disability, the student's specialized educational needs, the link between those needs and the services offered by the school, the placement's cost, and the extent to which the placement represents the least restrictive environment.

The only criterion left unaddressed by this record is the cost of the alternative placements; nothing in the record permits a finding as to the reasonableness of such costs. See also Holland v. District of Columbia, 71 F.3d 417, 425 (D.C. Cir. 1995).

236. Lastly as to the child find violation, 20 United State Code Section 1415(b)(6)(B) provides that a due process request may not state a claim of a violation that occurred more than two years before the parent knew or should have known about the alleged action that forms the basis of the complaint, unless Florida law provides an explicit deadline. The services found to be appropriate as a result of the child find violation all occurred within two years of the filing of the due process request in November 2007. The earliest of these services took place in approximately January 2006, when Mr. Zimmerman began providing educational consultation services to the grandmother.

237. The other main issue is whether the August 2007 or September 2007 IEP fails to provide FAPE in the LRE. For a couple of reasons, Petitioner has failed to prove this claim.

238. As of July 1, 2007, EBD is defined by Florida Administrative Code Rule 6A-6.03016 as follows:

(1) Definition. Students with an emotional/behavioral disability (E/BD). A student with an emotional/behavioral disability has persistent (is not sufficiently responsive to implemented evidence based interventions) and consistent emotional or behavioral responses that adversely affect performance in the educational environment that cannot be attributed to age, culture, gender, or ethnicity.

(2) Activities prior to referral. Prior to referral for evaluation, the requirements in subsections 6A-6.0331(1)-(3), F.A.C., must be met.

(3) Evaluation. In addition to the provisions in subsection 6A-6.0331(4), F.A.C., the evaluation for a student must also include the procedures identified in the district's Policies and Procedures for the Provision of Specially Designed Instruction and Related Services for Exceptional Students as required by Rule 6A-6.03411, F.A.C.

(4) Criteria for eligibility. A student with an emotional/behavioral disability must demonstrate an inability to maintain adequate performance in the educational environment that cannot be explained by physical, sensory, socio-cultural, developmental, medical, or health (with the exception of mental health) factors; and must demonstrate one or more of the following characteristics described in paragraph (4)(a) or (4)(b) of this rule and

meet the requirements of paragraphs (4)(c) and (4)(d) of this rule:

(a) Internal factors characterized by:

1. Feelings of sadness, or frequent crying, or restlessness, or loss of interest in friends and/or school work, or mood swings, or erratic behavior; or

2. The presence of symptoms such as fears, phobias, or excessive worrying and anxiety regarding personal or school problems; or

3. Behaviors that result from thoughts and feelings that are inconsistent with actual events or circumstances, or difficulty maintaining normal thought processes, or excessive levels of withdrawal from persons or events; or

(b) External factors characterized by:

1. An inability to build or maintain satisfactory interpersonal relationships with peers, teachers, and other adults in the school setting; or

2. Behaviors that are chronic and disruptive such as noncompliance, verbal and/or physical aggression, and/or poorly developed social skills that are manifestations of feelings, symptoms, or behaviors as specified in subparagraph (4)(a) 1.-3. of this rule.

(c) The characteristics described in paragraph (4)(a) or (b) of this rule must be present for a minimum of six (6) months duration and in two (2) or more settings, including but not limited to, school, educational environment, transition to and/or from school, or home/community settings. At least one (1) setting must include school.

(d) The student needs special education as defined in paragraph 6A-6.03411(1)(c), F.A.C.

(e) In extraordinary circumstances, activities prior to referral for evaluation as described in subsection (2) of this rule and criteria for eligibility described in paragraph (4)(c) of this rule may be waived when immediate intervention is required to

address an acute onset of an internal emotional/behavioral characteristic as listed in paragraph (4)(a) of this rule.

(5) Characteristics not indicative of a student with an emotional/behavioral disability:

(a) Normal, temporary (less than six (6) months) reactions to life event(s) or crisis, or

(b) Emotional/behavioral difficulties that improve significantly from the presence of evidence based implemented interventions, or

(c) Social maladjustment unless also found to have an emotional/behavioral disability.

239. By August and September 2007, Petitioner failed to meet all of the new EBD eligibility requirements. ■■■ had an EBD--namely, PTSD--and probably continued to exhibit difficulty in maintaining normal thought processes (and displayed excessive levels of withdrawal). However, ■■■ was no longer displaying chronic and disruptive behaviors, such as noncompliance and aggression, as a manifestation of ■■■ symptoms and behavior disorder and had not presented the qualifying characteristics for six months in at least two settings. As Dr. Jobe noted, notwithstanding the recurrent nature of PTSD, not all children afflicted with this condition meet the EBD criteria, and, by the end of ■■■ first semester at ■■■, Petitioner failed to meet these criteria.

240. Paradoxically, if the August 2007 IEP were evaluated strictly by the facts in existence at the time of its

preparation, or even at the time of the filing of the due process request, which was at the start of Petitioner's first semester at ■■■■, the August 2007 IEP would have to be sustained. Assuming that Petitioner would meet the new EBD eligibility criteria, the August 2007 IEP provided FAPE in the LRE because it responded meaningfully to the available data, especially the DeFant Report and its recommendation of a self-contained unit. Although the September 2007 IEP would have failed to satisfy the LRE requirement, even if assessed at the time of its preparation of at the time of the filing of the due process request, this deficiency is irrelevant because Respondent offered this IEP as an alternative to the August 2007 IEP, which did provide FAPE, under this scenario.

241. The case law holds that a school district's eligibility or IEP decision should be assessed based on the facts in existence at the time that the decision is made, although the court may consider subsequent developments, as long as the purpose of this additional evidence is limited to assessing the school district's original decision. See, e.g., Susan N. v. Wilson School District, 70 F.3d 751, 772 (3rd Cir. 1995). In this case, though, the result is the same, regardless of how much emphasis one places on the subsequent developments: Petitioner has failed to prove ■■■■ entitlement to tuition reimbursement during the 2007-08 school year for ■■■■ or ■■■■.

ORDER

Based on the foregoing, it is

ORDERED that:

1. Respondent committed a child find violation in May 2004 by failing to identify Petitioner as a child suspected of having an ESE-qualifying disability;

2. Respondent did not fail to provide Petitioner FAPE in the LRE either because Petitioner no longer met the eligibility criteria for EBD or, if ■■■ did, because the August 2007 IEP provided FAPE in the LRE; and

3. This forum lacks the jurisdiction to award the cost of enrollment for those services that, as noted above, were found to have been appropriate, but for a finding of reasonableness.

DONE AND ORDERED this 23rd day of July, 2008, in Tallahassee, Leon County, Florida.

S

ROBERT E. MEALE
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings

this 23rd day of July, 2008.

COPIES FURNISHED:

Dr. Arthur C. Johnson
Superintendent
Palm Beach County School Board
3340 Forest Hill Boulevard, C316
West Palm Beach, Florida 33406-5869

Kim C. Komisar, Section Administrator
Bureau of Exceptional Education
and Student Services
Department of Education
325 West Gaines Street, Suite 614
Tallahassee, Florida 32399-0400
Deborah K. Kearney, General Counsel
Department of Education
Turlington Building, Suite 1244
325 West Gaines Street
Tallahassee, Florida 32399-0400

Iola T. Mosley, Esquire
Associate Counsel, Academics
Palm Beach County School Board
Post Office Box 19239
West Palm Beach, Florida 33416-9239

Dennis D. Bailey, Esquire
Schiller, Kessler & Gomez, PLC
7501 West Oakland Park Boulevard, Suite 201
Fort Lauderdale, Florida 33319

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(1)(e), Florida Statutes; or c) files an appeal within 30 days in the appropriate state district court of appeal pursuant to Sections 1003.57(1)(e) and 120.68, Florida Statutes.