STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

[redacted],	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 10-0396E
	)	
LEON COUNTY SCHOOL BOARD,	)	
	)	
Respondent.	)	
	)	

FINAL ORDER

A formal due process hearing was held in this case before Lawrence P. Stevenson, Administrative Law Judge of the Division of Administrative Hearings, on May 17 through 19, 2010, in Tallahassee, Florida.

APPEARANCES

For Petitioner: [redacted], Petitioner's father
Qualified Representative
(Address of record)

For Respondent: J. Jeffry Wahlen, Esquire
Daniel E. Nordby, Esquire
Ausley & McMullen
Post Office Box 391
Tallahassee, Florida 32302

STATEMENT OF THE ISSUE

Whether Respondent, the Leon County School Board ("School District") denied Petitioner [redacted] a free, appropriate public education ("FAPE") pursuant to the Individuals with Disabilities

Education Act ("IDEA") and, if so, to what relief is [redacted] entitled for the School District's denial of FAPE.

The parties stipulated to eleven Subordinate Issues[1/]:

1. Whether the School District sufficiently considered [redacted]'s educational needs and personal welfare in conducting an IDEA eligibility meeting in August 2008, in compliance with Florida Administrative Code Rule 6A-6.0331;[2/]

2. Whether the School District considered the results of [redacted]'s parent-initiated evaluations that were provided at the August 20, 2008, eligibility team meeting, as required by Florida Administrative Code Rule 6A-03311(7)(i);

3. Whether [redacted]'s parent-initiated evaluations provided at the August 20, 2008, eligibility team meeting met the criteria set forth in Florida Administrative Code Rule 6A-6.03311(7)(d) for consideration as "independent educational evaluations," and, if so, whether the School District considered the results of these evaluations at the August 20, 2008, eligibility team meeting;

4. Whether the School District completed its initial evaluation of [redacted] within the time period prescribed by Florida Administrative Code Rule 6A-6.0331(4)(b) and (c);

5. Whether the School District provided [redacted]'s parents with an opportunity to give informed parental consent at any time after they withdrew their consent on December 9, 2008;

6. Whether the School District made reasonable efforts to obtain the informed consent of [redacted]'s parents as required by Florida Administrative Code Rule 6A-6.03311(3);

7. Whether the School District used a parent's refusal to give consent to one service or activity under Florida Administrative Code Rule 6A-6.03311(3) to deny [redacted] or the parent any other service, benefit or activity, in violation of Florida Administrative Code Rule 6A-6.03311(3)(g);

8. Whether the School District interfered with [redacted]'s access to state complaint procedures made available under Florida Administrative Code Rule 6A-6.03311(6);

9. Whether the School District interfered with [redacted]'s access to a due process hearing under Florida Administrative Code Rule 6A-6.03311(11);

10. Whether the School District considered all relevant information known to the School District in attempting to conduct an evaluation of [redacted] under Florida Administrative Code Rule 6A-6.0331(4); and

11. Whether the School District violated the IDEA by disclosing personally identifiable information about [redacted] without parental consent during a December 9, 2008, public meeting of the School District.

PRELIMINARY STATEMENT

This matter commenced upon the filing with the School District of a Request for Due Process Hearing (the "Petition") on January 25, 2010, by then-counsel for [redacted] The School District forwarded the Petition to the Division of Administrative Hearings ("DOAH") on January 27, 2010.

The parties used the 30-day resolution period under current Florida Administrative Code Rule 6A-6.03311(9)(o), then the School District filed a Consented Motion to Extend the Resolution Period on February 23, 2010. The motion was granted by order dated February 24, 2010. The order extended the informal resolution period to April 1, 2010.

On March 18, 2010, counsel for [redacted] filed a Motion to Withdraw citing his client's desire to obtain alternative counsel. The School District did not object to the motion, which was granted by order dated March 19, 2010.

On March 29, 2010, the School District filed a Motion for Summary Final Order on the ground that the relief sought by [redacted] could not be granted by this tribunal unless and until [redacted]'s parent consented to the School District's evaluation of [redacted] On April 1, 2010, Petitioner filed a Motion to Act on the School District's Motion for Summary Final Order, essentially a cross-motion for summary final order on the ground that the Superintendent of Schools for Leon County had already determined

that [redacted] was eligible for services under the IDEA. A telephonic hearing was held on both motions, which were denied.

The final hearing was scheduled for and held on May 17 through 19, 2010. At the outset of the hearing, it was stipulated that [redacted]'s father, [redacted], could act as [redacted]'s qualified representative. Also at the outset of the hearing, the parties stipulated to the admission of [redacted]'s Exhibits A through Y and the School District's Exhibits 1 through 69.

[redacted] offered an unsworn statement, and presented the testimony of [redacted]; Dr. Margot Palazesi, a Program Specialist for Compliance with the School District; Cindy Evers, a licensed clinical social worker and [redacted]'s treating therapist; Jackie Pons, Superintendent of Schools for Leon County; Andrea Blaylock, a Corrections Officer for the Department of Corrections, called to corroborate [redacted]'s version of a meeting with Mr. Pons on December 2, 2009; and Bruce Harrison, the School District's Coordinator of Exceptional Student Education ("ESE"). [redacted]'s Exhibit Z was admitted into evidence during the hearing.[3/]

The School District presented the testimony of Dr. Palazesi; Jo Wenger, Director of Student Services for the School District; Ward Spisso, former Director of ESE for the School District; and Meredith Sheldon, a speech-language pathologist for the School District.

A seven-volume transcript was filed at DOAH on June 1, 2010. On June 4, 2010, Petitioner filed a Consented Motion to Extend the Deadline for Filing Proposed Final Orders, which was granted by order dated June 7, 2010. Consistent with the order granting extension, the parties filed their Proposed Final Orders on June 21, 2010.

On June 29, 2010, the School District filed a Motion for Leave to Supplement the Record with an additional exhibit not received by the School District until after the hearing was completed. By Order dated July 26, 2010, the motion was granted and the School District's Exhibit 70 was accepted into evidence.

FINDINGS OF FACT

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

1. Petitioner [redacted] was born [redacted], and was [redacted] years old at the time of the hearing. [redacted] was not enrolled as a student in the School District at the time of the hearing. [redacted] had previously been enrolled as a student at [redacted] Middle School, and then at [redacted] High School ("[redacted]") from August 2007 through February 2008.

2. [redacted]'s parents withdrew [redacted] from [redacted] on February 7, 2008. [redacted] commenced home school, but continued to take Junior [redacted] and, later, art as non-core academic courses at [redacted].

3. [redacted] has not been identified as a student with a disability under the IDEA.

4. On February 22, 2007, [redacted] was identified as a student with a disability for purposes of Section 504 of the Rehabilitation Act of 1973, as amended.[4/] [redacted] was determined eligible for accommodations under Section 504 due to a medical condition called Neurocardiogenic Syncope, which is a temporary loss of consciousness associated with a drop in arterial blood pressure. It is the most common cause of fainting spells in young people. The School District developed a Section 504 accommodation plan for [redacted] on March 8, 2007.

5. On December 14, 2007, [redacted] fell down a flight of stairs at [redacted] and was taken to [redacted] Hospital for observation. Though there was a hearsay report that [redacted] intentionally jumped, the greater weight of the reliable evidence indicates that [redacted] fainted and fell down the stairs.

6. On [redacted], [redacted] wrapped a belt around [redacted]'s own neck and tightened it to the point of leaving marks. If not an outright suicide attempt, this was at least a suicidal gesture. [redacted] was taken to [redacted] Health Center and remained hospitalized from January 18 through 23, 2008.

7. On January 24, 2008, [redacted] attempted to return to school. Assistant Principal Scott Hansen of [redacted] was concerned for [redacted]'s safety, and wrote a letter to [redacted]'s parents. The

letter, dated January 24, 2008, stated that [redacted] intended to set up an intervention team meeting to meet with the student, parents, the doctor, staff, guidance personnel and a psychologist to make a determination as to the best educational options for [redacted]. The letter concluded with the statement that [redacted] would be on "administrative leave (excused absent)" until the meeting, and that make-up work would be provided.

8. At the hearing, the School District conceded that it does not have a policy or rule calling for "administrative leave" for students. Ward Spisso, then the School District's Director of ESE, testified that Mr. Hansen conjured "administrative leave" as an alternative to suspension, which carries a connotation of disciplinary action.[5/] Mr. Hansen "was trying to do a good deed," according to Mr. Spisso, because he did not want [redacted] to return to school before all concerned parties could meet and determine the best means to ensure [redacted]'s safety while on the [redacted] campus. [redacted]'s parents strongly disagreed with Mr. Hansen's action because they wanted [redacted] back in school as early as possible.

9. In response to Mr. Hansen's letter, [redacted]'s parents provided the School District with a letter dated January 24, 2008, from Dr. Mark Strickland, a psychiatrist who practiced at [redacted] Health Center. The letter stated that [redacted] was released from the hospital on [redacted], in stable condition and that the

plan at discharge was for [redacted] "to return to school without restriction and continue further evaluation and minor treatment adjustment on an outpatient basis."

10. On January 31, 2008, the School District convened an intervention team, including Dr. Palazesi,[6/] at [redacted] to review [redacted]'s status. The team met with [redacted]'s parents, [redacted]'s attorney, and [redacted]'s therapist, Cindy Evers. The team had the letter from Dr. Strickland, as well as [redacted]'s grades, attendance and discipline records from the fall 2007 semester. [redacted] had a 2.0 grade point average. [redacted]'s parents found these grades to be so low as to indicate a problem, but Dr. Palazesi testified that it was not unusual for a student transitioning from middle school to high school to struggle somewhat in the first semester of [redacted] grade.

11. At the intervention team meeting, Ms. Evers reviewed the events leading to [redacted]'s psychiatric hospitalization. [redacted]'s parents revealed that [redacted] had been diagnosed with bipolar disorder. Ms. Evers told the team that [redacted]'s disorder was well maintained with medication. [redacted]'s parents also disclosed that [redacted] had been referred to Dr. Marilyn Jennings, a psychologist at [redacted] Behavioral Health Center, for a neurological evaluation to determine whether [redacted] had a cognitive dysfunction.

12. The team discussed the best way to transition [redacted] back into school. Ms. Evers recommended that a staff person be appointed as [redacted]'s "point person," whom [redacted] could consult with any problems and who would provide positive reinforcement and motivation to [redacted] Ms. Evers also recommended that teachers and staff be alerted to observe [redacted]'s behaviors, and that [redacted]'s parents receive a daily email from the school reporting on [redacted]'s attitude and academic progress.

13. Based on all the information presented at the meeting, the team decided that [redacted] should be evaluated for possible eligibility for ESE services under the IDEA. Because Ms. Evers had stated that [redacted]'s bipolar condition was well managed with medication, and Dr. Strickland had cleared [redacted] to return to school without restriction, the intervention team's primary concern was to explore the possibility of cognitive dysfunction in [redacted]

14. At the January 31, 2008, meeting, [redacted]'s parent signed a "Parent Consent for Evaluation" form provided by the School District. The form stated that the "evaluation procedure may include individual assessment, classroom observation, individual or group counseling, or parent and teacher interviews." The form then set forth a list of "assessment areas" that are recommended for a particular child. The assessment areas recommended for [redacted] were:

Psycho-Educational Evaluation –- to assess intellectual, academic, perceptual, behavioral/social, or language skills.

Vision Screening/Evaluation –- to screen/evaluate vision.

Hearing Screening/Evaluation –- to screen/evaluate hearing.

Speech-Language Screening/Evaluation –- to screen/evaluate communication skills.

Social Assessment –- to assess the behavioral, social or developmental factors affecting learning.

15. Also on [redacted], [redacted]'s parent signed a School District form titled "Request for Release of Records and/or Information from Records." This document provided that [redacted]'s psychological report, intelligence and aptitude tests, and health and medical records could be released by [redacted]'s providers to [redacted] for purposes of an ESE evaluation.

16. As of January 31, 2008, [redacted]'s parents had not disclosed to the School District any concerns relating to Asperger's syndrome, attention deficit hyperactivity disorder ("ADHD"), or anxiety disorder. [redacted] was cleared to return to school at the January 31, 2008, meeting, and returned to school on [redacted].

17. The School District commenced pre-referral activities soon after [redacted] returned to [redacted] A hearing and vision screening was performed on February 4, 2008, and a speech-

language screening was conducted on February 11, 2008, by Meredith Sheldon, a speech-language pathologist employed by the School District.

18. Also as part of the pre-referral process, [redacted]'s mother met with classroom teacher Danley Skelly and Referral Coordinator Mary Kay Wells on February 7, 2008, to discuss the design of an intervention plan for [redacted] that was being developed by the intervention team. At these meetings on February 7, 2008, [redacted]'s mother told the School District personnel that she intended to withdraw [redacted] from [redacted] and to begin home schooling. In light of the parent's announced intentions, the intervention team tabled its intervention plan.

19. [redacted] enrolled in home education effective February 7, 2008. At the request of [redacted]'s parents, [redacted] was allowed to continue participation in Junior [redacted] as a non-core academic course at [redacted]. [redacted] was later also allowed to participate in art, another non-core course. The School District allows home-schooled students to participate in non-core academic activities such as sports, clubs, and some elective classes.

20. The School District's position, as articulated by Mr. Spisso, is that the IDEA does not require the provision of FAPE to home-schooled students.[7/] However, Mr. Spisso also testified that the School District's "Child Find" obligation required it to continue its evaluation of [redacted] even after [redacted]'s

withdrawal to home schooling. See 20 U.S.C. § 1412(a)(3). Therefore, the School District continued the evaluation process.

21. [redacted] was referred to the School District's Student Services department for a formal evaluation. Student Services received the referral for psychological and social work services on February 13, 2008, after the intervention team had completed its pre-referral activities.

22. The School District had 60 school days in which to complete the evaluation, counting only the days [redacted] attended school. Fla. Admin. Code R. 6A-6.0331(4)(b). The 60 days began to run on February 13, 2008, when the pre-referral activities were complete and the referral was received in Student Services. If [redacted] attended school every day after the referral, then the School District's initial evaluation would have to be completed by May 15, 2008.

23. Based on the information available to the School District at the time, it was determined that the two primary components of the evaluation, in addition to the pre-referral activities, would be a social assessment and a psychological evaluation.

24. School District social worker Judith Felder conducted a social assessment interview with [redacted] and the parents on February 25, 2008. [redacted]'s parents told Ms. Felder that they adopted [redacted] when the child was one week old. [redacted] has been the

object of teasing and bullying since the third grade, but the parents could not identify a reason other than [redacted]'s peculiar vulnerability. They stated that [redacted] has been in counseling with Ms. Evers since the second grade for issues such as defiance, obsessive-compulsive disorder, and difficulties relating to peers. [redacted] was taking medication for seizures, which the parents believed could be related to or the cause of [redacted]'s Neurocardiogenic Syncope.

25. [redacted]'s parents told Ms. Felder about the [redacted], incident of falling down the stairs and the [redacted], incident involving self-strangulation with a belt. They believed that the belt incident was attention seeking behavior rather than an effort at self-harm. The parents discussed the referral to Dr. Jennings at [redacted] They stated that there is a question whether [redacted] has a cognitive processing deficit, and that [redacted] had a diagnosis of bipolar disorder. They reported that [redacted] was on several medications: Trileptal, a brand name for oxcarbazepine, an anticonvulsant seizure medication; Abilify, a brand name for aripiprazole, an antipsychotic drug generally used in the treatment of schizophrenia, bipolar disorder, and clinical depression; Lamictal, a brand name for lamotrigine, an anticonvulsant used to treat seizures and as a mood stabilizer for patients with bipolar disorder; and a medication identified by the parents only as "a patch of a new drug" to treat ADHD.

26. Ms. Felder's report included results from the Parent Rating Scale portion of the Behavior Assessment System for Children, Second Edition ("BASC-2"). The results indicated that [redacted] was "in the at-risk and clinically significant ranges in a number of scales," and that [redacted]'s parents agreed that [redacted] shows clinically significant signs of depression.

27. On February 12 and 28, 2008, Dr. Jennings administered a neuropsychological evaluation to [redacted] The School District's School Psychologist, Al London, had been in contact with Dr. Strickland at [redacted]. In early February, Dr. Strickland informed Mr. London that Dr. Jennings was going to perform a neuropsychological evaluation on [redacted] and agreed to forward Mr. London's phone number to Dr. Jennings. Mr. London decided to delay his own evaluation of [redacted] until he could coordinate with Dr. Jennings in order not to duplicate her evaluations. [redacted]'s father agreed with Mr. London's plan.

28. Dr. Jennings administered the following tests: Asperger's Syndrome Diagnostic Scale ("ASDS"); Behavioral Rating Inventory of Executive Function; NEPSY-II, a "developmental neuropsychological test battery designed to assess neurocognitive functioning in children and adolescents ages 3 to 16 years"; and the Wechsler Intelligence Scale for Children, Fourth Edition ("WISC-IV"). Dr. Jennings wrote an 18-page report. Her DSM-IV Axis I[8/] diagnoses were Asperger's syndrome

and cognitive disorder not otherwise specified ("NOS"). In her text, Dr. Jennings characterized [redacted] as in the "likely" range for Asperger's syndrome, based on the ASDS assessment completed by [redacted]'s father. Dr. Jennings' report cautioned that Asperger's was a "working hypothesis" subject to further testing after [redacted]'s condition became more stable.

29. Also on February 28, 2008, [redacted]'s mother completed an "Authorization to Release" form, apparently produced by [redacted] Hospital that authorized Dr. Jennings to release to Mr. London only the results of the WISC-IV testing.

30. Dr. Jennings sent the WISC-IV results to Mr. London on March 20, 2008. The WISC-IV indicated that [redacted]'s full scale IQ was 89, which placed [redacted] at the 23rd percentile of children in [redacted]'s age group.

31. Also on March 20, 2008, Dr. Jennings sent the full neuropsychological report to [redacted]'s parents with a cover letter informing them that Mr. London had been provided only the WISC-IV results.

32. Because [redacted]'s mother limited the amount of information released to Mr. London, the School District was deprived of the significant information that Dr. Jennings had diagnosed [redacted] as likely having Asperger's syndrome.

33. At the hearing, no witness for [redacted] could offer a satisfactory explanation for the parents' decision to conceal

Dr. Jennings' diagnosis from the School District. At the hearing, [redacted] emphasized, correctly, that [redacted]'s parents were under no legal obligation to provide the School District with the results of private evaluations performed at [redacted] Health Center. However, this statement of the law does not explain why the parents would want to hold back test results during a cooperative process intended to determine their child's eligibility for ESE services.

34. [redacted] repeatedly stated that [redacted] intention was to allow the School District to perform its own evaluations, without being biased by the private evaluations.[9/] The evidence makes it far more plausible to find that [redacted]'s parents had already convinced themselves that their relationship with the School District was and would remain adversarial.[10/] After [redacted]'s hospitalization in January 2008, and the subsequent "administrative leave" incident, the parents' cooperation with the School District would always be grudging and provisional.

35. The School District's psychological evaluation of [redacted] was conducted by Mr. London on May 7, 2008. Mr. London administered the Woodcock-Johnson Tests of Achievement, Third Edition ("WJ-III"). He had [redacted]'s teacher, Ms. Skelly, complete the Teacher Rating Scale of the BASC-2, and he considered the WISC-IV results provided by Dr. Jennings.[11/]

36. Mr. London's report was completed on May 7, 2008, and was received in Student Services on May 13, 2008.[12/] Both of these dates were within the 60 day window for completion of [redacted]'s initial evaluation. See Finding of Fact 22, supra.

37. On May 28, 2008, ESE staffing specialist Beth Green sent a letter to [redacted]'s parents that read as follows:

> The Exceptional Student Education Office has received the preliminary evaluation results regarding [redacted]. In reviewing the background information in the report, I noticed there was an additional evaluation conducted by Dr. Marilyn Jennings on 2/28/08. The report also indicated that [redacted] has been prescribed a new drug for ADHD which [redacted] has not been on for very long.
>
> Before scheduling [redacted's] staffing I wanted to give you an opportunity to submit any additional information or report to us for consideration. Also, prior to the staffing we are requesting that the ROTC instructor submit written classroom observation for the staffing committee's consideration.
>
> Given the lateness in the school year, we will probably schedule the staffing at [redacted] in August. Please contact this office (487-7155) if you need further clarification in this matter.

38. Mr. Spisso testified that when an evaluation is completed near the end of a school year, it is "very common" for the ESE office to schedule staffing meetings at the beginning of the next school year. Most School District employees do not work during the summer months, making it difficult to schedule a

staffing. Further, by waiting until the fall, the School District is able to have the teachers who will be teaching the student attend and participate in the meeting. The record indicated that [redacted] was having no attendance or discipline problems, indicating that [redacted] was responding appropriately to the new ADHD medication and could reasonably wait until the start of the new school year for a staffing meeting.

39. At the hearing in this case, [redacted] voiced his displeasure over the delay in the staffing meeting, and attempted to elicit agreement from School District witnesses that the delay was unreasonable. However, no evidence was presented that [redacted]'s parents made any contemporaneous objection to scheduling the staffing meeting in August 2008.

40. Despite the suggestion in Ms. Green's letter that [redacted]'s parents submit Dr. Jennings' evaluation and elaborate on the new ADHD drug that [redacted] was taking, [redacted]'s parents submitted no new information to the School District prior to the eligibility team staffing on August 20, 2008.[13/]

41. Both Ms. Palazesi and Mr. Spisso testified that, as August 20 approached, they believed the School District had sufficient information with which to hold an eligibility staffing and make a finding as to [redacted]'s eligibility.[14/] They had no reason to believe that there were areas of suspected disability beyond those that the evaluation team had

investigated, i.e., bipolar disorder, which could provide grounds for a finding of eligibility under the "Emotional Behavioral Disability" ("EBD") category; cognitive dysfunction, which could make [redacted] eligible under the "Specific Learning Disability" ("SLD") category; and ADHD, which could lead to a finding of eligibility under the "Other Health Impairment" ("OHI") category.[15/]

42. On August 20, 2008, the third day of the 2008-2009 school year, the School District convened an eligibility staffing team meeting, pursuant to notice, to consider [redacted]'s evaluations. Those present at the meeting included: [redacted]'s parents and their lawyer; Ms. Evers; Staffing Specialist Beth Green; Ms. Palazesi; Mr. Spisso; Ms. Felder; Ranae Meehan, a school psychologist; [redacted] Principal Merry Ortega and Assistant Principal Deborah Barnes; Charley Fowinkle, the Commander of [redacted]'s Junior [redacted] unit; and Jeffry Whalen, the School District's legal counsel.[16/]

43. Ms. Meehan, who was substituting for Mr. London, led the discussion regarding Mr. London's psychological services report. Ms. Felder thoroughly discussed her social assessment.

44. At some point during the meeting, [redacted]'s parents produced two reports that the School District had not seen previously. The first was a redacted copy of a private speech-language evaluation conducted on May 22, 2008, by Janet

Hastings, a speech language pathologist at [redacted] Rehabilitation Center. The School District had been unaware of this evaluation.

45. Ms. Hastings' report describes her assignment as a "review of neuropsychological evaluation cognitive deficits, informal executive functioning and reasoning task and word fluency task." Ms. Hastings administered the Test of Problem Solving 3 ("TOPS-3"), which is designed to measure reasoning in context for children up to age 13. The report noted that because [redacted] was [redacted] years old, the TOPS-3 could yield only an age equivalency result. At the hearing, School District speech-language pathologist Meredith Sheldon testified that the TOPS-3 test was not a comprehensive test, was not age-appropriate, and therefore could not be used by the School District as the basis for an eligibility determination.

46. The second report produced by [redacted]'s parents was a redacted version of the full neuropsychological evaluation conducted by Dr. Jennings on February 12 and 28, 2008. See Finding of Fact 28, supra, for details of the evaluation. Prior to August 20, 2008, the School District had only received the WISC-IV intelligence test results from Dr. Jennings.

47. The staffing team considered and discussed all the available evaluations: the social assessment by Ms. Felder, the

psychological report by Mr. London, the redacted report from Dr. Jennings, and the redacted report from Ms. Hastings.

48. Mr. Spisso, as chair of the meeting, called for a recess to allow the School District members of the staffing team to consult with the School District's legal counsel for advice as to whether the team should proceed with the eligibility determination or seek to perform further evaluations.[17] Mr. Spisso testified that after the conference with counsel, he reconvened the meeting and explained to [redacted]'s parents that, in light of the new information they had provided, the School District would be obligated to conduct further evaluations of [redacted] before an eligibility determination could be made.

49. The contemporaneous notes taken at the meeting by Ms. Green stated that the School District was "unable to determine eligibility for ASD (Autism Spectrum Disorder), EBD, or OHI due to TMH report and S/L private report not available to [the School District] until 8-20-08." Mr. Spisso explained to the parents that, at a minimum, [redacted] required an age-appropriate speech-language evaluation, a functional behavioral assessment ("FBA"), and the administration of the Gilliam Autism Rating Scale, Second Edition ("GARS-2") or similar test to determine the appropriateness of the Asperger's diagnosis made by Dr. Jennings.[18/]

50. [redacted]'s parents agreed to the proposed additional testing. The team agreed by consensus that [redacted] would be given time to get settled into school before the commencement of testing.[19/] The understanding was that the speech-language evaluation would be scheduled shortly after the Labor Day holiday, which was about one week away at that point. No objections to the proposed course of action were raised by [redacted]'s parents or their attorney.

51. Ms. Sheldon, the School District's speech-language pathologist, was assigned to perform the speech-language evaluation on [redacted] She contacted [redacted]'s mother on September 5, 2008, to schedule the evaluation. [redacted]'s mother told Ms. Sheldon that [redacted] had been privately evaluated, and that she would speak with her lawyer and get back to Ms. Sheldon with the lawyer's recommendation. Ms. Sheldon called [redacted]'s mother again on September 8, 2008, but was unable to reach her. [redacted]'s mother left a voice-mail message for Ms. Sheldon asking for the name of the test that Ms. Sheldon planned to administer to [redacted]

52. In an email message to the School District's counsel, dated September 11, 2008, [redacted]'s attorney Joshua Jones stated as follows, in relevant part:

> On another note, [[redacted]'s parents] would like to request mediation to help determine eligibility so that the process can move forward. Given that [[redacted]] has a clear diagnosis of Asperger's Syndrome, emotional

> and behavioral disturbances, and a speech processing issue, she should be considered eligible for IDEA services. I understand that they received a request for speech evaluation earlier this week, consent for which the [parents] are hesitant to give because such issues have already been addressed through private evaluation. Can you please let me know the purpose of another speech evaluation?[20/] The school's delay for the purpose of conducting yet another evaluation, which will likely confirm what is already on the record, is troubling....

53. On September 19, 2008, [redacted]'s parents withdrew consent for the School District to evaluate [redacted] for eligibility under the IDEA. In their withdrawal letter, [redacted]'s parents stated their intention to seek mediation, and directed the School District to address all further correspondence to Mr. Jones.

54. Mr. Jones stayed in touch with the School District's attorney, Jeffry Whalen. In an email dated September 30, 2008, Mr. Jones stated:

> The [parents'] position is that the school has a complete and full evaluation in its hands, coupled with an independent evaluation at their own expense, and thus, further testing will add unnecessary stress to [redacted] and jeopardize progress [redacted] has made in therapy and further alienate [redacted] from [redacted's] peers. They feel that the school has ample information to make a determination of eligibility.

55. In an email dated October 8, 2008, Mr. Whalen responded as follows, in relevant part:

> ...[T]he District believes that it needs to do a full and complete evaluation in all areas of suspected disability, including a speech and language evaluation and requests that [[redacted]'s parents] reinstate consent so the District can complete its evaluation and a determination on IDEA eligibility can be made. Although the District is sympathetic to concerns about additional testing, the District notes that the parent initiated evaluations provided to the District when we met in early September[21/] were done without the knowledge of or in concert with the District, were redacted and that the District is entitled to perform its own evaluations using experts of its choice. . .

56. On October 1, 2008, [redacted]'s attorney filed a request for mediation with the Florida Department of Education ("FDOE"). Participation in the mediation process is voluntary under the IDEA, and requires the consent of all parties. 20 U.S.C. § 1415(e). The School District did not think that mediation would be productive because of its conviction that a full and complete evaluation of [redacted] in all areas of suspected disability was required. The School District notified FDOE that it did not wish to participate in mediation. By letter to the parties dated October 22, 2008, FDOE cancelled the mediation case.

57. On October 29, 2008, [redacted]'s parents reinstated their consent for evaluation by signing a new consent form. The proposed assessment areas checked on the form[22/] were:

> Psycho-Educational Evaluation—- to assess cognitive, academic, and/or behavioral/social skills.

Vision Evaluation-- to evaluate vision.

Hearing Evaluation—- to evaluate hearing.

Speech-Language Evaluation—- to evaluate communication skills.

58. [redacted]'s parents also signed a new written consent for release of records to the School District. They consented to the release of psychological reports, standardized achievement scores, intelligence and aptitude tests, education-related health and medical records. Under a category on the release form titled "Other," the following was written by hand: "neuropsychological evaluation or any similar psychological eval, speech-language evaluation."

59. In a letter to [redacted]s parents dated November 7, 2008, Mr. Spisso acknowledged receipt of their request for the School District's records relating to [redacted], stated that the School District had identified 373 pages of responsive documentation, and requested payment of [redacted] for copies of the documents. Mr. Spisso testified that this was the standard charge for copies of all School District documents except for Individualized Education Programs ("IEPs"), copies of which are provided to parents at no charge.[23/]

60. In his letter, Mr. Spisso also requested a list of mental health professionals who had worked with [redacted] over the past two years, to enable the School District to request psycho-

social records. Finally, Mr. Spisso requested that [redacted]'s parents restrict their contacts with the School District to himself, Ms. Ortega, or Mr. Whalen, to "avoid any confusion regarding [[redacted]'s] due process rights."

61. In separate letters dated November 10, 2008, Dr. Palazesi requested un-redacted copies of all records relating to [redacted], including "neuro-psychological evaluations, similar psychological evaluations, and speech and language evaluations," from Ms. Hastings at [redacted] Rehabilitation Center, from Drs. Strickland and Jennings at [redacted] Behavioral Health Center, and from Ms. Evers.

62. At the hearing, Ms. Evers acknowledged that she received the letter from Dr. Palazesi but testified that she provided no documents to the School District in response.

63. On November 13, 2008, Ms. Sheldon spoke with [redacted]'s mother and arranged for a speech-language evaluation of [redacted] on November 19, 2008. This evaluation was canceled due to [redacted]'s medical absence from school from November 14 through 25, 2008. Ms. Sheldon attempted to contact [redacted]'s mother on December 3, 5, and 8, 2008, but was never able to reschedule the evaluation.

64. On November 13, 2008, in response to Dr. Palazesi's November 10, 2008, request, [redacted] Behavioral Health Center provided to the School District a psychological evaluation performed by psychologist Dr. Larry Kubiak on January 21, 2008,

while [redacted] was hospitalized following the belt incident at school.

65. Dr. Kubiak's DSM-IV Axis I diagnoses of [redacted] were cognitive disorder NOS; rule-out (R/O) bipolar disorder; oppositional defiant disorder; eating disorder NOS; and ADHD combined type. Dr Kubiak's report found indications that [redacted] may be at risk for suicide and recommended that "reasonable precautions" be taken to keep [redacted]'s environment safe, "including limiting [[redacted]'s] access to guns, knives, and medications with a potential for overdose." Dr. Kubiak recommended establishment of a "therapeutic alliance" between [redacted] and an outpatient therapist, and that [redacted] should be closely monitored "through periodic comprehensive suicide risk assessment."

66. Dr. Kubiak also stated the following: "There were indications [[redacted]] may be eligible for ESE placement. It is important for a staffing committee at the school to review the results of this evaluation very closely in order to make the most appropriate educational decision on this individual's behalf."

67. As did Dr. Jennings, Dr. Kubiak concluded his report with the cautionary note that his diagnosis should be viewed as a "working hypothesis," subject to further testing after [redacted]'s condition has stabilized.

68. The School District naturally assumed that Dr. Kubiak's report had been held back by [redacted]'s parents, given their earlier withholding of the evaluations by Dr. Jennings and Ms. Hastings. At the hearing, [redacted] testified that he and his wife were likewise unaware of the existence of Dr. Kubiak's report before the hospital provided it to the School District. [redacted] testified that he and his wife have never met or spoken with Dr. Kubiak. [redacted]'s testimony is credited on this point, though the School District's skepticism was understandable at the time.[24/]

69. Mr. Spisso noted the conflict between Dr. Kubiak's report that [redacted] was at such risk of suicide that precautions should be taken to ensure safety, and Dr. Strickland's January 24, 2008, letter indicating that [redacted] could return to school without restriction, with evaluation and treatment adjustment on an outpatient basis. Mr. Spisso also raised a concern regarding the fact that Dr. Kubiak's report mentioned a head injury to [redacted], which was mentioned in no other report made available to the School District.[25/]

70. Mr. Spisso also noted that Dr. Kubiak's report includes diagnoses of ADHD and R/O bipolar disorder, neither of which is included in Dr. Jennings' diagnoses. Earlier medical records from 2004 showed Dr. Strickland reporting an impression of ADHD, and in 2005 reporting an impression of bipolar

disorder. Mr. Spisso stated that the inconsistencies among the various private provider reports strengthened the School District's conviction that it needed to conduct its own evaluations of [redacted]

71. As noted above, [redacted] was absent from school from [redacted], through [redacted]. [redacted] was readmitted to the hospital following an incident at school in which [redacted] bit another student on the cheek.

72. On November 18, 2008, the School District requested a behavioral services evaluation of [redacted], based on the evaluations the School District had in hand, [redacted]'s possible suicide attempt in January 2008, and the recent biting incident.

73. On November 20, 2008, [redacted]'s parents sent a letter responding to Mr. Spisso's letter of November 7, 2008. The parents enclosed a check for [redacted] to cover the cost of the copies they had requested, and provided the names of mental health professionals who had worked with [redacted] within the past two years: Drs. Strickland and Jennings, and Ms. Evers.[26/]

74. In their letter, [redacted]'s parents also asserted that they were giving the School District formal notification, assertedly for the fourth time since August 20, 2008, of their "concerns with the school's placement and services" for [redacted], their rejection of those services, and their request that individualized educational instruction and speech therapy be

provided at public expense. Essentially, [redacted]'s parents were asserting that [redacted] had been denied a FAPE by the School District, and that they had been forced to place [redacted] in a private school or facility and were entitled to reimbursement pursuant to Florida Administrative Code Rule 6A-6.03311(9).

75. By letter dated November 20, 2008, Mr. Spisso responded to [redacted]'s parents as follows:

> Leon County Schools is in receipt of your letter dated November 20, 2008, and the enclosed check for [redacted]. The District does not agree with the recitation of facts in your letter, but does not believe that a point by point rebuttal would serve our goals of fostering a good working relationship and promoting success for [redacted]. The records that you have requested should be available by Tuesday, November 25, 2008. Please contact Mrs. Ortega to arrange a pickup time. It would be helpful if you could also provide Mrs. Ortega with any information regarding [redacted's] current hospitalization, projected dates of return to [redacted], and any recommendations from Dr. Strickland, or other health professionals regarding [redacted's] status.
>
> For your information, the District will provide an adult staff member to accompany [redacted] at all times when [redacted] returns to school, and is on [redacted's] Campus. If you have any questions, you can contact Mrs. Ortega or me.

76. Mr. Spisso testified that when [redacted] was hospitalized and returned to school the first time in January 2008, the school "didn't handle it very well." He did not want a repeat of that situation, in which [redacted's] parents were so upset they

removed [redacted] from the school. Mr. Spisso wanted [redacted] to come back to school and get back into a routine as quickly and easily as possible. At the time Mr. Spisso wrote the November 20, 2008, letter, the School District had no details regarding the circumstances of [redacted]'s hospitalization.[27/] Mr. Spisso wanted to ensure [redacted]'s safety, and he believed that having an adult staff member accompany [redacted] on the campus would be welcomed by [redacted]'s parents as a means of providing a safe environment.

77. As with the "administrative leave" given [redacted] by Mr. Hansen in January 2008, see Finding of Fact 8, supra, Mr. Spisso conceded that there is no School District policy providing for the assignment of a staff member to accompany a student on campus. However, Mr. Spisso also made the reasonable point that principals, teachers and staff members of the School District are expected to keep students safe, that no rule or policy could possibly spell out every situation facing School District personnel charged with maintaining safety on the campus, and that a certain amount of discretion is necessary when School District personnel are trying to be helpful in keeping a child safe at school. He characterized this as a pure student safety concern, outside the realm of either Section 504 or the IDEA.

78. In any event, [redacted]'s parents objected to Mr. Spisso's proposed assignment of an adult staff member to accompany [redacted], and the assignment was therefore never actually made.[28/]

79. For several years, the School District has had a contract with Behavior Management Consultants, Inc. ("BMC") of Tallahassee to provide behavioral services, including hands-on work with students in the development of IEPs and eligibility determinations. On December 5, 2008, Aaron Mendleson, a behavior analyst working for BMC, attempted to conduct a functional behavioral assessment of [redacted] A conversation occurred between Mr. Mendleson, [redacted], and [redacted] Assistant Principal David Wilson. [redacted] asked why Mr. Mendleson was requesting [redacted]'s school schedule from Mr. Wilson. According to [redacted], Mr. Mendleson's answer was, "Due to the pending legal action, I've been asked to lay eyes on [[redacted]] to cover the District's butt."

80. Upon [redacted]'s complaint, Mr. Spisso investigated the incident, interviewing everyone who was present to hear Mr. Mendleson's remarks. Mr. Mendleson admitted that he told [redacted] that he was there "to lay eyes" on [redacted], but denied saying that his purpose was "to cover the District's butt." Mr. Wilson confirmed Mr. Mendleson's version of his statements.

81. Mr. Mendleson's admission was enough to prompt Mr. Spisso to chastise Mr. Mendleson and to contact BMC. At

Mr. Spisso's insistence, BMC removed Mr. Mendleson from [redacted]'s evaluation and warned him that he would be fired if there were any repeat of his unprofessional action. On December 17, 2008, counsel for the School District sent a letter to [redacted] apologizing for the incident and assuring [redacted] that Mr. Mendleson would not be involved in any activity involving [redacted] In fact, Mr. Mendleson never had any contact with [redacted]

82. On December 9, 2008, prior to the apology letter, [redacted]'s parents again withdrew consent for evaluation. Their letter of withdrawal cited the Mendleson incident as the primary reason for withdrawal of consent, alleging that the School District "used our voluntary Parental Consent for Evaluation under the guise of IDEA Due Process to gain improper access to [[redacted]]."

83. The School District stopped its evaluation of [redacted] when the consent for evaluation was withdrawn on December 9, 2008. [redacted] continued as a home-schooled student taking Junior [redacted] and art at [redacted].

84. On December 9, 2008, [redacted] attended a public meeting of the Leon County School Board. During the public comment portion of the meeting, [redacted] asked the Board to explain the School District's policy on "administrative leave."

85. [redacted] contended that the Board violated the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g

and 34 C.F.R. Part 99, by disclosing identifiable student information without parental consent at the meeting, then compounded the violation by televising the taped Board meeting more than 20 times between December 9, 2008, and January 17, 2009.

86. On September 16, 2009, [redacted]'s parents filed a complaint against the School District with the United States Department of Education, Family Policy Compliance Office ("FPCO"). The School District responded to the FERPA complaint on October 12, 2009, including a transcript of the December 9, 2008, meeting. By letter dated June 10, 2010, FPCO notified the parties of its finding that the School District did not improperly disclose information from [redacted]'s education records at the meeting.

87. The record of the instant proceeding includes a DVD recording of the December 9, 2008, Board meeting as well as a transcript of the meeting. This evidence fully supports FPCO's conclusion. At the meeting, Mr. Whalen cautioned the Board on several occasions to refrain from disclosing student record information and not to mention names. [redacted] gave no indication that he was discussing his own child. [redacted] was not mentioned by name at the meeting. No evidence was presented to show that the Board's discussion with [redacted] impeded [redacted]'s right to a FAPE, significantly impeded the parents' opportunity to participate in

the decision making process regarding the evaluation for eligibility or the provision of FAPE to [redacted] or caused the deprivation of an educational benefit to [redacted] or the parents.

88. In early 2009, the Advocacy Center for Persons with Disabilities, Inc. ("Advocacy Center") undertook the representation of [redacted] in dealing with the School District. Dr. Lee Clark, a senior advocate/investigator for the Advocacy Center, began communicating directly with Mr. Spisso in March 2009. Dr. Clark and Mr. Spisso had known each other professionally for many years, and Mr. Spisso hoped that their amiable, respectful relationship would lead to a resolution of the matter and permit the School District to finally conduct its evaluation of [redacted]

89. On March 12, 2009, Ms. Palazesi sent Dr. Clark the School District's records release and evaluation consent forms for [redacted]'s parents to complete. In a letter to Mr. Spisso dated March 16, 2009, Dr. Clark wrote as follows, in relevant part:

> ...On behalf of the parents we are requesting the following:
>
> - The conduct of a comprehensive ESE evaluation:
>
> - Prior to any new assessment protocols that are to be completed, we are requesting a complete and true review of the independent evaluations that were completed by the [[redacted] family]. The [parents] will prepare a packet of these evaluations and will provide your

identified contact with the information as soon as he/she is identified. This review should be completed with the [parents] and there [sic] designee(s). Once received please provide a date and time for this review.

- After the review it will be determined if and what additional assessments will be needed. Please provide an estimated date for the completion of this portion of the assessment/evaluation.

- Upon completion of the evaluation, there will be conducted an eligibility staffing to determine if and what type of ESE services [[redacted]] may be eligible for to address [[redacted]'s] academic, social and transition needs.

- Upon completion of the eligibility staffing, a transition plan will be developed to successfully integrate [[redacted]] back into the school setting at [[redacted]] High School on a full-time basis.

90. In a reply letter to Dr, Clark dated March 17, 2009, Mr. Spisso reiterated the School District's position:

> As we discussed last week, Leon County Schools (LCS) has tried numerous times in the past year to conduct a comprehensive E.S.E. evaluation for [[redacted]]. Last week, I [sic] mailed you a new Consent for Evaluation form, and Release of Information form. To date, the District has not received these forms. Until the District receives these forms, we will be unable to conduct an evaluation.
>
> Thank you for your offer of [the [redacted] family's] preparing a packet of evaluations. As I indicated last week, LCS will consider any evaluations or testing information the [parents] have submitted when the eligibility/staffing team meets to determine

> eligibility. The District believes the appropriate course of action is to have unfiltered access to [[redacted]'s] private evaluations and mental health professional, in order to review [[redacted]'s] previous and current private evaluations, to assist the District in conducting a comprehensive evaluation. Until the District has completed a comprehensive evaluation, it is our belief that a review of the independent evaluation would be inappropriate and counterproductive.

91. In a letter to Mr. Spisso dated April 13, 2009, Dr. Clark requested that a child study team meet as soon as possible, to review the independent evaluations "in light of [[redacted]'s] current 504 plan and to determine if additional accommodations are needed to successfully allow [[redacted]] to transition back to [redacted] High School on a full time basis." By reply letter dated May 5, 2009, Mr. Spisso agreed to such a meeting.

92. A meeting was held on May 21, 2009, attended by Dr. Palazesi, Mr. Spisso, Mr. Whalen, [redacted]'s parents, and Dr. Clark, among others. Dr. Clark pressed for modifications of [redacted]'s Section 504 accommodations in order to get [redacted] back into [redacted] for four classes during the 2009-2010 school year, and continued to argue that the private evaluations already administered to [redacted] should be sufficient for an eligibility determination. Mr. Spisso remained firm that the School District required a full and complete evaluation of [redacted] in

order to determine eligibility under the IDEA, and would not modify the Section 504 plan in lieu of a complete evaluation and the provision of services pursuant to the IDEA. Mr. Spisso testified that he had told Dr. Clark numerous times that the School District had to do a speech-language evaluation and an FBA, and that he repeated these requirements yet again at this meeting.

93. According to Mr. Spisso, the meeting was amicable until the conversation turned to the School District's reasons for not basing its eligibility decision on the reports provided by the parents, at which point it "kind of disintegrated." Mr. Whalen informed [redacted] that the School District had lost faith in the information being provided by the parents, due to their withholding of the privately prepared evaluations followed by their piecemeal release. [redacted] was extremely upset by this statement.

94. The School District again provided [redacted]'s parents with blank consent forms, which again were not completed and returned to the School District.

95. In a letter to Mr. Spisso dated May 27, 2009, Dr. Clark summarized the points of agreement and disagreement between the parties following the meeting. Dr. Clark noted that there was agreement that [redacted] would continue to take ROTC and art at [redacted], that [redacted] would take a "learning strategies" class

to assist with study and test taking issues, that [redacted] would be enrolled in one other basic education course to be agreed upon by the parents and [redacted]'s guidance office, and that other portions of [redacted]'s schedule would be agreed upon at a later date.

96. As to the points of disagreement, Dr. Clark discussed one-to-one supervision, modifications to the Section 504 plan, and the status of [redacted]'s eligibility determination. Dr. Clark stated that the parents had agreed [redacted] should have one-to-one supervision during transitions, using appropriate "proximity control" to alleviate concerns that [redacted] would be stigmatized by peers; however, the parents did not agree that [redacted] would require staff supervision while in class. Dr. Clark proposed that the staff person should be used by the teacher as a support person for the entire class, thereby diverting peer attention from [redacted] while maintaining the presence of a support person. Dr. Clark then wrote:

> It was at this point that, as a result of heated discussion, you, representing the District withdrew this accommodation, stating that this was probably an ESE intervention and should be made by an IEP team. We cannot disagree more strongly. This accommodation does not modify the curriculum nor does it rise to the level of an intervention that could only be provided through ESE services.

97. Regarding the Section 504 plan, Dr. Clark noted his and the parents' strong disagreement with the School District's position that [redacted]'s current plan could not be modified because the School District suspected a disability covered under the IDEA. Dr. Clark stated that the School District's failure to have a Section 504 plan that appropriately meets [redacted]'s current needs would deny [redacted] access to [redacted]'s educational program and curriculum in violation of Section 504.

98. Regarding the IDEA eligibility determination, Dr. Clark proposed that the School District first review the information already collected by the parents, and then provide the parents with a summary of the review and an explanation as to why the existing assessments do not suffice for making an eligibility determination.

99. In a letter to Dr. Clark dated June 24, 2009, Ms. Evers listed the evaluations already in hand: Ms. Felder's social assessment; Dr. Jennings' neuropsychological evaluation; Mr. London's psychological evaluation; and Ms. Hastings' speech-language evaluation.[29/] Ms. Evers wrote: "It continues to be my position, that without specific questions or testing concerns, there would be no benefit to additional testing. Instead, I only see this as an additional and unnecessary stressor for [redacted]."

100. At the hearing, Ms. Evers testified that she would have recommended that [redacted]'s parents give consent for evaluation if the School District had identified a specific assessment that was needed. She also would recommend consent if FDOE's eligibility rules required tests that have not yet been administered to [redacted].[30/]

101. The record contains no written response from Mr. Spisso to Dr. Clark's May 27, 2009, letter. At the hearing, Mr. Spisso acknowledged that [redacted]'s parents, through Dr. Clark and Ms. Evers, persistently asked the School District to explain why further evaluations were necessary. Mr. Spisso found this question perplexing because the School District had repeatedly explained to [redacted]'s parents, beginning on August 20, 2008, why the School District needed to conduct its own evaluation of [redacted]: the private evaluations did not enable the School District to determine [redacted]'s eligibility for ASD, EBD, or OHI. At minimum, [redacted] required an age-appropriate speech-language evaluation, an FBA, and testing to confirm Dr. Jennings' tentative diagnosis of Asperger's syndrome. As of November 13, 2008, the School District saw the further need to resolve the apparent contradiction between Dr. Jennings' tentative Asperger's diagnosis and Dr. Kubiak's working diagnoses of ADHD and R/O bipolar disorder.

102. Mr. Spisso strongly believed that the School District's Child Find responsibilities under the IDEA were absolute, that the School District had a duty to conduct an initial evaluation pursuant to 20 U.S.C. § 1414(a), and that [redacted]'s parents were preventing that evaluation from occurring by attempting to bargain with the School District as to the terms of their consent. Mr. Spisso repeatedly assured [redacted]'s parents and their representatives that the School District would consider their private evaluations, but he refused to restrict the School District's inquiry into suspected disabilities before the fact:

> [P]arents don't give consent to particular tests. They give consent for an evaluation to determine if a child has a disability. The district has a right to conduct an evaluation, and it has an obligation to investigate all areas of suspected disability. But parents don't have the right under IDEA to consent to a specific test.[31/]

103. On June 29, 2009, the Advocacy Center provided the School District with a compilation of [redacted]'s evaluations, including unredacted versions of the full reports by Dr. Jennings and Ms. Hastings. This was the School District's first opportunity to review the full, unredacted reports. Also included in the compilation were Ms. Felder's social assessment of February 25, 2008, Mr. London's psychological services report of May 7, 2008, and Ms. Evers' letter of June 24, 2009.

104. Another item included in the compilation that had not been previously provided to the School District was a set of case notes prepared by Dr. Strickland detailing visits from [redacted] dating to October 21, 2004. The notes indicate that Dr. Strickland was seeing [redacted] on an outpatient basis (as noted in Dr. Jennings' report), and that Dr. Strickland had formed an impression of bipolar disorder in April 2005.

105. Also on June 29, 2009, the Advocacy Center presented Mr. Spisso with a document purporting to memorialize the understanding between Dr. Clark, [redacted], and Mr. Spisso regarding the evaluation process. The document had already been signed by Dr. Clark and [redacted], and contained a signature line for Mr. Spisso. The document read as follows:

> As part of the ESE eligibility determination process, Leon County Public Schools (LCPS) agrees to follow local, state and federal policies, rules, statutes and regulations regarding the review of evaluation information/reports submitted by [the] parent of a child suspected of having a disability. Any and all reports to be considered are attached to this agreement. LCPS agrees to review this information first in an effort to determine if or what types of additional evaluative information is necessary to determine if [[redacted]] . . is eligible for ESE services. The parents understand that the need for additional information may be for the following reasons:
>
> - Current data does not meet evaluation requirements.

- Need additional data not found in that submitted by parents.

- Evaluation protocols not current enough for IEP team to make decisions.

- Evaluation protocols do not sufficiently answer ESE eligibility determination "questions" (e.g. gives [DSM-IV] diagnosis but no education implications or education implications not sufficient enough to make eligibility determination.

106. Mr. Spisso declined to sign the document. He believed it was redundant, in that the School District was already bound to follow the relevant "policies, rules, statutes and regulations." Mr. Spisso viewed this document as "another attempt by [redacted] to control the evaluation process" and prevent the School District from going in its own direction in conducting the evaluation of redacted

107. At this point, direct communications between the parents and the School District mostly ceased as redacted's parents commenced filing a series of complaints against the School District. On July 16, 2009, redacted filed a complaint against the School District with the United States Department of Education, Office of Civil Rights ("OCR"). redacted alleged that the School District discriminated against redacted on the basis of disability, i.e., Asperger's syndrome and bipolar disorder.

108. redacted's complaint with OCR raised four issues: first, whether the School District discriminated against redacted when it

"failed to respond in a timely fashion" to Dr. Clark's April 13, 2007 "request for a Section 504 Plan meeting," refused to consider medical assessments or accommodations requested by [redacted], and withdrew the one-to-one escort service at the May 21, 2009 Section 504 meeting; second, whether the School District discriminated against [redacted] by modifying the student's Section 504 plan without parental participation or notice on or around June 2, 2009; third, whether the School District retaliated against [redacted] on May 21, 2009, when it informed [redacted] that [redacted] was not an enrolled student and must be re-enrolled to receive services; fourth, whether the School District discriminated against [redacted] by withdrawing [redacted] from school on August 26, 2009, due to non-attendance.

109. OCR conducted an investigation. On February 10, 2010, OCR issued a letter of findings that found in favor of the School District on all four issues. As to the first issue, OCR found that Dr. Clark requested a "child study" meeting, not a Section 504 plan meeting, and that the School District responded in timely fashion to that request.[32/] [redacted]'s medical evaluations were considered at the May 21, 2009, meeting, but the School District determined that conflicting information in the evaluations meant that the School District needed to conduct its own evaluations. OCR found that the School District sought [redacted]'s consent for evaluations and tabled all accommodations

requests "until it could determine whether the Student was a disabled student under the auspices of Section 504 or the IDEA." The School District's withdrawal of the offer of an escort was likewise the result of the need to make a complete evaluation of [redacted], and the School District had acknowledged that after the comprehensive evaluation was completed, the team would reconsider the necessity of an escort.

110. As to the second issue, OCR found that no Section 504 meeting occurred on June 2, 2009, when [redacted]'s mother met with the guidance counselor for a class scheduling meeting. The Section 504 coordinator was present at the meeting, but only to assist the guidance counselor. No changes to [redacted]'s Section 504 plan were made at the meeting.

111. As to the third issue, OCR found that no adverse action was taken on May 21, 2009. [redacted] was already not an enrolled student within the School District. [redacted]'s recognized local educational agency ("LEA") at the time was the Florida Virtual School. If [redacted] wished to pursue a greater course load at [redacted], [redacted] would have to re-enroll as a full-time student, at which time [redacted] would receive the services listed on the Section 504 plan.

112. As to the fourth issue, OCR found that [redacted] was automatically withdrawn from the school for non-attendance because [redacted] missed the first three days of class. Though [redacted]

was the only part-time student withdrawn on the third day, other disabled and non-disabled students were withdrawn for three days' non-attendance at the start of the school year. Therefore, the School District applied its compulsory attendance policy in a nondiscriminatory fashion and did not discriminate against [redacted]

113. On August 6, 2009, [redacted]'s parents filed a complaint against the School District with FDOE. The complaint raised three issues, only one of which is relevant to this proceeding: whether the School District followed appropriate procedures regarding the evaluation and identification of [redacted] for ESE during the 2008-2009 school year.[33/] FDOE's Bureau of Exceptional Education and Student Services conducted an investigation[34/] and issued a report on October 5, 2009, that concluded as follows:

> 1. An eligibility determination meeting was held for the student on August 20, 2008, and both complainants participated. In addition to the district's own evaluation data, the complainants provided copies of independent evaluations, with some content redacted.
>
> 2. After reviewing existing evaluations, the team determined that the student did not meet eligibility criteria for specific learning disabilities, and that additional evaluations were required to determine if the student met eligibility criteria for other areas of disabilities.

> 3. The district reviewed the information provided by the complainants and determined that additional assessment was required.
>
> 4. The complainants withdrew consent for evaluation on September 19, 2008, reinstated consent for evaluations on October 29, 2008, and again withdrew consent on December 9, 2008. All assessments and/or observations conducted as part of the student's evaluation were completed during periods when consent was in effect.
>
> 5. Leon County School District followed appropriate procedures regarding the evaluation and identification of the student for ESE during the 2008-09 school year.

114. On September 3, 2009, [redacted]'s parents filed a second complaint against the School District with FDOE. This complaint raised two issues, one of which is relevant to this proceeding: whether the School District denied the student any other service, benefit or activity of the district as a result of the parent's refusal to provide consent for an ESE evaluation during the 2008-2009 and 2009-2010 school years.[35/]

115. The Bureau of Exceptional Education and Student Services conducted an investigation and issued a report on October 27, 2009, that concluded as follows:

> 1. A Section 504 accommodation plan meeting was held on May 21, 2009, for the purpose of reviewing the student's Section 504 plan. The plan was reviewed at that meeting.
>
> 2. At the meeting, the complainants requested that the Section 504 plan be modified in order for the student to attend school at the beginning of the school year

with the appropriate supports in place. The district concluded that additional information was needed in order to appropriately identify the student and determine the student's needs, and refused to modify the Section 504 plan unless the complainants signed the consent for an ESE evaluation under IDEA.

3. In accordance with the requirements of Section 504, a district is required to conduct an evaluation of a student prior to taking any action that reflects a significant change in services.

4. The Leon County School District did not follow its procedures. . . regarding reevaluation of students eligible only under Section 504. Instead, the district followed its procedures. . . regarding reevaluation of students protected by both Section 504 and IDEA.

5. It was within the district's rights under Section 504 to refuse to modify the student's Section 504 plan absent a reevaluation. However, in requiring that the complainants provide consent for an evaluation to be conducted under the auspices of IDEA rather than Section 504, the district committed the procedural violation of denying the student a service, benefit, or activity of the district as a result of the parent's refusal to provide consent for an exceptional student education (ESE) evaluation during the 2008-09 and the 2009-10 school years.

6. While the complainants decision to have the student remain at home rather than attend school without the Section 504 plan being modified was based on the district's procedural violation regarding reevaluation, it was a choice made by the complainants. The district followed its established practice when it withdrew the student for nonattendance on August 27, 2009; this did

> not prevent the student from reenrolling at any time.

116. The Bureau set forth the following as "required action" for the School District:

> If the student re-enrolls in the Leon County School District and the complainants or other members of the Section 504 planning team request that the Section 504 plan be modified, the district must determine whether a reevaluation of the student is required. If so, the district must request parental consent for an evaluation to be conducted under Section 504. The district may not require that the complainants consent to an evaluation under IDEA.
>
> In addition to any actions taken regarding the student's Section 504 plan, if the district determines that referral for evaluation under IDEA is necessary in order to appropriately address the student's academic and/or behavioral needs, the district must request parental consent for such an evaluation. In the event the complainants refuse to provide consent for evaluation under IDEA, the district may, but is not required to, pursue the evaluation through mediation or due process procedures, and the district may not deny the student any other activity of the district.

117. In summary, the Bureau found that the School District possessed the authority to require a reevaluation before it modified [redacted]'s Section 504 plan, and that the consent of [redacted]'s parents was required before that reevaluation could be undertaken. However, the School District committed a procedural violation by linking a requirement that the parents consent to

an evaluation under the IDEA to any modification of the Section 504 plan.

118. Mr. Spisso disagreed with the FDOE's conclusion that the School District's refusal to update [redacted]'s Section 504 plan was a "service, benefit, or activity" as contemplated by Florida Administrative Code Rule 6A-6.03311(3)(g). Mr. Spisso pointed to the fact that the OCR, the federal agency charged with enforcement of the requirements of Section 504, found that the School District had acted properly.[36/]

119. On November 20, 2009, School District Superintendent Jackie Pons met with [redacted]'s parents in an attempt to resolve their on-going dispute with the School District. At that meeting, Mr. Pons agreed to review the record and meet with them again. A second meeting was held on December 2, 2009, at which Mr. Pons urged the parents to reinstate their consent for evaluations and allow the School District to perform a full and complete evaluation in all areas of suspected disability for [redacted]

120. [redacted] came away from that meeting convinced that Mr. Pons had stated that [redacted] was eligible for services under the IDEA. At the hearing in this matter, Mr. Pons could not recall having made such a statement.[37/] Mr. Pons testified that his position had never changed: the School District needed consent for evaluation in order to provide the services that

were needed, and [redacted]'s parents had not provided such consent. Mr. Pons' testimony is credited.[38/]

121. [redacted] pointed to no rule or policy that gives the Superintendent authority to make a unilateral eligibility determination and further denied that he even possesses the authority to make a unilateral IDEA eligibility determination. Further, prior to the final hearing in this matter, the parties stipulated that the School District has not made an eligibility determination. Thus, the question raised by [redacted] as to Mr. Pons' actions and statements is not relevant to the issues of this proceeding.

122. At the hearing, [redacted] questioned School District witnesses as to why [redacted] was not considered for participation in the hospital-homebound program. However, because [redacted] produced no evidence to demonstrate that [redacted] ever met the criteria for hospital-homebound placement, there is no need to make detailed findings as to this issue.[39/]

123. Mr. Whalen, the School District's attorney, sent a letter dated March 1, 2010, to the attorneys for [redacted][40/] The letter stated as follows, in relevant part:

> The Leon County School Board remains hopeful that we will be able to resolve all of the issues between the Board and your clients via a settlement agreement.
>
> The District has been reviewing the Request for Due Process you submitted and the issues

> you raised. The District asked that I make sure that you have read the February 10, 2010 letter from OCR resolving Complaint No. 04-09-1448 in the Board's favor, the October 5, 2009 letter from the Florida Department of Education resolving Case No. BEEESS-2009-046-RES in the Board's favor and the November 20, 2009 letter from the Florida Department of Education resolving Case No. BEEESS-2009-049-RES in the Board's favor. The District also asked that I make sure you are aware of Section 1415(i)(3)(B), as the District believes that the issues raised in the Request for Due Process you filed are covered in the three letters discussed above.

124. 20 U.S.C. §. 1415(i)(3)(B) provides the standards by which a prevailing party in a due process hearing under 20 U.S.C. §. 1415(f) may obtain an award of attorneys' fees in United States district court. [redacted] testified that one of his attorneys referred to this letter as a "threat." [redacted] saw it as an attempt to "intimidate our family and counsel." [redacted] testified that his lawyers withdrew from representing [redacted] shortly after receipt of the letter.

125. [redacted]'s counsel filed a Motion to Withdraw as Counsel at DOAH on March 18, 2010. As reason for the motion, counsel states, "Petitioner has expressed a desire to obtain alternative counsel." [redacted] testified that he was having difficulty with his attorneys not reviewing the information that he was providing them. His attorneys were "overwhelmed" by the materials in the case and were not grasping the issues. As to their working

relationship, [redacted] testified that "we weren't moving in a good direction."

126. Mr. Whalen's letter is a straightforward statement of the School District's position in this case as of March 1, 2010. The letter contains nothing resembling a threat or an attempt at intimidation. The letter does suggest that the School District may seek attorneys' fees in the case, but a notice of intent that the School District may avail itself of a statutory remedy does not constitute a threat. Through his own testimony, [redacted] established that his relationship with the law firm representing [redacted] was shaky on grounds having nothing to do with Mr. Whalen's letter. [redacted] elected to represent [redacted] rather than secure alternate counsel and performed adequately.[41/] Mr. Whalen's letter was not the cause of counsel's withdrawal, and did not affect [redacted]'s right or ability to be heard on the merits in a due process hearing.

127. In contemplation of this hearing, the School District had school psychologist Susan Barnes review all of the reports and information related to [redacted] and produce a written report summarizing, analyzing and synthesizing their contents. Ms. Barnes' report, dated May 5, 2010, concluded that the School District does not have adequate evaluation information to determine [redacted]'s possible eligibility under the categories of

autism spectrum disorder, emotional/behavioral disabilities, speech impaired, language impaired, and other health impaired. Ms. Barnes recommended as follows:

> In my opinion, additional evaluation is needed to determine [[redacted]'s] possible eligibility as a student with a disability under IDEA. These evaluations include, but may not be limited to, depending on the results of testing:
>
> Age-appropriate comprehensive speech and language evaluation
>
> Functional behavior assessment
>
> Evaluation of adaptive behavior
>
> Additional social/developmental history focusing on early and current features of Autism Spectrum Disorder
>
> A review of evidenced-based [sic] interventions that have already been implemented
>
> Documented/dated behavioral observations
>
> Teacher-completed instrument(s) specific to Autism Spectrum Disorder.

128. Mr. Spisso accurately noted that there is little in this report that was not pointed out by the School District at the August 20, 2008, meeting, and certainly nothing that had not been repeatedly stated to [redacted]'s parents during the intervening period preceding this hearing. Nonetheless, [redacted] somewhat mystifyingly testified that Ms. Barnes' report was exactly what he had been seeking from the School District all along, and he

stated that "this might have all been unnecessary" had the School District provided such a written summary to the family at the outset.

Ultimate Findings on Subordinate Issues

129. As to Subordinate Issue 1, the School District did consider [redacted]'s educational needs and personal welfare at the August 20, 2008, IDEA eligibility meeting. The evidence established that the School District moved forward in good faith during the spring of 2008 to conduct a full and complete evaluation of [redacted], unaware that [redacted]'s parents knew of other possible grounds for eligibility that the parents were, inexplicably, holding back from the School District. At the August 20, 2008, meeting, the parents revealed two hitherto unseen evaluations offering diagnoses of [redacted] that were not only different from those known to the School District but that in some respects contradicted the earlier evaluations. Under the circumstances, the School District was obligated to conduct further evaluations of [redacted] before making an eligibility determination. At the close of the August 20, 2008, meeting, the parents (who had an attorney present) agreed to further evaluations. It was only later that they changed their minds and began to insist that the School District make an eligibility determination based on the existing evaluations.

130. As to Subordinate Issue 2, the School District fully considered the results of [redacted]'s parent-initiated evaluations that were brought forth at the August 20, 2008, eligibility team meeting. In fact, it was the School District's consideration of these evaluations that led it to conclude that further evaluations were necessary. The parents' disagreement with the outcome of the meeting does not mean that the School District failed to consider their evaluations.

131. As to Subordinate Issue 3, the evaluations provided by the parents were obtained at private expense, generally met the criteria found in Florida Administrative Code Rule 6A-6.03311(7)(d), and therefore met the definition of "independent educational evaluations" for purposes of the 2008 version of Florida Administrative Code Rule 6A-6.03311(7)(i). As noted in the finding for Subordinate Issue 2 above, the School District fully considered these evaluations. The parents have mischaracterized their disagreement with the School District's conclusion that further evaluation was necessary as a failure by the School District to consider their parent-initiated evaluations.

132. As to Subordinate Issue 4, the School District completed its initial evaluation of [redacted] within 60 school days of which [redacted] was in attendance, as required by Florida Administrative Code Rule 6A-6.0331(4)(b) and (c).

133. As to Subordinate Issue 5, the parents contended that they were denied the opportunity to give informed consent to evaluations at all times after December 9, 2008, because the School District consistently refused to explain the evaluations it proposed to conduct on [redacted] or why the existing evaluations were insufficient for an eligibility determination. The evidence demonstrated that the School District repeatedly explained to the parents why the existing evaluations could not form the basis of an eligibility determination. Beginning at the August 20, 2008, meeting, the School District repeatedly explained to the parent that it required, at a minimum, an age-appropriate speech-language evaluation, an FBA, and the administration of an appropriate test to determine to appropriateness of Dr. Jennings' Asperger's diagnosis.[42/] The School District could not, consistent with its Child Find duties, agree at the outset to limit its inquiry to specific evaluations approved by the parents. The School District provided sufficient information to the parents; it simply refused to bargain away its responsibilities in order to obtain a parent's signature on a consent form.

134. As to Subordinate Issue 6, it is found that the School District made reasonable efforts to obtain the informed consent of [redacted]'s parent, for the reasons set forth in Finding of Fact 133, supra.

135. As to Subordinate Issue 7, the question of whether the School District withheld a "service, benefit, or activity" from [redacted] or the parents because of the parent's refusal to give consent for evaluation under the IDEA, in violation of Florida Administrative Code Rule 6A-6.03311(3)(g), is inextricably tied with the issue of whether the School District has complied with Section 504 of the Rehabilitation Act of 1973, as amended. It is apparent that "service, benefit, or activity" is intended to have a broad application. However, under the facts presented, it would not be possible to make a finding that the School District has withheld a service, benefit, or activity to which [redacted] or the parent is entitled without also finding that the School District has violated the provisions of Section 504. Though [redacted]'s allegation invokes the IDEA, any remedy for the alleged violation would necessarily implicate Section 504. DOAH does not have jurisdiction to consider alleged violations of Section 504 in the absence of a contractual grant of authority to hear such claims from the School District in question. No evidence was presented that DOAH has such a contract with the Leon County School Board.

136. As to Subordinate Issue 8, the School District did not interfere with [redacted]'s access to state complaint procedures. This issue relates to the parents' allegation that School District personnel made "offensive comments" about them during

the FDOE's investigation of their August 3, 2009, complaint, to Congressman Boyd, and in affidavits filed in the instant case, all maliciously designed to tar them as "complainers" or as non-cooperative in their dealings with the School District. The evidence produced at the hearing established that this allegation was baseless. See Endnotes 34 and 38, supra.

137. As to Subordinate Issue 9, the School District did not interfere with [redacted]'s access to a due process hearing. This issue relates to the parents' allegation that the March 1, 2010, letter from the School District's attorney was an attempt to intimidate [redacted]'s parents from pursuing their due process petition. See Findings of Fact 123-126, supra. Mr. Whalen's letter placed the parents on notice that the School District could seek attorneys' fees should it prevail in this case. The evidence indicated that [redacted]'s attorneys withdrew for reasons unrelated to Mr. Whalen's letter, and that the School District placed no impediments in the way of the parents' employing alternate counsel. [redacted] made the decision to represent [redacted] as the child's qualified representative, and performed capably in that capacity.

138. As to Subordinate Issue 10, the School District did consider all relevant information in attempting to conduct an evaluation of [redacted], to the extent that [redacted]'s parents allowed. The parents alleged that the School District did not

consider [redacted]'s "documented medical diagnosis, academic failures,[43/] excessive absences,[44/] high-risk behaviors, victimization (bullying)" and other "obvious and apparent facts" that were before the School District. The School District clearly was aware of the factors listed by the parents; however, the parents never allowed the process to reach the point of a full and complete evaluation of [redacted] Thus, if relevant information has not been considered by the School District, it is because [redacted]'s parents prevented the School District from undertaking that consideration.

139. As to Subordinate Issue 11, the School District did not disclose personally identifiable information about [redacted] during the December 9, 2008, public meeting of the School Board or by re-broadcasting that meeting on local cable television. See Findings of Fact 84-87, supra.

CONCLUSIONS OF LAW

140. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties of this proceeding pursuant to Subsection 1003.57(1)(e), Florida Statutes (2009), and Florida Administrative Code Rule 6A-6.03311(9)(as amended December 22, 2008).

141. Petitioner has the burden of proof in this case as the party seeking relief. Schaffer v. Weast, 546 U.S. 49 (2005).

142. The IDEA's standards for an impartial due process hearing are codified at 20 U.S.C. § 1415(f). The criteria for the decision of the hearing officer, set forth at 20 U.S.C. § 1415(f)(3), are as follows:

> (E) Decision of hearing officer
>
> (i) In general. . . Subject to clause (ii), a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education.
>
> (ii) Procedural issues. . . In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies—
>
> (I) impeded the child's right to a free appropriate public education;
>
> (II) significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents' child; or
>
> (III) caused a deprivation of educational benefits.
>
> (iii) Rule of construction. Nothing in this subparagraph shall be construed to preclude a hearing officer from ordering a local educational agency to comply with procedural requirements under this section.

143. 20 U.S.C. § 1414(a)(1)(A) requires that a local educational agency such as the School District conduct "a full and individual initial evaluation" before "the initial provision of special education and related services to a child with a

disability" under the IDEA.[45/] 20 U.S.C. § 1414(a)(1)(C) and (D) provide, in relevant part:

> (C) Procedures.
>
> (i) In general. Such initial evaluation shall consist of procedures—
>
> (I) to determine whether a child is a child with a disability (as defined in [section] 1401 of this title) within 60 days of receiving parental consent for the evaluation, or, if the State establishes a timeframe within which the evaluation must be conducted, within such timeframe; and
>
> (II) to determine the educational needs of such child.
>
> * * *
>
> (D) Parental consent.
>
> (i) In general.
>
> (I) Consent for initial evaluation. The agency proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability as defined in section 1401 of this title shall obtain informed consent from the parent of such child before conducting the evaluation. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services.
>
> (II) Consent for services. An agency that is responsible for making a free appropriate public education available to a child with a disability under this subchapter shall seek to obtain informed consent from the parent of such child before providing special education and related services to the child.
>
> (ii) Absence of consent.

> (I) For initial evaluation. If the parent of such child does not provide consent for an initial evaluation under clause (i)(I), or the parent fails to respond to a request to provide the consent, the local educational agency may pursue the initial evaluation of the child by utilizing the procedures described in section 1415 of this title, except to the extent inconsistent with State law relating to such parental consent.
>
> (II) For services. If the parent of such child refuses to consent to services under clause (i)(II), the local educational agency shall not provide special education and related services to the child by utilizing the procedures described in section 1415 of this title.
>
> (III) Effect on agency obligations. If the parent of such child refuses to consent to the receipt of special education and related services, or the parent fails to respond to a request to provide such consent—
>
> (aa) the local educational agency shall not be considered to be in violation of the requirement to make available a free appropriate public education to the child for the failure to provide such child with the special education and related services for which the local educational agency requests such consent; and
>
> (bb) the local educational agency shall not be required to convene an IEP meeting or develop an IEP under this section for the child for the special education and related services for which the local educational agency requests such consent....

144. The central issue at the outset of this case was whether the School District denied [redacted] a FAPE pursuant to the

IDEA. As the hearing progressed, it became clear that the real central issue is whether the School District was ever afforded the opportunity to complete an initial evaluation sufficient to determine whether [redacted] is a child with a disability, or to determine [redacted]'s educational needs. Based on all the record evidence, it is concluded that [redacted]'s parents, through active obstruction and the withholding of consent, prevented the School District from ever completing its initial evaluation.

145. [redacted]'s hospitalization after the [redacted] suicide gesture/attempt at school led to the convening of an intervention team that agreed [redacted] should be evaluated for possible eligibility for ESE services under the IDEA. During the initial evaluation period from January 31, 2008 (when the parents signed the consent form) through May 13, 2008 (when Mr. London completed his evaluation), the School District in good faith and with due diligence investigated the suspected areas of disability that were known to it: bipolar disorder, cognitive dysfunction, and ADHD. As of August 20, 2008, the School District believed it had completed the initial evaluation and stood ready to make a decision on [redacted]'s eligibility.

146. At the August 20, 2008, eligibility staffing meeting, [redacted]'s parents produced two parent-initiated evaluations: a speech-language evaluation that was not age-appropriate, and a

neuropsychological evaluation with a diagnosis of Asperger's syndrome. The parties agreed that the new information required the School District to, in effect, re-open the record of its initial evaluation in order to conduct a full and complete evaluation based on all areas of suspected disability. However, the parents withdrew their consent for initial evaluation before the School District could schedule and conduct the required evaluations.

147. Through their attorney, the parents took the position that the School District already had a complete and full evaluation in its hands, and should therefore make a determination of eligibility without further testing. The parents reinstated their consent for evaluations on October 29, 2008, but shortly thereafter, [redacted] was re-hospitalized following a biting incident at school. On November 20, 2008, [redacted]'s parents gave the School District "formal notification" of their rejection of the school's "placement and services" and their demand for private placement reimbursement. On the heels of the incident with Mr. Mendleson, the parents withdrew their consent on December 9, 2008, and never reinstated it. [redacted] continued as a home-schooled student taking two non-core classes at [redacted]

148. Section 1003.57(1)(b), Florida Statutes, provides: "A student may not be given special instruction or services as an exceptional student until after he or she has been properly

evaluated, classified, and placed in the manner prescribed by rules of the State Board of Education. . . " The quoted Florida Statutes is in accord with 20 U.S.C. § 1414(a)(1)(A), which provides, in relevant part:

> A State educational agency, other State agency, or local educational agency shall conduct a full and individual initial evaluation in accordance with this paragraph and subsection (b) [evaluation procedures], before the initial provision of special education and related services to a child with a disability under this subchapter.

149. [redacted]'s parents withheld meaningful consent after the School District became aware of all areas of suspected disability. The School District was unable to complete its initial evaluation. Therefore, pursuant to 20 U.S.C. § 1414(a)(1)(D)(ii)(III), the School District cannot be considered to be in violation of the requirement to provide FAPE and is not required to develop an IEP for [redacted][46/] G.J. v. Muscogee County Sch. Dist., 2010 U.S. Dist. Lexis 28764, *24 n.9 (M.D.Ga. March 25, 2010). The parents are free to decline special education under the IDEA rather than submit to the School District's evaluations. Shelby S. v. Conroe Indep. Sch. Dist., 454 F.3d 450, 454-55 (5th Cir. 2006); Gregory K. v. Longview Sch. Dist., 811 F.2d 1307, 1315 (9th Cir. 1987).

150. All of the other issues raised by [redacted] are secondary and/or procedural questions that did not impede [redacted]'s right to

a FAPE, impede the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to [redacted], or cause a deprivation of educational benefits.

151. There is no question that the School District failed to follow its own internal procedures in Mr. London's use of Dr. Jennings' evaluation. The School District was at times somewhat tone deaf to the mainstreaming concerns of [redacted]'s parents, such as when Mr. Hansen placed [redacted] on "administrative leave" following [redacted]'s January 2008 stay in the [redacted] or when Mr. Spisso unilaterally assigned a staff member to accompany [redacted] at all times following [redacted]'s November 2008 hospitalization. However, for much of the time in question, School District personnel were operating in the dark as to the details of [redacted]'s hospitalizations and suspected diagnoses. Mr. Hansen and Mr. Spisso may have erred on the side of caution to ensure [redacted]'s physical safety on campus, but they could act only on the limited information available to them.

152. The School District complied with Florida Administrative Code Rule 6A-6.0331(4)(b) by completing its initial evaluation of [redacted] within "sixty (60) school days of which the student is in attendance."

153. Florida Administrative Code Rule 6A-6.0331(5), governing staffing committee meetings to determine eligibility, does not establish specific time limits for holding a staffing

meeting after the initial evaluation is complete. Given that [redacted]'s initial evaluation was completed near the end of the school year, it was reasonable for the School District to wait until August 2008 to hold the elibility staffing. [redacted] did not prove a violation of the IDEA as to this issue.

154. The School District fully considered the parent-initiated evaluations provided at the August 20, 2008, eligiblity staffing meeting, in accord with Florida Administrative Code Rule 6A-6.03311(7)(i).

155. [redacted]'s parents contended that the School District did not properly inform them of the evaluations requested by the School District, and therefore the School District was in violation of Florida Administrative Code Rules 6A-6.0331(4) and 6A-6.03311(1), regarding informed consent. 34 C.F.R. § 300.9 defines "consent" as follows:

> Consent means that—
>
> (a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or through another mode of communication;
>
> (b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

> (c)(1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

156. The School District's standard consent form, identifying the proposed areas of evaluation, was signed by [redacted]'s parents on January 31, 2008, and again on October 29, 2008. The form is in keeping with the quoted definition and provided the parents with information sufficient to provide their informed consent. The School District was not under an obligation to provide the level of detail sought by the parents, i.e., the names of particular testing instruments, as an element of informed consent.

157. The School District's responses to the various complaints filed by [redacted] did not constitute interference with the state complaint procedures set forth in Florida Administrative Code Rule 6A-6.03311(6).[47/]

158. The School District's counsel's letter to [redacted]'s former legal counsel did not constitute interference with [redacted]'s right to a due process hearing as set forth in Florida Administrative Code Rule 6A-6.03311(11).[48/]

159. The undersigned is without jurisdiction to consider alleged violations of Section 504 of the Rehabilitation Act of 1973, as amended. Therefore, the issue of whether the School District violated the IDEA by virtue of its refusal to modify

[redacted]'s Section 504 accommodation plan without first conducting an IDEA eligibility evaluation is beyond the scope of this proceeding, as making conclusions of law on the issue would necessarily require the undersigned to determine whether the School District has violated Section 504.

160. The School District did not disclose personally identifiable information about [redacted] during the December 9, 2008, public meeting of the School Board or during subsequent broadcasts of the meeting. The School District did not violate 34 C.F.R. § 300.622, relating to parental consent before release of personally identifiable information to third parties.

161. Based upon the foregoing Findings of Fact and Conclusions of Law, the School District has not violated the IDEA and has not denied a FAPE to [redacted]

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby:

ORDERED that

The Request for Due Process Hearing dated January 25, 2010, is DISMISSED.

DONE AND ORDERED this 17th day of August, 2010, in Tallahassee, Leon County, Florida.

S

LAWRENCE P. STEVENSON
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 17th day of August, 2010.

ENDNOTES:

[1/] Though the parties agreed as to the substance of the issues, each party submitted its own wording of the issues. The following statement for the most part adopts the wording of the School District's statement, which was set forth in more neutral terms than Petitioner's.

[2/] Unless otherwise noted, all references to the Florida Administrative Code relate to the versions that were in effect during the great majority of the year 2008, when the School Board was attempting to evaluate and determine [redacted]'s eligibility for special education services. Florida Administrative Code Rules 6A-6.0331 and 6A-6.03311 were amended effective December 22, 2008. Florida Administrative Code Rule 6A-6.0331 was amended again, effective December 15, 2009.

[3/] Exhibit Z consists of only the first page of a December 17, 2008, letter from the School Board's counsel to [redacted]

[4/] 29 U.S.C. § 701 et seq. is the codification of the Rehabilitation Act of 1973, as amended. The provision popularly known as "Section 504" is codified at 29 U.S.C. § 794. The implementing regulations of Office of Civil Rights are found at 34 C.F.R. Subtitle B, Chapter I.

[5/] The evidence at hearing indicated that the correct course under the School District's procedures would have been for Mr. Hansen to suspend M.R.M. Dr. Margot Palazesi, the School District's program specialist for compliance, testified that, "In some instances, students with disabilities may be removed under the School District's procedures would have been for Mr. Hansen to suspend [redacted] Dr. Margot Palazesi, the School District's program specialist for compliance, testified that, "In some instances, students with disabilities may be removed from school because of safety issues for a period of time. Typically, that's called 'suspension.'" Though they showed that Mr. Hansen did not follow correct procedures, [redacted]'s parents failed to show that the "administrative leave" had any adverse effect aside from the parents' own dissatisfaction.

[6/] Dr. Palazesi testified that she was told to attend the meeting regarding [redacted]'s Section 504 plan. She was to review the plan and revise it if appropriate. Dr. Palazesi testified that the Section 504 plan was modified to adopt Ms. Evers' suggestions, see Finding of Fact 12, infra, as accommodations for [redacted]

[7/] In fact, some states have made statutory provision for ESE services to home schooled children. See, e.g., H.C. v. Colton-Pierrepont Cent. Sch. Dist., 341 Fed. Appx. 687, 691 (2d Cir. 2009)(In 2008, New York amended its law to provide that a home schooled student "shall be deemed to be a student enrolled in and attending a nonpublic school eligible to receive services" under the IDEA). As neither party to this proceeding pointed to a similar Florida statute or rule on this point, Mr. Spisso's testimony is credited as to Florida.

[8/] The Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition is the psychiatric diagnostic manual published by the American Psychiatric Association, and is essentially the "bible" for any professional who makes psychiatric diagnoses in the United States. The DSM-IV uses a "multiaxial" approach to diagnosis, assessing five dimensions or axes. Axis I lists the clinical syndromes, the items typically thought of as the subject's diagnoses.

[9/] This asserted intention is undercut by the fact that, once the School District became aware of the private evaluations, [redacted] switched gears and insisted that the School District base

its eligibility decision solely on these evaluations and those already performed by Ms. Felder and Mr. London.

[10/] Mr. Spisso telephoned [redacted] shortly before the August 20, 2008, eligibility staffing meeting, to ask [redacted], "What is it that you're looking for?" This was a question that Mr. Spisso, as ESE director, always asked parents prior to eligibility meetings. The typical answer was along the lines of, "We want our child to be identified as autistic," or "We don't want our child to be identified as having a disability." Mr. Spisso was taken aback by [redacted]'s response: "I want [[redacted]'s] due process rights." Mr. Spisso was confused, and asked [redacted] what he meant by that. [redacted] answered, "I want [[redacted]'s] due process rights." Mr. Spisso said, "I don't understand that," at which point [redacted] terminated the call.

[11/] At the hearing, [redacted] dwelled at length on the School District's internal ESE procedure that calls for a private evaluation, such as that submitted by Dr. Jennings, to be reviewed by a professional staff member of Student Services before it may be included in the student's cumulative file or used for educational program planning purposes. This procedure is not required by the IDEA or state law. Jo Wenger, the director of Student Services, testified that the procedure is used to verify the credentials of the professional who administered the test, and to ensure that a private evaluation is properly considered by ESE staff and does not fall through the cracks. After a Student Services professional reviews the report, the procedure calls for a cover memorandum to be attached, stating that the evaluation appears appropriate for inclusion in the student's file.

Mr. London did not attach a cover memorandum to Dr. Jennings' report when he received and reviewed it on March 20, 2008. Mr. London was a school psychologist and a professional staff member of Student Services fully qualified to review Dr. Jennings' report in accordance with the School District's internal procedure. Mr. London did, in fact, review and rely on the WISC-IV results provided by Dr. Jennings, whose work was well known to the professional staff of Student Services. Mr. London simply neglected to complete the required form, which was eventually completed by Ms. Wenger on August 25, 2008.

[redacted] contends that Mr. London's use of the report violates Florida Administrative Code Rule 6A-6.03311(7)(i)1., which provides that a school district must consider the results of an

evaluation obtained at private expense if the evaluation and the professional who administer the evaluation meet the same criteria that the school district employs when it performs its own evaluations. [redacted]'s argument is that, by not following the letter of its internal procedure, the School District failed to ensure that Dr. Jennings was qualified to perform the testing and therefore violated [redacted]'s rights under the IDEA by using the WISC-IV results in Mr. London's psychological evaluation.

This argument is symptomatic of [redacted]'s approach to this case overall. At much time and expense, he was able to extract from the School District an admission that it did not follow its non-mandatory, internal procedure to the letter. He failed to show that any actual harm was done to [redacted], or even that the purpose of the internal procedure was transgressed by Mr. London. The cited rule, Florida Administrative Code Rule 6A-6.03311(7)(i)1., is intended to ensure that school districts use and give proper weight to private evaluations. [redacted] seeks to stand the rule on its head to exclude his own private evaluation, and to no apparent end other than to score a debating point.

Mr. London made a mistake in not filling out the cover memorandum for Dr. Jennings' report. However, no evidence was presented that this action violated the IDEA or any of its implementing federal or state statutes or regulations, or that it impeded [redacted]'s right to a FAPE, or that it impeded the parents' opportunity to participate in the decision-making process regarding the provision of FAPE to their child, or caused any deprivation of educational benefit.

[12/] Ms. Wenger testified that May 13, 2008, would be considered the official date of completion.

[13/] [redacted] argued that Ms. Green's letter did not specifically ask for either Dr. Jennings' report or further information about [redacted]'s ADHD drugs. It is true that the second paragraph of Ms. Green's letter is phrased in terms of a general request for "additional information," rather than a pointed request for the items mentioned in the first paragraph. However, it is disingenuous for [redacted] to pretend not to understand that Ms. Green was politely phrasing a request for those items.

[14/] [redacted] alleged that the School District personnel had already arrived at an eligibility decision going into the August 20,

2008, meeting. Both Mr. Spisso and Dr. Palazesi credibly denied that any decision had been made before the meeting.

[15/] Mr. Spisso pointed out that the Asperger's diagnosis was based on the parent's report and that the School District would need to perform additional testing to confirm the diagnosis, which appeared to conflict with Dr. Jennings' observations regarding [redacted]'s language skills and social interactions.

[16/] The School District's legal counsel attends such meetings only when the parents bring their own attorney to the meeting.

[17/] Mr. Spisso testified that as the team was going over Dr. Jennings' report, "I noted inconsistencies between what Dr. Jennings was reporting in her observations about [redacted]'s language skills and social interactions and then the diagnosis of Asperger's. . . It was just too much inconsistency in what we were seeing." He did not share his feelings with counsel during the break because he did not want to prejudice the evaluations that he anticipated would have to be performed by the School District's psychologists.

[18/] Much time at the hearing was expended on an inquiry into the "Eligibility, Assignment Staffing and Notice Form" that was partially filled in by Ms. Green in anticipation of the August 20, 2008, meeting. [redacted] attempted to demonstrate that the School District's failure to complete this form, in particular the failure to check a box labeled "further review required," constituted some dereliction of duty. Mr. Spisso adequately testified that the form in question is only completed when an eligibility determination is made at a staffing. The "further review required" box is located in a section of the form indicating the ESE director's approval of the team's recommendation. Mr. Spisso testified that there were sometimes instances in which the ESE director examined the record and decided that the team should conduct further review of the existing record before a final eligibility determination was made. The box on the form was unrelated to the decision made on August 20, 2008, which was to expand the record by conducting further evaluations. Both Mr. Spisso and Dr. Palazesi suggested that it would have been better practice had Ms. Green not partially filled in the form prior to the eligibility staffing, but that it was common practice to do so in order to save time at the meeting. The partially completed form is further indication that the School District entered the August 20, 2008,

meeting believing it was prepared to make an eligibility determination.

[19/] At the beginning of the 2008-2009 school year, [redacted] was enrolled as a home schooled student and taking the ROTC class and an art class at Lincoln. Dr. Palazesi testified that [redacted]'s parents requested that [redacted] be allowed to take a second class in order to begin working [redacted] way back into the school setting, in anticipation of full-time enrollment when the evaluation process was complete.

[20/] Of course, the School District had explained at the August 20, 2008, meeting that the TOPS-3 evaluation administered by Ms. Hastings was not age-appropriate and therefore unusable in an eligibility determination. This was a pattern: [redacted]'s parents would continue to ask questions that the School District had already answered multiple times, and then complain that the School District was stonewalling them.

[21/] Testimony at the hearing established that this was a reference to the August 20, 2008, staffing.

[22/] The form appears to have changed somewhat between January 31, 2008, and October 29, 2008, as evidenced by a comparison of these category descriptions with those in Finding of Fact 14, supra.

[23/] At the hearing, [redacted] stated that [redacted] was offended by the fact the School District seemed more interested in getting money from [redacted] than in providing the requested records. This gratuitous commentary was unsupported by any evidence that [redacted]'s parents made a contemporaneous complaint at being charged for copies.

[24/] Had the lines of communication been more open, this misunderstanding might have been avoided.

[25/] Ms. Felder's report discussed a possible cognitive problem that "could be similar to traumatic brain injury," and speculated that it could be related to loss of oxygen at birth, later seizures, "or an unknown accident (such as on the playground)." Nonetheless, Dr. Kubiak's report is the only one that forthrightly states "head injury" on Axis III (physical conditions) of the DMS-IV.

[26/] The letter did not mention Dr. Kubiak, which is consistent with [redacted]'s testimonial assertion that he and his wife knew nothing of Dr. Kubiak's evaluation until after the School District received the doctor's report.

[27/] At the hearing, Mr. Spisso testified that he was concerned because [redacted] was in the mental care unit of the hospital for something approaching two weeks in November 2008, longer than [redacted] would likely be admitted for simply biting another student on the cheek. He knew of [redacted]'s previous suicide gesture/attempt. [redacted]'s parents refused to disclose the details of the current hospitalization. In light of these concerns, "I acted . . . in good faith by saying we would have an adult person there . . . we would be keeping an eye on [redacted]."

[28/] [redacted] testified that he did not think it would have been a bad idea for a staff person to accompany [redacted] during class changes, but he objected to the idea of an adult staff person sitting in class with [redacted] [redacted] also objected to the fact that Mr. Spisso did not contact him directly to propose the assignment. Mr. Spisso testified that relations had been strained between [redacted] and himself, and that he did not wish to jeopardize the recent thawing in the relationship between the School District and [redacted]'s family by directly telephoning [redacted]

[29/] Ms. Evers did not mention Dr. Kubiak's report, possibly because she was not aware of it. See Finding of Fact 68, supra.

[30/] Mr. Spisso observed that, despite her status as [redacted]'s therapist, Ms. Evers is a social worker, not a certified school psychologist or in any way certified in ESE. Therefore, he did not believe her qualified to offer an opinion as to the benefits of further evaluation in making an IDEA eligibility determination. The undersigned finds Mr. Spisso's point well taken, though Ms. Evers' opinion regarding the additional stress to [redacted] is worthy of at least some consideration.

[31/] Mr. Spisso also noted that the evaluations submitted by [redacted]'s parents had been performed by clinical psychologists, and that sometimes a clinical psychologist's diagnosis will be a "mental health diagnosis" rather than an "educational diagnosis." The School District needed to perform its own evaluations to determine whether [redacted]'s disability, if any, affected [redacted]'s ability to perform in a regular classroom setting.

[32/] Regardless of the nature of Dr. Clark's request, the meeting did, in fact, address Section 504 plan issues.

[33/] The second issue was an allegation that the School District improperly used IDEA funds to pay BMC's contract, an allegation stemming from [redacted]'s encounter with Mr. Mendleson. The third issue was an allegation that the School District violated FERPA in its release of records to BMC. The FDOE's Bureau of Exceptional Education and Student Services found in favor of the School District as to both of these allegations.

[34/] One of the complaints lodged by [redacted] against the School District in the instant case is that its personnel made "offensive comments" about [redacted]'s family in its response to the August 3, 2009, complaint. The School District's response was a September 4, 2009, letter to the Bureau of Exceptional Education and Student Services written by Ward Spisso. In this letter, Mr. Spisso references [redacted]'s "complaint" about BMC and goes on to write, "The [parents] have complained or expressed dissatisfaction either formally or informally about a substantial number of people from the District who has met with them or interacted with [[redacted]]." [redacted] argued that these statements were an attempt to color the Bureau's view of [redacted]'s parents as "complainers." In fact, nothing in the School District's letter was a misrepresentation of facts or constituted interference with [redacted]'s right to access the state complaint procedure as alleged by [redacted]

[35/] The second issue was whether the School District asserted the appropriate protections for [redacted], based on the district's knowledge of the student's disabilities, related to the student's suspensions during the 2008-2009 school year. The Bureau of Exceptional Education and Student Services found that the only disciplinary referral within its jurisdiction was a two day in-school suspension issued to [redacted] on [redacted]. Because [redacted] was not subjected to a disciplinary removal for more than ten days as set forth in 34 C.F.R. § 300.530(b), the Bureau found that the School District was not required to apply IDEA protections. [redacted]'s parents also raised the issue of the January 24, 2008 "administrative leave" issued by Mr. Hansen at Lincoln, but the Bureau found that this fell outside of the requirement of 34 C.F.R. § 300.153(c) that a complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received.

[36/] The School District also argues, with some logical force, that it is less than credible for [redacted] to suggest that he would have given consent for evaluation if only the School District had presented him with a Section 504 consent form, given his steadfast refusal to reinstate consent for evaluation under the IDEA.

[37/] An affidavit was filed by Gwendolyn Graham, the School District's director of the Department of Professional Standards. Ms. Graham was present at the meeting and verified that Mr. Pons did not state that [redacted] had been determined eligible for ESE services.

[38/] Mr. Pons filed an affidavit in this case that included the following statements:

> The parents of [redacted] have had a variety of complaints about the District for approximately the last two years and maybe longer. They have filed a number of complaints against the District in various forums. I am always concerned when parents of a student complain about the District. I occasionally invite complaining parents to meet with me so I can understand their concerns. . .

[redacted] cited the quoted language as another example of the School District's effort to smear him with the label of "complainer." See Endnote 34, supra. To support his assertion, [redacted] also cited a letter written by Mr. Pons to United States Representative Allan Boyd, in response to [redacted]'s complaint to Congressman Boyd's office, in which Mr. Pons referred to [redacted]'s parents as "less than cooperative with Leon County Schools. . . ". [redacted]'s assertion is without substance.

[39/] Florida Administrative Code Rule 6A-6.03020(1) provides that a homebound or hospitalized student "is a student who has a medically diagnosed physical or psychiatric condition which is acute or catastrophic in nature, or a chronic illness, or a repeated intermittent illness due to a persisting medical problem and which confines the student to home or hospital, and restricts activities for an extended period of time." (emphasis added). No evidence was presented that [redacted] was confined to

home or hospital except during her acute episodes in January and September 2008, or that [redacted]'s parents ever raised the question contemporaneously with the School District prior to or during those hospital stays. [redacted] was never certified by a physician pursuant to Florida Administrative Code Rule 6A-6.03020(3) or evaluated for eligibility pursuant to Florida Administrative Code Rule 6A-6.03020(4).

[40/] At this point, Mr. Jones was no longer representing [redacted] The parents had hired the firm of Eubanks, Barrett, Fasig & Brooks.

[41/] Testimony at the hearing established that [redacted] worked for a period of years at the Department of Education as a colleague of Mr. Spisso and Dr. Palazesi. [redacted] worked as a "program monitor," essentially performing an auditing function for school districts to ensure their compliance with the procedural requirements of the IDEA. Thus, [redacted] was acutely familiar with the federal and state IDEA statutes and rules, and even more acutely sensitive to any deviation from those statutes and rules.

[redacted]'s background may explain his insistent brooding upon every procedural misstep of the School District, without regard to whether it had any actual effect on the educational progress of [redacted] It was plain that Mr. London's failure to complete a form, violative of nothing but a School District internal procedure, had absolutely no impact on [redacted], but [redacted] returned to this topic over and over at the hearing. Similarly, the School District took immediate steps to remove Mr. Mendleson from [redacted]'s case, and extravagantly apologized to [redacted]'s parents for the incident, but [redacted] continued to dwell upon this episode as evidence of the School District's bad faith.

Mr. Hansen's placing [redacted] on "administrative leave" was a well-intentioned attempt to avoid any negative disciplinary inferences regarding his decision to keep the child off the Lincoln campus until a plan could be put in place to ensure [redacted]'s safety. Mr. Spisso's decision to appoint a one-to-one staff person to accompany [redacted] was similarly well meaning. The undersigned has considered that these administrators were operating in more or less an informational vacuum. They knew there had been an incident at the school, they knew the child had been hospitalized, and they knew they were responsible for the child's safety on campus. The parents had volunteered no

further information, and would provide none until prodded or provoked by the School District to do so. Yet, at the hearing, [redacted] stubbornly clung to the theory that every action taken by the School District that deviated from the IDEA rules, however slightly, constituted a violation of the IDEA, regardless of whether it impeded the child's right to a FAPE, impeded the parents' opportunity to participate in the decision making process regarding the provision of FAPE to their child, or caused a deprivation of benefits.

[42/] The parents left their consent intact after the August 20, 2008, meeting, an indication that they understood what the School District proposed. The parents revoked their consent on September 19, 2008, an indication that they had reflected on the matter and disagreed with the School District's evaluation proposal, not an indication that they were uninformed. The parents then reinstated their consent on October 29, 2008. The consent form signed by the parent listed essentially the same evaluation activities that were discussed at the August 20, 2008, meeting, another indication that they understood the nature of the evaluation activities the School District proposed to undertake.

[43/] The evidence established no "academic failures" for [redacted] The evidence established that [redacted]'s grades were lower than the parents would have liked.

[44/] The record did not establish "excessive absences" apart from [redacted]'s health-related, excused absences from school.

[45/] Section 1003.57(1)(b), Florida Statutes, contains the corresponding Florida requirement: "A student may not be given special instruction or services as an exceptional student until after he or she has been properly evaluated, classified, and placed in the manner prescribed by rules of the State Board of Education. . . "

[46/] The School District could have pursued the evaluation process through initiating its own due process hearing, 20 U.S.C. § 1414(a)(1)(D)(ii), but elected to respect the parents' decision to withdraw from the process and home school [redacted] Shelby S. v. Conroe Indep. Sch. Dist., 454 F.3d 450, 454 (5th Cir. 2006). In the instant case, even after the parents withdrew [redacted] from school, the School District pursued the evaluation process pursuant to its Child Find responsibilities,

20 U.S.C. § 1412(a)(3), until the parents' withdrew their consent for evaluations.

[47/] Since December 22, 2008, the referenced provision has been found at Florida Administrative Code Rule 6A-6.03311(5).

[48/] Since December 22, 2008, the referenced provision has been found at Florida Administrative Code Rule 6A-6.03311(9).

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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).