

Broward County School District
No. 09-1279E & 09-1392E
Initiated By: District and Parent
Hearing Officer: Claude B. Arrington
Date Of Final Order: June 26, 2009

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BROWARD COUNTY SCHOOL BOARD,)
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Petitioner,)
)
vs.) Case No. 09-1279E
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Respondent.)
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Petitioner,)
)
vs.) Case No. 09-1392E
)
BROWARD COUNTY SCHOOL BOARD,)
)
Respondent.)
_____)

FINAL ORDER

Pursuant to notice, a final hearing was conducted on April 21, 2009, via video teleconference between Fort Lauderdale and Tallahassee, Florida, before Claude B. Arrington, a duly-designated Administrative Law Judge of the Division of Administrative Hearings (DOAH).

APPEARANCES

For School Board: Barbara J. Myrick, Esquire
Broward County School Board

600 Southeast Third Avenue, 11th Floor
Fort Lauderdale, Florida 33301

For Student: Debra Thornby, Qualified Representative
The Learning Foundation of Florida
507 Royal Palm Beach Boulevard
Royal Palm Beach, Florida 33411

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(Address of record)

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(Address of record)

STATEMENT OF THE ISSUES

As to DOAH Case No. 09-1279E, whether █ (the Student)¹ is entitled to an Independent Education Evaluation (IEE) at public expense.

As to DOAH Case No. 09-1392E, whether the Student is a student with a disability and meets the criteria for special education and related services pursuant to the Individuals with Disabilities Act, 20 U.S.C. Section 1400, et. seq. (IDEA).

PRELIMINARY STATEMENT

At all times relevant to these consolidated proceedings, the Student has been a student within the Broward County School District. At the time of the formal hearing, the Student was a 7th grade student at █ School (█), a public school in Broward County.

The Student's parents signed a consent form in February 2008 authorizing the Broward County School Board (the School Board) to evaluate the Student to determine the Student's

eligibility for services from the School Board's Exceptional Student Education (ESE) program pursuant to IDEA. The evaluations performed pursuant to this authorization will be discussed below.

On January 5, 2009, the Student's educational advocate filed a request for a Due Process Hearing, which was referred to DOAH and became DOAH Case No. 09-0175E. Along with the Due Process request, the Student's educational advocate requested State Mediation. A State Mediation was held on January 21, 2009, but the parties were not able to resolve all issues. Following the State Mediation, the School Board agreed to conduct additional evaluations of the Student in the areas of social, emotional, and behavioral needs. The School Board also agreed to consider reports provided by the Student's private providers.

Following the additional evaluations of the Student, the School Board held an eligibility meeting and determined that the Student did not meet the criteria for ESE services pursuant to IDEA. On or about February 25, 2009, the Student's educational advocate requested an IEE at public expense. In response to that request, the School Board filed a request for a Due Process Hearing asserting that the evaluations of the Student were accurate and appropriate. The School Board's request was referred to DOAH, where it was assigned DOAH Case No. 09-1279E.

On March 5, 2009, a new plan was developed for the Student under the provisions of 34 C.F.R. Section 504. As a result of the development of that plan, the Student's father signed a settlement agreement under advice from the Student's educational advocate and agreed to withdraw DOAH Case No. 09-0175E. On March 10, 2009, the presiding ALJ dismissed DOAH Case No. 09-0175E.

On March 10, 2009, the Student's mother filed a request for a Due Process Hearing challenging the School Board's determination that the Student is not eligible for ESE and related services pursuant to IDEA. That Due Process request was referred to DOAH, where it was assigned DOAH Case No. 09-1392E.

On March 23, 2009, the undersigned consolidated DOAH Case Nos. 09-1279E and 09-1392E.

At the formal hearing, the School Board presented testimony from the following School Board employees: Annette Rodriguez (school psychologist assigned to the South Central Area), Ian Loew (■■■■ grade band teacher at ■■■■), Ann Baum Vitello (ESE teacher at ■■■■), Savita Bissoonndatt (■■■■ grade reading teacher at ■■■■), and Lisa Bandman (ESE specialist at ■■■■). The following pre-marked School Board exhibits were admitted into evidence: 1, 2, 3, 4, 9, 10, 11, 19, and 20.

The Student's mother testified on behalf of the Student. The Student's father made a statement on the record, which constituted argument and not testimony. The following Student Exhibits were admitted: 1, 2, 4, 5, 6, 7, 8, 9, 10, and 11. The Student's Exhibits 8, 9, and 10 had not been pre-filed with DOAH. Those three exhibits were subsequently filed with DOAH and reviewed by the undersigned. By Order entered May 22, 2009, those three Exhibits were admitted into evidence.

The Transcript of the consolidated proceedings, consisting of two volumes, was filed May 11, 2009. Following an on-the-record discussion with the parties, the deadline for the filing of proposed final orders was established as being 45 days following the filing of the Transcript. In a subsequent status conference, at the request of the parties the deadline for the filing of proposed final orders was set as being close of business on June 15, 2009, and the deadline for the filing of the Final Order was extended to close of business on June 30, 2009. The School Board and the Student filed Proposed Final Orders, which have been duly considered by the undersigned in the preparation of this Final Order.

FINDINGS OF FACT

1. The Student, born in [REDACTED], has attended public schools in Broward County, Florida, since kindergarten and, at the time of the formal hearing, was completing the [REDACTED] grade at [REDACTED].

2. A Child Study was conducted at the request of the Student's parents to address the parents' concerns about the Student. On October 7, 2008, the Child Study team met to determine whether the Student was eligible for services from the School Board's ESE program pursuant to IDEA. The parents had consented to an evaluation of the Student in February 2008. Between the time of the consent and the Child Study team meeting, the School Board had assembled a Student Services Referral for Psychological Evaluation Packet dated February 28, 2008 (School Board Exhibit 1), a Psychosocial Evaluation Report dated May 23, 2008 (School Board Exhibit 2), and a Psychological Evaluation report dated September 8, 2008 (School Board Exhibit 3).

3. School Board Exhibit 1 includes a visual screening test; a hearing screening test; a "Clinical Evaluation of Language Fundamentals" screening test; parent contact records; classroom observations; a "Functional Behavioral Assessment" (including teacher interviews that underpin the Functional Behavioral Assessment); "Comprehensive Problem Solving and Evaluation: Student Rating Form" completed by five of the Student's teachers; a "Parent Information Form" providing social and developmental history; a letter from an advocate for the Student dated October 1, 2007; and a "Referral for Psychological Services."

4. Because of the concerns in the areas of social and emotional functioning, the Child Study team requested a Psychosocial Assessment of the Student. The School Board's Exhibit 2 is a Psychosocial Assessment Report dated May 23, 2008, and prepared by Maryann Diest-Zemon, MSW, LCSW, a school social worker. The Report contained the following under the section headed "Summary, Assessment and Recommendations":

[The Student] is a [redacted] year-old, [redacted] grade student enrolled in advanced placement classes at [redacted] School. This student was referred for a psychosocial assessment due to social and emotional concerns. [The Student] is on or above grade level. [The Student] has been diagnosed with OCD [Obsessive Compulsive Disorder] and ADD [Attention Deficit Disorder] by a neurologist. This student has found medication to be effective. [The student] has trouble being organized, keeping track of [the Student's] assignments, staying on task, and keeping motivated. [The Student] also has some issues with self-esteem.

1. Continue monitoring medication.
2. Counseling to help [the Student] deal with [the Student's] frustration and OCD.
3. It may be helpful for parents to consult with a therapist to find new strategies to help manage a more positive parenting environment.
4. Continue working with occupational therapist as recommended.

5. The School Board's Exhibit 3 is a Psychological Report dated September 8, 2008, and prepared by school psychologist Annette Rodriguez. Ms. Rodriguez testified at length as to her evaluation of the Student as reflected by the School Board's

Exhibit 3 and by her Psychological Addendum dated February 23, 2009 (School Board's Exhibit 10).

6. As reflected by the School Board's Exhibit 3, Ms. Rodriguez utilized the following assessment procedures during her initial evaluation of the Student:

Wechsler Intelligence Scale for Children - Fourth Edition (WISC-IV),
Woodcock Johnson III Tests of Achievement (WJ-III),
Berry-Buktenica Developmental Test of Visual-Motor Integration, Fifth Edition (VMI),
Behavior Assessment System for Children Second Edition - Parent Rating Scales,
Behavior Assessment System for Children Second Edition - Teacher Rating Scales,
Behavior Assessment System for Children Second Edition - Self Report,
Conner's Parent Rating Scale - Revised (L),
House-Tree-Person,
Kinetic Family Drawing,
Guess Why Test,
Student Self-Assessment Inventory,
Clinical Structured Interview with Child,
and
Review of Records.

7. By an agreement of the parties, the Student was referred to Ms. Rodriguez for additional testing in the areas of social and emotional functioning. The additional testing resulted in the School Board's Exhibit 10, which is an addendum to her initial evaluation. The testing dates were February 2, 12, and 23, 2009.

8. A Psychological Services Referral Packet (School

Board's Exhibit 9) contained information from the Student's parents and teachers and was used by Ms. Rodriguez in preparing School Board Exhibit 10. School Board Exhibit 9 includes a hearing screening test; a "Clinical Evaluation of Language Fundamentals" screening test; reports of meetings with parents and teachers; reports of a meeting to develop a 504 plan; observation form from teachers and administrators; a "Functional Behavioral Assessment" (including teacher interviews that underpin the Functional Behavioral Assessment); "Comprehensive Problem Solving and Evaluation: Student Rating Form" completed by six of the Student's teachers; a copy of the "Parent Information Form" contained in School Board Exhibit 1 providing social and developmental history; and a "Referral for Psychological Services."

9. School Board Exhibits 1, 3, 9, and 10, together with the testimony of Ms. Rodriguez, established that she used an appropriate variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the Student in preparing School Board Exhibits 3 and 10.

10. The assessments conducted by Ms. Rodriguez were given according to protocols and procedures in the assessment manuals.

11. The assessment instruments used by Ms. Rodriguez are accepted in the field of psychology as they apply to the specific issue for which they are evaluating.

12. The assessments and the evaluation materials that were used are designed to assess the specific areas of educational need, and not merely designed to provide a general intelligence quotient.

13. The evaluations consisted of sufficient standardized assessments to determine whether the Student is a student with a disability as defined by the eligibility criteria in Special Programs and Procedures for Exceptional Students.

14. Ms. Rodriguez assessed the Student in all areas related to the suspected disabilities.

15. The evaluations were sufficiently comprehensive to identify any and all of the Student's special education and related services needs.

16. The assessments selected and administered were nondiscriminatory as to race or cultural bias.

17. The assessments were administered in the Student's native language.

18. There was a dispute in the record as to whether the results obtained by Ms. Rodriguez in both her initial evaluation and her addendum were valid and reliable. The greater weight of the credible evidence established that both her initial evaluation and her addendum were valid and reliable.

19. The assessment results accurately reflect the Student's aptitude and achievement level.

20. The Student has been diagnosed with ADD and has been prescribed medication that helps the Student concentrate. The initial evaluation was completed more than 60 days from the date the parents gave their consent to the evaluation. The Student was off medication for a trial period when the Student first presented to Ms. Rodriguez. Ms. Rodriguez explained, credibly, that she delayed administering some of the tests because the Student was having difficulty concentrating as a result of being off medication. Ms. Rodriguez wanted the Student to be on medication while she administered the evaluation tests to enable a more accurate assessment of the Student. The failure to complete the evaluation within 60 days was justified by extenuating circumstances and in no way prejudiced the Student.

21. In addition to the foregoing, Ms. Rodriguez reviewed the Psychosocial Report that was admitted as the School Board's Exhibit 2.

22. Ms. Rodriguez holds the proper licensure and has the proper training to conduct the assessments and evaluations that she completed.

23. The pre-referral activities and the information collected were complete, met the requirements established in the Florida Department of Education's Special Programs and Procedures for Exceptional Students (DOE ESE Procedures) and provided the necessary information for the school psychologist

to conduct a comprehensive evaluation.

24. The initial evaluation contained input from the Student's 6th grade teachers indicated that the Student had clinically significant signs of withdrawal. The Addendum contained input from the Students' [REDACTED] grade teachers, but there were no clinically significant signs with respect to depression, atypicality, withdrawal, social skills deficits, or adaptive behavior deficits.

25. In contrast to the teachers' input, the parents reported that the Student at home was having clinically significant difficulties in hyperactivity, depression, atypicality, attention problems, social skills problems, poor leadership, poor activities of daily living, and functional communication.

26. Ms. Rodriguez consulted with Dr. Brian Greer, the Student's private psychiatrist, when she was in the process of preparing the addendum because the Student had reported that the Student had heard voices at night. After this consultation, Ms. Rodriguez concluded that the Student's hearing voices was not a sign of psychosis, but was either a side effect of the Student's medication or was hypnagogue.

27. Two letters from Dr. Greer, one undated and one dated February 23, 2009, were admitted into evidence. The undated letter was part of the School Board's Exhibit 1 (at Bates stamp

page 9) while the dated letter was part of the School Board's Exhibit 11 (at Bates stamp page 189).

28. The undated letter, addressed "To Whom It May Concern", provided as follows:

After a comprehensive psychiatric evaluation [the Student] . . . has received a diagnosis of Pervasive Developmental Disorder, NOS (Not Otherwise Specified), DSM-IV diagnosis code 299.80 and A.D.H.D., Combined Type, DSM-IV diagnosis code 314.0.

29. The dated letter was also addressed "To Whom It May Concern," provided as follows:

After a comprehensive psychiatric evaluation [the Student] . . . has received a diagnosis of Pervasive Developmental Disorder, NOS (Not Otherwise Specified)/Aperger's [sic] Disorder, DSM-IV diagnosis code 299.80 and A.D.H.D., Combined Type, DSM-IV diagnosis code 314.0.

30. Dr. Greer did not testify at the formal hearing. There was no explanation why Aperger (sic) Disorder² was included in the dated letter, but not in the undated letter.

31. Although the undated letter was part of the School Board's Exhibit 1, Ms. Rodriguez testified that she had not seen either letter before completing her initial assessment and the addendum. She also testified that the letters from Dr. Greer did not change her assessments of the Student.

32. Ms. Rodriguez's initial evaluation (School Board Exhibit 3) contained the following recommendations beginning at

Bates stamp page 82:

1. If feasible, parents are highly encouraged to contact [the Student's] pediatrician/neurologist to determine any possible physiological explanation for observed tics and repetitive behaviors. Furthermore, if feasible, parents may wish to seek the assistance of a child psychiatrist to further explore [the Student's] auditory hallucinations.
2. If feasible, parents are urged to consult a therapist to help [the Student] cope with any feelings of insecurity, resentment, or anger. Broward County Public Schools offers a Family Counseling Program that parents may wish to consider.
3. Parents, school personnel, and private therapists are urged to keep an open line of communication to ensure that [the Student] is coping well within the school setting.
4. [The Student] should be encouraged to engage in self-affirmations by modeling and demonstration. Self-defeating remarks only serve to reinforce [the Student's] insecurities.
5. Teachers should reassure [the Student] through compassion and sensitivity should [the Student's] academic performance deteriorate as a result of low mood, inattentiveness, or any possible side effects of medication. [The Student] should be allowed extra time to turn in missing assignments, for instance, as opposed to being allowed to miss them altogether with no consequence.
6. [The Student] would benefit from having consistent contact with school personnel or school counselor to monitor [the Student's] mood. [The Student] should continue to be monitored by the Comprehensive Problem Solving Team at [the Student's] school
7. Multimodal presentation of academic material may aid in engaging [the Student's] interest in academic concepts.
8. Provide immediate positive feedback

for effort and completed assignments. Praise [the Student] for strengths such as cooperative behavior.

9. [The Student] may need assistance from teachers when trying to integrate [the Student] into a work group (as in for the purpose of a group project or class work). Teachers should be sensitive to [the Student's] withdrawn nature and facilitate [the Student's] transition into a group setting by providing [the Student] with reassurance and positive encouragement.

10. [The Student] may wish to join an extracurricular club to help [the Student] socialize with [the Student's] peers. An effort should be made to include [the Student] in activities with [the Student's] "friends" from the bus.

33. The addendum prepared by Ms. Rodriguez contained similar recommendations.

34. The Student has been appropriately evaluated. No further evaluation of the Student is necessary at this time.

35. The Student's mother believes that the Student is eligible for ESE services under criteria of Emotional/Behavioral Disabilities (EBD) and Other Health Impaired (OHI) as set forth in the DOE ESE Procedures.³ The Student's mother believes that the Student needs services from the ESE program, but she was not able to specify the type of services needed.⁴

36. The definition of EBD is set forth in the DOE ESE Procedures as follows:

A student with an emotional/behavioral disability (E/BD) has persistent (is not sufficiently responsive to implemented evidence-based interventions) and consistent

emotional or behavioral responses that adversely affect performance in the educational environment that cannot be attributed to age, culture, gender, or ethnicity.

37. The eligibility criteria for EBD as set forth in the DOE ESE Procedures are as follows:

A student is eligible for a special program for emotional/behavioral disabilities if the following criteria in (1), (2), and (3) are met.

1. A student with an emotional/behavioral disability must demonstrate an inability to maintain adequate performance in the educational environment that cannot be explained by physical, sensory, socio-cultural, developmental, medical, health (with the exception of mental health) factors; and must demonstrate one or more of the following in 1.a. or 1b.:

a. Internal factors characterized by:

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

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

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

b. External factors characterized by:

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

2. Behaviors that are chronic and disruptive, such as non-compliance, verbal and/or physical aggression, and/or poorly developed social skills, and are

manifestations of feeling, symptoms, or behaviors as specified in section 1a.

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

3. The student needs special education as defined in rule 6A-6.03411(1)(c), FAC.

4. In extraordinary circumstances activities prior to referral for evaluation and the criteria for eligibility described in 2 above may be waived when immediate intervention is required to address an acute onset of an internal emotional/behavioral characteristic as listed in 1a above.

38. The definition of OHI is set forth in the DOE ESE

Procedures as follows:

Other health impaired means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment that is due to chronic or acute health problems. This includes, but is not limited to, asthma, attention deficit disorder or attention hyperactivity disorder, Tourette syndrome, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and acquired brain injury.

39. The criteria for OHI are set forth in the DOE ESE

Procedures as follows:

A student with a health impairment is eligible for exceptional student education if the following criteria are met:

1. There is evidence of a health impairment that results in reduced

efficiency in schoolwork and adversely affects the student's performance in the educational environment; and

2. The student needs special education as defined in rule 6A-6.03411(1)(c), FAC.

40. The Student has been diagnosed by different practitioners as having OCD; ADD; ADHD; and Pervasive Development Disorder, NOS/Asperger's Disorder. Those diagnoses are health impairments within the meaning of the criteria for services under the classification OHI and an emotional/behavioral disability within the meaning of the criteria for services under the classification EBD.

41. The testimony of the Student's mother and the evidence presented by the School Board established that the symptoms of ADHD are a significant problem in the home setting and less than a significant problem in the school setting. While in the home setting, the Student demonstrated feelings of sadness, loss of interest in friends and school work, and mood swings. Those feelings were not demonstrated in the school setting.

42. The Student is fidgety in class, frequently disorganized, easily distracted, and socially awkward. However, the Student has no difficulty remaining in the Student's assigned class for the duration of the class and is easily re-directed when off-task. At school, the Student does not verbalize any feelings of being upset or frustrated. The Student communicates appropriately with peers and teachers and

can respond correctly when questioned by a teacher. The Student has maintained average or above final grades in the Student's classes. The teachers' ratings for the Student's behavior were typical of a student of the age and gender of the Student.

43. The Student does not, as of the date of the formal hearing, meet the criteria for ESE services pursuant to IDEA under the category of EBD or OHI.⁵

CONCLUSIONS OF LAW

44. DOAH has jurisdiction over the parties and the subject matter of this proceeding pursuant to the provisions of Section 1003.57(5), Florida Statutes (2009); 20 U.S.C. Section 1400, et seq.; 34 CFR Part 300; and Florida Administrative Code Rule 6A-6.03311(11).

45. 34 C.F.R., Section 300.502(b) provides, in relevant part, as follows:

(b) Parent right to evaluation at public expense.

(1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section.

(2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either—

(i) File a due process complaint to request a hearing to show that its evaluation is appropriate; . . .

46. As to DOAH Case No. 09-1279E, the burden of proof is on the School Board to prove by a preponderance of the evidence that its Psychological Evaluation dated September 8, 2008, and

the Psychological Addendum, dated February 23, 2009, were appropriate, that valid tests and assessment materials were used, and that qualified personnel administered and interpreted the assessment material. See Schaffer v. Weast, 126 S.Ct. 528 (2005). The School Board must prove all elements of its case by a preponderance of the evidence. See Florida Department of Transportation v. J. W. C. Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981), Balino v. Department of Health & Rehabilitative Services, 348 So. 2d 349 (Fla. 1st DCA 1977), and § 120.57(1)(j), Fla. Stat.

47. A "preponderance" of the evidence means the greater weight of the evidence. See Fireman's Fund Indemnity Co. v. Perry, 5 So. 2d 862 (Fla. 1942). "Competent" evidence must be relevant, material and otherwise fit for the purpose for which it is offered. See Duval Utility Co. v. FPSC, 380 So. 2d 1028 (Fla. 1980), and Gainesville Bonded Warehouse v. Carter, 123 So. 2d 336 (Fla. 1960). "Substantial" evidence must be sufficient to allow a reasonable mind to accept the evidence as adequate to support a conclusion. See Degroot v. Sheffield, 95 So. 2d 912 (Fla. 1957), and Agrico Chemical Co. v. Fla. Dept. of Environmental Regulation, 365 So. 2d 759 (Fla. 1st DCA 1978).

48. As set forth in the Findings of Fact, the School Board has met its burden of proof as to all elements necessary to establish that the Student has been appropriately assessed.

Consequently, it is concluded that the Student is not entitled to an IEE.

49. The Student has asserted in DOAH Case No. 09-1392E that the Student meets the criteria for services from the ESE program pursuant to IDEA. The authorities set forth above impose upon the Student, as the party asserting the affirmative of the issue, the burden of proving the Student's eligibility for services by a preponderance of the evidence. As set forth in the Findings of Fact, the Student was unable to meet that burden. Consequently, it is concluded that as of the date of the formal hearing the Student is not entitled to ESE services pursuant to IDEA under the category OHI or the category EBD.

ORDER

The premises considered, as to DOAH Case No. 09-1279E, it is ORDERED that the Student is not entitled to an IEE.

As to DOAH Case No. 09-1392E, it is ORDERED that the Student is not entitled to ESE services pursuant to IDEA under the category OHI or the category EBD.

DONE AND ORDERED this 26th day of June, 2009, in Tallahassee, Leon County, Florida.

S

CLAUDE B. ARRINGTON
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building

1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 26th day of June, 2009.

ENDNOTES

^{1/} The undersigned has attempted to comply with the request by the Florida Department of Education that DOAH ALJs write Final Orders involving IDEA so that the gender of the student will not be disclosed.

^{2/} The dated letter apparently contains a typographical error. It is assumed that Dr. Greer's diagnosis was Asperger's Disorder, not Aperger Disorder.

^{3/} The undersigned carefully considered the mother's testimony, the statement made by the father, and the arguments set forth by the Student's Qualified Representative in deciding whether the Student meets the criteria for services under the category of EBD or OHI.

^{4/} The inability of the Student's mother to specify the type of services needed under either the EBD or the OHI categories has been given no consideration by the undersigned because the Student's parents are not educational professionals and there was no evidence that anyone on behalf of the School Board had explained the range of services that may be available.

^{5/} While the Student continues to be an average or above student, there was some decline in the Student's grades from the ■■■ grade to the ■■■ grade. There was no evidence as to what caused that decline. The School Board and the parents are encouraged to closely monitor the Student's progress in school. Another Child Study team should be convened if the Student's performance in school deteriorates.

COPIES FURNISHED:

Edward J. Marko, Esquire

Broward County School Board
600 Southeast Third Avenue, 11th Floor
Fort Lauderdale, Florida 33301

Kim C. Komisar, Section Administrator
Bureau of Exceptional Education
and Student Services
Department of Education
325 West Gaines Street, Suite 614
Tallahassee, Florida 32399-0400



(Address of record)

Barbara J. Myrick, Esquire
Broward County School Board
600 Southeast Third Avenue, 11th Floor
Fort Lauderdale, Florida 33301

Debra Thornby, Qualified Representative
The Learning Foundation of Florida
507 Royal Palm Beach Boulevard
Royal Palm Beach, Florida 33411

Deborah K. Kearney, General Counsel
Department of Education
Turlington Building, Suite 1244
325 West Gaines Street
Tallahassee, Florida 32399-0400

James F. Notter, Superintendent
Broward County School Board
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301-3125

NOTICE OF RIGHT TO JUDICIAL REVIEW

This decision is final unless an adversely affected party:

- a) brings a civil action within 30 days in the appropriate federal district court pursuant to Section 1415(i)(2)(A) of the Individuals with Disabilities Education Act (IDEA); [Federal court relief is not available under IDEA for students whose only exceptionality is "gifted"] or
- b) brings a civil action within 30 days in the appropriate state circuit court pursuant

to Section 1415(i)(2)(A) of the IDEA and Section 1003.57(1)(e), Florida Statutes; or c) files an appeal within 30 days in the appropriate state district court of appeal pursuant to Sections 1003.57(1)(e) and 120.68, Florida Statutes.