

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

██████████,)
)
Petitioner,)
)
vs.) Case No. 10-0056E
)
BROWARD COUNTY SCHOOL BOARD,)
)
Respondent.)
_____)

FINAL ORDER

Pursuant to notice, a formal hearing was held in this case on May 11, 12, and 13, 2010, in Fort Lauderdale, Florida, before June C. McKinney, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Doris Landis Raskin, Esquire
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For Respondent: Barbara J. Myrick, Esquire
Broward County School Board
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STATEMENT OF THE ISSUES

The issues are as follows:

1. Whether The School Board of Broward County ("Respondent" or "School Board"), unlawfully changed ██████████'s

placement to Whispering Pines school ("WPS") for 45 days as a consequence of the events occurring on December 1, 2009.

2. Whether the School Board failed to implement [REDACTED]'s Individualized Education Plan ("IEP") at Flanagan High School ("FHS") and therefore denied [REDACTED] free appropriate public education ("FAPE") during the 2009-2010 school year.

3. Whether [REDACTED] can be provided FAPE at FHS.

4. Whether the School Board failed to provide [REDACTED] with FAPE at [REDACTED] Middle School ("NRMS") during the 2008-2009 school year.

5. Whether the School Board is responsible for reimbursing Petitioner any costs incurred as a result of [REDACTED]'s unilateral placement at The [REDACTED] in [REDACTED], [REDACTED].

PRELIMINARY STATEMENT

The parent of Petitioner filed for a due process hearing on January 7, 2010, and the matter was forwarded to the Division of Administrative Hearings for assignment of an administrative law judge. After several continuances, pursuant to notice, the due process hearing was held on May 11, 12, and 13, 2010.

At the hearing, Petitioner presented the testimony of Mary Katherine Ziccardi, Pradi-Willi Syndrome Association USA ("PWSAUSA") Educator; Barbara Feller, Advocate; Ms. [REDACTED] [REDACTED]'s mother; Johnathan Espana, Behavior Technician at FHS; Kevin Keney, Behavior Technician; Felicia Starke, Due Process

Coordinator for Broward County Schools; Sharon Shaulis, Principal of FHS; Rose Sanlino, ESE Specialist at NRMS; Tonie Raichandani, School Board's Program Support Specialist for Behavior; Stacey Pratt, Reading Specialist for the District; and Mr. ■■■, ■■■■■'s father. Petitioner's Exhibits 1 through 4 were offered and received into evidence. However, Exhibit 1, the PWS DVD, was not considered in this matter because Petitioner never supplied the exhibit to the undersigned even after the undersigned's assistant called Petitioner's lawyer and reminded her that it be submitted.

The School Board presented the testimony of eight witnesses: Sarah Samuels, Program Specialist, assigned to NRMS; Elizabeth Otto-Kulzer, School Psychologist, South Area Office, Broward County Public Schools; Barbara Schwartz, FHS exceptional student education ("ESE") teacher; Kathleen Ferrer, FHS ESE Teacher; Lida Yocum, Due Process Coordinator, Broward County Public Schools; Erin Pashley, FHS Physical Education Teacher; Sheri Wilson, Speech and Language Therapist; and Anna Marie Brown, WPS Lead Therapist. Respondent's proposed Exhibits 1 through 79 were offered and received into evidence.

The Parties agreed and submitted the deposition of ■■■■■ of the Children's Institute in lieu of testimony at the due process hearing.

Due to the unavailability of the School Board witnesses on the first scheduled hearing date of March 8 through March 10, 2010, and the continuous unavailability of the witnesses until April 12, 2010, the undersigned granted a continuation of the hearing and extended the final order deadline 32 days to April 26, 2010, without objection from Petitioner.

The matter was again continued at the request of the Petitioner due to the unavailability of the expert witness and doctor. This cause was re-scheduled for May 11 through 13, 2010. The undersigned extended the deadline for filing the final order an additional 29 days until May 25, 2010.

At the conclusion of the hearing, it was estimated that the transcript of the proceedings would be filed with the Division of Administrative Hearings and available to the parties on May 31, 2010, after the end of the 45-day period within which the final order in this case was to be filed. The parties requested that they be allowed to file proposed final orders on June 21, 2010, due to the complexity of the issues and, at the stipulated request of the parties, the Administrative Law Judge extended the 45-day time period 27 days within which the final order was to be entered July 26, 2010.

The seven-volume Transcript of the record was filed on June 4, 2010, with the Division of Administrative Hearings. On June 18, 2010, the parties requested a joint extension to file

the proposed final orders no later than June 29, 2010. The undersigned ordered the eight-day extension, which extended the deadline for filing the final order until August 3, 2010.

The Proposed Findings of Fact and Conclusions of Law filed by the parties have been considered in the preparation of the Final Order.

FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the following findings of fact are made:

1. [REDACTED]. is a [REDACTED]-year-old [REDACTED] with Prader-Willi Syndrome ("PWS").

2. PWS is a genetic disorder that happens at or near the moment of conception when the father's side does not contribute the Y chromosome on the fifteenth pair of chromosomes, which directly affect the formation and functioning of the hypothalamus.¹

3. PWS manifests itself by an insatiable appetite that often leads to morbid obesity with low metabolism and life-threatening issues if not managed through food security.

4. PWS also results in a significant behavioral disorders that cannot be modified but simply managed. Aggressive negative behaviors occur that can be violent and disruptive. Also, there are often intellectual deficiencies.

5. Other significant medical problems associated with PWS can be central adrenal insufficiency when the adrenal gland in the core body temperature goes very, very low and people are lethargic and unresponsive. PWS individuals also often times suffer with an inability to reproduce.

6. There is no cure for PWS.

7. Food can be life-threatening. It is possible that an individual with PWS can eat himself to death.

8. Consequences have little or no lasting effect to change behavior on a person with PWS. People with PWS are impulsive and typically cannot apply a consequence to a repetitive situation to stop the previous maladaptive inappropriate behavior or conduct.

9. It is possible to shape a different response in a person with PWS, but the individual would not typically internalize that response. External supports and controls are necessary to help make the response different.

10. Children with PWS often drop to the floor when in pre-crisis or crisis. Treatment for such actions requires those around them to either move the person physically or wait it out.

11. PWSAUSA is an organization that provides education and residential consultations and trainings to schools across the country for individuals with PWS who seek training and assistance. PWSAUSA also works with schools to monitor and

manage all the situations where food is in the school. Services are provided at no cost to the school districts. PWSAUSA is located in Sarasota, Florida.

12. The Petitioner is eligible for special education and related services under the Individuals with Disabilities Education Act ("IDEA") due to Petitioner's diagnosis of PWS.

13. In Broward County, [REDACTED] receives ESE services for the exceptionalities of Other Health Impairment, language-impaired, speech-impaired and occupational therapy.

14. [REDACTED] began school in a regular education class at Palm Cove Elementary in Broward County.

15. [REDACTED] attended a residential program for PWS children in Gainesville, Florida during fifth grade. The program was operated by the Association for Retarded citizens (ARC). [REDACTED] did not complete the two-year program but returned to Broward County after 10 months in Gainesville.

16. [REDACTED] also has a one-to-one at home through the Medicaid Waiver program to assist the parents with [REDACTED]'s care.

New Renaissance Middle School

17. [REDACTED] was enrolled in NRMS, a Broward County public school, in the sixth grade. [REDACTED] did not have any major food seeking behaviors while at NRMS.

18. Barbara Feller ("Feller") is a coach and advocate for students with disabilities. She has assisted [REDACTED] since sixth grade. Feller works with the school system by advocating [REDACTED]'s needs through education, writing letters, and other communications.

19. Feller has previously worked with five other PWS students and attended conferences, conventions, and educational programs regarding PWS. She has also lobbied PWS issues in Washington D.C.

20. Feller attended numerous meetings at NRMS on behalf of [REDACTED]

21. [REDACTED] was out of control in sixth grade and had aggressive behaviors including cursing teachers, talking back, and threatening staff, inappropriate gestures, hitting, pushing, destroying materials, throwing objects, and flipping furniture.

22. Feller testified that [REDACTED] has had difficulty following directions, completing non-preferred activities, interacting appropriately with authority figures, becoming verbally and/or physically aggressive when presented with non-preferred tasks or when denied an object or activity [REDACTED]

wants to do. Additionally, [REDACTED] has difficulty changing routines, sensitivity to loud environments, and may get upset about transitioning, depending upon how it's presented to [REDACTED]

23. While [REDACTED] was in middle school, Feller was concerned about the training provided to staff on PWS and the behavior intervention plan and crisis management plan.

24. NRMS developed a Positive Behavioral Intervention Plan ("PBIP") and crisis intervention plan focusing on de-escalation which specified who would be involved and what they would do if [REDACTED] went into a crisis. Behavior signs were identified that indicated a situation was forthcoming and steps were detailed as to how to avoid incidents.

25. Ms. Salino ("Salino") knew [REDACTED] from sixth through eighth grade at NRMS, as the ESE Specialist that facilitated [REDACTED]'s IEP meetings, collaborated with the teachers, and ensured the implementation of [REDACTED]'s IEP.

26. During the 2007-2008 school years, Ms. Raichandani("Raichandani") was assigned to NRMS as the Area Behavior Program Specialist and that is when she first met [REDACTED]

27. Raichandani attended all the IEP meetings for [REDACTED] during that school year.

28. During the 2008-2009, Ms. Samuel was the Area Behavior Program specialist assigned to NRMS.

29. During 2008-2009, Salino scheduled a number of meetings regarding ██████ and was in regular contact with Ms. S. and Feller during the year.

30. Feller was concerned about ██████'s progress during ██████'s eighth-grade year. She testified that "It would seem that people were trying or were implementing and then it wouldn't--then we wouldn't see them doing what they were suppose[d] to do. It was a constant roller coaster ride."

31. Feller's concerns that ██████ had not made progress were discussed with the IEP team. It was confirmed that ██████ had not progressed in reading based on the Diagnostic Assessment of Reading ("DAR"). However, the DAR is not meant to be used to measure a student making progress that should be another test.

32. Feller further found out that ██████ had difficulty decoding words and that the staff was working on ██████'s multiplication and coins.

33. Feller was disappointed that she didn't get to see work samples demonstrating the IEP's explanation of ██████'s work. Also, she was concerned that the team focused on ██████'s progress in behavior not mastering the IEP goals.

34. On October 23, 2008, ██████'s parents and advocate met with the staff because they felt that ██████ wasn't making any measurable or observable academic progress at NRMS. Feller requested that a learning styles profile be done to determine

what approach to teaching reading, writing, and math would be successful for [REDACTED]

35. In the IEP meeting October 23, 2008, Keller recommended to the IEP team that [REDACTED] use the Fast ForWord program as assistive technology. The school purchased it for [REDACTED], but it wasn't until several months that it was used.

36. Ms. Gibson, [REDACTED]'s ESE teacher, followed [REDACTED]'s IEP during 2008-2009. [REDACTED] mastered some of the IEP goals. Mr. Keys was [REDACTED]'s paraprofessional.

37. The school psychologist, Ms. Otto-Kulzer ("Otto-Kulzer"), evaluated [REDACTED] twice while attending NRMS. Otto-Kulzer's knowledge of PWS was through her course work studying to become a psychologist in the university and her keeping up with the different syndromes on a regular basis.

38. Otto-Kulzer performed an evaluation that was completed in April 2007 to address [REDACTED]'s academic achievement, processing skills, and adaptive behavior.

39. [REDACTED] was in eighth grade at NRMS during 2008-2009 school year.

40. [REDACTED] was in a varying exceptionalities class with approximately 25 students.

41. Otto-Kulzer conducted a second re-evaluation of [REDACTED] in November 2008. This re-evaluation was just for academic achievement. [REDACTED] attended the testing sessions willingly.

At times during the testing [REDACTED] attempted to give up easily on certain tasks, but responded well to praise and encouragement.

42. During the 2008 re-evaluation, [REDACTED] continued to show some weaknesses in the areas of reading, math and writing. However, [REDACTED] made progress by getting more answers correct than on the 2007 evaluation.

43. [REDACTED] also improved in the area of comprehension and was able to identify words that were more difficult at the 2008 re-evaluation. [REDACTED] progressed in math because of the capability of solving basic addition and subtraction problems, where previously in 2007 [REDACTED] could only do addition. In written language, [REDACTED] was able to formulate simple sentences in response to a prompt.

44. As a result of the 2008 re-evaluation, Otto-Kulzer recommended that [REDACTED] continue receiving ESE services and continue to provide support in the areas of weaknesses.

45. During the 2008-2009 school year, [REDACTED] was learning because the grade equivalent went up.

46. As far as behavior, [REDACTED] also made progress in that [REDACTED] made more eye contact, seemed more mature and was comfortable at the school.

47. In November 2008, [REDACTED] also had a reading evaluation. When evaluated, [REDACTED] was not cooperative with

Ms. Pratt ("Pratt"). So, it took until March 2009 for Pratt to complete it. Pratt has known [REDACTED] since fifth grade.

48. Pratt has a master's degree in reading.

49. Pratt was the individual who administered the DAR to [REDACTED] as part of the reading assessment.

50. When Pratt compared [REDACTED]'s scores to the previous scores, the two assessments were about the same.

51. In April 2009, an Addendum to the Reading Assessment and the SRA Corrective Reading Program, were added to [REDACTED]'s reading plan to address [REDACTED]'s areas of word attack skills, decoding, fluency, comprehension, and vocabulary. The staff and parents requested that the SRA program be presented at the IEP meeting.

52. Otto-Kulzer explained during the hearing that language processing is a significant factor why [REDACTED] is not progressing in reading. Otto-Kulzer also testified that PWS has an impact on short-term memory. Short-term memory is part of most aspects of learning. She went on to explain that it is a possibility that [REDACTED]'s achievement level could stay where it currently is, giving [REDACTED]'s language processing deficits and low I.Q.

53. Ms. S. testified that when [REDACTED] was at NRMS, the staff made an effort to work with [REDACTED]'s issues.

54. [REDACTED] attended FHS for the Extended School Year("EYS") services in the summer following both seventh and

eighth grade. ██████ became familiar with the FHS campus and staff through attendance. ██████ was scheduled to attend the home school of Everglades High School for the 2009-2010 school year.

55. ██████'s parents decided that they wanted ██████ to attend FHS since ██████ was familiar with it from summer class, which would make an easier transition, and because a good program was offered in reading.

Flanagan High School

56. On August 21, 2009, ██████'s mother, attorney, and child advocate met with district personnel about ██████'s high school placement. During the meeting, it was decided that ██████ would attend FHS for the ninth grade in the ESE classroom. Both Ms. S. and Feller requested a small pupil/teacher ratio for ██████ so that progress could be made.

57. ██████ received a McKay Scholarship to attend FHS in the severe varying exceptionality (SVY) classroom.

58. District personnel arranged for Ms. S., Feller, and the attorney to go to FHS that same afternoon to meet with staff from FHS. They met with Ms. Schwartz ("Schwartz"), ██████'s ESE teacher at FHS.

59. Schwartz knew ██████ and about PWS because ██████ had been in EYS at FHS in the summer 2009. She was trained in PWS

prior to ██████'s starting ninth grade on August 24, 2009, and she was also familiar with ██████'s crisis plan.

60. Raichandani, ██████'s former Area Behavior Program Specialist from NRMS, was also informed on Friday, August 21, 2009, that ██████ would be attending FHS for the 2009-2010 school year, and she would be working with ██████ again.

61. FHS staff could not be trained in PWS or ██████'s behavior or crisis plan prior to school starting since ██████'s enrollment was the Friday before school started.

62. At the meeting on August 21, 2009, ██████'s food seeking behaviors were discussed as well as the FHS students' access to vending machines and FHS campus-wide food sales.

63. Schwartz prepared her classroom for ██████ by securing the food. She covered the refrigerator so that it looked like a little table and she locked up all the food in the closet.

64. Seven other students were assigned to Schwartz's class with one para-professional, ██████ and the behavior technician that worked directly with ██████

65. ██████'s May 1, 2009, IEP and January 14, 2009, PBIP were implemented at FHS for ██████'s ninth grade year when ██████ started the year.

66. ██████'s Professional Crisis Management (PCM) included techniques such as verbal praise, redirecting to something else

as well as physical maneuvers if [REDACTED] was a danger to self or others.

67. [REDACTED]'s class structure was a four-block class schedule. [REDACTED] was in Schwartz's first period for reading and fourth period for social studies. Second period was [REDACTED]'s elective of aerobics with Ms. Pashley ("Pashley"). Third period was transition class with Ms. Kathy Ferrer ("Ferrer") where [REDACTED] learned life skills.

68. Cooking was also scheduled as a component of the class in [REDACTED]'s block but staff changed that portion of the schedule so that there would be no cooking when [REDACTED] was in class.

69. When the school year started on August 24, 2009, [REDACTED] was fine in a majority of the classes while doing class work. [REDACTED] loved to work and oftentimes wanted to be the helper.

70. Mr. Espana ("Espana") was assigned to work with [REDACTED] the first day of ninth grade at FHS as the behavior technician.² He knew [REDACTED] from working ESY during the summer of 2009. Espana's duties were to work with [REDACTED] and assist [REDACTED] during transitions and staying on-task in class.

71. Espana was not [REDACTED]'s permanent behavior technician for the school year. Principal Shaulis ("Shaulis") was looking and interviewing for a permanent behavior technician to work with [REDACTED] for several months into the school year.

72. On August 28, 2009, Ms. Mary Hood sent an email regarding PWS training to FHS. It stated:

Student with Prader-Willi Syndrome.
Student's IEP states that school staff that have direct contact with student or could have contact with student throughout the day, hallway, offices, cafeteria, must participate in training.

The training is scheduled on the Professional Development Day September 3rd at 12:30-1:30/2:00 in the cafeteria.

It was recommended that an AP, one clerical staff from each office participate-student affairs, guidance, main office. All cafeteria staff, paras, security/campus monitors and those individually names need to participate. Teachers participating in PDD needing training will be scheduled on another day.

73. ██████ had good and bad days. On a daily basis, Espana used verbal prompts, rewards and re-directing to try to de-escalate the behavioral situations. Most of ██████'s behavioral problems occurred when ██████ was transitioning or if there was something ██████ wasn't going to like coming up, ██████ might not want to leave.

74. Schwartz sent home ABC sheets to ██████'s parents detailing the activity that preceded ██████'s behavior, a description of the behavior, and the consequences whenever they occurred in her class. ██████ did not always give the parents the documentation sent home.

75. Preparation with [REDACTED] was required before any change was made to [REDACTED]'s schedule or routine. FHS staff was to share all changes with [REDACTED]'s parents prior to making them so that the parents could prepare [REDACTED] and [REDACTED] would not go into pre-crisis or crisis.

76. Changes that could trigger a crisis in [REDACTED] included: staff; food; the bus; early release; and schedule. [REDACTED] resists any deviation in routine. Ms. S. testified that [REDACTED] is difficult to deal with because [REDACTED] can't accept change.

77. [REDACTED] also has self-picking injurious behavior.

78. On September 2, 2009, [REDACTED] chose picking at finger(s) and was unable to stop. [REDACTED] was bleeding and licking the finger(s).

79. FHS staff was instructed to monitor [REDACTED] to make sure [REDACTED] was not seeking or sneaking food. [REDACTED]'s parents warned staff not to let [REDACTED] stay in the bathroom too long because [REDACTED] could have food.

80. Also, FHS was instructed to call the parents upon any food-related incidents to determine whether to call 911. The parents would oftentimes have to adjust [REDACTED]'s diet at home if something was eaten that was not suppose to be.

81. On September 3, 2009, [REDACTED] snuck and bought two candy bars with money taken from [REDACTED]'s mother. When Espana

took the candy, ██████ got upset. At the end of first period, ██████ began to bang ██████'s head on the wall and refused to go to the next class aerobics and sat on the floor refusing to get up. Schwartz called ██████'s mother, who was put on speaker phone, and ██████ became more aggressive after hearing the mother. The teacher and behavior technician ignored ██████ and after about 20 minutes ██████ got up.

82. When ██████ arrived at the next class late, ██████ became physically aggressive. ██████ destroyed a file cabinet, flipped over a bicycle, and used profanity. Ms. S. met with the police, administration and the ESE specialist after the incident.

83. Near the beginning of the year after ██████ had a crisis episode, Ms. S. talked to Mr. Fatout ("Fatout") about the incident. Ms. S. felt that Fatout was very tough when he stated that ██████ had to follow the rules at FHS because destructive and disruptive behavior and problems were unacceptable. Fatout emphasized that ██████ was going to go by the book. Ms. S. said that Fatout didn't understand PWS and why ██████ was acting the way ██████ was. Ms. S. said, "I think any intervention or every intervention they were doing, it was worse for [██████]."

84. ██████ was absent for two weeks prior to September 22, 2009.

85. Ms. Wilson ("Wilson") provided language services for [REDACTED] based on the IEP while at FHS.

86. Wilson worked with [REDACTED] on pragmatic skills. [REDACTED] was capable of putting phonemes together.

87. [REDACTED]'s language disability included social language conversation and staying on-task, auditory processing, which is defined as when talking to [REDACTED] [REDACTED] might not hear or see language the way a typical student would.

88. Auditory processing is a large part of learning because if one has difficulty receiving information, it will affect learning across subjects, including vocabulary, spelling, and reading comprehension. A person with auditory processing disability cannot hear language or read language and see a picture in his or her mind.

89. Wilson always used visual cues with [REDACTED] since [REDACTED] did not respond to information that was just presented orally.

90. [REDACTED] progressed with the language services Wilson provided.

91. Schwartz taught [REDACTED] reading. She used the SRA Corrective program one day a week with [REDACTED] along with many different other programs.³

92. On September 25, 2009, [REDACTED] refused to get on the bus after being told Espana would not be at work the following

Tuesday and passing pizza on the way to the bus. [REDACTED] kicked poles and lay on the ground refusing to get up. Espana removed himself out of the area. After being ignored for approximately 30 minutes, [REDACTED] finally got on the bus independently.

93. On September 29, 2009, [REDACTED] got off the bus and refused to move because Espana was in training that day and wouldn't be with [REDACTED]. Security intervened and after 30 minutes [REDACTED] went to class.

94. Espana and [REDACTED] established a relationship, and [REDACTED] liked Espana. In the end of September 2009, [REDACTED]'s parents requested that Espana remain [REDACTED]'s behavior technician. The district denied the request and informed the parents that they were still looking for a permanent behavioral technician.

95. In October 2009, [REDACTED]'s behavioral problems increased. Numerous days [REDACTED] had several negative behavioral incidents in a day.

96. On October 5, 2009, [REDACTED] refused to go walk up the stairs to the auditorium to wait for the bus. [REDACTED]'s refusal allowed [REDACTED] to see the candy, pizza, and other foods and drinks that were to be kept away from [REDACTED]

97. On October 6, 7, 9, and 9, 2009, the behavior technician and teachers continued to try to have [REDACTED] go to the auditorium to wait for the bus so as not to be exposed to

the food. However, [REDACTED] either refused by sitting on the floor, and/or standing by the stairs with head down, and/or shaking the head no.

98. On October 9, 2009, [REDACTED] refused to participate in Aerobics, sat on the floor, and worked on a workbook from out of the backpack.

99. Espana had to calm [REDACTED] down from the interaction with the aerobics instructor. When it was time to transition to the next class, [REDACTED] refused to go and was late.

100. On October 12, 2009, Professional Crisis Management ("PCM") was authorized to be used with [REDACTED] because the staff was certified after completing the three-day training on September 17, 18, and 29, 2009.

101. On October 12, 2009, [REDACTED] went into crisis numerous times. [REDACTED] ran into a closet and threw everything around in the third hour. When [REDACTED] came out of the closet, [REDACTED] grabbed the teacher's right breast and grabbed the lanyard with other hand and pulled the teacher's head down until the lanyard broke. The crisis team was called. Soon thereafter, in the same period, [REDACTED] slammed the keyboard on the teacher's computer and the keys flew around the room.

102. That afternoon, around 1:10 p.m., after hearing on the radio that the assistant principal wanted to talk to [REDACTED] in the office, [REDACTED] stated "no", and ripped off a piece of

metal from the salad bar station waving it around stating, "I am going to kill you." [REDACTED] also bit Espana and Mr. Gulla and ripped Espana's shirt. Espana had the cafeteria workers cleared out of the cafeteria and called for assistance from the PCM team. Later, the mother met with the police, administration, and ESE specialist.

103. On October 13, 2009, [REDACTED] was suspended for two to ten days for the October 12, 2009, incident with recommendation for expulsion.

104. [REDACTED]'s parents decided in October 2009 that FHS was not the proper placement for [REDACTED]. The parents were called to pick up [REDACTED] numerous times instead of the behavioral plan being implemented and utilized. Also, the parents weren't receiving communication as they wanted from the school regarding [REDACTED]. The parents felt they had to fight to get the daily home notes. Schwartz was the only consistent communication with the school. The other constant communication the parents received were frequent calls to come pick [REDACTED] up. The parents were concerned about [REDACTED]'s safety.

105. On October 13, 2009, [REDACTED]'s parents informed the School District that they didn't believe [REDACTED]'s needs were being met and that they wanted a private placement for [REDACTED] in Pennsylvania at the Children's Institute.

106. The District scheduled a meeting with the parents after receiving the 10-day notice via email on October 14, 2009, from the parents' attorney requesting the private placement.

107. The meeting to discuss the placement was scheduled for October 30, 2009, but was rescheduled for November 12, 2009, because the parents were out of the country.

108. Starting October 2009, ██████ started receiving one-on-one instruction using the SRA reading program. ██████ was the only student in the class using the SRA and ██████ did not like doing the program that was different from what the other students were doing.

109. When ██████ received the first report card, ██████ received three A grades and one B-plus.

110. On or about October 21, 2009, an in-service with ██████'s teachers and technicians was held to review ██████'s revised crisis plan.

111. By mid-October, Raichandani was having concerns over ██████'s placement.

112. On October 22, 2009, ██████ would not transition to the bus, threw the lunchbox on the floor put ██████ head down and said, "Leave me alone." Nick Lippert came, as a safe person trying to redirect ██████ to the bus, as Espana stepped back and ignored ██████, ██████ reacted by turning over two picnic tables, walking over to the art room display window, taking off

shoes, and starting to bang them. [REDACTED] also banged [REDACTED]'s head multiple times against the display window. The PCM team immobilized [REDACTED] because of the self-injurious behavior. At release time, FHS had [REDACTED]'s father pick [REDACTED] up.

113. On or about October 21, 2009, Raichandani worked with FHS staff regarding a revised crisis plan for [REDACTED] since so many incidents had occurred in a short period of time.

114. The revised plan called for staff to try to de-escalate [REDACTED] when [REDACTED] engaged in negative behavior and/or remove the items from [REDACTED]'s presence and remove [REDACTED] from the area through encouragement, but not physically. It also included adding a safe person, who stepped in and had not been directly involved in the incident to redirect [REDACTED]

115. On October 26, 2009, [REDACTED] took trash from a trash bin and put it in the book bag as school ended. Staff took the bag and [REDACTED] went into crisis and had to be immobilized into the prone position. The father picked [REDACTED] up from school.

116. Shaulis hired Mr. Keney ("Keney") as the permanent behavior technician to replace Espana in November 2009.

[REDACTED]'s parents were never informed of Keney's hire. Also, [REDACTED] was never informed or prepared for a new behavior technician.

117. As rescheduled, on November 12, 2009, the District met with the parents regarding the placement request and to have

an interim IEP meeting. The District planned to develop a re-evaluation plan, review ██████'s IEP, and discuss the 10-day notice. The committee determined it needed additional evaluation information regarding ██████ to consider the placement. ██████'s parents refused to provide consent for the re-evaluation.

118. A Transition Individual Education Plan ("TIEP")- Interim was completed and implemented at FHS on November 12, 2009. ██████'s TIEP had a Specific Special Considerations for Behavioral Needs section that included the PBIP, a crisis plan, and the crisis team. The TIEP also required support for school personnel, special training on PWS, crisis plan, and PBIP twice a year. The mandate read, "All staff to participate in training on Pradi Willi Syndrome, Crisis Plan and PBIP to include medical alerts (including staff at other settings such ESY) twice annually."

119. ██████ made academic progress while at FHS. Each of ██████'s three teachers testified to the progress.

120. On November 13, 2009, ██████ sat down and damaged the jacket and later refused to go to class. For both incidents ██████ was ignored by staff as part of ██████'s PCM.

121. On November 13, 2009, Raichandini sent an email to ██████'s teachers, the assistant principal, paraprofessional, and others regarding the revised daily behavior report form.

The email reminded all that ABC forms were to go home every time there is an incident of verbal aggression, physical aggression, property destruction, food issues, refusal to do work, refusal to transition, extensive time in the bathroom, or a room clear. It further stated, "PLEASE remember to communicate to parent ANY changes made to forms or schedule, staff absences (even after the fact), etc. via writing or email."

122. On November 18, 2009, ██████ refused to place the assignment in the box when asked. It was an altered schedule day. ██████ did not want to leave the class and put ██████'s head down. When ██████ transitioned to next class, ██████ sat in the corner on the floor and was noncompliant. Staff provided ██████ space. At dismissal time, ██████ had a meltdown because the worksheets were not completed. ██████ kicked, punched, and/or choked three staff members and also threatened to kill a staff member. Staff immobilized ██████ because of the continuous aggression. ██████ was suspended for one day with recommendation for expulsion.

123. Espana told ██████ about Keney's arrival for the whole week before Keney was going to substitute for Espana the following Monday when Espana was scheduled to be absent at a training. Espana tried to prepare ██████ to work with Keney that one day when he was not going to be there.

124. November 23, 2009, the first day that Keney worked with [REDACTED] as the behavior technician, Espana was not at work and Keney was supervising [REDACTED]. The daily behavior report states that [REDACTED] refused to leave cafeteria. Also, a food-related incident occurred when a child offered [REDACTED] an extra chocolate milk. The cafeteria worker distracted [REDACTED] and enlisted [REDACTED] to help find the owner of a lost book as a diversion from the food. The supervising adult was changed to assist [REDACTED].

125. When Espana returned to work, Keney continued to shadow Espana and [REDACTED]. Keney asked numerous questions about the schedule. Espana testified he thought [REDACTED] wanted to be with him alone. Keney was aware of [REDACTED]'s crisis intervention plan, as Mr. Fatout ("Fatout"), assistant principal at FHS, had reviewed it with him on his first day.

126. On November 24, 2009, Ms. Hood, the ESE specialist at FHS, sent an email to Raichandani that stated, "I'd like to set up a meeting with BTechnician Kevin Kerry [sic], to review the behavioral plan in place to assist with transition and to ensure it is a smooth transition. Let me know what is good for you. Sometime next week?"

127. On November 30, 2009, around 7:00 a.m., [REDACTED] ripped the bus number board off the wall when [REDACTED] found out that

Espana was not at FHS yet. Keney was present with [REDACTED] when the incident occurred.

128. Around 9:05 a.m., [REDACTED] broke a golf umbrella and [REDACTED] was immobilized after attempting to bite a staff member.

129. Around 11:00 a.m., Espana had not arrived yet and [REDACTED] was there with Keney. [REDACTED] became upset and began kicking classroom doors from the hallway; banging book bag loudly; refused to sit down in chair; smashed the printer in the classroom, and refused to transition to lunch. [REDACTED] went to lunch late with Espana once he arrived.

130. Keney testified that he noticed the mark on [REDACTED]'s face on November 30, 2009, that [REDACTED]'s parents discovered when [REDACTED] arrived home that day. [REDACTED]'s parents were not contacted by FHS about the injury.

131. [REDACTED]'s parents were never notified that Keney was hired to replace Espana or when Keney began working with [REDACTED]

132. Keney only worked with [REDACTED] five to seven days.

133. On December 1, 2009, Espana was late, and [REDACTED] started the morning by informing Keney that [REDACTED] was not going with him. [REDACTED] then ran away from Keney when Keney tried to get [REDACTED] to go see the friend, [REDACTED]. Soon thereafter, when [REDACTED] was getting P.E. clothes to go to the bathroom and change, [REDACTED] asked Keney if [REDACTED] could have lunch with

Espana alone. Espana explained to [REDACTED] that "We have lunch all three of us all together every day like we always do."

134. [REDACTED]'s response to Espana's denial was to go ask Schwartz if [REDACTED] could have lunch with Espana alone. She told [REDACTED] that was not an option, that it was the three of them and maybe tomorrow Espana and [REDACTED] could eat alone. [REDACTED] became upset with that answer and went into crisis by falling on the floor, banging the desk against the wall, and throwing objects like the headphones that shattered the fluorescent lights and a wooden pencil box that shattered all over the floor.

135. During the incident, staff followed the PCM. Staff did a room clear just for the safety of the other children.⁴ Staff instituted the required relaxation for [REDACTED] to calm [REDACTED] down. Staff did not use any type of immobilization because [REDACTED] was not injuring [REDACTED] or anybody else. During the tantrum, [REDACTED] said, "I will [REDACTED] kill you."

136. After [REDACTED] calmed down, Espana went to find a custodian to clean up the glass. When Espana returned, [REDACTED] was trying to kick or bite Keney. Since that was an aggressive behavior towards a person, Espana and Keney immobilized [REDACTED] for approximately 27 minutes by laying [REDACTED] on the mat.

137. After the room was cleaned and [REDACTED] calmed down, [REDACTED] was escorted by Espana and Keney to aerobics class. [REDACTED] participated in class. After class, Keney told [REDACTED]

that [REDACTED] would not be eating lunch in the cafeteria due to the earlier aggressive behavior in the morning and the they were going to eat in the classroom. [REDACTED]'s aerobics instructor saw [REDACTED] going into pre-crisis.

138. [REDACTED] reacted to Keney's talk and the change in lunch location by pushing items. Then [REDACTED] went into a crisis meltdown and tore the classroom up. [REDACTED] threw whatever [REDACTED] could get [REDACTED]'s hands on including markers, pencils, and a box of crayons. During the tantrum, [REDACTED] also asked to be left alone. Then, [REDACTED] started opening cabinets throwing things.

139. At one point, [REDACTED] found a pair scissors the cheerleaders use to cut signs for pep rallies. When [REDACTED] grabbed the scissors, Keney interrupted the crisis meltdown and asked for the scissors.

140. Keney testified that "I asked [REDACTED] if I could have the scissors because that was a safety concern. [REDACTED] asked me if I wanted them, and I said yes, and [REDACTED] threw them."

141. [REDACTED] responded, you can have them, before throwing the scissors to Keney.

142. Keney was approximately five feet away. The scissors were pointed on the end and approximately four inches long. They hit Keney's left side underneath the armpit area when he

turned away. A red mark which later became a bruise was on Keney from the scissors. Keney's shirt was not cut and his skin was not broken.

143. [REDACTED] was immobilized again. [REDACTED] was released when the crisis team thought [REDACTED] was calm.

144. Once [REDACTED] was free, [REDACTED] started pulling electrical wire off of the speaker cable in the room. Therefore, the crisis team immobilized [REDACTED] for a third time that day. Even though Keney should have been removed and replaced with a safe person, Keney participated in the immobilization and [REDACTED] attempted to bite Keney.⁵ [REDACTED] threatened to kill staff.

145. On December 1, 2009, Keney had [REDACTED] arrested for the scissors incident by the Pembroke Pines Police.⁶

146. Keney was not trained in PWS before working with [REDACTED]. Keney received his PWS training about a week after [REDACTED] was arrested.

147. Keney testified at hearing that the PWS training did not change his position that [REDACTED] should have been arrested for the incident even though he was aware that [REDACTED] was incapable of accepting consequences.

148. [REDACTED] was suspended on December 2, 2009, for seven days and recommended for expulsion again.

149. Shaulis reviewed the December 1, 2009, scissors incident with the District and it was concluded that [REDACTED] would be assigned to an alternative school for 45 days. Shaulis determined that [REDACTED] committed an aggravated battery based on the district's new matrix for ESE discipline. She decided that such an act is a basis to recommend expulsion for violation of the student code of conduct.

150. Shaulis was never trained in PWS. She did not evaluate the circumstances related to the scissors incident with [REDACTED] when deciding to assign [REDACTED] to an alternative school.

151. On December 2, 2009, Shaulis notified the team that [REDACTED] would be assigned to an alternative school for 45 days.

152. On December 3, 2009, a manifestation determination meeting was held regarding [REDACTED]'s scissors incident of December 1, 2009.

153. The FHS team determined that [REDACTED]'s conduct of throwing the scissors was a manifestation of [REDACTED]'s disability.

154. The team discussed the location for Shaulis' 45-day placement. The committee determined WPS was a better location than Lanier James, a disciplinary center, and FHS, for [REDACTED] because WPS was able to implement [REDACTED]'s IEP in a smaller environment with contained food.

155. During the committee meeting, Dr. Miller, ██████'s endocrinologist from Shands Hospital in Gainesville, Florida, advised the committee against placing ██████ in any alternative placement for 45 days because the change in ██████'s environment and the change in ██████'s routine would clearly cause ██████ to become more aggressive, and regress in academics and behavior, socially and emotionally.

156. ██████'s parents did not agree with the placement at WPS.

Whispering Pines School

157. Whispering Pines is a separate day school for students with an emotional behavioral disability. Students generally attend WPS if they are unable to participate within the general education setting due to mental health, and behavior issues that interfere with their ability to function within a school [general education] setting.

158. WPS students have limited access to food. There are no food sales.

159. Ms. Brown ("Brown"), a mental health therapist and lead therapist at WPS for eight years, has no experience with PWS students. She attended her first PWS training session in anticipation of ██████'s attendance.

160. Brown testified that she thought the intensive services at WPS could assist ██████ have more stability in a smaller setting where ██████ could be safer.

162. No other child with PWS has been assigned to WPS. None of the WPS staff has expertise in PWS.

163. WPS treats students by moving them through a level system; training, evolving, Achieving I, Achieving II, and Mastery. Moving through the levels can take a full school year which allows student to be closely monitored while receiving individual therapy, group therapy, and coping skills.

164. WPS is structured to control emotional and behavioral issues that can be controlled with use of the level system wherein the child strives to reach the top level for success.

165. ██████ cannot accept not getting a reinforcer even if ██████ will be able to obtain the reward. ██████'s negative behaviors are biologically-based and ██████ does not comprehend consequences.

166. ██████'s behavior can only be controlled by managing the environment. WPS's program cannot treat or change ██████'s medical condition, cure ██████ or teach ██████ not to respond to stress. Changing ██████ to a new environment or a new behavior management system puts ██████ in crisis. Transitions have to be gradual and fully understood in advance.

167. As a result of the committee's decision to send ██████ to WPS, the parents kept ██████ home and provided a tutor to deliver education to ██████. The tutor worked with ██████ providing supplementary instruction in pursuit of ██████'s IEP goals.

168. While ██████ was receiving at home tutoring, ██████'s parents were still trying to get ██████ enrolled in the Children's Institute in Pennsylvania.

169. Ms. S. felt that the School Board did not provide the help needed regarding ██████'s admission to the Children's Institute.

170. Ms. Strake ("Strake") attempted to contact Agency for Persons with Disabilities ("APD") to discuss placement for ██████ at the Children's Institute after the School Board received the request in October 2009 from ██████'s attorney regarding residential placement.

171. Ms. S. refused to sign a release for the School Board to talk to APD.

172. Starke called the Children's Institute and spoke to them about the program in general terms, but not about ██████ specifically because she did not have the release to do so.

173. In order for the District to use FTE dollars to fund a private placement, the process starts when an agency, such as APD, contacts the District and states that it is are placing a

student in a private residential facility. APD never contacted the School Board.

174. The District explained to ██████'s attorney on two occasions that the process of a student's FTE funding going to private placement is only after another agency places a student residentially.

175. When ██████'s parents were threatened with legal process for not having ██████ in school, the parents requested Hospital/Homebound services for ██████

176. ██████ received homebound services for approximately two weeks before being accepted in the Children's Institute. The issue of the appropriateness of the homebound instruction is not an issue in the case.

Children's Institute

177. On April 22, 2010, ██████ went to the Children's Institute in Pittsburgh Pennsylvania. ██████ was approved for a three-month stay funded by the Medicaid Waiver.

178. The parents took ██████ to the Children's Institute and attended the parents' training.

179. The Children's Institute is a pediatric physical rehabilitation facility and a hospital, which has a program composed almost entirely of children and adults with PWS. The program occupies one wing of the hospital. The PWS unit can serve as many as 14 or 15 patients.

180. The Institute serves several populations of individuals with PWS. The first group of patients typically has medical complications related to morbid obesity; the second are patients who have behavioral and psychiatric complications related to PWS; and the third is a combination of the first two.

181. PWS patients are admitted to the Children's Institute for medical and/or behavioral stabilization and treatment.

182. A treatment team assesses all individuals admitted to the Children's Institute. The team is composed of a psychologist; psychiatrist; speech, occupational, and physical therapist; and an educational support person.

183. The program is a short-term crisis treatment program. The length of stay at the Institute can be as short as two to three weeks, or as long as 60 to 70 days, the average being 30 days.

184. The Children's Institute is not a place where people go to live or to work or to be educated over the long haul. Individuals coming to the Institute are not coming for school placement, but coming for a treatment program.

185. The Institute does provide up to two hours of educational services per day. The teacher who works with the PWS patients also works with the other patients in the hospital. At the time of [REDACTED] deposition, the Institute had 41 patients.

186. Oftentimes patients at the Children's Institute lose a significant amount of weight while they are there because there is total food security, they are on a structured diet, and all the people in their community, families, and others are trained and learn how to manage food so that the patient does not go back into medical crisis.

187. Costs to the parents associated with [REDACTED]'s placement at the Children's Institute include cost of traveling, food, airline tickets, and car rental.

CONCLUSIONS OF LAW

188. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this cause pursuant to Sections 120.569, 120.57(1) and 1003.57(3)(i)and(e), Florida Statutes (2009), and Florida Administrative Code Rule 6A-6.03311.

189. Petitioner has the burden on proof in this proceeding. Schaffer ex rel. Schaffer v. Weast, 546 U.S. 49, 126 S. Ct. 528, 163 L. Ed. 2d 387(2005). The standard of proof is preponderance of the evidence. Devine v. Indian River County School Board, 249 F.3d 1289, 1291-92 (11th Cir. 2001); cert. denied, 537 U.S. 815, 123 S. Ct. 82, 154 L. Ed. 2d 19 (2002).

Whispering Pines 45-day placement

190. According to 34 CFR 300.530(g),

School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child-

(1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA;

(2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or

(3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.

191. When implementing the regulation at 34 C.F.R. Section 300.530(i)(4), the term "weapon" is defined in Florida Administrative Code Rule 6A-6.03312(1)(e), which states:

(e) Weapon. Weapon means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade that is less than two and one half (2 1/2) inches in length.

192. Schaulis testified that she followed the district's discipline matrix for an aggravated battery to determine [REDACTED] should have the 45-day interim placement.

193. Section 784.045 Florida Statutes, defines aggravated battery as:

(1)(a) A person commits aggravated battery who, in committing battery:

1. Intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; or

2. Uses a deadly weapon.

194. In this matter, whatever [REDACTED] touched while in crisis was thrown everywhere but not at people. However, [REDACTED] threw scissors to Keney after Keney asked for them without specific directions as to how to transfer the scissors. [REDACTED] confirmed with Keney that he wanted the scissors, and then [REDACTED] complied with Keney's request. [REDACTED] did not carry the scissors to school, and when [REDACTED] possessed the cheerleading scissors in hand, the scissors were an art tool for pep rallies. No evidence was shown to the contrary.

195. Even though the blade was sharp and approximately four inches long, the evidence fails to show the cheerleading scissors were a deadly weapon or were intended to cause "death or serious bodily injury," or that they were "readily capable of" inflicting such harm. Further, the testimony was that there

was no cut, blood, or tearing of clothes after the scissors hit Keney when he turned his body upon receipt of the scissors he requested from five feet away.

196. As such, the evidence does not support that ██████ possessed a weapon on December 1, 2009. Therefore, Petitioner has proven that the School Board's decision to place ██████ in the alternative interim setting was an unlawful placement, thereby violating its obligations under the IDEA.

197. Further, if the 45-day placement had been lawful, WPS would not have been the proper placement for ██████ because the behavioral system would have exacerbated ██████'s pre-crisis and crisis behaviors that are not conduct-based but medically-based.

FAPE

198. The IDEA defines FAPE at 20 U.S.C. Section 1401(a)(8) as:

[S]pecial education and related services that have been provided at public expense, under public supervision and direction, without charge; meet the standards of the State educational agency; include an appropriate preschool, elementary, or secondary school education in the state involved; and are provided in conformity with the individualized program required under section 1414(d).

199. The legal standard to be applied in determining whether a student has received FAPE is a two-pronged test described by the United States Supreme Court in Board of

Education of the Hendrick Hudson Central School District v.

Rowley, 458 U.S. 176, 206,102 S. Ct. 3034, 73 L. Ed. 2d 690

(1982), which states as follows in pertinent part:

First, has the State complied with the procedures set forth in the IDEA? And second, is the individualized education procedures reasonably calculated to enable the child to receive educational benefits? If these requirements are met, the state has complied with the obligations imposed by Congress.

200. IDEA's requirement for FAPE has been interpreted in Rowley to be satisfied when the school system provides the student with a "basic floor of opportunity consist[ing] of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child." Rowley, 458 U.S. at 2001-203.

201. In School Board of Martin County v. A.S., 727 So. 2d 1071, 1074 (Fla. 4th DCA 1999), the court discussed the nature and extent of the educational benefits which Florida school districts must provide to exceptional students, stating:

Federal cases have clarified what "reasonably calculated to enable the child to receive educational benefits" means. Education benefits under IDEA must be more than trivial or de minimis. J.S.K. v Hendry County Sch. Dist., 941 F. 2d 1563 (11th Cir. 1991); Doe v. Alabama State Dept. of Educ., 915 F. 2d 651 (11th Cir. 1990). Although they must be 'meaningful,' there is no requirement to maximize each child's potential. Rowley, 458 U.S. at 192, 198.

202. As the Eleventh Circuit stated in Devine, in characterizing the Supreme Court's decision in Rowley, "a student is only entitled to some educational benefit; the benefit need not be maximized to be adequate." Devine, supra, 249 F. 3d at 1292.

New Renaissance Middle School

203. Applying the standards above, it is clear that Respondent has provided Petitioner with FAPE while in eighth grade at NRMS.

204. ██████'s educational benefits at NRMS far surpass the trivial threshold in Hendry. ██████ had been evaluated in April 2007 and was reevaluated in November 2008 by Otto-Kulzer.

██████'s progress was demonstrated by ██████'s getting more answers correct in 2008. Also, in math ██████ was able to also perform subtraction, unlike in 2007, and ██████ could identify words that were more difficult as well as formulate simple responses. Additionally, a separate reading evaluation was completed by Pratt. The specific reading programs were recommended and subsequently purchased for use with ██████

205. ██████'s behavioral problems also improved while ██████ was at NRMS.

206. The factual findings expressed above and the documentary evidence in the record amply supports the conclusion

that Petitioner made progress across the board. Therefore, Respondent provided ██████ FAPE while in eighth grade at NRMS. Flanagan High School

207. Under the governing federal regulation, 34 C.F.R. Section 300.513 (2)(i)-(iii), a procedural violation can only be found to result in a denial of FAPE in limited circumstances. That regulation provides, in relevant part:

300.513 Hearing decisions.

(a) Decision of hearing officer on the provision of FAPE.

(1) Subject to paragraph (a)(2) of this section, a hearing officer's determination of whether a child received FAPE must be based on the substantive grounds.

(2) In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies-

(i) Impeded the child's right to FAPE;

(ii) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or

(iii) Caused a deprivation of educational benefit.

208. Petitioner addressed this issue by asserting that ██████ did not receive FAPE at FHS because ██████ failed to make any documented progress toward mastery of annual goals or short-term instructional objectives on the IEP's. However, Petitioner

failed to meet its burden and demonstrate its claim that FHS's research-based programs to fit ██████'s learning style were obtained, but not used. Further, the record does not show that ██████'s curriculum was not individualized.

209. To the contrary, the record shows that FHS continuously made changes to accommodate ██████'s individualized needs so that ██████ could receive educational benefits. FHS started setting up a specialized environment for ██████ to learn the Friday before school started when FHS was notified ██████ would start at FHS the next Monday. ██████'s parents and advocate were able to go to FHS to meet with the teacher on the same Friday as ██████'s acceptance into ninth grade. Swchartz immediately readjusted her classroom to make it food-secure. And, cooking was removed from ██████'s schedule to adhere to the food prevention restrictions.

210. PWS training was scheduled at the earliest date available on September 3, 2009, and all teachers, cafeteria workers, bus drivers, office staff and any other individual who might come in contact with ██████ were notified of the required attendance by email on August 28, 2009.

211. Raichandani also started working to get the crisis team assembled the first week of ██████'s attendance. She set up the three-day training starting September 17, 2009, and had the team certified by October 12, 2009.

212. Additionally, Raichandani continued to revise the BPIP and crisis management plans to address the new issues that came up at FHS, thereby continuously correcting any new found procedural inadequacies.

213. And, when the parents notified FHS they were dissatisfied with what was occurring at the school, FHS attempted to reevaluate [REDACTED] on November 12, 2009, to put a better plan in place at the parent's earliest available date after being out of the country for two weeks. FHS also implemented the TRIEP.

214. In order to improve communication, FHS also implemented a plan that included ABC Data sheets going home to the parents within 24 hours of an incident and the behavioral forms were sent home daily

215. Additionally, the testimony of [REDACTED]'s three teachers was that they were following the IEP and that [REDACTED] was progressing. Evidence was also presented that [REDACTED] progressed with language services. Petitioner failed to present evidence to the contrary.

216. The undersigned only addressed the issue of FAPE and FHS by addressing Petitioner's specific claims asserted in the Proposed Final Order under Petitioner's framed and noticed issue "Whether [REDACTED] can be provided a FAPE at FHS."

217. The undersigned is not persuaded by Petitioner's claims that assert FAPE can't be provided at FHS; Petitioner's claims were not established at hearing. Further, even though the parents were dissatisfied with the level of ██████'s educational progress in the short three months ██████ was at FHS, ██████ was given the basic floor of opportunity to have access to specialized instruction and related services individually designed for ██████ and ██████ progressed.

218. Therefore, Petitioner did not meet its burden to demonstrate its claims. And, Respondent provided ██████ FAPE within the framework of Petitioner's claims.

Implementation of ██████'s IEP at FHS

219. The unique educational needs of the particular child in question must be met by the IEP. Todd v. Andrews, 933 F.2d 1576 (11 Cir. 1991). The importance of the development of the IEP to meet the individualized needs of the handicapped child cannot be underestimated. Greer v. Rome City School District, 950 F.2d 668, Pet 695 (11th Cir. 1991).

220. "[T]he IDEA does not require that schools attempt to maximize a child's potential, or, as a matter of fact, guarantee that the student actually make any progress at all." CJN v. Minneapolis Pub. Sch., 323 F.3d 630, 642 (8th Cir. 2003); See also 34 C.F.R. § 300.350. The IDEA's legal obligations are fulfilled when the school district (1) complies with the law's

procedures in developing an IEP, and (2) the resulting IEP is "reasonably calculated to enable the child to receive educational benefits[.]" Rowley, 458 U.S. at 207.

221. "An IEP should be set aside only if procedural inadequacies compromised the pupil's right to an appropriate education, seriously hampered the parents' opportunity to participate in the formulation process, or caused a deprivation of educational benefits." Indep. Sch. Dist. No. 283 v. S.D. by J.D., 88 F.3d 556, 562 (8th Cir. 1996).

222. The parents are not contesting the IEP itself in this matter.

223. In Van Duyn, the Ninth Circuit held that a violation of IDEA exists if it is shown that the district materially failed to implement the student's IEP, not just when a school district does not perform exactly as detailed in the IEP. Van Duyn v Baker Sch. Dist. 502 F.3d 811,822 (9th Cir. 2007).

224. Petitioner asserts that Respondent compromised ██████'s right to an appropriate education and caused a deprivation of educational benefits.

225. Petitioner claims that FHS was not able to produce test scores, data compilations or samples to show progress. Further, the School Board failed to demonstrate records for the 12 goals in the IEP.

226. The record demonstrates that ██████'s IEP was implemented and ██████ made academic progress during the three months at FHS. Each of ██████'s teachers testified to the progress. Therefore, Petitioner does not demonstrate how ██████ was deprived of educational benefits.

227. However, Petitioner did demonstrate ██████'s right to an appropriate education was compromised. FHS compromised ██████'s right to an appropriate education by failing to provide the supportive services of PWS training to ensure ██████ the controlled environment needed for ██████'s education.

228. Looking at ██████'s unique needs in this matter, the record has shown that PWS training must be implemented for those coming in contact with ██████ to understand the necessity of external supports and properly implement controls required for ██████'s education. ██████'s genetic syndrome mandates that in order for ██████ to be successful in an educational setting, consideration must always be made regarding behavioral needs such as changes that trigger pre-crisis and crisis, which can only be learned with PWS training.

229. ██████'s IEP covers ██████'s unique needs by including a section, which mandates providing support for school personnel, special training on PWS, crisis plan, and PBIP, twice a year.

230. Schaulis was never trained in PWS even though she was FHS' principal and making decisions relating to ██████'s behavior like the 45-day unlawful placement. It is clear that the wording of ██████'s IEP that states, "All staff to participate in training on Pradi Willi Syndrome, Crisis Plan and PBIP to include medical alerts (including staff at other settings such ESY) twice annually" does not exclude Schaulis.

231. Additionally, Schaulis hired Keney, assigned him to work with ██████ as a behavior technician, and started Keney working with ██████ without Keney being trained in PWS. Keney was hired to be with ██████ one-on-one daily basis. The IEP specifically required prior training for such an interaction with ██████

232. The record demonstrates that the change of Keney in ██████'s daily activities escalated ██████'s negative behaviors. ██████ had problems with Keney from day one. Espana even testified that ██████ wanted to be with him alone without Keney. ██████ did not accept the change. Within a week of the addition of Keney, ██████ was physically restrained on two or three days, and injured on November 30, 2009.

233. Moreover, ██████'s parents were not notified about Keney to prepare and transition ██████ into working with a new person. December 1, 2009, was a crisis-ridden day for ██████, so much so that ██████ asked for help from both of the people

██████ trusted, Schwartz and Espana, to get away from Keney. However, ██████ was forced to be with the untrained Keney, went into crisis, yet again, and ultimately ended up arrested after following Keney's instruction.

234. The preponderance of the evidence establishes that the School Board was aware of the importance of the training in as much as FHS implemented it quickly school-wide when ██████, was enrolled at FHS the last minute. The procedural inadequacies of Schaulis and Keney not being trained in PWS compromised ██████'s right to an appropriate education.

235. Further, the FHS's failure to implement the requirement that all staff participate in the PWS training, is material thereby, depriving ██████ of FAPE.

Children's Institute

236. The Children's Institute is a pediatric physical rehabilitation facility and hospital which has a program comprised almost entirely of children and adults with PWS.

237. The record is clear that individuals admitted into the Institute are not going for school placement but for a treatment program. There is one teacher who works with all the patients in the hospital. A patient can receive up to two hours of educational services per day.

239. ██████'s placement at the Children's Institute was not for educational purposes, but for treatment.

240. Therefore, the parents are not eligible for reimbursement of expenses. Consequently, the parents should not be reimbursed with the expenses associated with the Children's Institute.

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

ORDERED that

1. The 45-day placement at Whispering Pines is unlawful.
2. The School Board shall convene an IEP team to meet and determine if ██████'s IEP should be changed since the therapy received at the Children's Institute. The Children's Institute evaluations, progress, and follow-up recommendations shall be considered by the team.
3. The IEP team members shall determine which, if any, educational placement the IEP can be implemented for ██████ to be placed, and the determination must be made before ██████ is placed.
4. The School Board shall ensure that anyone who works with ██████ directly or comes in contact with ██████ is trained in PWS. The School Board shall consult with PWSAUSA regarding providing training to staff at no cost to the District.
5. The School District shall invite PWSAUSA to participate at no cost to the district and confer to get input regarding

food monitoring and management at ██████'s educational placement.

6. The School Board shall ensure that Keney is never allowed to work with ██████ again.

7. The Parents should not be reimbursed with the expenses associated with the Children's Institute.

8. All other requests for relief are denied

DONE AND ORDERED this 3rd day of August, 2010, in Tallahassee, Leon County, Florida.

S

JUNE C. MCKINNEY
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 3rd day of August, 2010.

ENDNOTES

^{1/} The hypothalamus regulates feelings of satiety, eating. It is how one determines if they are full. It also regulates pain threshold, sleep cycle, and temperature.

^{2/} A behavior technician is not a para-professional because behavioral technicians work with students with behavioral problems. Their goal is to de-escalate negative behaviors and situations as well as help the student with educational work.

3/ Petitioner asserted that it was a violation of FAPE that SAR was not taught daily at FHS. Petitioner failed to show the undersigned where that was dictated in the IEP. The undersigned only had evidence of Pratt's testimony that the SAR should be taught daily.

4/ A room clear is part of [REDACTED] crisis management. If staff determines that other student's safety is an issue the other children leave the room. There is space set aside for them to go with substitute work for them to work on while out of the classroom.

5/ Keney testified that [REDACTED] bit him during the third immobilization and it drew blood. The undersigned finds Kenny's testimony lacks credibility since the December 1, 2009, ABC Monitoring Report stated that the behavior regarding the biting was an attempt.

6/ The undersigned is concerned that a behavioral technician would initiate an arrest of a student with known serious behavioral problems. Further, the school district's recommendation that Kenny be [REDACTED]'s behavior technician after the interim placement must be reevaluated. Based on the incidents that occurred between [REDACTED] and Kenny and their inability to get along, if the District were to have the two of them paired together in an educational relationship, it would be a hindrance and obstacle to [REDACTED] learning.

COPIES FURNISHED:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

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

- a) brings a civil action in the appropriate state circuit court pursuant to Section 1003.57(1)(b), Florida Statutes (2009), and Florida Administrative Code Rule 6A-6.03311(9)(w); or
- b) brings a civil action in the appropriate district court of the United States pursuant to 20 U.S.C. § 1415(i)(2), and Florida Administrative Code Rule 6A-6.03311(9)(w).