

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

██████████,

Petitioner,

vs.

Case No. 12-1511E

HILLSBOROUGH COUNTY SCHOOL  
BOARD,

Respondent.

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FINAL ORDER

Administrative Law Judge, John D. C. Newton, II, of the Division of Administrative Hearings (DOAH), conducted the final hearing in this case on June 19 and 20, 2012; October 29 through November 2, 2012; and January 23 through 25, 2013, in Tampa, Florida.

APPEARANCES

For Petitioner: Abraham Shakfeh, Esquire  
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For Respondent: LaKisha Kinsey-Sallis, Esquire  
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and Hearing, P.A.  
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STATEMENT OF THE ISSUES

A. Did Respondent, Hillsborough County School Board (Board or District), comply, in June 2010, with the requirement of 20 U.S.C. section 1414(d)(2)(c)(i)(II) to provide Petitioner, [REDACTED] " a free appropriate public education [FAPE], including services comparable to those described in the previously held IEP [Individual Education Plan], in consultation with the parents until such time as the local educational agency conducts an evaluation pursuant to subsection (a)(1), if determined to be necessary by such agency, and develops a new IEP, if appropriate, that is consistent with Federal and State law," by failing to provide [REDACTED] an IEP that provided an extended school year (ESY) comparable to that provided for in the IEP [REDACTED] had in California before moving to Hillsborough County?

B. Did the Board's initial assignment of [REDACTED] in June 2010, to hospital/homebound services deny [REDACTED] a FAPE by not providing education in the least restrictive environment?

C. Did the Board deny [REDACTED] and [REDACTED] parents the right to meaningful participation, created by 20 U.S.C. section 1414, in the IEP meeting conducted August 19, 2010?

D. Did the Board deny [REDACTED] and [REDACTED] parents the right to meaningful participation, created by 20 U.S.C. section 1414, in the IEP meeting conducted August 23, 2010?

E. Did the IEP dated August 23, 2010, fail to provide for a FAPE for [REDACTED]?

F. Did the Board deny [REDACTED] and [REDACTED] parents the right to meaningful participation, created by 20 U.S.C. section 1414, in the IEP meeting conducted September 2, 2010?

G. Did the Board deny [REDACTED] and [REDACTED] parents the right to meaningful participation, created by 20 U.S.C. section 1414, in the IEP meeting conducted January 19, 2011, by: (a) failing to consider an evaluation by [REDACTED]; (b) failing to provide copies of the Board's evaluations of [REDACTED] needs before the meeting; and (c) failing to completely evaluate [REDACTED] needs in a timely fashion before the meeting?

H. Does the fact that the Board did not determine [REDACTED] eligible for hospital/homebound services until April 4, 2011, after [REDACTED] was determined on February 3, 2011, to have a broken femur, deny [REDACTED] a FAPE?

I. Did the Board deny [REDACTED] and [REDACTED] parents the right to meaningful participation, created by 20 U.S.C. section 1414, in the IEP meeting conducted July 18, 2011?

J. Did the Board deny [REDACTED] and [REDACTED] parents the right to meaningful participation, created by 20 U.S.C. section 1414, in the IEP meeting conducted July 20, 2011?

K. Did the Board deny [REDACTED] and [REDACTED] parents the right to meaningful participation, created by 20 U.S.C. section 1414, in the IEP meeting conducted August 12, 2011?

L. Did the Board deny [REDACTED] and [REDACTED] parents the right to meaningful participation, created by 20 U.S.C. section 1414, in the IEP meeting conducted August 16, 2011?

M. Did the Board deny [REDACTED] and [REDACTED] parents the right to meaningful participation, created by 20 U.S.C. section 1414, in the IEP meeting conducted September 12, 2011?

N. Does the IEP dated September 12, 2011, deny [REDACTED] a FAPE?

O. Did the Board deny [REDACTED] and [REDACTED] parents the right to meaningful participation, created by 20 U.S.C. section 1414, in the IEP meeting conducted October 26, 2011?

P. Did the Board deny [REDACTED] and [REDACTED] parents the right to meaningful participation, created by 20 U.S.C. section 1414, in the IEP meeting conducted December 14, 2011?

Q. Did the Board deny [REDACTED] a FAPE from December 14, 2011, forward?

R. What relief, if any, should be granted?

PRELIMINARY STATEMENT

On April 19, 2012, [REDACTED] (mother) and [REDACTED] (father) filed a due process hearing request with the District maintaining a broad range of failings in the District's fulfillment of its duty to provide their child, [REDACTED] (student), a FAPE. By Order dated

May 3, 2012, the undersigned determined the due process hearing request insufficient and provided an opportunity to amend it. On May 15, 2012, [REDACTED], proceeding pro se, filed a document, with attachments, titled Petitioner's Response to Respondent's Motion to Dismiss Due Process Complaint & Notice of Insufficiency. By Order dated May 16, 2012, the undersigned deemed this document to be an Amended Request for Due Process Hearing.

The Board filed a Notice of Insufficiency of the amended due process request on May 31, 2012. The undersigned determined the request sufficient by Order dated June 1, 2012.

The hearing in this case began on June 19, 2012, and was conducted for two days, the time period allotted based upon the representations of the parties during a scheduling conference. [REDACTED] did not complete presenting [REDACTED] evidence during the two days set aside for the entire hearing. The hearing was continued.

After consultation with the parties about the anticipated length of their presentations, the continued hearing was rescheduled to be held October 29 through November 2, 2012. Based upon [REDACTED] representations, October 29 through 31, 2012, was set aside for presenting the remainder of [REDACTED] evidence, with the final two days set aside for the Board's case. [REDACTED] did not complete presentation of [REDACTED] evidence until November 2, 2012. At that time, [REDACTED] rested.

After conducting a scheduling conference with the parties on November 14, 2012, the continued hearing was set for January 23 through 25, 2013, for presentation of the Board's case. The continued hearing convened as scheduled. On January 22, 2013, counsel appeared on behalf of [REDACTED]. Counsel participated in the continued hearing and proceedings subsequent to the hearing.

Petitioner presented testimony from [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED], and [REDACTED]. Petitioner's Exhibits 1 through 51, 53, and 58 through 62 were admitted into evidence.

On January 23, 2013, [REDACTED] waived confidentiality of these proceedings on behalf of [REDACTED]. [REDACTED] expressly agreed to a television camera recording proceedings and reporters observing the proceedings and exhibits. [REDACTED] consulted with counsel before deciding to waive confidentiality.

Respondent presented the testimony of [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

██████████ and ████████████████████ Respondent's Exhibits 1 through 8, 10 through 22, 24 through 32, 34 through 44, 46 through 52 and 56 through 60 were admitted into evidence.

At the end of the hearing, the undersigned, in light of the lengthy and fragmented proceedings, the fact that the cause began as a pro se matter, the appearance of counsel for ██████████ and the need to narrow and refine issues, directed the parties to file Statements of Disputed Issues.

The parties timely filed the required statements. They were considered in the preparation of the Amended Order Establishing Issues in Dispute issued February 19, 2013. The Order also required the parties to file proposed orders on or before March 18, 2013.

The last of the hearing transcripts was filed on March 28, 2013. The parties jointly moved to extend the time period during which they could file proposed orders. The motion was granted.

██████████ timely filed a proposed order on March 26, 2013. The proposed order is 25 pages long. The Board filed its proposed order untimely on March 27, 2013. The Board's 77-page proposed order also exceeded the 40-page limit on proposed orders established by Florida Administrative Code Rule 28-106.215.

██████████ moved to strike the Board's proposed order for being untimely and too long. The Board filed a Motion for Retroactive Leave to File Proposed Order in Excess of Forty Pages and to Have

Proposed Order Accepted as Timely. The undersigned denied [REDACTED] motion and granted the Board's. [REDACTED] next filed a Motion for Leave to Amend Proposed Recommended Order as equitable relief for the Board being permitted to file its 77-page order. On April 4, 2013, the undersigned issued an Order granting [REDACTED] leave to file an amended proposed order of up to 77 pages. On April 12, 2013, [REDACTED] filed an amended proposed order.

Due to the several continuances of the hearing, the length of the proceeding, the size of the record, the length of the proposed orders, the extensions of time granted the parties, and the fact that [REDACTED] is no longer enrolled in school in Florida, six specific extensions of time have been entered in this case. The most recent extends the time for final resolution of this matter until June 26, 2013.

#### FINDINGS OF FACT

1. [REDACTED] is a former student of the Hillsborough County School District. At the time of the hearing's conclusion, however, [REDACTED] was residing in California.

2. [REDACTED] was born [REDACTED]. When [REDACTED] was three years old, [REDACTED] was diagnosed as a [REDACTED]. At the time, [REDACTED] was a single mother. [REDACTED] moved from Arizona to Tampa, in Hillsborough County, to benefit from the support of [REDACTED] family.

3. ██████ had limited and delayed verbal skills. But ██████ was mobile and able to use both hands. ██████ could eat orally. ██████ was an active, happy, outgoing child who enjoyed music and climbing in play structures. Initially, ██████ did not manifest many ██████ characteristics, such as hand-flapping, rocking, self-abusive behavior, or hand-biting. But they developed within several months. ██████ grew dissatisfied with the educational support the District provided ██████ and moved to Gainesville. In 1997, when ██████ was five, ██████ began seeing ██████ Later, when ██████ was assigned to the navy base at Mayport, they moved to Jacksonville.

4. In 1999, ██████ condition worsened dramatically. ██████ began having seizures. Within six months, ██████ lost the ability to walk, talk, eat, and use ██████ hands. ██████ was suffering roughly 80 seizures a day. ██████ was transported by air to Miami for specialized treatment. By June of 2000, ██████ essentially fell into a coma. ██████ spent nine months in a non-responsive state.

5. During ██████ treatment in Miami, ██████ received many tests. Doctors provided ██████ a Gastrostomy Tube (G-tube or feeding tube), because ██████ quit eating. A G-tube delivers a patient's nutrients directly to the abdomen through a port in the skin.

6. And after three months in Miami, ██████ returned to Jacksonville, where ██████ began receiving hospice services. Despite ██████ condition, ██████ and ██████ continued therapies,

including speech therapy, working on swallowing, massage, and physical stimulation to stave off atrophy and prevent pressure sores. They did not know if [REDACTED] could even hear or see.

7. In February 2001, doctors diagnosed [REDACTED] with [REDACTED]. [REDACTED]'s materializing at [REDACTED] age was unusual. [REDACTED] typically manifests between six and 18 months of age.

8. Shortly afterwards, [REDACTED] and [REDACTED] married. [REDACTED] adopted [REDACTED]. The family moved to San Diego, California, in April 2001.

9. Around April 2001, [REDACTED] condition unexpectedly improved slightly. [REDACTED] was conscious again and able to laugh.

10. Despite [REDACTED] improvement, [REDACTED] experienced disabilities far greater than those [REDACTED] experienced before entering the coma. For instance, [REDACTED] had seizures almost daily. [REDACTED] was also unable to speak, could not move without assistance, and was confined to a wheelchair. [REDACTED] had some limited ability to communicate with eye movements.

11. During high school in San Diego, [REDACTED] in [REDACTED] words, "flourished as much as a person with [REDACTED] could flourish."<sup>1/</sup>

12. [REDACTED] siblings, [REDACTED], and [REDACTED] moved from California to Florida in June 2010. [REDACTED]. [REDACTED], a helicopter pilot and commander in the United States Navy, had been assigned to United States Central Command located at MacDill

Air Force Base in Tampa, Hillsborough County, Florida, as [REDACTED] home base.

13. During [REDACTED] eighteen months in the District school system, the District conducted over 12 meetings to consider, evaluate, and revise [REDACTED] IEP.

14. The record does not contain sufficient evidence to make Findings of Fact about [REDACTED] physical, mental, or educational condition in 2013.

15. Sometime between June and October 2012, while the hearing in this matter was underway, [REDACTED] and [REDACTED] family returned to California.

June 2010 Transfer to Hillsborough County Schools

16. In February 2010, before moving back to Hillsborough County, [REDACTED] visited Tampa to search for a house and prepare for [REDACTED] transition. Before that trip, [REDACTED] called District employees and various support agencies. [REDACTED] also sent the District a copy of [REDACTED] IEP dated November 6, 2009, from [REDACTED] in Chula Vista, California.

17. [REDACTED] wanted to know which school [REDACTED] would be assigned to before deciding where to live. Where a family lives affects which school the District assigns a student.

18. [REDACTED] spoke to [REDACTED] in one of those calls. [REDACTED] is and was the District's supervisor for Exceptional Student Education (ESE) Compliance.

19. [REDACTED] was another person to whom [REDACTED] spoke by telephone before the move. Although [REDACTED] and [REDACTED] had not yet determined where they would live, [REDACTED] told [REDACTED] emphatically that [REDACTED] wanted [REDACTED] to attend [REDACTED] [REDACTED]. [REDACTED] told [REDACTED] that before they moved to California, administrators there had helped [REDACTED] determine a school and a teacher for [REDACTED]

20. [REDACTED] explained that the District operated differently. [REDACTED] advised [REDACTED] of the District's preference for neighborhood schools, if they could provide the needed resources to support a student's IEP services.

21. [REDACTED] expressed unhappiness with the answer and the policy. [REDACTED] said the family would try to find a home near [REDACTED]. [REDACTED] also told [REDACTED] that [REDACTED] had been very involved in San Diego and that [REDACTED] could "Google" [REDACTED].

22. [REDACTED], a parent services program manager for Florida Diagnostic & Learning Resources System or FDLRS (Fiddlers), which is part of the ESE department of Hillsborough County public schools, spoke with [REDACTED] also. [REDACTED] asked about the Hillsborough County schools and the procedure for transferring [REDACTED] to the school system. [REDACTED] provided general information. [REDACTED] did not advise [REDACTED] that [REDACTED] would be placed in any specific school or offer opinions about what

services would be provided compared to services provided in California.

23. [REDACTED] met with District representatives before [REDACTED] and [REDACTED] moved to Hillsborough County. [REDACTED], principal of [REDACTED] also met with [REDACTED]

24. [REDACTED] said that [REDACTED] and the children would finish the school year in California and move during the summer. [REDACTED] advised the District employees that [REDACTED] planned to move to Tampa before the family. The officials advised [REDACTED] that rules governing the school District did not allow them to register a student until the student actually lived in the District.

25. The officials thanked [REDACTED] for the information and advised that they would begin evaluating the [REDACTED] IEP and talk to people at that school. They did so. Their efforts included contacting a California therapist of [REDACTED] to gather information that would help with the transfer.

26. [REDACTED] and [REDACTED] family moved to Hillsborough County in June 2010. The regular school year for students in California and Florida had ended. The ESY had begun in both systems. [REDACTED] met to discuss ESE services for [REDACTED] with [REDACTED]; [REDACTED], supervisor of ESE Staffing; and [REDACTED], supervisor of Improvement and Accountability. [REDACTED] brought [REDACTED] April 21, 2010, [REDACTED] IEP with [REDACTED] and gave them a copy.

27. The [REDACTED] IEP identifies [REDACTED] primary disability as [REDACTED]. It does not identify any secondary disabilities. The description of how [REDACTED] disability affects involvement and progress in the general curriculum states: "[REDACTED] needs are more appropriately met in a Special Day Class. [REDACTED] benefits from a functional curriculum and works best in a small group setting."

28. The [REDACTED] IEP notes report that [REDACTED] was having seizures daily. The notes also report that [REDACTED] was providing [REDACTED] music therapy consultation services, but not direct therapy from a music therapist. The notes include a discussion of an eye gaze communication device called "Vanguard" and some difficulties with it. They also include a discussion of using a different eye-gaze device called "MyTobii" at home and school. But the notes discuss [REDACTED] experiencing fatigue using the MyTobii. Progress notes indicate the most communication success with a portable whiteboard.

29. The [REDACTED] IEP is a 32-page document. It identifies more than 15 annual goals and 17 short-term objectives as subparts of some goals for [REDACTED] during the regular school year. It identifies nine services, excluding meetings, to be provided during the regular school year.

30. It also provides for transportation "Curb to Curb," with a bus assistant for student health issues during the regular

school year. The [REDACTED] IEP notes that at the time of the IEP, a licensed vocational nurse rode the bus with [REDACTED] in case of a medical emergency.

31. The [REDACTED] IEP has a separate section for the ESY. That section is much simpler than the regular school year section. The IEP identifies one service to be provided during the ESY: "Specialized Academic Instruction" to be provided daily for five hours in a separate class in a "public integrated facility." District employees, including [REDACTED] and \*\*\* [REDACTED], reviewed the [REDACTED] IEP and considered the information in it during their determinations for [REDACTED] ESY placement and [REDACTED] Hillsborough IEP.

32. Even before determining [REDACTED] placement for the ESY, the District sent employees to [REDACTED] home to observe [REDACTED] and obtain information to plan for serving [REDACTED] educational needs. Among others, [REDACTED], an occupational therapist with the District, visited [REDACTED] and [REDACTED] family, along with a speech therapist. [REDACTED] also reviewed the [REDACTED] IEP.

33. During their meeting [REDACTED], [REDACTED], [REDACTED], and [REDACTED] discussed [REDACTED] the [REDACTED] IEP, and the fact that the ESY was already underway. [REDACTED] expressed concerns about [REDACTED] adjustment to the move, the effect of Florida heat, and regression in [REDACTED] condition and health, including increased seizure activity.

34. They also discussed the fact that the ESY school location, [REDACTED], would probably not be [REDACTED] school in the fall. This caused [REDACTED] to discuss concerns about [REDACTED] difficulty with transitions.

35. After the discussions, consideration of [REDACTED] concerns, and review of the [REDACTED] IEP, the District offered to provide [REDACTED] the IEP services described in the [REDACTED] IEP for the ESY at home. [REDACTED] agreed. The parties all agreed to conduct an IEP meeting before school began in the fall to develop a Hillsborough IEP.

36. The District also proposed, and [REDACTED] agreed, for occupational therapists, physical therapists, speech therapists, representatives from school health services, a representative of the District's assistive technology unit, and other District staff to observe and interact with [REDACTED] at home to obtain more information to prepare for the upcoming school year.

37. [REDACTED] and [REDACTED] documented receiving the [REDACTED] documents and provided [REDACTED] a Notice of Eligibility for [REDACTED]. Consistent with the agreements at the meeting, the notice advised that the District would provide [REDACTED] home-based services for the ESY that were comparable to the services for the ESY in the [REDACTED] IEP. The notice also indicated that the District would hold an IEP meeting in August to include additional information.<sup>2/</sup>

38. The District provided the home-based instruction. It also provided the agreed-to visits from therapists and school representatives. During the period of home-based instruction in the ESY, the District provided [REDACTED] services comparable to those provided for in the [REDACTED] IEP.

39. [REDACTED] grew dissatisfied with the home-based services and demanded that the District admit [REDACTED] to [REDACTED] for the seven remaining days of the ESY. The District quickly agreed and made the changes necessary. This included [REDACTED] coordinating supports and services needed for [REDACTED] to attend [REDACTED].

40. Due to [REDACTED] medical needs during transportation and the need to arrange for people to meet those needs, the seven remaining days did not allow the District a reasonable amount of time to provide for transportation to [REDACTED] during the ESY. [REDACTED] provided transportation.

41. Among other services, in the transition to [REDACTED], the District provided [REDACTED] a one-on-one nurse, [REDACTED]. The District consulted with [REDACTED] and [REDACTED] to determine how to meet [REDACTED] medical needs, especially in case of a seizure, and how to stimulate sufficient alertness in [REDACTED] to obtain educational benefits from [REDACTED] time at [REDACTED]. This included learning how to use a wand that triggers a vagus nerve stimulator that was supposed to reduce seizure intensity and length.

42. While attending [REDACTED] , [REDACTED] interacted with non-disabled peers and experienced a curriculum modified to [REDACTED] needs. During this period, however, [REDACTED] had frequent seizures that interfered with [REDACTED] ability to participate in educational activities.

43. At this point, the District had not yet obtained specific equipment to assist [REDACTED] with communication. [REDACTED] used [REDACTED] personal MyTobii device. [REDACTED] also used an alternate form of communication, a book with images that [REDACTED] could use by eye movement or head positioning. This was analogous to the whiteboard method the [REDACTED] IEP reported favorably about. Also, a District speech therapist worked with [REDACTED] on [REDACTED] communication needs at [REDACTED] .

44. The services and education the District provided [REDACTED] in the ESY during [REDACTED] attendance at [REDACTED] were comparable to those that the [REDACTED] IEP provided for the ESY.

45. There is also no credible, persuasive evidence that any difference between the services provided by the District in the ESY and the services described for the ESY in the [REDACTED] IEP contributed to any decline or regression in [REDACTED] education or condition.

46. [REDACTED] initially agreed to the District providing services at home during the ESY. This was an appropriate and a least restrictive environment, agreed to by [REDACTED] because of

██████ condition immediately after the move and ██████ concerns at the time.

August 19, 2010, IEP Meeting

47. As contemplated in the June discussions with ██████ the District conducted an IEP meeting on August 19, 2010, for the coming school year. The meeting notice identified the expected participants by position, but not by name.

48. Because ██████ was overseas and could not attend, ██████ wanted to tape-record the meeting for him. The District declined, relying on its written tape-recording policy.

49. The District offered several alternatives to tape recording to facilitate ██████ participation and input. The options were: (1) rescheduling the meeting to a day and time when ██████ could attend; (2) ██████ participating by telephone; and (3) providing ██████ the conference summary notes and conducting a telephone conference with him after he reviewed the notes.

50. Using any of the three alternatives would have informed ██████ of ██████ issues, allowed ██████ an opportunity to express ██████ disagreement with the IEP team's conclusions, and to request revisions to the IEP. ██████ refused all three alternatives and did not record the meeting.

51. At least 13 people participated in the August 19, 2010, meeting. They included: ██████ ; ██████ ; ██████ ██████ teacher; ████████████████████, an ESE specialist; ████████████████████, an ESE teacher;

██████████; ██████████, a social worker and advocate engaged by ██████ and ██████; ██████████; ██████████, District physical therapist; and ██████████, District registered nurse.

52. The participants reviewed and considered the ██████████ IEP and other documents provided by the ██████████ district.

53. The participants also shared their observations of, and experiences, with ██████ during the ESY. They fully informed themselves of ██████ condition, limitations, and needs. This included District employee observations of ██████ enjoyment of music.

54. During the ESY, ██████ could only feed ██████████ using an adaptive spoon and, with assistance, supporting ██████ shoulder and elbow. Even with assistance, ██████ often could not feed ██████████ or consume ██████ soft food. Consequently, staff often had to feed ██████ through the G-tube.

55. The District members of the group were very concerned about ██████ medical needs, both because of the ██████████ information and their experience with ██████. That experience included ██████ suffering cluster seizures and clonic/tonic seizure activity. The seizures affected ██████ ability to participate in activities.

56. The District members also had well-founded concerns about swallowing and aspiration risks caused by the seizures.

57. The group members also considered the fact that [REDACTED] required maximum assistance for all areas of daily care. With assistance [REDACTED] could drink through a straw. [REDACTED] required the assistance of two people for transfers from one position to another.

58. In this meeting, [REDACTED] insisted that any equipment [REDACTED] used at home must remain at home and that [REDACTED] would not permit school use of it. This included wrist splints and the MyTobii. After consideration of [REDACTED] position, the school agreed that the school would provide equipment, such as a stander and a bicycle at school. But [REDACTED] was to provide the splints to travel back and forth from school. The participants discussed the MyTobii visual communication device available at [REDACTED] home and different devices for mounting it on [REDACTED] wheelchair.

59. [REDACTED] expressed [REDACTED] views of the best way to handle [REDACTED] seizures, feed [REDACTED], administer medications, communicate, and motivate [REDACTED]. The IEP team members considered this information.

60. District representatives advised [REDACTED] that Florida law required the school to have orders from a Florida-licensed doctor before it could provide direct physical therapy services.

61. The therapists present discussed the need to re-evaluate physical therapy and occupational therapy for [REDACTED]

62. Because [REDACTED] was [REDACTED], [REDACTED] was a transition services student. District documents describe transition services as follows:

Transition services means a coordinated set of activities for a student with a disability that is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the student with a disability to facilitate the student's movement from school to post-school activities.

63. The participants discussed post-high school goals, including employment, education, and independent living. School officials also provided [REDACTED] information about obtaining guardianship for [REDACTED]

64. [REDACTED] did not like the District's process of determining a student's goals and objectives through the IEP process before determining which school placement was appropriate to serve those goals and objectives.

65. The participants also discussed [REDACTED] very frequent seizures and possible triggers, including over-stimulation and changes in stimulation.

66. District health and school employees, who had worked with [REDACTED] during the ESY, expressed their safety concerns about [REDACTED] eating and drinking by mouth and requested a "swallow study" to address those concerns.

67. Overall, District representatives expressed serious, well-founded concerns for ██████ physical health, health risks, and safety. The concerns stemmed from their observations of ██████ during the ESY, including seizures and reactions to medicines, limited medical information provided by ██████, inconsistencies between ██████'s descriptions of ██████ abilities and medical needs and observations, and the need for more information about ██████ health.

68. For instance, District representatives felt ██████ required nurse services, while ██████ maintained that ██████ only required a one-on-one aide.

69. Also, ██████ provided materially different information about the administration of Diazepam, an anti-seizure medication, than the bottle label indicated. ██████ said Diazepam was to be administered for seizures lasting longer than eight minutes. The bottle label stated the Diazepam should be administered for seizures over five minutes long.

70. The participants addressed transportation needs also. School officials noted that District health services would generate a "red alert" for ██████ transportation orders upon receiving a physician's form provided to ██████, documenting ██████ need for an air-conditioned bus.

71. ██████ advised that ██████ was receiving occupational, physical, and speech therapy at home through Independent Living.

█ also advised that they had received a report from █  
█, a University of South Florida social worker. But █  
chose not to provide it to the school representatives at that  
time.

72. █ also advised team members that █ was looking  
into college course programs for █

73. The District IEP process includes detailed note-taking  
at the meeting and a narrative report of the meeting. As the  
report of the IEP contemporaneously documented and testimony  
proved, █ was an active participant in the August 19, 2010,  
IEP meeting.

74. The assembled group considered information █  
provided, including █ adamant preference that █ be placed in  
separate classes in a "regular" high school, rather than a  
separate day school. The team members also considered and sought  
additional information about the differences in medical needs and  
risks perceived by District employees and █

75. The IEP resulting from the August 19, 2010, meeting  
established three goals with a total of 13 subparts. The IEP  
also established evaluation plans for each goal and its subparts.  
The IEP goes on to specify accommodations to instruction and  
other school activities for █ and support to be provided  
school personnel to help them serve █ The IEP provides for  
specialized transportation to and from school for █

administration of medication during the day by G-tube, feeding by G-tube when [REDACTED] is unable to eat or drink orally, assistive technology, and occupational therapy to help with positioning [REDACTED] who was unable to position [REDACTED] and required the assistance of two individuals to move.

76. The team decided a separate day school was the least restrictive environment for [REDACTED]. The well-founded health concerns, [REDACTED] medical needs, and the needed nurse-to-student ratio were major contributors to this decision. Other factors were [REDACTED] frustration and stress level, distractibility, need for individualized instruction, need for increased supervision, inadequate learning in large group settings, mobility problems, and communication needs.

77. The IEP provided, however, that [REDACTED] would participate with non-disabled peers for socialization, interaction, physical proximity, communication opportunities, non-academic activities, and extra-curricular activities.

78. After providing [REDACTED] full participation and considering information [REDACTED] presented and [REDACTED] preferences, the team reached conclusions that [REDACTED] disagreed with, particularly the decision to place [REDACTED] in a separate class in a special day school. The team assigned [REDACTED] to [REDACTED].

79. In consideration of [REDACTED] strong opposition and statements about [REDACTED] health, the District advised [REDACTED] that

it would consider additional medical information when provided and would re-evaluate the IEP separate day school decision in light of that information. The District specifically committed in the IEP to reconsider the separate class provision after receiving and reviewing additional medical information.

August 23, 2010, IEP Meeting

80. On August 23, 2010, the District convened another IEP conference to consider additional medical information, as it had committed. The meeting notice did not identify the expected participants by name, only by position. [REDACTED] participated in the meeting, although [REDACTED] wrote "in attendance" by [REDACTED] signature on the Conference Notes form. [REDACTED] and [REDACTED] were among the other seven participants.

81. At this meeting, [REDACTED] provided a letter from [REDACTED] neurologist indicating that [REDACTED] had recently started using a new medication to treat [REDACTED] inadequately controlled seizures. The neurologist requested that the school permit a three-month trial of [REDACTED] attending school with a one-on-one instructional aide, instead of a one-to-one nurse.

82. [REDACTED] also agreed that [REDACTED] would approve administration of Diazepam, as indicated on the bottle label, rather than only for seizures of over eight minutes as [REDACTED] had insisted on August 19, 2010.

83. The IEP team considered the additional information. It modified [REDACTED] level of support. That allowed the team to change [REDACTED] school assignment to [REDACTED], a "normal" school, as requested by [REDACTED]. The IEP continued the services established in the August 19, 2010, IEP.

84. During the August 23, conference, the District provided [REDACTED] full participation and considered information [REDACTED] presented and [REDACTED] preferences. The District, in fact, changed [REDACTED] school assignment as [REDACTED] desired.

85. [REDACTED] August 23, 2010, IEP established three goals, with multiple subparts. They were:

Goal 1: In an individual and/or small group-setting, [REDACTED] will use alternative methods with fading cues and prompts to increase [REDACTED] communication with peers and adults 4 out of 5 opportunities over a 9 week period. [A subpart example is: [REDACTED] will use alternative communication methods from a field of 2-4 to make 4-5 choices daily.]

Goal 2. In small group setting with one to one assistance, [REDACTED] will respond to academic questions, using various methods of communication, that relate to comprehension 3 out of 5 opportunities over a 9 week period. [A subpart example is: given a choice of 3, [REDACTED] will identify [REDACTED] name.]

Goal 3. Given small group setting with individual assistance utilizing visual supports and alternative communication methods, [REDACTED] will participate in activities of daily living 3 out of 5 opportunities per week for a 9 week period. [A subpart example is: With physical assistance, [REDACTED]

will hold [REDACTED] tooth brush to brush [REDACTED] teeth.]

86. The IEP provided for accommodations for [REDACTED] disabilities that included, more time for assignments, additional instructional time, use of manipulatives, pacing adjustment, proximity control, cueing and prompting, visual supports, and using switches and communication devices. The IEP provided for ESE services that included functional academics, self-determination/self-advocacy skills and strategies, speech/language therapy, communication skills, daily living skills, and vocational skills. All services were provided daily except for speech/language therapy which was 45 to 90 minutes per week. The IEP also provided for specialized transportation, specialized administration of medication through the G-tube, feeding through the G-tube as needed, assistive technology, and occupational therapy 60 to 90 minutes monthly. The IEP also called for [REDACTED] to spend up to 40 percent of [REDACTED] time in school with non-disabled students.

87. At [REDACTED], the District provided a number of assistive and adaptive devices specifically fitted to [REDACTED]. They included a supine stander, an EasyStand, an adjustable Rifton chair, a bike, and a gait trainer. A supine stander is a long wooden board that a child is lifted onto, laid on their back, secured into position, and then cranked to an upright position.

An EasyStand is also a standing device. But the child is placed in a sitting position and then cranked up into a standing position with a supporting surface in front of her. A Rifton chair is an adjustable chair with adjustable lateral supports. Feet can be secured in it. It has abductor pommels to keep legs separated and an adjustable head support. An adaptive bike has a butterfly harness for trunk support, lateral supports, and a headrest. In [REDACTED] case, adults pulled the bike to lead [REDACTED] to [REDACTED] desired location. A gait trainer is like a large version of a baby walker.

88. [REDACTED] did not agree with this IEP either. [REDACTED] wanted physical therapy included and "regular" educational goals.

89. The District representatives reminded [REDACTED] of Florida's legal requirement for a physician's order for physical therapy. They committed to consider physical therapy for [REDACTED] when they received the orders.

September 2, 2010, IEP Meeting

90. The District conducted an IEP meeting on September 2, 2010, to consider adding physical therapy goals to [REDACTED] IEP. The meeting notice identified the expected participants by position, but not by name.

91. This meeting fulfilled the District's commitment of August 23, 2010, to review or revise the IEP once it received orders for physical therapy from a Florida-licensed doctor.

Although [REDACTED] wrote "in attendance only" by [REDACTED] name on the Conference Summary form, [REDACTED] participated in the meeting.

92. Eight District employees participated, including [REDACTED], [REDACTED], a physical therapist, and one of [REDACTED] regular education teachers, [REDACTED].

93. [REDACTED] was concerned for [REDACTED] safety when using a gait trainer. [REDACTED] was informed about [REDACTED] and [REDACTED] abilities. [REDACTED] had reviewed the [REDACTED] documents and consulted with [REDACTED] California therapist. [REDACTED] also reviewed a report by [REDACTED], a private therapist who treated [REDACTED] in the summer of 2010 in Tampa. [REDACTED] also had observed [REDACTED] at home. As [REDACTED] observed and the documents reported, [REDACTED] required maximum assistance for transfers; had poor head control; was dependent on assistance for all transitions, movement and position changes; could not isolate single movement; had grossly decreased strength throughout the body; needed maximum assistance for balance; and had markedly impaired gross motor skills.

94. [REDACTED] told the group that [REDACTED] was able to use a gait trainer at home for an hour at a time.

95. As [REDACTED] urged, the IEP team added the objective of utilizing the gait trainer or an adaptive bicycle in [REDACTED] physical education activities. [REDACTED] considered all of the information [REDACTED] had reviewed and received, as well as [REDACTED]

assertions and established [REDACTED] baseline level for physical therapy and developed [REDACTED] physical therapy goals.

96. Also, [REDACTED] provided a calendar for recording [REDACTED] positioning and use of adaptive equipment throughout the day and to share the information with [REDACTED] parents. District representatives asked [REDACTED] to have [REDACTED] private physical therapist contact the school therapist to discuss use of the gait trainer.

97. [REDACTED] recommended providing physical therapy services by monthly consultations with the teachers and caregivers. [REDACTED] asked that the service include direct, as well as consulting services to begin with. The team agreed. [REDACTED] IEP was modified, accordingly, to provide for physical therapy and use of adaptive devices.

January 19, 2011, IEP Meeting

98. On January 19, 2011, the District convened an IEP meeting to review or revise [REDACTED] IEP. [REDACTED] requested the review and revision meeting. The meeting was a continuation of an October 20, 2010, IEP meeting, initiated at [REDACTED] request.

99. [REDACTED] participated in the meeting. Eleven other people participated, including [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. At [REDACTED] request, [REDACTED] private behavior analyst, [REDACTED], participated and presented a report that the group reviewed.

100. [REDACTED] private home nurse also attended and described use of a suctioning machine that [REDACTED] advocated the school using. The team elected to obtain more information. It did not reject the suggestion.

101. Afterwards, as elected by [REDACTED], the team received occupational therapy and physical therapy evaluations. The District did not provide [REDACTED] the evaluations in the days before the meeting because they were not yet completed.

102. The District advised [REDACTED] beforehand that [REDACTED] general education teacher was unable to attend. The general education teacher is a required participant of the IEP team. The District also advised [REDACTED], ahead of time, that the team would have to stop and reschedule the meeting, unless [REDACTED] waived the presence of the general education teacher. [REDACTED] declined to waive the requirement for the general education teacher.

103. Consequently, after the presentation and review of the reports and evaluations, the meeting adjourned. Also, because of this, the team did not discuss or analyze the reports from [REDACTED] [REDACTED] or the two therapists, because it was not fully constituted. The team made no change in IEP services.

104. After a review of calendars, the group scheduled the next meeting for February 21, 2011, from 9:00 to 11:00 a.m. That meeting did not occur because [REDACTED] withdrew [REDACTED] from school.

105. On February 3, 2011, [REDACTED], [REDACTED] one-on-one teacher, called [REDACTED] to tell [REDACTED] that [REDACTED] was not feeling well and had been throwing up. [REDACTED] suggested that [REDACTED] come get [REDACTED]

106. [REDACTED], who was picking up her other children, went to [REDACTED] to get [REDACTED]. [REDACTED] brought [REDACTED] out to [REDACTED]. [REDACTED] was asleep in [REDACTED] wheelchair. [REDACTED] did not return to [REDACTED].

107. On February 4, 2011, [REDACTED] advised school representatives that [REDACTED] had a broken femur. How or when the break occurred is not apparent from this record. [REDACTED] reported to [REDACTED] private physical therapy provider that "method [of fracture was] unknown." The cause of the break has been a matter of some dispute between the parties in the past. But it is not relevant to the issues in this proceeding.

108. On the afternoon of February 9, 2011, after school, [REDACTED] went to [REDACTED]. [REDACTED] saw the principal, [REDACTED], who had just returned to town after attending [REDACTED] father's funeral. [REDACTED] demanded all of [REDACTED] supplies and equipment. [REDACTED] emphatically told [REDACTED] that [REDACTED] wanted [REDACTED] withdrawn from school and that [REDACTED] was not returning.

109. [REDACTED] told [REDACTED] of the process for withdrawing a student and tried to give [REDACTED] the form used for withdrawal. [REDACTED] did not take the form. [REDACTED] repeated that [REDACTED] would not be returning, gathered [REDACTED] things, and left.

110. ██████ left a voice message for ██████, director of ESE services, advising ██████ of the withdrawal.

111. The next morning, ██████ sent an email to ██████, the general director of the Department of Exceptional Student Education, advising that ██████ had withdrawn ██████ from school. ██████ also completed and processed the forms required for withdrawal. Effective February 10, 2011, ██████ was not a student of ██████ or the District.<sup>3/</sup>

Hospital/Homebound Services on April 4, 2011

112. There is no persuasive evidence that ██████ sought services from the District from February 10, 2011, until February 24, 2011.

113. On February 22, 2011, ██████ completed and signed a form listing parental responsibilities for the homebound referral process. Among other things, ██████ confirmed that ██████ understood: that it was ██████ responsibility to request enrollment in Hillsborough County Public Schools; that it was ██████ responsibility to follow up with doctors' offices to confirm they have completed and submitted forms; that a signed Authorization for Release of Records was required; and that the program could not duplicate the hours or all courses provided at the school site.

114. On or about February 25, 2011, ██████ submitted a request to the District Hospital/Homebound Office for services

for [REDACTED] with supporting information. The documents reflected that [REDACTED] had directed [REDACTED] physician, Dr. [REDACTED], not to speak to District employees and had only authorized the physician to communicate with the District by email with a copy to [REDACTED]

115. The medical information provided for [REDACTED] on February 25, 2011, estimated that [REDACTED] would be out of school for six weeks.

116. The hospital/homebound program promptly reviewed and approved the forms on March 4, 2011.

117. The Hospital/Homebound Program Referral form advised: "Prior to Hospital/Homebound enrollment, the parent will be invited to an Eligibility/IEP meeting."

118. Upon receiving the request for hospital/homebound services, the District set about working to schedule the Eligibility/IEP meeting. This took some time because of the number of required participants. The District first scheduled the meeting for March 16, 2011. But [REDACTED] asked to reschedule it after March 16, 2011, because [REDACTED] attorney was unavailable from March 16 through 21, 2011.

119. The District set the meeting for March 29, 2011. At 12:35 p.m., just before the meeting started, the program office received a faxed medical update from Dr. [REDACTED] indicating that [REDACTED] was able to attend school full-time and that [REDACTED] leg was healed.

120. [REDACTED] participated in the meeting with [REDACTED] attorney [REDACTED] and [REDACTED] advocate, the private social worker, [REDACTED]. [REDACTED] provided Dr. [REDACTED]'s update to [REDACTED], [REDACTED] lawyer, and [REDACTED] advocate. [REDACTED] and the lawyer were surprised and disagreed with Dr. [REDACTED]'s report. [REDACTED] indicated that he had asked the doctor to provide updated information.

121. [REDACTED] refused to permit [REDACTED] or other District employees to contact Dr. [REDACTED].

122. [REDACTED] was advised that in light of the newer medical information, the options were to determine [REDACTED] ineligible based on the most recent information or defer the decision to provide an opportunity to obtain updated and clarified medical information.

123. [REDACTED], [REDACTED] lawyer, and [REDACTED] advocate met privately to discuss their options. Afterwards, they started questioning the certification and qualifications of [REDACTED] former teacher, \*\*\* [REDACTED]. The team refused to address that issue in that meeting and suggested that it be raised at a different time in a different way.

124. At [REDACTED] request, the District sent Dr. [REDACTED] a new blank form. [REDACTED] faxed it back, but it was incomplete.

125. The team concluded that deferring the eligibility decision until it had current and complete medical information

was the best course of action. The office gave [REDACTED] a new blank form to provide [REDACTED] physician. The continued meeting was rescheduled for April 4, 2011, from 11:00 to 1:00 p.m., after consulting with all of the participants.

126. On April 1, 2011, the hospital/homebound program received a new Medical Information form from Dr. [REDACTED]. It estimated that [REDACTED] would be out of school for four weeks and indicated that [REDACTED] required homebound services.

127. The team held the April 4, 2011, meeting as scheduled. [REDACTED] and [REDACTED] participated. Their attorney participated by telephone. The team determined that [REDACTED] was eligible for hospital/homebound services and recommended revising [REDACTED] IEP accordingly.

128. After the determination of eligibility, the team reviewed the IEP and proposed revisions. The appropriateness of those revisions is not at issue in this proceeding.

129. Also, [REDACTED] advised that due to the broken femur, new doctor's orders would be required before physical therapy would be provided. [REDACTED] requested permission to discuss the matter with [REDACTED] doctor. [REDACTED] denied permission.

130. The District took only a reasonable period of time to process and approve [REDACTED] application for hospital/homebound services. Reasonable scheduling difficulties, including the disclosure of [REDACTED]'s unavailability after the



134. At that time, [REDACTED] was still receiving hospital/homebound services. [REDACTED] was in the ESY, which would end July 28, 2011.

135. The meeting covered a wide range of subjects and became contentious. [REDACTED] was disruptive, repetitive, intense, and dismissive.

136. School assignment was subject of discussion. [REDACTED] and [REDACTED] had moved. They insisted that [REDACTED] be assigned to [REDACTED]. This was their priority. District employees advised them that [REDACTED] High School ( [REDACTED] ) was [REDACTED] zoned high school and [REDACTED] High School ( [REDACTED] ) was the closest school suited to provide the needed services.

137. [REDACTED] was a newer school and built to accommodate students with disabilities. It had built-in wheelchair ramps, wide hallways, two classrooms with dedicated bathrooms inside them, and a storage unit for student equipment. [REDACTED] also had a full-time registered nurse and a licensed practical nurse. Since [REDACTED] was located next to LaVoy Exceptional Center, [REDACTED] students also had quick access to four additional nurses, if needed. It also had a physically impaired and mentally handicapped unit.

138. [REDACTED] was built in the 1920s. It had a lot of steps and was not as wheelchair-accessible as other schools. It had no

classrooms with a dedicated bathroom and had only one nurse for the school. [REDACTED] could not implement [REDACTED] IEP.

139. At this point, however, the only issue related to the July 18, 2011, meeting is: Were the parents denied meaningful participation in the meeting by a District pre-determination of physical therapy services.<sup>4/</sup>

140. Because [REDACTED] wanted [REDACTED] to resume physical therapy, the District physical therapist faxed questions to [REDACTED] orthopedic doctor. [REDACTED], [REDACTED], and [REDACTED] complained about the questions being faxed directly to the doctor and emailed to the parents. Although this was consistent with earlier requests to fax questions to physicians with a copy to the parents, the District facilitator apologized for misunderstanding.

141. The physical therapist also provided an annual review of [REDACTED] progress.

142. The two-hour period ended shortly after that. The District suggested adjourning the meeting and reconvening as agreed. At that point [REDACTED] and [REDACTED] attorney requested the District to provide direct physical therapy immediately for the remaining seven days of ESY on homebound. [REDACTED] responded that the current services were appropriate, and the meeting was to review the past year and make recommendations for the upcoming year.

143. Among other things, [REDACTED] and [REDACTED] demanded full implementation of the deferred Goal 4. Goal 4 was added to the IEP at the September 2, 2010, meeting after the District received doctor's orders for physical therapy. Broadly stated, it was a physical therapy component of the IEP. Specifically, it stated:

In a variety of class settings, when provided with additional adult assistance and adaptive equipment as indicated, [REDACTED] will engage and interact in classroom and school based activities 4 out of 5 opportunities over a 9 week period. [REDACTED] will:

- A. Interact with [REDACTED] environment or a teacher directed activity, in an upright, supported standing position, 30-45 minutes, 1-2 times per day, 4 of 5 days per week.
- B. Assist with transfers, within [REDACTED] physical capabilities (taking weight through [REDACTED] legs, initiating steps), to and from adaptive equipment, wheelchair or changing table.
- C. Demonstrate an upright trunk and head while maintaining ring, tailor, or bench sitting for 15-20 minutes (duration of a teacher directed activity), with physical support, fading to close contact guard assist.
- D. Utilize the gait trainer or adaptive bicycle to participate in adaptive PE activities, initiating steps, maintaining head control with support.

144. The District had deferred some direct physical therapy services needed for this goal due to concerns about the broken femur. This was consistent with the caution on the form dated

April 22, 2011, from [REDACTED] orthopedic physician that suggested therapy for strengthening the healing injury. [REDACTED] earlier sought to obtain more information from [REDACTED] physician. But [REDACTED] would not authorize contacting the doctor. Later, [REDACTED] asked that [REDACTED] not be permitted to provide [REDACTED] services.

145. [REDACTED] agreed to make a home visit to evaluate [REDACTED] positioning options.

146. Physical therapy, as part of a school program, differs from physical therapy for therapeutic services, which [REDACTED] was also receiving from a private provider. In the school setting, the purpose of the therapy is to help the student access educational services. Therapeutic physical therapy addresses a broader range of needs including increasing range of motion and addressing specific problems, such as strength.

147. As the meeting closed, [REDACTED] and [REDACTED] insisted that nobody from the District contact [REDACTED] providers directly and further insisted that the District direct all requests for information to their attorney with copies to the parents. They wanted only hard copies, not emails.

148. Everyone agreed to reconvene on July 20, 2011, when the discussion of physical therapy continued, along with the remainder of the IEP review. [REDACTED] presented [REDACTED] notes of [REDACTED] observation of [REDACTED] on July 19, 2011. [REDACTED] reported that [REDACTED] was not actively bearing weight and was totally passive. This

was consistent with [REDACTED] earlier reports that [REDACTED] required total assistance for all movement. Nonetheless, [REDACTED] recommended closely monitored, continued physical therapy for three months in the new school year. This was to provide an opportunity to see if [REDACTED] was responding to the therapy since [REDACTED] history reports ups and downs in [REDACTED] abilities and performance.<sup>5/</sup>

149. [REDACTED], [REDACTED], and their advocate were active participants in the July 18, 2011, meeting and its July 20, 2011, continuation. The District staff listened to their concerns about physical therapy and took actions that considered and accommodated those concerns. They did not do exactly what [REDACTED] and [REDACTED] demanded, but they considered the information and requests. The District had not pre-determined what the physical therapy services would be. It had begun preparing for the meeting and the decision by gathering information and identifying options.

150. The District actually determined to provide physical therapy. That is what [REDACTED] and [REDACTED] wanted. It only refused to start full physical therapy for the last eight days of the ESY. This was because of reasonable medical concerns stemming from the broken femur.

July 20, 2011, IEP Meeting<sup>6/</sup>

151. The meeting of July 20, 2011, covered a number of subjects in addition to physical therapy. They included the parents' desire for music therapy and a music therapy assessment that they provided. After considering the information and observations of providers, the team reasonably concluded that although music functioned in the educational setting as a reinforcement, the District would collect more information, including classroom observations to determine if music therapy could have some educational benefit. [REDACTED] did not agree with this decision. [REDACTED] said [REDACTED] would be "contacting Tallahassee."

152. The team also reviewed [REDACTED]'s behavioral assessment provided in the January meeting. The parents and the school service providers had different views. [REDACTED] thought that [REDACTED] had regressed. The providers did not perceive regression. They noted that [REDACTED] has good days and bad days as [REDACTED] has had since entering the District and as described in the [REDACTED] IEP. The providers also reported progress with [REDACTED] use of the eye-gaze communication device, the MyTobii, the school had obtained for [REDACTED] <sup>7/</sup>

153. Based upon the medical information provided about [REDACTED] status, the team concluded that eligibility for hospital/homebound services would end when the ESY ended, July 28, 2011, and to plan for [REDACTED] attending school in the fall.

A draft copy of [REDACTED] present level and draft goals was distributed.

154. At some point, the District representatives met separately with their attorney for about one-half hour. The weight of the persuasive evidence does not establish what was discussed in the meeting. It also does not establish that any decisions about services for [REDACTED] were made during that meeting.

155. [REDACTED] parents, and [REDACTED] representatives participated in the decisions that were announced at the meeting. The decisions were that [REDACTED] eligibility for hospital/homebound would terminate July 28, 2011, to decline the demand for immediate resumption of physical therapy and to not immediately add music therapy.

156. The IEP meeting was continued for further consideration of issues and the IEP drafts distributed. This process enhanced the ability of [REDACTED] parents and their representatives to participate by giving them time to review the drafts and respond to them.

August 12, 2011, IEP Meeting<sup>8/</sup>

157. As agreed, the IEP team reconvened on August 12, 2011. Before that meeting the District provided summaries of the July 18 and 20, 2011, meetings to [REDACTED] and [REDACTED] attorney. This process too enhanced the parents' ability to participate in the meeting. Because [REDACTED] had repeatedly complained about [REDACTED]

██████'s participation and asked for someone else to facilitate the meeting, ██████████ facilitated the meeting. ██████ and ██████ advocate participated.

158. The team reviewed the present level of performance document. ██████ requested that ██████ observations of ██████ that differed with those in the document be added to it. ██████ report that ██████ had been provided private music therapy was added also, as ██████ requested.

159. Representatives from ██████ and ██████ were invited to the meeting. Only the ██████ representatives were able to attend. The District staff advised ██████ that ██████ was likely the school where the District would implement ██████ IEP and provide services. ██████ did not agree with this.

160. The placement was consistent with the information the District employees provided in the July 18, 2011, meeting. At that time, the District advised ██████ that ██████ was the closest school to ██████ home suited to provide the services ██████ needed. At that meeting, which was continued on August 12, 2011, ██████ and ██████ had argued vigorously for assignment to ██████.

161. District representatives also indicated that they might transfer the ██████ personnel who had been serving ██████ to ██████ to improve continuity of service. ██████ objected and demanded that nobody from ██████ be permitted to care for ██████. The District representatives advised ██████ that the IEP process

did not include parents or students choosing which faculty and other providers would render services. They said they would, however, consider [REDACTED] preferences.

162. The purpose of this entire series of meetings was to prepare an IEP for [REDACTED] when [REDACTED] resumed attending school in the fall. That is what the participants discussed, most notably the disagreements about which school [REDACTED] would attend. It is consistent with the decision in the July 20, 2011, meeting that [REDACTED] hospital/homebound services would end on July 28, 2011. It is also consistent with Dr. [REDACTED]'s April 1, 2011, Medical Information form, estimating [REDACTED] would be out of school for four weeks. In addition, at no time during the various IEP meetings did [REDACTED], [REDACTED], or their representatives express any disagreement with the premise that [REDACTED] would be attending school in the fall.

163. The District had no information indicating that hospital/homebound services would be appropriate for [REDACTED] in August 2011. [REDACTED] and [REDACTED] did not request continuation, and they did not provide medical information to support a hospital/homebound assignment in August 2011.

164. During this meeting, [REDACTED] grew increasingly upset and began banging pictures of [REDACTED] on the table. At that point [REDACTED] [REDACTED] decided to continue the meeting. The IEP team agreed to

reconvene on August 16, 2011, to ensure that [REDACTED] had a completed IEP in place before school started.

165. The District did not pre-determine [REDACTED] assignment to [REDACTED]. That decision was the result of reviews and discussions in which [REDACTED], [REDACTED], and their representatives participated. [REDACTED] and [REDACTED] disagreed with the decision, but they had a meaningful opportunity to participate in it.

August 16, 2011, IEP Meeting

166. The discord of the previous meetings continued during the August 16, 2011, meeting. At one point, when [REDACTED] interrupted the presentation of [REDACTED], the District's civility policy was reviewed.

167. The IEP team completed the annual review of the summer series of meetings at the August 16, 2011, meeting. [REDACTED] attended and participated. [REDACTED] attorney attended and participated by telephone.

168. [REDACTED] provided and orally presented several pages of proposed goals from [REDACTED] April 2010 [REDACTED] IEP. After an attempt at a group discussion of the proposals, the team recessed for the service providers to review the proposals.

169. After the review, the District providers on the team suggested ways to modify the draft IEP to incorporate some of [REDACTED] input. [REDACTED] did not welcome the modifications.

170. The time established for physical therapy was a significant point of disagreement. The District providers favored establishing ranges of time for the therapies. Providing 60 to 120 minutes of physical therapy per month is an example of this approach. [REDACTED], on the other hand, wanted the IEP to require a certain number of minutes per week. Because of [REDACTED] "good" and "bad" days which caused [REDACTED] ability to participate in or benefit from therapy to vary widely, the range of times approach was reasonable. It is also consistent with the [REDACTED] IEP which repeatedly noted that [REDACTED] abilities and expectations of [REDACTED] depending upon [REDACTED] having an "alert and active" day.

171. The team's original proposal did not include direct occupational therapy. After considering [REDACTED] input on the issue, the team decided to add direct occupational therapy to the services.

172. The team completed the IEP and assigned [REDACTED] to [REDACTED]. [REDACTED] did not like this result.

173. The District began taking the steps necessary for [REDACTED] to attend [REDACTED]. It developed the staffing, transferred equipment, and generally prepared the school and staff for their new student.

174. The District also asked [REDACTED] consent to obtain updated medical information. [REDACTED] refused.

September 12, 2011, IEP Meeting<sup>9/</sup>

175. ██████ never reported to ██████. One day before school started, ██████ told the District that ██████ would apply for hospital/homebound services for ██████. The District received the medical referral forms on September 1, 2011.

176. The IEP team scheduled a September 12, 2011, meeting to consider the request. ██████ and ██████ attorney participated along with District representatives.

177. At the IEP meeting, ██████ provided a letter from ██████ ██████, M.D., dated September 12, 2011, to support the request for hospital/homebound services. The letter stated that ██████ had received Corpus Callosotomy surgery on September 8, 2011, to reduce the severity of ██████ seizures. It opined that ██████ would need hospital/homebound school services for a minimum of three months to recover from the surgery. This placed the predicted end of hospital/homebound services in December 2011.

178. The letter also advised that the battery for ██████ vagal nerve stimulator had died. Battery replacement required surgery. Dr. ██████ letter advised that replacement would be assessed "over the next few months."

179. The IEP team considered Dr. ██████ letter and the, by now, extensive amount of information and documents it had about ██████ and ██████ needs. It concluded that ██████ was eligible for hospital/homebound services.

180. District team members raised concerns about implementing Goal 3, Objective A, in light of the recent surgery. This was a physical therapy item. Objective A called for [REDACTED] to "engage in a teacher directed activity, in a variety of positions such as adaptive seating and stander." [REDACTED] was totally passive and unable to move any body parts to participate in the physical therapy.

181. [REDACTED], the therapy coordinator, participated in the meeting. [REDACTED], the physical therapist, who had been providing [REDACTED] services at home, participated in the IEP meeting also. They both provided information about their experiences with and observations of [REDACTED]. But by the time of the meeting, [REDACTED], a new therapist, had been assigned to [REDACTED] <sup>10/</sup> [REDACTED] [REDACTED] was unable to attend this meeting because of a medical emergency.

182. The team concluded that before beginning physical therapy with a medically fragile student who had just undergone brain surgery, that the therapist should obtain more information from the doctor. All team members, except [REDACTED] and [REDACTED] attorney, agreed. [REDACTED] wanted to stop the meeting and call the doctor for clarification. The team reasonably concluded that it would be best for [REDACTED] to send [REDACTED] questions for clarification to the doctor.

183. The team agreed upon revised goals for the rest of the IEP, with the following exceptions: [REDACTED] continued to disagree with using a range of times for therapies; and the team reasonably concluded that use of time ranges was appropriate because of [REDACTED] varying ability to participate in therapies depending upon [REDACTED] fluctuating condition.

184. [REDACTED] attorney wanted a feeding goal added. The team concluded that the focus would not be on feeding [REDACTED] but teaching [REDACTED] to grasp a spoon and, otherwise, helping [REDACTED] feed [REDACTED]. This was an existing goal.

185. The team agreed to schedule a follow up meeting after [REDACTED] obtained updated information from Dr. [REDACTED].

186. The team considered information and arguments presented by [REDACTED] and [REDACTED] attorney. It addressed their concerns and took actions to respond to them. [REDACTED] did not agree with some of the decisions. But [REDACTED] had a meaningful opportunity to participate in them.

187. [REDACTED] September 12, 2011, IEP established six goals, with multiple subparts. They were:

Goal 1: Given specialized academic instruction, [REDACTED] will respond to academic questions, using alternative methods of communication, that relate to comprehension on 4 out of 5 opportunities over a 9 week period. [A subpart example is: [REDACTED] will identify stories by genre and chose the type of story [REDACTED] would like to hear by directing [REDACTED] gaze to the name card of the desired

genre (poetry, mystery stories, humorous tales, etc.)]

Goal 2: Given specialized academic instruction, with handover hand assistance and adaptive aids as needed, [REDACTED] will participate in school activities on 4 out of 5 opportunities per week over a 9 week grading period. [A subpart example is: [REDACTED] will activate a switch to access computer activities and other electronic devices.]

Goal 3: Given specialized academic instruction in the home, when provided with additional adult assistance and adaptive equipment s indicated, [REDACTED] will engage and interact in classroom activities, 4 out of 5 opportunities over a 9 week period. [A subpart example is: [REDACTED] will functionally hold [REDACTED] head up while engaging in teacher directed activities in a variety of positions.]

Goal 4: Given specialized academic instruction, with adult support and assistance, [REDACTED] will use [REDACTED] alternative communication system to improve [REDACTED] ability to make choices, sequence, and communicate during classroom activities with 70% accuracy over a nine week period. [A subpart example is: [REDACTED] will confirm a choice from a field of 4 by selecting the choice a second time after the location has been changed (such as books, items, or objects).]

Goal 5: Given specialized academic instruction, [REDACTED] will use alternative communication methods with fading cues and prompts to increase [REDACTED] expressive communication with adults on 70% of opportunities over a 9-week period. [A subpart example is: [REDACTED] will participate in a communication exchange of at least two turns.]

Goal 6: Given specialized academic instruction, [REDACTED] will use alternative communication methods with fading cues and prompts to increase [REDACTED] receptive language skills in 70% of opportunities over a 9-week period. [A subpart example is: [REDACTED] will identify clothing body parts and simple descriptive concepts (big, wet, tall, etc.)]

188. The September 12 IEP provided for accommodations for [REDACTED] disabilities that included more time for assignments, additional instructional time, use of manipulatives, pacing adjustment, proximity control, cueing and prompting, visual supports, and using switches and communication devices. The IEP provided for ESE services that included functional academics, self-determination/self-advocacy skills and strategies, speech/language therapy, communication skills, daily living skills, and vocational skills. All services were provided daily except for speech/language therapy which was 45 to 90 minutes per week.

189. The IEP provided for assistive technology, including a communication device, pictures, eye-gaze board, and switches. It provided for 45 to 60 minutes monthly of Occupational therapy for consultations, interventions, collaborations, strategies, and modifications/adaptations to facilitate [REDACTED] ability to access and participate in [REDACTED] educational program. The IEP also provided for 60 to 120 minutes per month of direct service

physical therapy, with additional consultation for equipment and staff training.

190. After the meeting, [REDACTED] emailed [REDACTED]'s questions to Dr. [REDACTED]. Dr. [REDACTED] replied that the surgery and non-functional vagal nerve stimulator did not create a need for any specific precautions or limitations upon physical therapy. To prepare to serve [REDACTED], [REDACTED] also reviewed [REDACTED] records, observed [REDACTED] at home, and consulted with [REDACTED]. As other therapists had, [REDACTED] observed that [REDACTED] required maximum assistance for most activities. [REDACTED] also familiarized [REDACTED] with the equipment [REDACTED] was using.

191. There is no persuasive evidence that the IEP developed in the September 12, 2011, meeting did not provide [REDACTED] a FAPE.

October 26, 2011, IEP Meeting<sup>11/</sup>

192. The District scheduled a follow-up IEP meeting for October 26, 2011. The meeting was to re-address physical therapy and [REDACTED] request for music therapy. Before the meeting, the District provided [REDACTED] and [REDACTED] attorney a copy of [REDACTED]'s observation notes of October 4, 2011.

193. [REDACTED], attorney [REDACTED], and [REDACTED] private physical therapist, [REDACTED], participated in the meeting. [REDACTED], [REDACTED], [REDACTED], the school board attorney, and others from the District participated.

194. [REDACTED] consented to [REDACTED] teacher, [REDACTED], not attending because of the death of [REDACTED] mother. The team members agreed to limit discussions at the meeting to matters for which [REDACTED] had previously provided written input.

195. The participants thoroughly discussed [REDACTED] physical therapy needs, including repositioning. They also revisited Goal 3, Objective A. The team agreed to reinstate that goal as [REDACTED] desired.

196. [REDACTED] objected to the practice of the physical therapist working with [REDACTED] during instructional time. [REDACTED] explained the importance of the two working together so that [REDACTED] would be repositioned during the instructional time and so the teacher could train for repositioning and other services. Goal 3, objective A, involved activities [REDACTED] would be doing with a teacher.

197. The District advised that if therapy was taking away from, rather than enhancing instructional time, the instructional time could be increased.

198. [REDACTED] recommended 60 to 120 minutes of physical therapy per month. [REDACTED] suggested providing more time in the beginning so [REDACTED] could get to know [REDACTED] and support the teachers working on Goal 3. As before, [REDACTED] objected to the range approach and insisted on more specific time commitments.

199. [REDACTED] revamped [REDACTED] proposal twice in response to [REDACTED] concerns. The final result was [REDACTED] would provide physical therapy twice a week for 30 minutes each of the first two weeks and then once a week for 30 minutes for the next two weeks, and reassess at the end of four weeks. [REDACTED] anticipated that after four weeks, [REDACTED] would institute the range of 60-to-120 minutes again.

200. [REDACTED] remained unhappy with the proposal. [REDACTED] explained, as others before had, that the purpose of the school-provided physical therapy was not treatment as in the private setting, but was to support [REDACTED] access to education. [REDACTED] responded that [REDACTED] had three pages of physical therapy goals [REDACTED] wanted to discuss at the next IEP meeting. [REDACTED] also demanded that the meeting occur within four weeks.

201. The IEP team also addressed [REDACTED] request for music therapy. The District had earlier agreed to conduct a music therapy observation when [REDACTED] returned to school. Since [REDACTED] had not returned to school and would not for a while, the District agreed to perform the observation at home. [REDACTED] demanded that the observation occur within a week. The District could not commit to the time because it had to locate a certified music therapist, as [REDACTED] had requested.

202. The team also discussed occupational therapy. [REDACTED] again objected to the range-of-time approach. Again, the

district adjusted the plan in response to [REDACTED] objections. The occupational therapist agreed to provide therapy two times a month for 30 minutes.

203. The team did not make a school assignment at this meeting. At this time, [REDACTED] was eligible for hospital/homebound services.

204. The team scheduled an IEP meeting for December 2, 2011, near the end of the fall term.

205. After the IEP meeting, the District provided the music therapy observation. The District engaged board-certified music therapist [REDACTED] for the observation. To prepare for the observation, [REDACTED] reviewed a copy of [REDACTED] most recent IEP and [REDACTED] private music therapy assessment performed by Sweet Sweet Music.

206. Shortly after [REDACTED] arrived, [REDACTED] had a seizure of several minutes. [REDACTED] was visibly tired after the seizure and had difficulty paying attention to the Jammin' in Jamaica activity [REDACTED] was attempting at that time. Consequently, [REDACTED] was positioned on a mat on the floor where [REDACTED] fell asleep.

207. [REDACTED] gathered information. [REDACTED] spoke to [REDACTED] about [REDACTED] activities and abilities. [REDACTED] learned that [REDACTED] used music and recreation time as reinforcers. [REDACTED] also learned, as others serving [REDACTED] had learned, that [REDACTED]

success in activities varied greatly and depended on [REDACTED] condition.

208. [REDACTED] observed [REDACTED] while [REDACTED] was receiving speech therapy. [REDACTED] interviewed the therapist, who also reported using music and break time as a reinforcer.

209. [REDACTED] spoke with [REDACTED] who told [REDACTED] about how the [REDACTED] school used music therapy, about [REDACTED] private music therapy, and how music calmed [REDACTED] after a seizure.

210. [REDACTED] prepared a detailed report of [REDACTED] observations. [REDACTED] teacher and speech therapist made plans to include [REDACTED] observations and instructions in their service to [REDACTED]

December 14, 2011, IEP Meeting

211. As anticipated at the September 12, 2011, and October 26, 2011, meetings, the IEP team met in December. But the meeting was December 14 instead of December 2, 2011, as discussed at the October 26, 2011, meeting.

212. [REDACTED] attended and participated in part of the meeting. [REDACTED] participated in the entire meeting. [REDACTED] attorney, [REDACTED] [REDACTED], also attended and participated, along with District representatives, including [REDACTED] and the school board attorney.

213. In this continuation of the series of IEPs, the team members covered a variety of subjects. After reviewing the music

therapy observations, the District members concluded that music therapy should not be provided as a related service, although music would continue to be part of [REDACTED] instruction and used as a reinforcer. [REDACTED] and [REDACTED] disagreed.

214. The members also discussed [REDACTED] upcoming transition back into the school setting. [REDACTED] said they expected [REDACTED] to return to school in January. As [REDACTED] testified, [REDACTED] and [REDACTED] wanted [REDACTED] in a local high school.<sup>12/</sup>

215. [REDACTED] wanted to discuss the specific school assignment. After a private consultation with their attorney, [REDACTED] indicated that the attorney would take the lead for the parents. She also asked to return to goals and then address school assignment.

216. The attorney asked for goals addressing [REDACTED] participating in specific electives, including theater, performance, pottery-making, music class, plays, and musical performance. [REDACTED] urged [REDACTED] participation in the performing arts choir as a long-term goal. [REDACTED] also wanted goals to include [REDACTED] participation in cheerleading and band.

217. [REDACTED] then returned to discussion of the school assignment. [REDACTED] said [REDACTED] did not feel [REDACTED] had been given an adequate opportunity to provide [REDACTED] observations of [REDACTED] visits to [REDACTED], [REDACTED], and [REDACTED]. The District team members responded that the issue had been thoroughly covered in previous meetings and that they were just in disagreement.

218. The IEP team members discussed [REDACTED] proposals for electives. Over the objections of [REDACTED] and [REDACTED] attorney, the District members concluded that the IEP team should not determine the specific schedule or electives of [REDACTED]. They also added information to the present level section of the IEP describing those interests of [REDACTED] as [REDACTED] described them.

219. The discussion then moved to [REDACTED] transition into the community. [REDACTED] advised that [REDACTED] wanted [REDACTED] to only participate in community activities at locations close to [REDACTED] home.

220. The discussion returned to a review of [REDACTED] goals and objectives, revising them to include community activities. [REDACTED] requested a goal of [REDACTED] participating in a basketball game with [REDACTED] able-bodied peers or participating in a social club with [REDACTED] able-bodied peers. The district members noted that these sorts of activities are incorporated in the IEP and that [REDACTED] has opportunities during the day to participate with able-bodied peers.

221. After revising the IEP, the team concluded: (1) [REDACTED] would be assigned to and receive services at [REDACTED], effective January 2, 2012, and that hospital/homebound services would end January 1, 2012; (2) compensatory services for a week when [REDACTED] teacher was sick were not needed; and (3) a music therapy evaluation was not needed and would not be provided.

222. At this point, the District was prepared to implement for [REDACTED] at [REDACTED], as revised over the course of months provided.

223. [REDACTED] left abruptly as the team was reviewing the notes of the conference.

224. There is no persuasive evidence that at any time during or before the December 14, 2011, meeting, did [REDACTED] or [REDACTED] representatives indicate they desired [REDACTED] to receive hospital/homebound services in the upcoming term or indicate that there was any reason [REDACTED] could not return to school.

225. It was clear to all people attending the December 14, 2011, meeting that [REDACTED] was returning to school and that the District was assigning [REDACTED] to [REDACTED].

#### December 2011 Forward

226. [REDACTED] was scheduled to come to [REDACTED] home the day after the meeting for [REDACTED] last class before winter break.

227. [REDACTED] did not go to the home for that last instructional session because [REDACTED] told [REDACTED] not to come.

228. The day after the meeting, the District's attorney wrote [REDACTED] attorney confirming [REDACTED] planned return to school and reiterating the steps [REDACTED] and [REDACTED] were responsible for taking prior to school starting. [REDACTED] lawyer forwarded the email to [REDACTED] on December 20, 2011.

229. The email stated:

Based on the last medical information provided to the District and the absence of new medical information suggesting the need for continued H/H [hospital/homebound] services, at yesterday's IEP meeting H/H services for [REDACTED] were removed. Accordingly, all parties discussed that [REDACTED] is anticipated to return to the school setting on the first day students report back following the winter break, which is January 2, 2012. In order to make sure that everything is in place for [REDACTED] and to ensure [REDACTED] smooth transition and safety, the following information is needed by tomorrow:

1. [REDACTED] will need to register [REDACTED] at [REDACTED] High School. If assistance is needed, the District is happy to support as needed.
2. [REDACTED] will need to complete the necessary medical information and provide it to the school. (I will forward you the forms under separate email.)
3. [REDACTED] will need to contact the school to arrange a meeting with the school nurse so a health plan can be completed.

You may recall this information was previously provided to you and [REDACTED] when [REDACTED] was to return to the school setting back in August 2011. The process is the same. I understand [REDACTED] is under the weather; however, as we discussed back in August, this information is critical to make sure all necessary services and supports, including bus transportation, are in place on January 2, 2012. Thus, please communicate this to [REDACTED] at your earliest convenience.

Also, if there is any information that the District should be aware of related to [REDACTED] ability to return to school, please provide that immediately. As I am sure you can

appreciate, much effort goes into taking steps to ensure a seamless transition for [REDACTED]. If [REDACTED] will not be returning to school, that effort can be redirected to helping [REDACTED] in other ways.

Thanks for your assistance with this matter.

230. There is no persuasive evidence that [REDACTED] ever enrolled in [REDACTED].

231. On January 19, 2012, [REDACTED] submitted a Request for Hospital/Homebound (H/H) Services form, dated January 12, 2012, to the District.

232. The "Comments" section stated:

Due to [REDACTED] medical care/needs and District's inability to place [REDACTED] w/in close proximity to home w/ certified trained staff for an appropriate education per [REDACTED] specific individual needs in a public school setting for safety and medical [REDACTED] to be educated in home.

233. The District's hospital/homebound office followed its practice of sending the medical information form to the physician identified on the request, Dr. [REDACTED]. [REDACTED] is the doctor who previously provided the information supporting [REDACTED] previous hospital/homebound assignment.

234. The District received two completed forms with conflicting information from Dr. [REDACTED], one on January 23, 2012, and one on January 28, 2012.

235. It contacted the doctor to obtain clarification. The doctor's office refused to provide additional information stating

that [REDACTED] had prohibited it from releasing information about [REDACTED] to the District.

236. In the meantime, [REDACTED] emailed the District requesting an IEP meeting to address the request for hospital/homebound services.

237. On February 7, 2012, [REDACTED], the general director of the Department of Exceptional Student Education, wrote [REDACTED] advising that the hospital/homebound program sought clarification of the inconsistencies between the two medical information forms, but had been advised that [REDACTED] instructed the doctor's office not to provide any information. Because the District had insufficient information, it declined to schedule an IEP meeting to review the request for hospital/homebound services.

238. Less than a week later, the District, nonetheless, wrote [REDACTED] and [REDACTED] on February 21, 2012, advising that it would convene a meeting to review eligibility.

239. The meeting was scheduled for March 9, 2012. [REDACTED] emailed Dr. [REDACTED] demanding that [REDACTED] not participate in the meeting.

240. [REDACTED] email also addressed the conflicting physician form information. It stated:

[REDACTED] physician completed the paperwork but unfortunately sent it without completion. It was brought to their attention at which time Dr. [REDACTED] made the appropriate completion deeming that [REDACTED] has not met stabilization

of [REDACTED] seizure activity since [REDACTED] surgery as [REDACTED] would have liked to allow [REDACTED] to return to school. [REDACTED] is beginning new medication and [REDACTED] would like time for [REDACTED] to reach more stabilization of [REDACTED] increased seizure activity since the broken femur [REDACTED] suffered on February 3, 2011, [REDACTED] brain surgery in September and VNS Replacement in December which has not be [sic] set at [REDACTED] regular frequency allowing decreased seizure activity due to a gradual increase vs. a rapid cycle increase.

241. The District rescheduled the meeting to March 19, 2012, at [REDACTED] request. The District also agreed to not have [REDACTED] facilitate the meeting, but it did not agree to exclude [REDACTED] from the meeting.

242. [REDACTED] then asked to cancel that meeting.

243. On March 26, 2012, [REDACTED] brought [REDACTED] to [REDACTED] and attempted to enroll [REDACTED]. The Registrar recognized that [REDACTED] was an ESE student and asked for a copy of [REDACTED] most recent IEP.

244. [REDACTED] brought the IEP in. [REDACTED] ESE specialist, [REDACTED], reviewed the IEP and discovered that [REDACTED] was [REDACTED] assigned school.

245. [REDACTED] explained that [REDACTED] needed to enroll [REDACTED] in [REDACTED] and provided [REDACTED] the required papers.

246. On April 19, 2012, [REDACTED] filed the Request for Due Process Hearing in this Case.

247. On May 2, 2012, [REDACTED] faxed [REDACTED] a copy of a medical information sheet appearing to be signed by Dr. [REDACTED]

on December 9, 2011. It indicated that [REDACTED] had a medical condition that confined [REDACTED] to the home for the entire school year.

248. The form did not describe a new condition of, or restriction on, [REDACTED]. It described [REDACTED] conditions as "Symptomatic Generalized Epilepsy, Rhetts [sic] Syndrome, s/p Corpus Callosotomy, Vagal Nerve Stimulator Implant s/p Fx. Femur."

249. The medical form also described the following treatment plan for [REDACTED] to re-enter a school-based program:

Continue antiepileptic medications[.]  
[Patient] requires specialized services preferably provided by trained personnel (teachers) in order for [REDACTED] to reach maximum potential with the establishment of realistic goals. Patient's mother needs to be involved as part of the team in developing [REDACTED] teaching plan. Generally speaking, the goals should enhance or maintain mobility and balance[,] address diminished motor skills[,] maintain flexibility, and strengthen muscles[,] speech therapy to assist [with] communication skills and guiding patient in nonverbal forms of communication, occupational therapy, instruction in basic life skills and to assist [patient] in gaining greater control over involuntary movements [and] improve purposeful hand movements, leisure activities involving play and meaningful activities [-] arts, music, and maintaining social relationships.

250. The multiple medical forms with differing information created reasonable uncertainty among District personnel about [REDACTED] eligibility for hospital/homebound services, as well as

what services would be required if [REDACTED] were eligible for hospital/homebound services.

251. District officials reasonably sought additional information and sought to follow the established procedure of conducting a conference to determine if a student was eligible for hospital/homebound services and what services to include in [REDACTED] IEP.

252. After canceling the March 20, 2011, meeting, [REDACTED] and [REDACTED] did not attempt to reschedule it.

253. They decided after the December 14, 2011, meeting that they would not meet with the District representatives again, unless the District changed the personnel participating in the meeting.

254. Due to the decision of [REDACTED] and [REDACTED] to not participate in the process for determining hospital/homebound eligibility or IEP services after December 14, 2012, [REDACTED] did not receive services from that date forward.

255. In March or April of 2012, [REDACTED] received orders to deploy to Bahrain.

256. As of October 29, 2012, [REDACTED] and [REDACTED] and their family were living in California. [REDACTED] and [REDACTED] do not plan to return to Florida or Hillsborough County.

## CONCLUSIONS OF LAW

257. This case arises under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 (2004), and corresponding Florida Statutes and Florida Administrative Code provisions.

258. DOAH has jurisdiction over the parties and the claims under IDEA in this proceeding. § 1003.57(1)(e), Fla. Stat. (2009); Fla. Admin. Code R. 6A-6.03311(11)(2008).

### Burden

259. As the party challenging the IEPs, [REDACTED] bears the burden of proving that the IEPs are not reasonably calculated to confer an appropriate education. Schaffer v. Weast, 546 U.S. 49, 62 (2005); Loren F. v. Atlanta Indep. Sch. Sys., 349 F.3d 1309, 1313 (11th Cir. 2003); Devine v. Indian River Cnty. Sch. Bd., 249 F.3d 1289, 1292 (11th Cir. 2001).

### Overview

260. The purpose of the IDEA is to offer students with disabilities a public education on appropriate terms. Schools must provide an IEP that is likely to produce progress, not regression, and provides a greater opportunity than trivial advancement. S.F. v. N.Y. City Dep't of Educ., 2011 U.S. Dist. LEXIS 129672; 57 IDELR 287; 111 LRP 70544 (S.D. N.Y. 2011). A school must provide an appropriate education reasonably

calculated to allow the student to receive a meaningful educational benefit. Id.

261. Congress enacted the IDEA:

(1)(A) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;

(B) to ensure that the rights of children with disabilities and parents of such children are protected;

(C) to assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities;

(2) to assist States in the implementation of a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for infants and toddlers with disabilities and their families;

(3) to ensure that educators and parents have the necessary tools to improve educational results for children with disabilities by supporting system improvement activities; coordinated research and personnel preparation; coordinated technical assistance, dissemination, and support; and technology development and media services; and

(4) to assess, and ensure the effectiveness of, efforts to educate children with disabilities.

20 U.S.C. § 1400(d). The IDEA requires all states to provide resident children with disabilities a FAPE designed to meet their

unique needs. 20 U.S.C. § 1412(a)(1). The opinion in Maynard v. Dist. of Columbia, 701 F. Supp. 2d 116, 121 (U.S. D.C. 2010)

explains:

The IDEA attempts to guarantee children with disabilities a FAPE by requiring states and the District of Columbia to institute a variety of detailed procedures. "[T]he primary vehicle for implementing" the goals of the statute "is the [IEP], which the [IDEA] mandates for each child." Harris v. District of Columbia, 561 F. Supp. 2d 63, 65 (D.D.C. 2008)(citing Honig v. Doe, 484 U.S. 305, 311-12, 108 S. Ct. 592, 98 L. Ed. 2d 686 (1988)). An IEP is a written statement that includes, among other things: (i) a statement of the child's present levels of academic achievement and functional performance; (ii) a statement of measurable annual goals, including academic and functional goals; (iii) a description of the child's progress in meeting those goals; (iv) a statement of the special education and related services and supplementary aids and services to be provided to the child; and (v) an explanation of the extent, if any, to which the child will not participate with nondisabled children in any regular classes. Id. § 1414(d)(1)(A)(i). An "IEP Team"--which consists of the parents of the child with disability, not less than one regular education teacher of the child (if applicable), not less than one special education teacher or provider of the child, and a representative of the local education agency--is charged with developing, reviewing, and revising a child's IEP. See Id. § 1414(d)(1)(B) (defining an IEP Team). Because the IEP must be "tailored to the unique needs" of each child, Bd. of Educ. v. Rowley, 458 U.S. 176, 181, 102 S. Ct. 3034, 73 L. Ed. 2d 690 (1982), it must be regularly revised in response to new information regarding the child's performance, behavior, and disabilities, and

must be amended if its objectives are not met. See 20 U.S.C. §§ 1414(b)-(d). To be sufficient to confer a FAPE upon a given child, an IEP must be "reasonably calculated to enable the child to receive educational benefits." Rowley, 458 U.S. at 207. Each local educational agency is required to have an IEP in effect for each child with a disability in the agency's jurisdiction at the beginning of each school year. 20 U.S.C. § 1414(d)(2)(A).

See also Nack ex rel. Nack v. Orange City Sch. Dist., 454 F.3d 604, 608 (6th Cir. 2006); S.F. v. N.Y. City Dep't of Educ., supra.

262. The legal analysis of the validity of an IEP has two parts. The first is whether the school complied with the procedures established by the IDEA and implementing state statutes and rules. The second is whether the school system created an IEP reasonably calculated to provide the child an educational benefit. Bd. of Educ., Hendrick Hudson Cent. Sch. Dist., Westchester Cnty. v. Rowley, 458 U.S. 176, 206; 102 S. Ct. 3034, 3051, 73 L. Ed. 2d 690, 712 (1982).

Transition from California to Hillsborough County  
(Issues A and B)

263. Title 20 United States Code section 1414(d)(2)(c)(i)(II) requires a school district to provide a transferring student "a [FAPE], including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency

conducts an evaluation pursuant to subsection (a)(1), if determined to be necessary by such agency, and develops a new IEP, if appropriate, that is consistent with Federal and State law." Florida imposes a similar requirement. Fla. Admin. Code R. 6A-6.0334. █████ did not prove that the Board failed to comply with the requirement for an ESY IEP that was comparable to █████ California IEP. In the first instance, █████ agreed to the District's initial June assignment of █████ to hospital/homebound for home-based instruction. The assignment accommodated █████ concerns about the effects of the move from California on █████ and █████ difficulties with transitions. The District provided home-based instruction with appropriate support from therapists. Then, when █████ decided █████ wanted █████ enrolled in school, the District acted as promptly as possible to provide █████ services in █████ .

264. The ESY component of the California IEP called only for specialized academic instruction daily for five hours a day in a separate class, in a public-integrated facility. The persuasive evidence does not prove that █████ classes at █████ did not provide that service.

265. The California IEP did provide one ESY service that the District did not provide. The service is transportation. Due to █████ medical needs, the short notice █████ provided of █████ change of mind about home services, and the few days remaining,

the District could not organize transportation. Fortunately, [REDACTED] was able to provide transportation for [REDACTED]. Consequently, the District's inability to provide transportation did not deny [REDACTED] a FAPE.

266. In addition, the entire 2010 ESY time period was so brief that there is no persuasive evidence indicating any regression in [REDACTED] education attributable to the District's assignments and services and inability to provide transportation to [REDACTED] for seven days. Finally, there is no evidence indicating what services would be required more than two years after June 2010 to compensate for any asserted adverse consequence of the assignments and services the District provided [REDACTED] in June 2010.

267. The hospital/homebound assignment similarly did not deny education in the least restrictive environment. [REDACTED] mother agreed to the assignment. The assignment was more restrictive than separate classes in a public integrated facility. But [REDACTED] condition had changed since the California IEP was adopted. Due to the move, as [REDACTED] agreed at the time, home-based services were the least restrictive alternative in June of 2010.

Procedural Violation by Denial of Meaningful Participation  
(Issues C, D, F, G, I, J, K, L, N, O, and P)

268. [REDACTED] maintains the District denied [REDACTED] FAPE by denying [REDACTED] parents the procedural right to meaningful participation in the IEP meetings held August 19, 2010; August 23, 2010; September 2, 2010; January 19, 2011; July 18, 2011; July 20, 2011; August 12, 2011; August 16, 2011; September 12, 2011; October 26, 2011; and December 14, 2011. If proven, this would be a violation of the procedural requirements of the IDEA. Adhering to the IDEA's procedural requirements is important. Rowley, supra.

269. A procedural violation does not automatically require a finding that the school denied a student a FAPE. A procedural violation may cause a substantive denial of a FAPE only if it impedes the student's right to a FAPE, significantly impedes the parents' opportunity to participate in crafting the IEP to provide a FAPE, or deprives the student of educational benefits. Nack ex rel. Nack v. Orange City Sch. Dist., supra; Twin Rivers Unified Sch. Dist., 57 IDELR 177, 111 LRP 52914 (Cal. State Educ. Agency, July 28, 2011); S.F. v. N.Y. City Dep't of Educ., supra.

Participants

270. [REDACTED] maintains that the failure of the notices for the IEP meetings of August 19, August 23, and September 2, 2010, to identify the anticipated participants, by name, denied [REDACTED]

parents meaningful participation in those meetings. The notices only identified the anticipated participants with checkmarks by their position or expertise.

271. Title 34 C.F.R. section 300.322 creates procedural notice requirements for IEP team meetings. They include a requirement to "[i]ndicate the purpose, time, and location of the meeting and who will be in attendance . . . ." [REDACTED] maintains that this requires identifying the participants by name without citing authority for that interpretation.

272. Putting aside the lack of authority for the proposition that specific names are required, [REDACTED] has not identified, and the record does not disclose, any harm flowing from the District's failure to provide the names of anticipated participants in the IEP meeting. Each of the meetings involved a number of participants representing a wide range of expertise in the various fields, such as instruction, physical therapy, occupational therapy, and speech therapy that were relevant to [REDACTED] education. [REDACTED] knew the individuals and had frequent contact with them during this period. Each meeting also included a number of people familiar with [REDACTED] needs and progress in school. The fact that [REDACTED], who did not hesitate to raise procedural issues at each meeting, did not raise the issue at the meeting indicates [REDACTED] did not see it as creating a problem at the time.

The Eleventh Circuit has rejected an argument that a violation of the notice requirement is a per se violation of IDEA which by itself constitutes a denial of FAPE. Doe v. Alabama State Dep't of Educ., 915 F.2d 651, 660-663 (11th Cir. 1990); Weiss by & Through Weiss v. School Bd. of Hillsborough County, 141 F.3d 990, 994 (11th Cir. 1998). The Court held that no relief was required where the parents fully participated in the IEP process and there was no harm flowing from the procedural violation. Doe, 915 F.2d at 663.

Sch. Bd. of Lee Cnty. v. E.S., 561 F. Supp. 2d 1282, 1289 (M.D. Fla. 2008). [REDACTED] has not proven harm flowing from the failure to provide the names of anticipated participants in the IEP meetings.

273. [REDACTED] maintains that the meeting of August 19, 2010, denied meaningful participation because it did not fulfill the procedural requirement for participation of an ESE teacher imposed by 20 U.S.C. section 1414(d)(1)(B)(iii). This argument relies upon the premise that [REDACTED], although [REDACTED] was a certified ESE teacher and the supervisor of ESE Staffing, did not qualify as an ESE teacher because [REDACTED] most recent classroom experience was approximately ten years earlier. [REDACTED] makes the related argument that there was no ESE teacher participant in the September 2, 2010, IEP meeting, which [REDACTED] attended.

274. The years since a teacher participant has taught in the classroom do not determine if that person meets the requirement for a teacher's participation. See S.F. v. N.Y. City

Dep't of Educ., supra (certified general education teacher, who had not taught in general education for more than 20 years or taught the student satisfied general education teacher requirement). Being an administrator also does not disqualify someone from also fulfilling the requirement for a teacher participant. J.G. v. Kiryas Joel Union Free Sch. Dist., 777 F. Supp. 2d 606, 625 (S.D. N.Y. 2011). Also, since its 1992 amendments, the IDEA does not require that the teacher participants be teachers of the student. R.B. v. Napa Valley Unified Sch. Dist., 496 F.3d 932, 939 (9th Cir. 2007). [REDACTED] [REDACTED] fulfilled the requirement for participation by an ESE teacher.

275. Furthermore, [REDACTED] has not identified, and the record does not reveal, any injury from [REDACTED] serving to fulfill the ESE teacher requirement. There is also no harm from the alleged failure to have an ESE teacher participate in the August 19 and September 2, 2010, meetings.

276. [REDACTED] maintains that [REDACTED] parents were denied meaningful participation in the August 23, 2010, meeting because there was no regular education teacher participant as required by 20 U.S.C. section 1414(d)(1)(B)(ii). [REDACTED] has not identified and the record does not reflect any harm from this failure. Nack ex rel. Nack v. Orange City Sch. Dist., supra. Consequently, the absence of a regular education teacher does not make the IEP defective.

277. The August 23, 2010, meeting was a continuation of the August 19, 2010, meeting which a regular education teacher attended. The August 19, 2010, meeting was only to consider [REDACTED] request that the team consider recently provided medical information and reassign [REDACTED] to a regular school.

278. [REDACTED] maintains that the District denied [REDACTED] and [REDACTED] parents meaningful participation in the January 19, 2011, meeting in two ways. The first is the alleged failure to consider the report of [REDACTED]. The second is the fact that the District did not provide [REDACTED] the occupational and physical therapy evaluations before the meeting.

279. A parent has meaningfully participated in the development of an IEP when she is informed of her child's problems, attends the IEP meeting, expresses her disagreement with the IEP team's conclusions, and requests revisions in the IEP. N.L. v. Knox Cnty. Schs., 315 F.3d 688, 693 (6th Cir. 2003). A parent who has an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team, has participated in the IEP process in a meaningful way, even if the team does not adopt the parent's views. Fuhrmann v. E. Hanover Bd. of Educ., 993 F.2d 1031, 1036 (3d Cir. 1993).

280. The team received and reviewed the information from [REDACTED] that [REDACTED] wanted it to consider. It also accepted the written report for consideration. The team did not discuss the

██████ report at that time because ██████ chose not to waive the required presence of a general education teacher. Consequently, there is nothing the team should have done that day that it did not do.

281. The District provided ██████ and ██████ representatives with the physical and occupational therapy reports within a day of receiving them. There is no persuasive evidence of any intent to delay the information. The team did not discuss and consider the reports at the January 19, 2011, meeting for the same reasons it did not discuss and consider the ██████ report, the absence of the general education teacher.

282. ██████ was fully informed. ██████ attended the meeting, and ██████ was a full participant. The team received and reviewed the information ██████ wanted it to receive and review. This does not establish a denial of meaningful participation in the January 19, 2011, meeting.

283. The team, including ██████ were scheduled to consider and discuss the reports at the continuation meeting scheduled for February 21, 2011. But ██████ withdrew ██████ from the school on February 9, 2011.

284. ██████ asserts the District denied ██████ meaningful participation in the July 18, 2011, IEP meeting by pre-determining the outcome of the physical therapy issue. At this point, ██████ was receiving services at home, following ██████

broken femur. [REDACTED] wanted the District to re-start physical therapy immediately. The District representatives explained their reasonable concerns because of the broken femur. The District responded to [REDACTED] input by seeking updated medical information and proposing that the District's physical therapist visit [REDACTED] at home to evaluate options. The District did not ignore [REDACTED] parents' desires.

285. The District employees had considered the physical therapy issue before the meeting. In fact, in the course of [REDACTED] time in the District, they considered it many times since it was always a service or a proposed service, depending upon [REDACTED] medical status.

286. Considering it does not amount to pre-determination. Pre-determination is an educational agency deciding on its offer before the IEP meeting, including when it presents one placement option at the meeting and refuses to consider other alternatives. Deal v. Hamilton Cnty. Bd. of Educ., 392 F.3d 840, 858 (6th Cir. 2004). A district may not come to the IEP meeting with a "take it or leave it" offer. J.G. v. Douglas Cnty. Sch. Dist., 552 F.3d 786, 801, n.10 (9th Cir. 2008). Meeting before an IEP to discuss a student's needs and services is not prohibited. N.L. v. Knox Cnty. Schs., supra.

287. The IEP team's decision was not the immediate resumption of physical therapy that [REDACTED] and [REDACTED] wanted. But it

satisfies the requirements for informing the parent, allowing the parent to attend, permitting the parent to disagree, and considering the parents' input articulated by the opinions in N.L. v. Knox Cnty. Schs., supra, and Fuhrmann v. E. Hanover Bd. of Educ., supra. Furthermore, the fact that the District took action in response to the parents' input demonstrates meaningful participation. Ft. Osage R-I Sch. Dist. v. Sims ex rel. B.S., 55 IDELR 127 (W.D. Mo. 2010).

288. [REDACTED] alleges that the District denied meaningful participation in the July 20, 2011, IEP meeting by holding a separate 30-minute conference with its attorney and making decisions in that meeting. This is the IEP meeting during which the team concluded that hospital/homebound services should end when the ESY ended, considered the [REDACTED] evaluation, declined to institute physical therapy for the last eight days of the ESY, and declined [REDACTED] request to add music therapy as a service.

289. The evidence proved that the District employees held a 30-minute conference with their attorney. The weight of the persuasive evidence does not, however, establish [REDACTED] allegations about the substance of the meeting. Also, as with the July 18, 2010, meeting, the District satisfied the requirements for informing the parents, allowing the parents to attend, permitting the parents to disagree, and considering the

parents' input. N.L. v. Knox Cnty Schs., supra; Fuhrmann v. E. Hanover Bd. of Educ., supra.

290. [REDACTED] makes pre-determination and general denial of meaningful participation claims about the August 12, 2011, IEP meeting. [REDACTED] directs the claims at the assignment to [REDACTED]. The team, including [REDACTED], discussed [REDACTED] and other possible schools in the July 18, 2011, meeting. This was not a new subject or one which the team had not considered or one on which [REDACTED] had not been heard. The District satisfied the requirements of N.L. v. Knox Cnty. Schs., supra; Fuhrmann v. E. Hanover Bd. of Educ., supra.

291. In addition, identifying nearby schools and schools capable of providing the many services that [REDACTED] needed, was responsible preparation for the meeting, not pre-determination. See Nack ex rel. Nack v. Orange City Sch. Dist., supra; Ka.D. by Ky.D. v. Solana Beach Sch. Dist., 54 IDELR 310 (S.D. Cal. 2010). [REDACTED] also did not prove substantive harm from the alleged IDEA violation. Nack ex rel. Nack v. Orange City Sch. Dist., supra.

292. [REDACTED] makes a general claim that the District denied meaningful participation in the August 16, 2011, meeting by [REDACTED] not allowing [REDACTED] to express [REDACTED] concerns and opinions. [REDACTED] did not prove this claim. [REDACTED] disruptive behavior interfered with the ability to conduct the meeting. But [REDACTED] was, nonetheless, heard. The District team members agreed to changes

in the proposed physical therapy services in response to [REDACTED] concerns. They also agreed to add occupational therapy to the services after considering [REDACTED] position. The District satisfied the requirements for informing the parents, allowing the parents to attend, permitting the parents to disagree, and considering the parents' input. N.L. v. Knox Cnty. Schs., supra; Fuhrmann v. E. Hanover Bd. of Educ., supra.

293. In this meeting, as in preceding meetings, [REDACTED] objected to [REDACTED]. Parent participation in creating an IEP does not include the right to pick a particular classroom or school. "Educational placement" means the general type of educational program for the child. Parents have a right to be heard on the school choice, but do not have a veto. S.F. v. N.Y. City Dep't of Educ., supra.

294. [REDACTED] asserts that the District denied meaningful participation in the September 12, 2011, IEP meeting by refusing [REDACTED] request for the team to consider a letter from Dr. [REDACTED] in deciding if [REDACTED] was eligible for hospital/homebound services. The team considered the letter. The team also determined [REDACTED] eligible for hospital/homebound services. The district provided meaningful participation for [REDACTED] and [REDACTED] parents at the September 12, 2011, meeting.

295. [REDACTED] maintains that the District's decision at the October 26, 2011, meeting to deny [REDACTED] request for a music

therapy evaluation denied [REDACTED] meaningful participation in the meeting. The District reasonably responded to the request by arranging for the music therapy assessment by [REDACTED]. Nothing required a "formal evaluation" as [REDACTED] desired.

296. [REDACTED] also maintains that the District denied meaningful participation in the IEP meeting by failing to consider [REDACTED] input about the school assignment. The persuasive evidence does not support this claim. During the IEP meetings, [REDACTED] and [REDACTED] expressed their preference for [REDACTED] and their disagreement with assignment to [REDACTED] District employees considered and responded to the issues they raised. The decision to assign [REDACTED] to [REDACTED] was reasonable because of its proximity to [REDACTED] home, its accessibility, and its suitability for providing the services in [REDACTED] IEP.

297. [REDACTED] generally asserts that the District denied [REDACTED] and [REDACTED] parents meaningful participation in the December 14, 2011, IEP meeting. The persuasive evidence did not prove this claim. The persuasive evidence proved that in this meeting, as in the other meetings of the series, [REDACTED] vigorously presented [REDACTED] views, that the District employees considered them, that the District made some changes to the IEP in response, and that the District provided [REDACTED] and [REDACTED] parents meaningful participation in development of [REDACTED] IEP.

April 2011 Determination of Eligibility for  
Hospital/Homebound (Issue H)

298. ██████ argues that the District did not timely determine ██████ eligible for hospital/homebound services in April and that this denied ██████ a FAPE. ██████ did not prove this claim.

299. ██████ artificially inflates the period taken by assuming that the District should have started a hospital/homebound review because ██████ told the District on February 3 or 4, 2011, that ██████ had a broken femur. But ██████ did not apply for hospital/homebound services. Then ██████ withdrew ██████ from the District on February 9, 2011, leaving the District with no obligation to ██████ or authority to provide ██████ services.

300. ██████ did not request hospital/homebound services until February 25, 2011. The District promptly began the review process, including trying to schedule the eligibility review meeting. The scheduling of participants, including ██████ attorney, created difficulties. Setting the meeting for March 29, 2011, was reasonable. At that meeting, the District reacted appropriately to receiving new and different medical information. Since ██████ would not allow direct communication with the doctor, the District asked ██████ to obtain information needed to clarify the medical issues and re-scheduled the meeting for April 4, 2011. This was reasonable and appropriate under the circumstances. At the April 4, 2011, meeting, the District

properly considered the clarified medical information and approved hospital/homebound services.

Substantive Denial of FAPE (Issues E, N, and Q)

301. █████ asserts that the IEPs of August 23, 2010, and September 12, 2011, denied █████ FAPE. Failure to provide a plan reasonably calculated to provide some educational benefit is a substantive violation denying a student FAPE. Devine v. Indian River Cnty. Sch. Bd., supra. The IDEA does not require schools to provide the best possible education at public expense or to maximize a student's potential. Nack ex rel. Nack v. Orange City Sch. Dist., supra. But the plan must be reasonably calculated to provide some educational benefit. Devine v. Indian River Cnty. Sch. Bd., supra. "Put another way, 'the IDEA sets modest goals: it emphasizes an appropriate, rather than an ideal, education; it requires an adequate, rather than an optimal, IEP.' D.B. a minor, by his next friend and mother, Elizabeth B., 675 F.3d 26, 2012 U.S. App. LEXIS 6099, 2012 WL 975564 (1st Cir. March 23, 2012), citing Lenn v. Portland Sch. Comm., 998 F.2d 1083, 1086 (1st Cir. 1993)." L.J. v. Sch. Bd., 850 F. Supp. 2d 1315, 1319 (S.D. Fla. 2012). The party attacking an IEP has the burden of proving that the IEP is not reasonably calculated to confer an appropriate education. Devine v. Indian River Cnty. Sch. Bd., supra.

302. █████ has not met the burden of proving that either IEP was not reasonably calculated to confer an appropriate education.

303. █████ claims that the District denied █████ a FAPE from December 14, 2011, forward, by not providing █████ hospital/homebound services. The persuasive evidence proves that █████ chose not to participate in the eligibility determination process by attending a meeting with District representatives who had reasonable concerns about multiple and conflicting forms from Dr. ██████████. Consequently, the greater weight of the persuasive evidence does not prove that the District improperly or inappropriately denied █████ hospital/homebound services. █████ did not receive the services because █████ refused to participate in the process for determining eligibility.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Respondent, Hillsborough County School Board, did not deny Petitioner, █████ a free and appropriate education and is not required to provide compensatory services as demanded by █████

DONE AND ORDERED this 25th day of June, 2013, in  
Tallahassee, Leon County, Florida.

S

JOHN D. C. NEWTON, II  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 25th day of June, 2013.

ENDNOTES

<sup>1/</sup> Tr. Vol. 7, p. 1134.

<sup>2/</sup> In the course of this proceeding, the testimony of [REDACTED] and District employees was sometimes in conflict. In this instance, and others, the consistency of the testimony with contemporaneously created documents resulted in a conclusion that the testimony of the District employees was more credible and persuasive.

<sup>3/</sup> [REDACTED] maintains that [REDACTED] did not withdraw [REDACTED] from school and was only talking about [REDACTED] being out of [REDACTED] until [REDACTED] recovered from [REDACTED] broken femur. The greater weight of the persuasive evidence proved that [REDACTED] intended to and did withdraw [REDACTED]. [REDACTED] was a credible witness. [REDACTED] testimony was consistent with withdrawal forms that [REDACTED] prepared and circulated February 10, 2011. It is also consistent with the school's attendance records. Although [REDACTED] maintained that [REDACTED] did not intend to withdraw [REDACTED] from school, [REDACTED] testified "[n]eedless to say, [REDACTED] never went back to [REDACTED]." Tr. Vol. 10, p. 1536. Finally a Physical Therapy Evaluation form of Independent Living, Inc., [REDACTED] private service provider, reporting background information in the "Current Educational

Placement" blank records the following information provided by [REDACTED] : "formerly [REDACTED] High school [sic] Ø at this time."

<sup>4/</sup> The February 19, 2013, Amended Order Establishing Issues identified meaningful participation in the July 18, 2011, meeting as an issue. Petitioner's Amended Proposed Recommended Order raises only pre-determination of physical therapy services as a denial of meaningful participation.

<sup>5/</sup> Petitioner's "pre-determination" argument relies in large part on an assertion that [REDACTED]'s supervisor, [REDACTED], bullied or pressured [REDACTED] into making [REDACTED] recommendation. The argument is not persuasive. The evidence demonstrates to the contrary that [REDACTED] was intimidated by [REDACTED] and felt bullied by [REDACTED] at the meeting.

<sup>6/</sup> The February 19, 2013, Amended Order Establishing Issues identified meaningful participation in the July 20, 2011, meeting as an issue. Petitioner's Amended Proposed Recommended Order specifies two grounds for the claimed lack of meaningful participation. They are an alleged failure to allow [REDACTED] parents to attend the entire meeting and (similarly) making a decision without parental attendance.

<sup>7/</sup> By this time, the District had, as [REDACTED] urged, purchased a MyTobii and related software, training, and accessories for [REDACTED] use at school for \$30,000.00.

<sup>8/</sup> The February 19, 2013, Amended Order Establishing Issues identified meaningful participation in the August 12, 2011, meeting as an issue. Petitioner's Amended Proposed Recommended Order raises only pre-determination of placement at [REDACTED] as a failing.

<sup>9/</sup> The February 19, 2013, Amended Order Establishing Issues identified meaningful participation in the August 12, 2011, meeting as an issue. Petitioner's Amended Proposed Recommended Order raises the alleged failure of the District to consider a letter from Dr. [REDACTED], at her request, when determining the length of hospital/homebound services.

<sup>10/</sup> [REDACTED] requested reassignment due to the fact that [REDACTED] words and conduct made [REDACTED] feel bullied. The behavior included repeatedly yelling and screaming at [REDACTED].

<sup>11/</sup> The February 19, 2013, Amended Order Establishing Issues identified meaningful participation in the October 26, 2011,

meeting as an issue. Petitioner's Amended Proposed Recommended Order specifically raises the District's refusal to order a music therapy evaluation and the [REDACTED] assignment as the grounds for determining the District did not provide [REDACTED] a meaningful opportunity to participate.

<sup>12/</sup> Tr. Vol. 7, p. 1197.

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NOTICE OF RIGHT TO JUDICIAL REVIEW

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

a) brings a civil action in the appropriate state circuit court pursuant to section 1003.57(1)(b), Florida Statutes (2011), and Florida Administrative Code Rule 6A-6.03311(9)(w); or

b) brings a civil action in the appropriate district court of the United States pursuant to 20 U.S.C. § 1415(i)(2), 34 C.F.R. § 300.516, and Florida Administrative Code Rule 6A-6.03311(9)(w).