

01-0104621

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS

STATE OF GEORGIA



██████████,

Petitioner,

v.

DADE COUNTY SCHOOL  
SYSTEM,

Respondent.

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OSAH-DOE-SE-0104621-41-BBS

DECISION

I. PROCEDURAL HISTORY

1. On or about August 31, 2000, Respondent, Dade County School System, received a request for a due process hearing from Petitioner, ██████████, and his parents, ████████ and ████████. Judge Michael M. Malihi was originally appointed to hear the matter. On or about September 18, 2000, the Petitioner filed a Notice of Amendment of Grievance. On or about October 13, 2000, Petitioner filed a Notice of Second Amendment of Grievance. On or about November 10, 2000, the case was reassigned by the Office of State Administrative Hearings to the undersigned Special Assistant Administrative Law Judge ("ALJ"). The Petitioner was represented by Jonathan Zimring and Alissa Codel of Zimring, Smith & Billips, P.C. Respondent was represented by The Weatherly Law Firm, Charles Weatherly and Kathleen Sullivan.
2. By a letter dated November 10, 2000, the parties were notified of the reassignment and that the hearing would go forward on Wednesday, November 15, 2000 in Trenton, Georgia. On

or about October 19, 2000, the Respondent filed an Emergency Motion to Compel Evaluation of the Petitioner. At the beginning on the hearing on November 15, 2000, the ALJ orally denied the motion for an evaluation filed by Respondent. On or about November 21, 2000, the Dade County School System filed a request for a due process hearing on their right to re-evaluate ~~\_\_\_\_\_~~. The undersigned ALJ was appointed to hear this matter as well. On or about January 25, 2001, the ALJ consolidated the request for a hearing on the evaluation with the ongoing due process hearing filed by Petitioner. Petitioner objected to the consolidation and moved for reconsideration of the Order of Consolidation. Petitioner's Motion to Reconsider was denied. The hearing in the consolidated cases took place over nineteen (19) days beginning November 15, 2000 and continuing through April 17, 2001; November 15, 2000, December 1, 2000, December 11, 2000, December 13, 2000, December 14, 2000, January 17, 2001, January 18, 2001, January 19, 2001, February 22, 2001, February 23, 2001, March 12, 2001, March 13, 2001, March 14, 2001, March 26, 2001, March 27, 2001, March 29, 2001, March 30, 2001, April 16, 2001, and March 17, 2001. The following witnesses testified in this case: Shelly Boatner, Joyce Teal, Karen DeMarche, Connie Lea, Cathy Shepard, Darle Stewart, Dr. George Hynd, Dr. Morris Cohen, Dr. Thomas Oakland, Bonnie Ford, Tina Kesler, Jane Everett, Judy Bean, Loyd Gass, ~~\_\_\_\_\_~~, ~~\_\_\_\_\_~~, Sheila Wright, Eileen Card, Mary Ellen Brown, Linda Gregory, Janet Green, Dr. ~~\_\_\_\_\_~~ Michael Schmits, Kelly Brim Hollowell, John Emmett, Donna Allen, ~~\_\_\_\_\_~~, Matthew Wagner, Monda L. Wooten, Nathan Wooten, Angie Dean, Carol Miller Durham, Tricia Capagrossi, Jane Underwood, Eileen Stone, Annice Goodwim, Greg Ramey, Charles Johnston, Brian Henry, Juanita Blevins, Sheryl Pruitt, Cheri Robinson, Lamerle Howard,

Brian Watkins, Dr. David Rostetter, [REDACTED]

3. The Petitioner's exhibits admitted into evidence were: Petitioner's Notebooks I and II, consisting in Notebook I Bates p. 1-683 under 17 Tabs; Notebook II Bates p. 1-525 under Tabs 5 through 15; additionally Transcripts of three IEP meetings; September 12, 2000 meetings under Tabs 1 and 2; the May 15, 2000 meeting under Tab 3; and March 4, 1999 meeting under Tab 4. The evidence not tendered and not admitted in those notebooks are the following: Petitioner's Notebook II, any photographs of a child who is not the Petitioner; and Petitioner's Notebook II Bates p. 466-476.
4. The Respondent's exhibits admitted into evidence were: Respondent's Notebooks I through IV, except for the following documents to which an objection to their admission was sustained: Respondent's Notebook I Tab 87; Tab 102 AG1399, 1400, 1401, 1402; Respondent's Notebook II Tab 110 AG657 through 663; Tab 111 AG683; AG156 DFCS report; Respondent's Notebook IV Tab 24.
5. The current proceeding is related to an earlier due process hearing filed by Petitioner in 1999, as well as federal litigation filed in the Northern District of Georgia, Rome Division. On or about May 25, 1999, Petitioner [REDACTED], by his parent, [REDACTED], filed a Request for Special Education Due Process Hearing seeking compensatory and punitive damages in the amount of \$500,000.00 each, the cost of the action including reasonable attorneys fees and other relief as appropriate. On or about July 9, 1999, Lois D. Shingler, the Special Assistant Administrative Law Judge, assigned to the 1999 due process hearing request, dismissed the request for lack of jurisdiction as Petitioner presented no claims arising under IDEA. Petitioner, at the time, was represented by Steve Lanier's law firm in Rome, Georgia, Tricia

Dennis, an attorney in Chattanooga, Tennessee, and Matthew C. Wagner with the office of James E. Myers, P.C. in Washington, D.C. The due process hearing request only addressed issues arising during the 1998-1999 school year. Subsequent to the dismissal of that case, the Petitioner filed a Complaint in the United States District Court, Northern District of Georgia, Rome Division, against the Dade County Board of Education *et.al.*, Case No. 4:99-CV-216-HLM. On August 30, 2000, Judge Murphy ruled on Defendant's Motion for Summary Judgment by denying the Defendant's Motion for Summary Judgment and allowing Plaintiff to dismiss the case without prejudice as a way to allow the Plaintiff to exhaust his administrative remedies. The Complaint contained allegations relating only to the 1998-1999 school year. The due process hearing request filed on or about August 31, 2000, as well as the Amendment to Grievance and the Second Amendment to Grievance raised issues on the provision of appropriate public education for the years 1997-1998, 1998-1999, 1999-2000 and the failure to offer a program for 2000-2001 school year. The amended grievance addressed the IP developed on September 12-13, 2001. The Notice of Second Amendment of Grievance filed on or about October 13, 2000 raised claims of harassment and violation of Section 504 of the Rehabilitation Act, Title II of the Americans with Disabilities Act and the Individuals with Disabilities Education Act. Petitioner as plaintiff, moved the District Court to reconsider its Order of August 30, 2000, which Motion was denied by Order entered October 2, 2000.

6. After considering numerous motions and responses concerning burden of proof and scope of hearing, the Special Assistant Administrative Law Judge allocated, the burden of proof to the school system for the year 2000-2001 provision of a free appropriate public education

and to the Petitioner for the years 1997-1998, 1998-1999, 1999-2000 on the issue of a free appropriate public education. The burden of proof rests with the school system on their petition for an evaluation of [REDACTED]. The Special Assistant Administrative Law Judge allowed Petitioner to present evidence to support the allegations that the school system intimidated, harassed, and retaliated against educators and administrators so as to prevent the school system from making available a free appropriate education.

7. On or about March 7, 2001, Respondent filed a partial Motion to Dismiss with regard to the 1997-1998 academic year and the 1998-1999 school years as barred by the statute of limitations. After considering the response of Petitioner, by Order entered on or about April 11, 2001, the ALJ dismissed the Petitioner's claim for the 1997-1998 academic year as being outside the statute of limitations. The Respondent's motion on the claims for the 1998-1999 year was denied.
8. Petitioner frequently raised objections to Respondent's production of records and requested sanctions. Given the nature of the records supplied during the course of the hearing and the extensive and lengthy hearing process, the request was denied. Petitioner also raised issues via Motion about the legality of Respondent's disclosure of Petitioner's records to expert witnesses, one of whom had previously tested [REDACTED] (Dr. Hynd), and about the alleged lack of access to [REDACTED]'s records by his teachers and family. The Motion was denied by Order dated February 16, 2001.

## **II. ISSUES**

The issues remaining for decision are as follows:

1. Whether the Petitioner was denied a free and appropriate public education for the 1998-1999 school year;
2. Whether the Petitioner was denied a free and appropriate public education for the 1999-2000 school year;
3. Whether the Respondent has failed to offer a program designed to provide a free and appropriate public education to the Petitioner for the 2000-2001 school year; and
4. Whether the school system as Petitioner in Case No. 0109558-41 should be allowed to conduct a psychiatric evaluation of [REDACTED].

Specifically, Petitioner alleged the following deficiencies in the educational program provided by Respondent:

- A. That Dade County School System failed to provide programs that allowed him to make meaningful educational progress;
- B. That the school district changed his placement into a inappropriate self-contained setting without an agreement of the parents;
- C. That the members of the facility at Dade County Middle School physically abused [REDACTED];
- D. That the school system failed to address his mathematics learning disability;
- E. That the school district failed to consider whether [REDACTED] was eligible for services under the other emotional and behavioral disorder category;
- F. That for the 1999-2000 school year, the school system did not provide the goals and objectives in all of his areas of weakness and that [REDACTED] did not make an

appropriate meaningful progress;

- G. That the extended school year services provided to ██████ were inadequate to meet his needs;
- H. That, with regard to the 2000-2001 IEP developed in May, 2000, the IEP was inadequate to address all of his areas of weaknesses;
- I. That the behavioral management plan and transition plan were inadequate;
- J. That retaliation and intimidation of ██████'s educators existed; and
- K. That the school system had failed to conduct an assisted technology evaluation.

Petitioner's Notice of Second Amendment of Grievance added claims under harassment under Section 504 of the Rehabilitation Act, Title II of the Americans with Disabilities Act and reiterated claims about harassment of educators, added claims that the family themselves were being harassed and intimidated, and added a claim that the school district improperly sought to destroy special education records and to deny appropriate necessary access to ██████'s educational records.

### **III. OVERVIEW**

All the incidents giving rise to the request for due process hearing and Complaint filed in the United States District Court occurred during the 1998-99 school year, when ██████ entered middle school at Dade County Middle School. Prior to that, ██████ had been served with special education services for three years after having been diagnosed with a learning disability in reading, written expression, and math as well as with attention deficit hyperactivity disorder. In 1998, ██████ exhibited disruptive and oppositional behaviors and was in November removed from the Dade County Middle School. He began receiving individual instruction two hours per day from a Dade County teacher with special education training until he re-entered in the elementary school in March,

1999 in a fifth grade classroom. He again attended the elementary school in the 1999-2000 school year in the fifth grade receiving special education services, in an inclusion model classroom. The IEP developed in May, 2000 for the 2000-2001 school year provided for special education services in his areas of disability, a behavioral intervention plan and a transition plan to the middle school. It also provided for extended school year services for ██████████ for the summer of 2000. ██████████ did not attend the extended school year services which his parents notified the school system on or about July 13, 2000 that they were redrawing him from the school system and placing him in another school.

#### IV. BACKGROUND AND FINDINGS OF FACTS

1. ██████████ is a ██████████ year old boy who resides with his parents and two brothers in Trenton, Georgia. (PII-14, AG000455). He was first identified as having specific learning disabilities in May, 1994. (RII-59). In addition to having learning disabilities, he was diagnosed with ADHD. (PII-14, AG000455).
2. In May, 1993, ██████████ underwent an evaluation at ██████████ Psychological Services for attention deficit hyperactivity disorder. (RIII-3, AG001437). The history as reported by the parents at the time was that he showed some fears in the dark; he gets up in the night sometimes turning on the light but not disturbing his parents; he had been observed doing dangerous things to his younger brother but not to himself; he would destroy things if frustrated, screaming in protest when corrected. He exhibited behavioral problems throughout his year in kindergarten, becoming easily angered if asked to do something and requiring frequent isolation from other children. (Id.). Twice during the evaluation in 1993, ██████████ expressed a concern that his father had a temper. (Id., AG001439 and 1440). The

diagnosis was attention deficit hyperactivity disorder which was apparently mild at that point.

3. [REDACTED] has in the past exhibited significant and severe psychological problems at home for which his parents sought treatment. In 1995, [REDACTED] was admitted to [REDACTED] Psychiatric Hospital following an incident in the psychiatrist's office during which he became physically destructive and violent, kicking walls, kicking his brother and kicking the doctor after his brother took a toy that [REDACTED] wanted. (RIII-3, AG001430). His parents had taken him to see Dr. [REDACTED] after a six weeks history of significant escalating signs and symptoms of depression including moodiness, irritability, sleep disorder and escalation of long-standing out of control impulses and affect management difficulties including aggressive behaviors dangerous to others. His mother reported on a parent questionnaire that [REDACTED] often failed to finish things he starts, had difficulty concentrating, shifted excessively from one activity to another, had difficulty waiting his turn, had difficulty sitting still, lies, avoids being left alone, is very self-conscious or is easily embarrassed, often appears tense and unable to relax, inappropriately expresses feelings, is concerned that people are out to get him, has severe mood changes, withdraws socially, exhibits sibling rivalry and has difficulty making or keeping friends. (Id.).
4. [REDACTED] went into the hospital on June 13, 1995 and was discharged on June 22, 1995. On June 17, 1995, the father experienced severe separation anxiety and requested an emergency therapeutic leave of absence which was granted, returning [REDACTED] to the hospital on June 18, 1995. (Id., AG001435). [REDACTED] was diagnosed upon discharge with a typical depression with separation features, his attention deficit hyperactivity disorder, oppositional

defiant disorder and learning disability. Simple motor tics and vocal tics were observed. He was put on [REDACTED], [REDACTED], and [REDACTED]. (Id., AG001436).

5. In February, 1996, [REDACTED] was placed in the [REDACTED] Schhol in Washington, Connecticut by his parents. (RIII-3, AG001448). His parents sent him there because of continued temper tantrums, being physically and verbally aggressive, oppositional, defiant, moody, sad, manipulative, impulsive and stubborn. They also reported a history of sleep problems. They felt that [REDACTED] would benefit from the consistent limit setting and external structure of a residential setting. (Id., AG001455).
6. In 1996 after his release from the [REDACTED] Residential Treatment Center, [REDACTED]'s parents took him to see Dr. [REDACTED], a psychiatrist in Chattanooga. Dr. [REDACTED] has treated [REDACTED] for his attention deficit hyperactivity disorder with various medications which he monitors approximately four times per year and also has observed [REDACTED] for a possible Tourette's Syndrome and anxiety disorder. (RIII-3). In 1996, [REDACTED] under went a psychological examination at [REDACTED] Counseling Center which was requested by Dr. [REDACTED]. The evaluation was carried out by Dr. [REDACTED], a clinical psychologist. The psychological evaluation report prepared by Dr. [REDACTED] included information from [REDACTED]'s mother about his behaviors at home. This information included, among other things, that he frequently lay awake at night while fearful and covering his body including his head with the blanket; he had some active dreams and nightmares and even believed that his dreams would come true, but will not tell the dream; he has a temper and sometimes will stomp, yell or cry easily and, before being on medication, he threatened to kill his brother. He sometimes hit his brother; he did not always

tell the truth and sometimes fabricated things; and was considered strong-willed. (Id., RIII-3, AG001422). Dr. ██████████ personality assessment reported that ██████████ showed a mixture of ADD and depressed features. (Id., AG001424). At the time, his academic functioning was approximately two grade levels below placement.

7. For the 1995-1996, 1996-1997 and 1997-1998 years, ██████████ was provided special education services at ██████████ Elementary. His teacher was Janet Green, who had him in each year for special education services. (3-12-01 Tr., 3-13-01 Tr., testimony of Janet Green). Ms. Green did not have any particular behavioral problem with ██████████ for any of those years, although she noticed in Spring, 1998 that he seemed to be less able to focus and slightly more withdrawn. (3-12-01 Tr., p. 273-275). ██████████ had a difficult time wanting to complete his assignments. (3-12-01 Tr., p. 281).
8. On January 29, 1997, Dade County School District conducted a re-evaluation of ██████████ (RII-132). After that evaluation, IEP team, which included his mother, recommended his continued placement as learning disabled with services provided for him in a resource model for basic reading, reading comprehension and written expression. (RII-130). The team determined that ██████████ was no longer eligible as learning disabled in math because his ability was commensurate with the placement grade level that he was on. (RII-132, 133). ██████████'s mother accepted this placement in February, 1997 by signing the IEP document in agreement at the meeting on February 19, 1997. (RII-130 AG000858).
9. On February 20, 1998, the school system conducted an IEP meeting for ██████████ (RII-125; 3-13-01 Tr., testimony of Janet Monk Green, p. 246). As a result of that meeting, there was an agreement that ██████████ would continue his placement as learning disabled with 10

segments of special education services per week in reading and written expression and 25 segments of regular education including math. (3-13-01 Tr., testimony of Janet Monk Green, p. 256; RII-125).

10. The IEP team did not include a behavior plan in the IEP because [REDACTED] had not exhibited any significant behaviors in the 3 preceding school years. (313-01 Tr. testimony of Janet Monk Green, p. 257; RII-125, AG000837).
11. [REDACTED]'s mother participated in the meeting and consented to the IEP. (313-01 Tr. testimony of Janet Monk Green, p. 249-251; RII-125-836).
12. [REDACTED] received meaningful educational benefit from his special education program for the 1997 IEP and the 1997-98 school year. (313-01 Tr. testimony of Janet Monk Green, p. 281-282). She based her opinion upon her observation of him and his performances in her class. (Id.).
13. In the fall of 1998, [REDACTED] went to [REDACTED] Middle School. His fifth grade teacher, Janet Monk Green, did not anticipate that he would be a child who would have severe difficulties. (313-01 Tr., p.283). Ms. Monk Green took the IEP to the middle school, gave it to the special education teachers, and communicated any specific necessary information to the middle school teachers about her students, including [REDACTED]. (Tr. 3-13-01, p. 283).
14. Donna Allen was [REDACTED]'s special education teacher for the 1998-99 school year at [REDACTED] Middle School in reading and language arts. (3-14-01 Tr., testimony of Donna Allen, p. 6). Donna Allen had a provisional interrelated certificate in the fall of 1998. (Tr. 3-14-01, p. 4). Ms. Allen had [REDACTED] for the lunch period as well as language and spelling, all during a two-hour block. He also got his medications then. (Id.).

15. On August 10, 1998, the team teacher for the middle school who would be dealing with ██████ along with Ms. Allen met with Mrs. ██████, ██████'s mother, for a conference. (RII-121, AG000818).
16. August 12, 1998 was the first day of school for the 1998-99 school year. ██████ went home sick on August 13 at 12:45 p.m. (RII-121, AG000815).
17. Towards the end of August, ██████ started exhibiting behavior problems in the fifth period class with Ms. Allen. He was having conflicts with the other students who were also from ██████ Elementary. The problems he was having included bickering, shooting birds, and being confrontational. (314-01 Tr., p. 11; testimony of Donna Allen).
18. As a general practice, the team teachers meet about once a week to share concerns and teaching ideas. On August 20, the team members had their usual weekly meeting. At that meeting, they noted that ██████ had been very introverted and rarely spoke. He had missed two classes and hidden in the restroom. The team was trying to find ideas to get ██████ to talk. (RII-121, AG000814).
19. On August 26, 1998, Ms. Allen filled out a discipline warning form on ██████ because he had been breaking a potato chip bag, running soap out onto the bathroom floor, using markers in class instead of doing his assignment, and was generally being uncooperative and disruptive. She phoned the mother concerning the discipline warning and noted that detention was given. (RII-121, AG000811; 3-14-01 Tr., p. 15-17).
20. On August 28, 1998, Ms. Allen made a disciplinary referral to the principal, Gayle Gallaher, because ██████ refused to enter her room. (3-14-01 Tr. testimony of Donna Allen, p. 12-13).

21. On September 8, 1998, Ms. Allen filled out and sent a daily progress report form home to ██████'s parents for the week of August 31 through September 4, 1998. She noted that ██████ had been kicking Josh's book and throwing Josh's papers off his desk; not attempting to do his sentences at the beginning of class; fighting with Steve in the restroom; ripping Josh's progress report; and hitting Josh on the head with his lunch bag. (RII-119, AG000807; Tr. 3-14-01 testimony of Donna Allen, p. 22-25).
22. On September 3, 1998, Gayle Gallaher filled out a disciplinary referral on ██████ assigning him 3 days on in-school suspension from September 8 through 10 for being insubordinate, rude, discourteous, disruptive and uncooperative and not doing his class work. (RII-119, AG000808). The form indicates that the student was reprimanded and the parent contacted as well. (Id.).
23. On September 4, 1998, the middle school team to which ██████ was assigned had their usual planning meeting. At the meeting they discussed ██████'s modifications, lack of participation in class, and failure to have his notebook in social studies. (RII-119, AG000801).
24. Ms. Allen spoke with Mrs. ██████ and the uncle of another child with whom ██████ was having altercations. (Id.).
25. Also on September 4, 1998, ██████ threw paper wads, pushed another child in the lunch line, used derogatory remarks to three other students, shot a bird, held up a notebook that said "you suck" (which was thrown away by the teacher), refused to sign for his medications, and threatened to push a boy up and down the stairs as he walked to the classroom. (Id., AG000802).

26. On or about September 11, 1998, Donna Allen sent a daily progress report form to ██████'s parents. The form was for the period of September 8 through 11, 1998. It indicated that ██████ was in ISS for Tuesday, Wednesday, and Thursday and was absent on Friday, September 11, 1998. (PI-6000425).
27. Because of the problems that Donna Allen was having with some of the ██████ students in her class including ██████, she sought assistance from Annice Goodwin to arrange something in her room that would be suitable for isolating students when they were having problems. (3-14-1, Tr. p. 27, testimony of Donna Allen). Ms. Goodwin helped Ms. Allen get some study carrels so that she could have a place for the students to quiet down by themselves and not have to leave the classroom. (Id.).
28. On both Wednesday and Thursday, September 2 and 3, 1998, ██████ refused to stay in the study carrel and continued to disrupt class. On Thursday, September 2, 1998, Dr. Gallaher took ██████ to the office after interviewing him. (PI, 8, 508-512).
29. On or about September 7-8, 1998, several teachers and the counselor, Ms. Brim, filled out forms called Functional Analysis Screening Tools to help them determine if there were any triggers or particular times when ██████'s behaviors were occurring. (RII-117).
30. For the week of September 14-18, 1998, Donna Allen prepared a daily progress report form showing that for three days, ██████ had unsatisfactory behavior in several categories. (RI-6-000424).
31. For the week of September 21-25, 1998, Donna Allen prepared a daily progress report which was sent to ██████'s parents. This report also broke down the behavior according to which class (i.e. whether he was in reading or English). (PI-6, 000423). Ms. Allen had noted that

- ██████████ had fought in home room on September 25 since she had noticed that ██████████ and another ██████████ student had marks around their neck, and they had come straight from home room. (Tr. 3-14-01, testimony of Donna Allen, p. 28-29).
32. During September, 1998, Ms. Allen tried various strategies to reduce the conflict between ██████████ and other students in her class. Other parents were contacting her concerning the conflicts as well. (Tr. 3-14-01, p. 139-140). They moved two children to another room; she personally escorted a child who had a traumatic brain injury to her class so that he would not be engaged on the stairway before class; she separated the students at lunch and had them go to the bathroom at different times. (Id.).
33. She also tried to institute a point system in her classroom to improve the students' behavior with the reward of going to Taco Bell with Ms. Brim the counselor. (Id., p. 145-146).
34. Ms. Allen sent ██████████'s assignments to ISS for reading and language which she would grade when they came back to her. (Tr. 3-14-01, testimony of Donna Allen, p. 144-145).
35. During this time period, Ms. Allen also notified the parents verbally concerning the behavior as well as in writing. She was concerned that ██████████ was missing the school bus and that he wasn't eating lunch very well. She sent home a letter and a copy of the class rules. She also sent home a calendar of the lunch menus. (Id., p. 148-149).
36. On September 18, 1998, a parent-teacher conference on ██████████ was held. In attendance were Dr. Gallaher, Ms. Blevins, Ms. Goodwin, Ms. Smith, Ms. Brim, Mr. Doubet, Ms. Underwood, Ms. Bell, and Ms. Allen, along with ██████████'s parents. (RII-115, AG000755; Tr. 3-14-01, testimony of Donna Allen, p. 154-155).
37. At the meeting, Dr. Gallaher explained some of the problems that they had been having with

██████████'s interaction with other students and his refusal to go to class. Ms. Brim told the parents that ██████████ had gone out of the building. The math teacher and the science teacher also informed the parents of what ██████████ was or was not doing in their classes. The parents indicated that ██████████'s medicine may need to be changed and requested that they meet again in 10 days to see if a change in medication had a beneficial effect. (RII-115, AG000755-756; Tr. 3-14-01, testimony of Donna Allen, p. 154-155).

38. After the meeting, ██████████'s behavior continued to be disrespectful and confrontational with other students. (RII-115, AG000719-752).
39. On September 28, 1998, the special education director, Loyd Gass, noticed an IEP meeting scheduled for October 2, 1998 at 1:00 p.m. Mr. ██████████ called Annice Goodman on September 30 and requested that the meeting be delayed for two weeks. (RII-113, AG000716).
40. For the week of September 28 through October 1, 1998, Donna Allen prepared a daily progress report on ██████████'s behavior. The reports were separated according to reading and English classes for Monday through Thursday. She had an in-service on Friday and nothing was filled out for that date. (RII-112, AG000706). Generally, ██████████'s behavior was unsatisfactory and she notes that ██████████ has more interest in causing students to get angry than in performing the tasks in the classroom. (Id.).
41. On October 1, 1998, Ms. Allen made a disciplinary referral to Dr. Gallaher who noted that ██████████ had been insubordinate, rude, discourteous, and refused to obey school personnel. (RII-112, AG000702).
42. On October 1, 1998 at about 9:30 a.m., Dr. Gallaher called Cheri Robinson, the school resource officer, to talk to ██████████ (4-16-01 Tr., testimony of Cheri Robinson, p. 146-147).

Ms. Robinson and Dr. Gallaher went to the in-school suspension room where Ms. Robinson called for ██████, who came out on the step and sat down. Ms. Robinson kneeled down to be eye level with ██████ while she talked to him about his behavior. ██████ however, would not respond. (Id., p. 148-149). Since ██████ would not respond to her, she had him walk to her car, a Bronco vehicle that is painted brown with a Sheriff's symbol on the side. She helped him get into the passenger side seat because the step is steep. She told him that she would have to take him to the Sheriff's office and they would call his mother and father there. Once in the vehicle, ██████ finally responded that he understood when she told him that he could not act the way he had been doing. (Id., p. 149-150). Ms. Robinson did not handcuff ██████, did not close the door of the vehicle, nor arrest ██████. (Id., p. 150).

43. Ms. Robinson then returned to the school with Dr. Gallaher and went to the office of the juvenile probation officer to see if there had been any problems with ██████ before. While at the juvenile probation office, she learned that she had been accused of hitting ██████ (Id., p. 152-153).

44. For the week of October 5 through 9, 1998, Donna Allen prepared a daily progress report which was mailed on October 9, 1998 to ██████'s parents. (RII-111, AG000676). ██████ was absent on Monday, October 5, 1998.

45. On October 6-7, 1998, ██████ had several excellent ratings for behavior and only one unsatisfactory in getting his class work assignments done on time. On October 8-9, he had several unsatisfactory marks for behavior. ██████ was cursing, shooting birds, being disrespectful to everyone, and spitting at another student. (Id.).

46. On October 8, 1998, Loyd Gass noticed an IEP meeting for October 19, 1998 at ██████

Middle School. (RII-111, AG000681). On October 8, 1998, Donna Allen referred ██████ to Dr. Gallaher for another disciplinary warning. At this time, she noted that ██████ had been insubordinate, rude, discourteous, was talking excessively, using unacceptable language, and was engaging in disruptive and uncooperative behavior. He was assigned to 10 days of in-school suspension to be served on October 9, 12, 13, 14, 15, 16, 19, 20, 21, and 22, 1998. (Id., AG000682).

47. Donna Allen prepared a daily progress report for the week of October 12-16, 1998, which she provided to ██████'s parents. (RII-109, AG000652). ██████ was absent for October 15 and 16, 1998. For October 12 and 13, he was absent for a portion of the day, so did not get reports for his English behavioral performance. On October 14, 1998, he was picked up before 9:30 a.m. by his grandmother. (Id.).
48. On October 14, 1998, ██████ got into a fight with another child on the way to reading. ██████ was coming from home room down the stairs and another child was going up the stairs to the lab. When the other child killed a bug, ██████ started fighting with him. After ██████ got into class, Ms. Allen was playing a tape of Charlotte's Web that the class could hear and follow along in their books. (Tr. 3-14-01, testimony of Donna Allen, p. 96-97; PI-8, Bates 000473). ██████ was being insubordinate, uncooperative, and using inappropriate language and leaving the classroom. Ms. Allen sent for Dr. Gallaher to come to the class to assist with ██████. (Id.).
49. Dr. Gallaher brought ██████ to her office where she had him sit down. He started throwing candy around the office and then went to the back part of the office where the phone was in the teacher's workroom. (Tr. 4-16-01, testimony of Lamerle Howard, p. 202-204). After

Dr. Gallaher asked [REDACTED] to come back out and have a seat in the front office, he did but continued to throw candy around. When Dr. Gallaher and another teacher, Teresa Smith, went into Dr. Gallaher's office and shut the door, [REDACTED] kicked the door. Upon request by Ms. Howard to come back and have a seat, he did. (Id.).

50. Ms. Howard had a view of Dr. Gallaher and did not observe Dr. Gallaher hit [REDACTED] (Id., p. 204-205).
51. Because of [REDACTED]'s behavior, Dr. Gallaher called Cheri Robinson again for her help with [REDACTED] (Tr. 4-16-01, testimony of Cheri Robinson, p. 154). Before Ms. Robinson got there, however, [REDACTED]'s grandmother had picked him up. (Id.).
52. Dr. Gallaher had, in addition to calling Ms. Robinson, called [REDACTED]'s father to tell him about the behavior. [REDACTED]'s father said that he would come pick him up and Dr. Gallaher urged him not to do that. (Tr. 3-26-01, testimony of James G., p. 76).
53. [REDACTED]'s father contacted his mother who was at the post office and he had her go pick up [REDACTED] from the school. (Id.). When [REDACTED] got home, he told his father that Dr. Gallaher had hit him. [REDACTED] had red marks on his back that he said came from Dr. Gallaher hitting him. (Tr. 3-26-01, p. 77-78).
54. [REDACTED]'s father called the Dade County Sheriff's Department to send an officer to investigate. The Sheriff's Department referred the case to the Georgia Bureau of Investigation. (Id., p. 79).
55. [REDACTED]'s father also called a magistrate judge in Dade County, Matt Wagner, his corporate attorney, a person at DFCS, and John Emmett, another attorney who had handled things for [REDACTED]'s father. (Tr. 3-26-01, p. 87).

56. Cheri Robinson prepared an incident report including observations of other witnesses for the October 14, 1998 incident in the principal's office. Included in the incident report was a charge of disorderly conduct against [REDACTED], which charge was never processed. (Tr. 4-16-01, testimony of Cheri Robinson, p. 177-178, 154-156; RI-102, AG001411, 1412, 1418, 1416, 1417, 1399-1409).
57. On October 16, 1998, Greg Ramey, an agent with the Georgia Bureau of Investigation went to [REDACTED]'s home to interview him about the incident reported by [REDACTED]'s father. (Tr. 3-30-01, testimony of Greg Ramey, p. 3-4). Mr. Ramey has been with the GBI for 16 years and the current position that he holds is child abuse specialist. (Id.). He also went to [REDACTED] Middle School where he interviewed several people including Dr. Gallaher, Teresa Smith and Lamerle Howard. (Tr. 3-30-01, testimony of Greg Ramey, p. 12-14).
58. In speaking with [REDACTED] in the presence of his parents, [REDACTED] told the agent that Dr. Gallaher had hit him in the back. (Id., p. 13). Mr. Ramey observed the bruise on [REDACTED]'s back and described it as being light tan or very pale yellow in color to the left of the spine about mid-back. It was about a half inch long and tapered in a shape somewhat like a triangle. (Id., p. 10).
59. Mr. Ramey was unable to corroborate through observation of the bruise itself and interviews at school that Dr. Gallaher had hit [REDACTED]. The mark had a defined top edge and side edge which was not something that would normally appear if someone is hit with a hand or fist. (Id., p. 18). Additionally, the bruise was fading and was probably at least three days old, if not older. (Id., p. 19).
60. In January of 1997, [REDACTED] was indicted in the Northern District of Indiana for wire fraud

and conspiracy to defraud the United States Government. His trial began on August 17, 1998 and concluded on August 25, 1998. The jury reached a verdict on the August 25 finding Mr. [REDACTED] and another defendant both guilty on several counts of wire fraud and conspiracy. On April 30, 1999, a sentencing hearing as to [REDACTED] was held before Judge Robert L. Miller in Indiana. Mr. [REDACTED] was sentenced to 37 months on each count on which he was convicted, with all such terms to run concurrently. On May 13, 1999, [REDACTED] filed an appeal in his case. On December 18, 2000, the Seventh Circuit Court of Appeals reversed the conviction of [REDACTED]. On December 22, 2000, District Court Judge Miller vacated the judgment of conviction with respect to [REDACTED] and dismissed the case with respect to him and discharged him from all terms of his release pending appeal. (RIV-35, AG002374-2399). [REDACTED]'s father expressed a lack of concern about his federal conviction in Indiana on conspiracy and wire fraud. (Tr. 3-26-01, p. 20-23).

61. During the trial, Mr. [REDACTED] was away from home for several days in August of 1998, during the time when [REDACTED] was in his first 2-3 weeks of school in the sixth grade at [REDACTED] Middle School. (Id.).
62. Several people, including Bonnie Ford, Jave Everette, and Dr. William Schmits, wrote letters to Judge Miller with regard to the sentencing of [REDACTED]'s father urging him not to incarcerate [REDACTED]'s father as he was needed at home. (RIII-3AG001511).
63. [REDACTED] reported to his treating psychiatrist, Dr. [REDACTED], that he had been handcuffed, picked up by the police and that he had been hit by the principal at [REDACTED] Middle School. (Tr. 3-13-01, testimony of Michael Schmits, p. 36-37).
64. According to Dr. [REDACTED], [REDACTED] does not have the cognitive capacity to think ahead and

is not reflective about the consequences of his actions. (Id., p. 40).

65. After [REDACTED] saw Dr. [REDACTED] on October 22, 1998, he did not see him again for approximately four months. (Id., p. 114-115).
66. Kelly Brim (Hollowell) was the school counselor and testing coordinator for [REDACTED] Middle School during the 1998-99 school year. She has a Masters in School Guidance and Counseling with a K-12 Certification, and a Specialists Degree in School Guidance for K-12. (Tr. 3-13-01, Testimony of Kelly Brim Hollowell, p. 138-140). Ms. Brim saw [REDACTED] anywhere from 6 to 10 times during the fall of 1998, sometimes looking for him when he had left class and not returned. (Id., p. 140). She attempted to work on short term goals with [REDACTED] and to do so she also read up on ADD and ADHD. (Id., p. 146-147).
67. In working on short term goals, she would try to get him to follow all directions on one day and get a reward the next day. She would allow him to play with her snakes if he had been able to follow directions, something that he enjoyed doing. (Id., p. 179). Ms. Brim also let [REDACTED] stay in her office and draw cartoons, which she taped on the wall in order to build a rapport with him. (Id., p. 149).
68. On September 30, 1998, she overheard a conversation between Dr. Gallaher and [REDACTED] concerning [REDACTED]'s behavior, wherein Dr. Gallaher indicated that she might have to call the Sheriff because of his lack of compliance. [REDACTED] informed her that his dad said he didn't have to mind Dr. Gallaher. (Id., p. 158).
69. Jane Underwood was the sixth grade teacher for math and social studies at [REDACTED] Middle School during the 1998-99 school year. [REDACTED] was a student in her math class. (Tr. 3-29-01, testimony of Jane Underwood, p. 28-31). Before the September 18, 1998 parent teacher

meeting, Ms. Underwood called [REDACTED]'s father about an altercation that [REDACTED] had in the hall with another child. (Id., p. 48-49).

70. In teaching [REDACTED] math, Ms. Underwood tried different strategies to assist [REDACTED]. She attempted to work around his shyness in assisting him in his math problems. (Id., p. 39).
71. The first day of school, she sent [REDACTED] to give a message to another teacher's class and [REDACTED], when he went into her room, did not look around, spoke in a very low voice, and was clearly uncomfortable. (Id., p. 40). Ms. Underwood informed the parents of this behavior at the parent-teacher meeting in September. (Id., p. 41).
72. She sent [REDACTED] to a computer lab for a math lesson to which he responded very well the first day. The next day when she sent him, [REDACTED] refused to put on the headphones so he did not do the lesson. (Id., p. 50-51).
73. Ms. Underwood participated in identifying behaviors and triggering events for [REDACTED] in order to get a clear picture and be objective about his behavior. (Id., pg. 51-52).
74. She and [REDACTED]'s other teachers determined that [REDACTED]'s misbehaviors were occurring at times of transition or unstructured time such as bathroom breaks. After that, they decided they would be more diligent about monitoring the hall and to monitor bathroom breaks more closely as well. (Id., p. 52-53).
75. Ms. Underwood assisted [REDACTED] in keeping up with his warmup book by putting it in a drawer near a computer table; she gave [REDACTED] a homework sheet to fill out in class, have the teacher initial, and to take home to his parents. When [REDACTED] would lose the papers, Ms. Underwood contacted the parents to let them know that they should be checking the sheet. (Id., p. 53-54). She also developed a signal to get him back on task so as not to call

attention to him in front of the other students. This was done so as to not embarrass [REDACTED] and lead him to shut down. (Id., p. 54).

76. Ms. Underwood attended the parent-teacher meeting on September 18, 1998. The teachers discussed what they had observed in the classrooms and the strategies they had determined to do after the assessments were done. Ms. Underwood recalled the discussion about medication and adjustments to medication because [REDACTED] had apparently not been taking as much medication during the summer when the children had been home with their parents. (Id., p. 57-59). Ms. Underwood also attended the October 19, 1998 IEP meeting.
77. In addition to the adjustments implemented by Ms. Underwood in her math class, other adjustments were made for [REDACTED] to assist his academic progress. In social studies, he was going to be given shortened assignments to complete; the everyday assignments would be turned in and kept in the room for a notebook grade; the tests would be reviewed in the special ed segments and the regular education teacher would read the test orally; the test would be shortened and [REDACTED] would know exactly what he would be tested on before taking the test. (RII-107, AG000637). In science, his everyday work would be contained within the classroom and kept in a folder and the work would be self-paced. (Id.).
78. [REDACTED]'s father did not disclose, at the September 18, 1998 meeting or at the October 19, 1998 IEP meeting, that he had been tried and convicted in Federal Court in Indiana and was awaiting sentencing. (Id., p. 65). At the meeting, the advocate participated along with both Mr. and Mrs. G. in the discussion. She had the opportunity to ask questions concerning his behavior and the reasons for the recommended placement. Also present at the meeting was Velda Brass, who was with the Crisis Diagnostic Program. (Tr. 1-18-01, testimony of Jane

Everett, p. 187).

79. The IEP team recommendation developed on October 19, 1998, was for a 45 day evaluation period at ██████████ Georgia Educational Services to be done in a self-contained classroom. The diagnostic placement was to be done at ██████ Elementary School as being the least restrictive and appropriate placement for ██████ because of his issues with the interaction with students and adults and disobedience of authority. (RII-107AG000640). The parents did not consent to this placement for the reason that it was "not appropriate (sic) for ██████". (Id., AG000646). At the end of the meeting on October 19, 1998, Mr. Johnston told Mr. ██████ that if he did not agree to the alternative that had been proposed for ██████, that he should keep ██████ home the next day until they could have some proposal for discipline. (Id., p. 68).
80. On the day following the IEP meeting, Mr. Gass informed Mr. ██████ that if he refused the placement, ██████ could be brought back to ██████ Middle School to be served or else Mr. ██████ could seek homebound instruction for ██████ while the school system and the family worked to develop a mutually agreeable program. (Tr. 4-17-01, testimony of Mr. Gass, p. 318-319). When Mr. ██████ elected to pursue homebound services, he and Mr. Gass talked several times by telephone to identify teachers and put the services in place as soon as possible. The school system agreed to provide fifteen hours per week of homebound services pending a new IEP review meeting. (Tr. 4-17-01, transcript of Mr. Gass, p. 319-322).
81. On October 21, 1998, Mr. ██████ and ██████ came to ██████ Middle School and met with Ms. Gregory and discussed the interim program. Linda Gregory has a masters degree in special

education; an interrelated certificate, and an emotional conflict certificate. (Tr. 3-12-01, p. 140-141). On October 22, 1998, ██████ began in a one-to-one setting with Ms. Smith, Ms. Allen, and Ms. Gregory on an interim basis until the team could reconvene and develop a new IEP. In the interim placement, ██████'s teachers instructed ██████ according to his IEP goals and objectives. (Tr. 3-12-01, testimony of Ms. Gregory, p. 147-151).

82. The school system held another IEP meeting on November 3, 1998. At this meeting, the teachers brought their documentation and discussed ██████'s continuing behavioral difficulties. The IEP team again recommended a 45-day crisis diagnostic placement, but recommended that the placement be provided at ██████ Middle School with services provided by Ms. Gregory on a shortened day in a self-contained setting. (Tr. 1-19-01, testimony of Mr. Gass, RI-100-583-84). The IEP team again requested that the family consent to comprehensive evaluations of ██████ to which the family agreed when given a choice of evaluators. (Tr. 1-19-01, testimony of Mr. Gass, p. 215-216). ██████'s father agreed that ██████ would be placed in the LD category of exceptionality with services delivered in a 45-day crisis diagnostic setting at ██████ Middle School, transportation at the end of ██████'s day would be provided by the Dade County Board of Education, and evaluation through the TEAM or other independent agency. (RI-100, AG000585).
83. Following the November 3, 1998 IEP meeting, ██████ was served for two more days in the one-to-one homebound placement before he began attending classes on a shortened day schedule in Ms. Gregory's self-contained class. (Tr. 3-12-01, testimony of Ms. Gregory, p. 190). Ms. Gregory made daily notes about events in the classroom. (*Id.*, p. 185).
84. On November 4, 1998, Linda Gregory taught ██████ in first and second period. (RI-8,

AG000538). [REDACTED] worked hard in both sessions and when they were finished, they played Battle Ship for the last 10 minutes of class. (Id.).

85. On November 6, 1998, [REDACTED], with some efforts of both his and Ms. Gregory's parts, completed his English assignment. (RI-98, AG000552). During math, although he did several addition and subtraction problems, [REDACTED] refused to do the multiplication problems. Ms. Gregory allowed him to finish them the next day and moved on to science. [REDACTED] refused to do any science work, but made noise and disrupted other students. When he asked to go to the restroom, Ms. Gregory explained that he could go after he had finished the assignment and he refused to do so. Dr. Gallaher came to the room and advised that Ms. Gregory should let [REDACTED] go if he would finish the assignment upon his return. Ms. Gregory allowed him to go and he failed to finish his assignment upon his return. (Id., AG000553-554).
86. Ms. Gregory kept a notebook which she sent back and forth between school and home. On November 6, 1998, she sent a note to the parents listing the spelling words that he needed for the following Wednesday, November 11. She also advised that he needed to bring appropriate materials. She notified [REDACTED]'s parents that he had to refused to follow instructions for the science assignment and tried to disrupt the class. (Id., AG000532-533).
87. On November 9, 1998, [REDACTED] refused to complete his math assignment which consisted of 5 problems. He refused to follow instructions in his English assignment, but he did complete the English assignment. (Id., AG000544).
88. On November 10, 1998, [REDACTED] objected to sitting in the front of the room when he came to class. He then threatened to destroy something of Ms. Gregory's claiming that she had

destroyed his picture yesterday. Ms. Gregory had torn up a picture that [REDACTED] had drawn of the cartoon "South Park" above which he had written "My God this sucks". When Ms. Gregory told him it was inappropriate for the classroom, he stated that he was leaving and tried to go past her. He tried to do this several times; she eventually let [REDACTED] leave to go to the restroom once she had someone around to make sure he didn't leave. [REDACTED] had already been to the restroom twice and the last time had been only 30 minutes before then. (PI-8, AG000444-445).

89. On or about November 9, 1998, Loyd Gass, who was the special ed director at the time for Dade County School District, contacted Ms. Gregory concerning allegations that Ms. Gregory had hit [REDACTED] with her cane. (Tr. 4-16-01, testimony of Loyd Gass, p. 329).
90. Ms. Gregory did not hit [REDACTED] with a cane. (Tr. 3-12-01, testimony of Linda Gregory, p. 237). Ms. Gregory was offended by the way Mr. [REDACTED] handled the inquiry into [REDACTED]'s and Mr. [REDACTED]'s allegations about her hitting [REDACTED]. She was so offended that she wrote a letter to Mr. Gass protesting the allegations. (PI-8, 000443).
91. On or about November 13, 1998, Ms. Gregory spoke with [REDACTED]'s father when he was bringing [REDACTED] to school in the morning. Also present for the conversation were Annice Goodwin, Loyd Gass, and Brian Watkins, but not everyone was there the whole time. (Tr. 3-12-01, p. 232-237; Tr. 4-16-01, testimony of Loyd Gass, p. 329-332).
92. Ms. Gregory expressed concern to [REDACTED]'s father that if he didn't trust her, he may have to find someone else to teach [REDACTED] and she assured them that she had not hit [REDACTED] (Tr. 3-12-01, p. 234-236). During the conversation, [REDACTED] was present and Mr. [REDACTED] asked him several times to confirm the allegation that Ms. Gregory had hit him with the cane.

████████ kept his eyes on the floor during these inquiries but the last time Mr. ██████ asked him the question, his tone changed slightly, ██████ looked up and barely nodded his head. (Tr. 3-12-01, p. 234-235).

93. The tone of the conversation was not angry or confrontational and only a few people were involved in the conversation. (Tr. 3-12-01, p. 234-237; Tr. 4-16-01, testimony of Loyd Gass, p. 330-331). After this discussion, ██████'s father took ██████ home for the day. (Tr. 4-16-01, testimony of Loyd Gass, p. 332).
94. ██████ did not return the next day for class and on November 18, 1998, Mr. Gass attempted to contact ██████'s father. (Tr. 4-16-01, testimony of Loyd Gass, p. 332-333). Mr. Gass made several attempts to contact Mr. ██████ by telephone, although he did not always leave messages. Mr. ██████ did not return the message that was left by Mr. Gass on November 18, 1998. On November 20, 1998, Mr. Gass was informed that ██████'s father was out of town. On November 23, 1998, Mr. Gass got the answering machine and did not leave a message. On November 30, 1998, Mr. Gass spoke with Mr. ██████ at which time Mr. ██████ told him that he did not intend to bring ██████ back to school. (Tr. 4-16-01, testimony of Loyd Gass, p. 333-334).
95. Mr. Gass discussed options with Mr. ██████ and explained that ██████ could always return to the 45-day placement with Ms. Gregory or another teacher or pursue other options such as private placement or home school. (Tr. 4-16-01, testimony of Loyd Gass, p. 335-337). Mr. ██████ verbally elected to home school ██████ and because of that, Mr. Gass forwarded to Mr. ██████ the necessary forms. (Tr. 4-16-01, testimony of Loyd Gass, p. 338-339; RIV-30).
96. Mr. Gass was not clear as to what the school system's responsibility for special education

services during home school were, but elected to offer ██████ the special education instruction. (Tr. 4-17-01, p. 337-338).

97. As a result of the discussions between Mr. Gass and Mr. ██████, beginning on December 1, 1998 and lasting through February 3, 1999, Connie Lea served ██████ on his IEP goals and objectives for 2 hours per day in a one-to-one setting at the public library. (Tr. 12-01-00, testimony of Connie Lea, p. 339; Tr. 4-17-01, testimony of Loyd Gass, 340-341, 343; PII-2-176). Connie Lea was and is certified in behavior disorders. (Tr. 12-01-01, p. 490).
98. During the time that Ms. Lea was serving ██████, she and/or the school received two threatening notes and phone calls and Ms. Lea's tires were slashed. (12-1-01, Tr., testimony of Lea, p. 453-457). Ms. Lea only stopped instructing ██████ in February of 1999 because of a previous commitment of her time. (Tr. 4-16-01, testimony of Loyd Gass, p. 341).
99. On November 19, 1998, ██████'s parents initially took him for an initial evaluation at the TEAM Center pursuant to the agreement at the November 3, 1998 IEP meeting. (RII-107, 108, RI-95). After the first visit, they canceled all future visits. Mr. Gass determined that this had happened when he contacted the TEAM Center in January. ██████'s parents had failed to notify the school system that the evaluations had not been done. (Tr. 4-17-01, testimony of Loyd Gass, p. 326-327).
100. ██████'s father has a very different recollection of the discussion with Ms. Gregory in the hall on or about November 13, 1998. His recollection is that there was a large crowd, the meeting was confrontational, and that he had raised his voice in outrage. (Tr. 3-26-01, testimony of James G., p. 108-113; Tr. 3-29-01, testimony of Annice Goodwin, p. 247-250; Tr. 4-16-01, testimony of Brian Watkins, p. 257-261; Tr. 4-16-01, testimony of Loyd Gass,

p. 330-332).

101. When Mr. Gass learned that A█████'s parents had ended the TEAM Center's evaluation process in January of 1999, the school system decided to pursue formal dispute resolution. (Tr. 4-17-01, testimony of Loyd Gass, g. 343-347; RI-90-92). While Mr. ██████ originally agreed to participate in a mediation scheduled for February 18, 1999, he failed to sign the necessary forms and the mediator rescheduled the date to March 8, 1999. (Tr. 4-17-01, testimony of Loyd Gass, p. 348). ██████'s parents did not attend the mediation scheduled for March 8, 1999. (Tr. 4-17-01, testimony of Loyd Gass, p. 348-349).
102. Contemporaneously with Mr. Gass' efforts with ██████'s parents to mediate, the school system noticed an IEP meeting. On March 4, 1999, an IEP meeting was held to determine the appropriate placement and services for ██████ for the remainder of the 1998-99 school year. The IEP team, ██████'s parents, their two attorneys, and a private psychologist, Dr. Blackerby, agreed to place ██████ in the BD classroom at ██████ Elementary School for the full school day. (Tr. 12-01-01, testimony of Ms. Lea, p. 343; Tr. 3-27-01, testimony of Wagner, p. 95). The parents signed their agreement to this IEP. (RI-77-502).
103. At the IEP meeting, the parents were represented by Matthew Wagner and Trisha Dennis. In addition, Dr. ██████, ██████'s treating psychologist, attended the meeting. (RI-77, AG000502). The parents were provided with numerous attachments to the draft of the IEP that had been prepared by the school system. These attachments were documentation of ██████'s experiences and behaviors with the teachers at ██████ Middle School in the fall of 1998. (RI-77, AG00460-00482hh). ██████'s parents also had a court reporter at the meeting to take the minutes. The school system was not aware that a court reporter was

coming. (PII-4, IEP meeting Transcript, p. 43).

104. At the March 4, 1999 IEP meeting, there was an in-depth discussion about [REDACTED]'s behaviors at the middle school. Many of [REDACTED]'s records were there including his special ed file and his central office file. There was a discussion also about other records that would be gathered because they were in the teachers' individual files. Because she had been out on medical leave, some of Ms. Gregory's notes were presented at the meeting as well, which detailed [REDACTED]'s classroom activities and behavior. (PII-4, p. 23-24, 58-83). There was a discussion about evaluation and the need for the evaluation. (Id., 42). Dr. [REDACTED] believed at that point that [REDACTED] had some internal emotional things that he was dealing with. (Id., p. 54).
105. Additionally, an evaluation of [REDACTED] was discussed to assist in placement of [REDACTED]. Specific areas which were discussed along with the mention of specific names were audiological, speech language, academic, psychological, vision and hearing, medical, neurological, and behavioral evaluations. The names of George Hynd, Bob Slayden, and Raymond Capps were all mentioned as possibilities for carrying out some of the evaluations. Raymond Capps is a neurologist in Rome; George Hynd is a neuropsychologist; Bob Slayden is a child psychiatrist. (IEP meeting Tr. 3-4-99; PII-4, p. 205-209). It was agreed that the evaluators would contact the parents directly. (Id., p. 211).
106. Although there was an in depth discussion concerning [REDACTED]'s behaviors and some mention by Dr. [REDACTED] of emotional issues that [REDACTED] had, the parents did not let the IEP team members know of the trial, conviction, and sentencing of [REDACTED]'s father. (PII-4; IEP meeting Tr. 3-4-99).

107. At the March 4, 1999 IEP meeting, it was determined that [REDACTED] would be in the following classes with the following support: math with initial special ed support of 5 segments per week with the regular ed teacher; science with initial special ed support of 5 segments per week with the regular ed teacher; recess with initial special ed support with the regular ed teacher; art with initial special ed support with the regular ed teacher; special ed reading in the SLD resource class 5 segments per week; written expression 5 segments per week in the SLD resource class; social studies in the SLD resource class 5 segments per week. The IEP also listed out 4 annual goals in reading and written language skills along with short term instructional objectives and benchmarks under each annual goal. It listed one annual goal under social studies skills and three short term objectives and benchmarks. The IEP also listed out classroom and program modifications for teaching and evaluating [REDACTED]. (RI-77).
108. It was determined that [REDACTED]'s placement would be in the fifth grade classroom. (PII-4, p. 105-106, 137-140, 146). It was clear from the discussion at the IEP meeting that Dr. [REDACTED], who was there on behalf of the parents as the psychologist for [REDACTED], was in agreement with allowing Ms. Lea into his classroom or who would be having some interaction with [REDACTED], knew what his level was, and what goals and objectives were appropriate, and was willing to put confidence in that. (PII-4, p. 146). The progress was to be reported to the parents verbally as well as periodic weekly or bi-weekly progress reports. (Id., p. 150-152).
109. Goals and objectives, although they may be written out essentially the same as the child progresses from one level to another, they will actually be a more challenging goal and

objective as the child progresses through the curriculum. (Tr. 11-15-00, testimony of Boatner, p. 170-173).

110. [REDACTED] began in the placement at [REDACTED] Elementary School on March 9, 1999 and remained in that placement through the end of the school year. During this time, [REDACTED]'s parents reported good progress to [REDACTED]'s psychiatrist. (Tr. 3-13-01, testimony of [REDACTED], p. 118-120).
111. [REDACTED] underwent a neuropsychological evaluation under the direction of Dr. George Hynd at the University of Georgia in Athens on May 10-11, 1999. (12-13-00 Tr., testimony of Dr. George Hynd, p. 167-168). At the hearing, Dr. Hynd testified as an expert in assessment of children and adolescents with disabilities, the identification and diagnosis of learning disabilities, ADD, ADHD, and ODD, the general comorbidity of disorders with ADD and/or ADHD, and the educational programming of children and adolescents with disabilities, including specifically LD, ADHD, and ODD. (Id., p. 167);
112. The school system, through Mr. Gass, arranged for an evaluation at the school of [REDACTED] by Dr. Sladen, a child psychiatrist. Mr. [REDACTED] initially agreed to the evaluation and then retracted his consent to that particular portion of the evaluation. (1-19-01 Tr., testimony of Loyd Gass, p. 181-182; RI-65-64).
113. At the close of the March 4, 1999 IEP meeting, it was agreed to meet again before the end of school, specifically on or about May 14, 1999, to assist [REDACTED]'s program after the evaluations had been done. (PII-4; Tr. p. 259-260).
114. The March 4, 1999 IEP meeting developed a placement for [REDACTED] in Connie Lea's classroom at [REDACTED] Elementary with 3 segments of special ed and 3 segments of regular ed.

It also developed a behavior intervention plan for [REDACTED]. (RI-76, AG000477).

115. The school system paid for the travel expenses for [REDACTED]'s parents to take him and themselves to Athens for the evaluation by Dr. Hynd. [REDACTED]'s parents kept detailed records of all expenses incurred and submitted them to the school district for reimbursement. (RI-63). The IEP meeting was not held on May 14 but was rescheduled to May 25, 1999. On May 14, 1999, Loyd Gass requested that [REDACTED]'s father supply him with any evaluations to assist them in providing an appropriate educational program for Andrew. (RI-57, 56).
116. By letter dated May 21, 1999, the school system's law firm requested that [REDACTED]'s parents reconsider their refusal to allow a psychiatric evaluation of [REDACTED]. In addition, the documents requested by correspondence from Tricia Dennis on May 6 and April 20 were enclosed. (RI-55).
117. Counsel for [REDACTED] and his parents required that the IEP meeting of May 25, 1999 be limited to the consideration of a free and appropriate summer program of education for [REDACTED] to run from June 7, 1999 through and including July 30, 1999. The team, along with Dr. [REDACTED], was to consider the setting, substance, and delivery method in accordance with [REDACTED]'s best interest. (RI-54). In exchange for that agreement by the school district, [REDACTED]'s parents agreed to execute all necessary documents to waive the physician/patient confidentiality between Dr. [REDACTED] and [REDACTED] so that Dr. [REDACTED]'s records could be released to the school system. (Id.).
118. On May 25, 1999, the IEP meeting was held [REDACTED] to develop the summer services. Part of the IEP materials included a written evaluation by Connie Lea and Jennifer Blevins of

██████████'s progress since the March IEP meeting. (RI-49). At the time, ██████████'s reading and math was on a beginning fourth grade level and his written expression was on a third grade level. Ms. Lea communicated with ██████████'s mother every day and reported that the parents had been very supportive and concerned with ██████████. (Id., AG000290).

119. The final decision by the IEP team was that ██████████ would receive extended school year services from June 7 to July 30, 2 hours per day excluding July 5. The services were to be delivered by Bonnie Ford during the week of June 7-11 and by Connie Lea during the remainder of the service. Ms. Lea would coordinate with the summer school program for the fourth and fifth graders to initiate an inclusion delivery model for June 25 through July 15, excluding July 5. There would be continuing the ongoing communications with ██████████'s parents. (Id., AG000298, 303).

120. On March 15, 1999, Connie Lea had met with ██████████'s parents to discuss behavior plans developed by Ms. Lea and his parents and by Dr. ██████████. They agreed that the behavior plan from Dade County would be followed as no negative behaviors had occurred as of March 15, 1999. If negative behavior became an issue, they would apply Dr. ██████████'s behavior intervention suggestions. (RI-49, AG000306).

121. On May 25, 1999, the same day as the IEP meeting, ██████████'s parents, through their attorney Steve Lanier, submitted a request for a special education due process hearing, attaching a document styled as a complaint which requested compensatory damages in an amount not less than \$500,000.00, punitive damages in an amount not less than \$500,000.00, attorneys fees and other relief as appropriate. (RI-50). The request for a due process hearing complained that ██████████ was treated harshly because of his ADD and ADHD problems; that

he was hit by Dr. Gayle Gallaher; that Dr. Gallaher supported and encouraged mistreatment of ██████, that the administration failed to respond to the complaints of ██████'s parents; that Linda Gregory hit ██████ in the leg with her cane; that Mr. Gass expelled ██████ from ██████ Middle School; and that ██████ was denied educational instruction because of his confinement to in-school suspension. (Id.).

122. The goals and objectives for ██████'s academics that had been established in the February, 1998 IEP were continued for the March 4, 1999 IEP that was in effect for the rest of the 1998-99 school year. The same goals and objectives were also adopted for instruction in the summer of 1999. (RI-40, AG000178-41, AG000390; RI-49, AG000296).
123. Pursuant to the decisions made at the May 25, 1999 IEP meeting, Connie Lea and Karen Demarche served ██████ through the summer of 1999. (RI-49, AG000303). Ms. Demarche taught ██████ for approximately 13 days for 3 hours per day in a small group setting working on computers for the areas of reading, spelling and math and doing group activities to build social skills. (Tr. 11-15-00, testimony of Ms. Demarche, p. 238-239). Ms. Lea also worked with ██████ during this time, both independently and providing support to ██████ and Ms. Demarche in the computer based program. (Tr. 12-01-00, testimony of Ms. Lea, p. 347-349).
124. ██████ made meaningful progress during these summer services, both academically and socially. (Tr. 11-15-00, testimony of Ms. Demarche, p. 239; Tr. 12-01-00, testimony of Ms. Lea, p. 348-349).
125. The school system convened an IEP meeting on August 2, 1999 to develop a program for ██████ for the 1999-2000 school year. The parents' private psychologist, Dr. ██████,

disagreed with the proposed present levels of performance and called Dr. Hynd's report "hogwash". The school system suggested that the meeting be adjourned so that Dr. [REDACTED] could complete additional testing of [REDACTED] (Tr. 2-22-01, testimony of Wright, p. 128; Tr. 3-29-01, testimony of Goodwin, p. 73-74; R1-40-181). The meeting did proceed with all participants to develop behavioral interventions for [REDACTED] because the school system had retained the services of Dr. Kennedy, a behavioral expert from Vanderbilt University who was present at the meeting. (Tr. 3-20-01, testimony of Goodwin, p. 74-75).

126. When the IEP team reconvened on August 6, 1999, they agreed that [REDACTED] should be placed in fifth grade at [REDACTED] Elementary School on an inclusion model. (Tr. 12-01-00, testimony of Connie Lea, p. 375-376). The parents and Dr. [REDACTED] noted their disagreement on the IEP form which they signed, but it was also agreed that there would be another meeting in October after about 9 weeks to further discuss [REDACTED]'s goals, objectives, and placement. (RI-38, AG000166). Additionally, it was proposed that there would be a discussion of an OHI eligibility. (*Id.*, AG000173).
127. During the 1999-2000 school year, [REDACTED] attended Ms. Shepard's fifth grade regular education class with approximately 22 other students, including approximately 5 who were also children with disabilities. The classroom included students of similar physical size and age to [REDACTED] and he fit in well both socially and intellectually. (Tr. 11-15-00, testimony of Boatner, p. 139-140; Tr. 12-11-00, testimony of Shepard, p. 568-570; Tr. 12-01-00, testimony of Connie Lea, p. 375). [REDACTED] was initially shy and withdrawn, however, within the first 3 months of school, [REDACTED] developed a trusting relationship with his teachers and was showing and making improvements. (Tr. 11-15-01, testimony of Boatner, p. 86-86; Tr.

12-01-00, testimony of Lea, p. 531).

128. [REDACTED] was taught under a co-teaching or inclusion model, in which primarily two teachers, Cathy Shepard and Shelley Boatner, shared the teaching responsibilities for [REDACTED]. Ms. Boatner, a special education teacher, delivered services in the regular education classroom by working with [REDACTED] one-on-one or in small groups for 2 to 2 ½ hours per day in his areas of exceptionality. Ms. Lea was available in the event of behavior problems but generally consulted with Ms. Boatner and Ms. Shepard almost daily on classroom strategies and behavioral interventions. (Tr. 11-15-00, testimony of Ms. Boatner, p. 72; Tr. 12-11-00, testimony of Ms. Shepard, p. 543-544, 554; Tr. 12-01-00, testimony of Ms. Lea, p. 349-350, 354-355).
129. The goals and objectives that were being worked on were the ones from the March 4, 1999 IEP. (11-15-00 Tr., testimony of Ms. Boatner, p. 64, 100-101; 12-01-00 Tr., testimony of Ms. Lea, p. 386-387).
130. On October 5, 1999, Sheila Wright who was by then the special education director for [REDACTED] Middle Schools noticed an IEP meeting to be held on October 20, 1999 to review relevant information about [REDACTED] and determine an appropriate program and least restrictive educational environment for [REDACTED]. (RI-37).
131. At the IEP meeting on October 20, 1999, the following people were present: Shelly Boatner, Cathy Shepard, Connie Lea, Bonnie Ford, [REDACTED]'s parents, and Dr. Blackerby. [REDACTED]'s test scores were discussed and it was mentioned that he was improving in math, writing, and letter-word identification, and reading comprehension based upon tests that had been administered. Ms. Shepard suggested that [REDACTED] should remain in her regular education

class for math because of his pre-test score. Dr. ████████ agreed to this as long as his progress was monitored closely. The parents agreed with this. The parents were generally pleased with ████████'s progress in the classroom and report card grades of B's and C's. ████████ had not had any major behavior problems so far. They agreed to meet again in April for an annual review unless problems came up. (RI-36, AG000164).

132. During the 1999-2000 school year, ████████'s parents did not express any dissatisfaction with the program. The ████████'s had multiple, frequent opportunities to speak with ████████'s educators through the home-school communication notebook used throughout the school year as well as opportunities presented when the parents dropped their children off in the morning and picked them up in the afternoon. (Tr. 11-15-00, testimony of Boatner, p. 81).
133. ████████'s teachers documented and sent home reports of his progress, showing that he was on track for the mastery of his IEP goals and objectives, at regular intervals during the year. In addition to receiving regular progress reports and having constant communication with the school through the daily home-school communication notebook, the ████████'s were also sent a writing file of ████████ that Ms. Shepard used to track progress. (Tr. 11-15-00, testimony of Boatner, p. 81; Tr. 12-11-00, testimony of Shepard, p. 566; Tr. 11-15-00, testimony of Boatner, p. 81).
134. ████████ made significant and meaningful progress during the 1999-2000 school year. Academically, ████████ significantly improved in his attitude towards reading and gained at least one year or grade level in reading. ████████ made gains in the area of written expression, progressing from the third level to the fourth or fifth level so that rather than writing one long sentence, he could use an outline to create, edit and revise multi-paragraph

stories. (Tr. 11-15-001, testimony of Boatner, p. 88-90, 93-94; Tr. 12-00-00, testimony of Shepard, p. 587-591). In the regular mathematics classroom, ██████████ progressed from a third grade level to the mid-fifth grade level. (Tr. 12-11-00, testimony of Shepard, p. 591-592).

135. ██████████ also progressed socially and behaviorally. During the 1999-2000 school year, ██████████ engaged in horseplay typical of his peers but did not present any significant behavioral problems. (Tr. 11-15-00, testimony of Boatner, p. 72-76; Tr. 12-01-00, testimony of Lea, p. 353, 356, 364, 403-404; Tr. 12-11-00, testimony of Shepard, p. 553-556). Throughout the school year, ██████████ did not exhibit any "shutting down" behaviors and made progress with his self esteem and social skills. (Tr. 11-15-00, testimony of Boatner, p. 87-87; Tr. 12-11-00, testimony of Shepard, p. 597-598).
136. At the end of the school year, ██████████'s teachers awarded him the Most Improved Student Award. (Tr. 12-11-001, testimony of Shepard, p. 562-563).
137. On or about July 9, 1999, the request for a due process hearing before the Office of State Administrative Hearings was dismissed by Administrative Law Judge Lois Shingler for lack of jurisdiction. (RIV-19, AG002023-24). On July 30, 1999, ██████████, through his parents, filed a complaint in the United States District Court for the Northern District of Georgia Rome Division against the Dade County Board of Education, Charles Johnston, Superintendent, Carolyn Bradford, Debbie Burrell, John Emmett, David Paris, Loyd Gass, and Gayle Gallaher, all in their official and personal capacities. (Id., AG002001).
138. The school system noticed and convened an IEP meeting on May 15, 2000 to review ██████████'s program and prepare an IEP for the next school year. All necessary participants

were in attendance. The school system invited Dr. [REDACTED], [REDACTED]'s private psychiatrist, to the IEP meeting, but he was unable to attend. (Tr. 12-11-00, testimony of Goodwin, p. 762-763; Tr. 2-22-01, testimony of Wright, p. 40-41; RI-27; Tr. 3-13-01, testimony of [REDACTED], p. 88; RI-25-56).

139. Ms. Boatner, Ms. Lea, and Ms. Shepard collaborated to prepare a draft IEP including present levels of performance and goals and objectives for the 2000-2001 school year. (Tr. 11-15-00, testimony of Boatner, p. 79-81; Tr. 12-01-00, testimony of Lea, p. 370, 372, 481; Tr. 12-11-00, testimony of Shepard, p. 560-562). Although [REDACTED]'s teachers did not catch an error in transferring screening instrument scores to the draft IEP, the IEP team thoroughly discussed [REDACTED]'s performance during the school year and the error did not affect the determination that [REDACTED] made significant and meaningful progress during the 1999-2000 school year. (Tr. 11-15-00, testimony of Boatner, p. 94-97; Tr. 12-01-00, testimony of Lea, p. 509).
140. [REDACTED]'s IEP, both as developed in May, 2000 and across time, provided for special education services in his continuing areas of need. The goals and objectives developed in May, 2000 reflected the expectation of more advanced skills. At the beginning of the meeting, Ms. Lea distributed a draft IEP and made it very clear that the IEP presented was a draft. (Tr. 12-01-00, testimony of Lea, p. 371, 480; PII-3-12).
141. [REDACTED]'s parents both attended the meeting and brought with them three attorneys. (PII-3-2-4). His parents actively participated in a discussion of the present levels of performance and goals and objectives. (Tr. 12-01-00, testimony of Lea, p. 370-371; Tr. 12-11-00, testimony of Goodwin, p. 763-764; Tr. 2-22-01, testimony of Wright, p. 36).

142. Because of the success that ██████ had enjoyed in the 1999-2000 school year, the IEP team recommended that he continue with the friends he had made to a sixth grade placement at Dade Middle School for the 2000-01 school year. (Tr. 11-15-00, testimony of Boatner, p. 86-88, 93; Tr. 12-01-00, testimony of Lea, p. 391; Tr. 12-11-00, testimony of Shepard, p. 599-601).
143. At part of the proposed IEP, the IEP team developed a comprehensive transition plan that, in fact, was implemented to the extent that it could be before ██████'s parents removed him from the school system during the summer of 2000. (RI-7-17; Tr. 11-15-00, testimony of Demarche, p. 242-245; Tr. 12-11-01, testimony of Goodwin, p. 766-767). Specifically, the middle school administration ensured that ██████'s class schedule placed him in classes with at least one, usually two, students that Ms. Shepard recommended; divided duties so that Ms. Demarche would be visible to ██████ during transition time, and sent one of the prospective special education teachers to observe ██████'s placement during the end of the 1999-2000 school year. (Tr. 11-15-00, testimony of Demarche, p. 342-245; Tr. 12-01-00, testimony of Lea, p. 398-399; Tr. 12-11-00, testimony of Shepard, p. 613-615).
144. Despite the consensus that ██████ evidenced no problematic behaviors in the 1999-2000 school year, the IEP team also developed a precautionary, detailed Behavioral Intervention Plan (BIP). (Tr. 12-01-00, testimony of Lea, p. 403-405; Tr. 12-11-00, testimony of Shepard, p. 606; Tr. 2-22-01, testimony of Wright, p. 50-52; RI-7-17). The team specifically elicited the parents' input and then included the language that provided that ██████ will follow school rules without modification as long as he has received his prescribed medication. (RI-7-17; PII-3-190; PII-3-216).

145. In response to the parents' concerns about ISS, the IEP team determined that [REDACTED], if assigned to ISS, would only participate if supervised by a special education teacher. (Tr. 11-15-00, testimony of Demarche, p. 292; Tr. 2-23-01, testimony of Wright, p. 155-156; PII-3-217). Further, the IEP provided that all discipline contemplating suspension would be preceded by a parent conference and that all discipline involving any kind of removal, even short term, would be supervised by a special education teacher with an IEP meeting to be convened if [REDACTED] was removed from his class for a time-out more than three times in one week. (RI-7-19-20; Tr. 2-23-01, testimony of Wright, p. 155-157).
146. The [REDACTED]'s and their three attorneys actively participated in review of the behavior and transition plans but did not express any concerns or disagreement with the final result. (Tr. 11-15-00, testimony of Demarche, p. 266; Tr. 12-01-00, testimony of Lea, p. 393-394; Tr. 2-22-01, testimony of Wright, p. 51; Tr. 2-23-01, testimony of Wright, p. 159-160; PII-3-206-218). Neither [REDACTED]'s parents nor their attorney expressed disagreement with the goals and objectives, or with any other component of the IEP developed in May. (Tr. 11-15-00, testimony of Boatner, p. 84-85; Tr. 12-01-00, testimony of Lea, p. 392-393; Tr. 12-11-00, testimony of Goodwin, p. 769; Tr. 3-26-01, testimony of [REDACTED], p. 257, PII, Tab 3, p. 173-176).
147. At the May meeting, the [REDACTED]'s only expressed concern with regard to personnel, to which the school system responded by making it clear that [REDACTED] would not be involved with certain staff members. (Tr. 11-15-00, testimony of Demarche, p. 249-250, 279-280; Tr. 12-01-00, testimony of Lea, p. 397-398; Tr. 2-22-01, testimony of Wright, p. 54-58). The [REDACTED]'s and their attorneys pressed for specific commitments about personnel to be included in the IEP, but

the school system declined to include that in the IEP. (PII, Tab 3, p. 181-185; 220). Specifically, although it was not yet officially announced, in advance of and again during the May meeting, the school system informed ██████'s parents that Dr. Gallaher was retiring and a new principal would be in place at ██████ Middle School the following year. (Tr. 12-01-00, testimony of Lea, p. 397-397; Tr. 2-22-01, testimony of Wright, p. 56-57; Tr. 2-23-01, testimony of Wright, p. 140-143; Tr. 3-26-01, testimony of ██████, p. 160). Schools decline to name personnel in IEP's because the staff at ██████ Middle School is not identified and assigned to the extent that it could name personnel for a particular student or grade level. (Tr. 11-15-00, testimony of Demarche, p. 250; Tr. 2-22-00, Testimony of Wright, p. 55; Tr. 2-23-01, testimony of Wright, p. 135-139). In the discussion, the school system committed to having Theresa Smith, a prospective teacher for ██████, observe ██████ in the classroom with Ms. Shepard at the elementary school (PII, Tab 3, transcript of IPE meeting, p. 131-135). The attorneys representing ██████ at the May 15, 2000 IEP meeting used factually inaccurate descriptions to advance the concerns about ██████'s placement at ██████ Middle School (PII Tab 3, p. 197-200, 223-225). ██████'s father stated that he would not send his son to ██████ Middle School unless he had reassurance that Dr. Gallaher and Ms. Gregory would not be there. (PII Tab 3, p. 205). Judy Bean, the school superintendent, had already told Mr. ██████ that Dr. Gallaher was resigning. (*Id.*, 221). Even with that information, ██████'s parents and representatives decided to move forward with the due process hearing. (*Id.*, 225-226).

148. At the May IEP meeting, the IEP team deferred consideration of ESY for the 2000-2001 IEP until the following spring. As ██████ is able to recoup his skills after a break with only a

brief 10-15 minute review, he does not require continued instruction for vacations or short breaks during the school year. (Tr. 11-15-00, testimony of Boatner, p. 159-163, 166-167; Tr. 12-01-00, testimony of Lea, p. 406-407; Tr. 12-11-00, testimony of Shepard, p. 584-586; RI-7-7). The IEP team developed a plan for extended school year services for the summer of 2000 during which ██████ would work on the goals and objectives in place for the 1999-2000 school year. (PII Tab 3, p. 153-164). Mr. G. agreed with this ESY plan. (Id., 164).

149. Although the ██████'s attorneys made a verbal request for a due process hearing at the end of the May IEP meeting, Mr. ██████ telephoned Ms. Wright and indicated that he did not wish to proceed with that request before the school system could forward a due process hearing request form to him. (Tr. 2-21-01, testimony of Wright, p. 58-61; RI-23-91). When Mr. ██████ then indicated that he was planning to proceed with due process, Mr. Wright forwarded the form. (RI-22; RI-21-88). During the course of the summer, although ██████ did not attend the offered ESY, the school system had many contacts with the ██████'s.
150. In late May or early June, 2000, Judy Bean met with Mr. ██████ informally about settling the 1999 federal District Court litigation. (Tr. 1-19-01, p. 99-100).
151. By letter dated July 13, 2000, Mr. ██████ informed the school system that he intended to enroll his three children in private school and requested that the school system guarantee funding for tuition and transportation. (RI-17, AG000081). In response to the concerns implicit in his request, the school system attempted to schedule an IEP review meeting, primarily by forwarding communication by facsimile. (RI-16-79; RI-15-80; RI-12-187; RI-10-77; RI-9-76; Tr. 2-22-01, testimony of Wright, p. 66-77; Tr. 12-11-00, testimony of Goodwin, p. 771). At the ██████'s request and on one occasion at the school system's request to facilitate Ms. Lea's

participation, the IEP meeting was rescheduled several times. (Tr. 3-26-01, testimony of [REDACTED], p. 271; RIII-5-1934-1935; RIV-18-1952; Tr. 2-23-01, testimony of Wright, p. 126-128).

152. Sometime in the second week of July, 2000, [REDACTED] came to meet with Judy Bean, the superintendent by then of Dade County Schools, about her child's special education program. (Tr. 1-19-01, testimony of Bean, p. 63; Tr. 1-18-01, testimony of Kesler, p. 143-144). Ms. [REDACTED] told her a little bit about the problem with her child, discussed Ms. [REDACTED]'s medical history with Ms. Bean, and told Ms. Bean that she had been [REDACTED]'s first secretary. (Tr. 1-19-01, p. 65). She also asked Ms. Bean if she knew that Mr. [REDACTED] had borrowed \$1,000,000.00 from the mafia to get his business started. Further, Ms. [REDACTED] told Ms. Bean that Mrs. [REDACTED] was on drugs and that she had a real problem. (*Id.*, 66). Ms. Bean did comment that Mr. [REDACTED] controlled his wife. (*Id.*, p. 67). She also confirmed that when Mr. [REDACTED]'s name was mentioned to anybody in the general population that there were rumors that he sold drugs. (*Id.*, 68-69). Ms. Bean also mentioned that the litigation was costing the system a lot of money. (*Id.*, p. 70).
153. After the conversation with Ms. Bean, Ms. [REDACTED] reported the conversation to Mr. [REDACTED] but from the standpoint that it was Ms. Bean who had initiated the discussion about the [REDACTED]'s and had made the allegations of Mr. [REDACTED]'s treatment of his wife, drugs, and the mafia. (Tr. 1-18-01, testimony of [REDACTED], p. 153-158).
154. Shortly after the conversation occurred between Ms. Bean and Ms. [REDACTED], [REDACTED]'s father notified the school that he and his wife would be withdrawing their children from Dade County Schools and enrolling them in a private school. (RI-17, AG000081). On August 18, 2000, [REDACTED]'s parents sued Judy Bean personally for defamation of character. (RIV-34).

155. Before that, however, in a series of letters starting May 23, 2000 and continuing until July 14, 2000, the school system and ██████'s parents corresponded with regard to due process hearing and ██████'s extended school year services for the summer of 2000. By letter dated June 5, 2000, the school system provided ██████'s parents with the due process hearing request form. (RI-21). By letter dated June 28, 2000, the school system notified the ██████'s of the arrangements for ██████'s instruction during the period of July 11-20. (RI-20). By letter dated July 5, 2000, the school system reminded the ██████'s about the services for ██████ in accordance with ██████ IEP. (RI-18).
156. In his letter of July 13, 2000, Mr. ██████ informed Ms. Wright that they rejected the placement being offered by the school system and alleged that the school system had failed to provide an appropriate educational program. The letter further complained that there is a lack of adequately trained teachers and professionals, that the children have regressed, and that the teachers and administrators that had been an important part of their educational program were no longer in the education of the children because of retaliatory actions against them. This letter also requested that the school system pay the tuition costs for private school and transportation to and from. (RI-17).
157. By letter dated July 13, 2000, the school system notified the ██████'s that they needed to have IEP reviews because of their request for reimbursement. (RI-16).
158. By letter dated July 14, 2000, Mr. ██████ insisted on a yes or no answer for the tuition request and transportation costs. (RI-15). By letter dated July 19, 2000, the school system reminded ██████'s parents of the preparatory tour that Connie Lea was to take ██████ on at Dade Middle School. (RI-14).

159. The school system proceeded to notice an IEP meeting to determine an appropriate program and least restrictive educational environment for Andrew. (RI-12). The meeting was rescheduled for August 9, 2000. (RI-10).
160. ██████'s parents did not have him obtain any educational services over the summer of 2000 from Dade County Schools or otherwise. (3-21-01 Tr., testimony of Jim G., p. 43).
161. The ██████s enrolled their children in ██████ School, a private school for learning disabled children in Chattanooga, Tennessee. (3-26-01 Tr., testimony of ██████, p. 296). ██████ started school two weeks late. (Tr. 3-12-01, testimony of Card, p. 53). ██████ School is located more than 45 minutes from the ██████ household in Chattanooga, Tennessee. It is exclusively for children with disabilities and all of the students have IEPs. (3-12-01 Tr., testimony of Card, p. 21). ██████'s IEP provides for 36 hours per week in special education with zero hours in regular education classes. (RIV-28-2177; 3-12-01 Tr., testimony of Brown, p. 126).
162. ██████, at the time of the ██████s' enrollment of their children, had lost its status as a state approved private school. (RIV-29-2269; 3-12-01 Tr., testimony of Card, p. 24-29; 2-23-01 Tr., testimony of Card, 194-196). Three of Andrew's current teachers at ██████ in social studies, literature, and writing are teaching without proper certification or approval from the Tennessee Department of Education. (RIV-29-2271-2275; 3-12-01 Tr., testimony of Card, p. 30-34).
163. ██████ has had a difficult transition to ██████, having had to serve detention already and having two and perhaps more serious episodes of shutting down behavior similar to what he had exhibited in the fall of 1998. (2-23-01 Tr., testimony of Card, p. 270-271; 3-12-01

Tr., testimony of Card, p. 67-74; RIV-2178-2196). ██████████ is now seeking to involve Dr. ██████████ in planning for ██████████ (3-12-01 Tr., testimony of Card, p. 74-75; 3-13-01 Tr., testimony of ██████████, p.88; RI-25-073). In addition, in January, February, and March of 2001, A ██████████ was exhibiting disrespectful and disobedient behavior, along with aggressive behavior towards other students. (RIV-28-2223-2229; AG002324).

164. The Dade County School System held an IEP meeting for ██████████ that covered two days, September 12-13, 2000, concerning a revision in his IEP to address concerns raised by the request for reimbursement including a higher grade placement. (RI-7). There were several attorneys present including Alissa Codell, Charles Weatherly, Kathleen Sullivan, and Craig Goodmark (representing Connie Lea). Mr. ██████████ also attended the September, 2000 IEP meeting and participated throughout the meeting. (11-15-00 Tr., testimony of Boatner, p. 168; 12-11-00 Tr., testimony of Shepard, p. 777-778; 12-11-00 Tr., testimony of Goodwin, p. 777-778).
165. As ██████████'s teachers felt he would need more support in a higher grade placement, the IEP team developed additional goals and objectives in the areas on reading and math. The IEP team also added more details for handling interventions with ██████████ to the behavior plan. (RI-7-20; 11-15-00 Tr., testimony of Boatner, p. 102-103; 2-22-01 Tr., testimony of Wright, p. 88-90; 2-23-01 Tr., testimony of Wright, p. 157-159).
166. Dade County School District did not enter into an agreement to forego a psychiatric evaluation of ██████████ if they received the records of Dr. ██████████. (RIV-18, AG001963-1967). Dr. ██████████ has indicated that he is now diagnosing ██████████ with probable Tourette's Syndrome and anxiety disorder. (3-13-01 Tr., testimony of ██████████, p.30).

167. In September, 2000, [REDACTED]'s parents had Dr. [REDACTED] evaluate [REDACTED]. Dr. [REDACTED] also indicated that there is a possible Tourette's Syndrome diagnosis that would need further evaluation. (12-14-01 Tr., testimony of [REDACTED], p. 61). Additionally, Dr. [REDACTED] found [REDACTED] to have a learning disability in the areas of reading, written expression, and math. (Id., 36). He found [REDACTED] to have average intelligence. Dr. [REDACTED] testified as an expert in the area of neuropsychology and neuropsychological evaluation of children with an emphasis in children with learning disabilities and/or ADD or ADHD and the educational planning and provisional services to children with learning disabilities in ADD or ADHD..
168. On November October 17, 2000, Mr. [REDACTED] had the entire District Court complaint published in the local Dade County publication, with a fax sheet showing that Judy Bean had used the Dade County School District's fax machine to sent two sheets in the lawsuit filed against [REDACTED]'s father as a way of showing the community that Ms. Bean was putting school equipment to personal use. (RIV, 2).
169. [REDACTED] was absent for ten days from the middle of August through November 10, 1998. (RII-121, AG000812; RII-116, AG000780, 781; RII-109, 654, 653; RI-98, AG000531, 552; RIV-25).
170. [REDACTED] does not have any educational records of [REDACTED]. (Tr. 3-26-01, testimony of [REDACTED], p. 202-204.).
171. According to [REDACTED]'s grandmother, [REDACTED] will lie, as will any child, to stay out of trouble. (Tr. 1-19-01, testimony of Wanda G., p. 225).
172. [REDACTED] did not testify. (Hearing transcripts).
173. For a student to be classified as Other Health Impaired (OHI), a doctor has to provide a

signed form to that effect. This was discussed at the August 6, 1999 IEP meeting with Dr. [REDACTED]. (RIII-12). In September, 2000, the school system was still waiting on the form from the doctor. (Tr. 12-1-00, testimony of Connie Lea, p. 490).

174. Both Petitioner and Respondent made proffers of the following: testimony and evidence during the course of the hearing. Petitioner proffered testimony of Eileen Card and Mary Ellen Brown on the issue of harm to [REDACTED]; the testimony of Ms. Card on the issue of the Dade County IEP's; the testimony of Ms. Card on the issue of [REDACTED]'s fears; a demonstrative exhibit 3, the slides Sheryl Pruitt used during testimony on April 16, 2001; further explication of Ms. Pruitt's testimony and the testimony of Ms. Pruitt concerning a behavioral intervention plan developed for [REDACTED]; the further examination of Bonnie Ford with regard to tutoring services claimed to have been provided to [REDACTED] in lieu of the ESY offered by the Dade County School District and with regard to her other conduct; and a proffer with regard to the testimony of [REDACTED]. (Ms. [REDACTED] however testified, so no proffer was in fact necessary); further examination of [REDACTED] with regard to the tutoring services to [REDACTED] on vacation breaks and during the summer of 2000. Petitioner's also proffered the rebuttal testimony of Dr. [REDACTED] concerning the current diagnosis, lack of necessity of further psychiatric or psychometric evaluation of [REDACTED]; the testimony of two additional [REDACTED] witnesses, Dixie Gray and Barbara Zielke, on the current behavioral plan and the family's participation in the program and their communications; Ms. Pruitt would have testified additionally with regard to years prior to the 1998-99 year and subsequent school years as well concerning various IEP matters, goals and objective, behavioral techniques, the manner and method in which and IEP should and can be

developed; Craig Goodmark would have called to testify regarding his observations at the September 12, 2000 IEP meeting; Steve Lanier's testimony was proffered concerning the IEP meetings he attended and the hostility and lack of cooperation; Darlene Brooks, a parent advocate working with Zimring, Smith & Billips, would have testified concerning the tone and demeanor of the IEP meeting in December, 2000 concerning [REDACTED]; Lisa Susen would have been cross examined on the evaluation claim.

175. Respondent has proffered testimony of Dr. George Hynd to rebut testimony of [REDACTED]'s father and Dr. [REDACTED] on the evaluation of [REDACTED]; they proffered testimony of Officer Roxie Thompson who was unavailable concerning the observation of marks on [REDACTED]'s back. Additionally, by letter dated April 13, 2001, Respondent had tendered briefly the testimony of other witnesses who did not re-appear as follows: Cathy Shepard would have testified on rebuttal to Sheryl Pruitt regarding methodologies employed at [REDACTED] Elementary; Judy Bean would have presented additional testimony with regard to the alleged slander of Mr. [REDACTED] and her communications with him over 1999 and 2000. Having reviewed the proffers in light of the evidence already presented, the undersigned Special Assistant Administrative Law Judge determined that the evidence and testimony contained in the proffers were both irrelevant and cumulative to the record and therefore unnecessary.

#### V. CONCLUSIONS OF LAW

1. The Office of State Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. (OC.G.A. §§50-13-13, 50-13-40, and 50-13-41).
2. There is no dispute that [REDACTED] is an exceptional student and is entitled to special education and related services under the IDEA. What is disputed is whether the school system

provided a free appropriate education (FAPE) to ██████ in the 1998-1999 and 1999-2000 school years, and whether the IEP's developed in May (September) 2000 can provide FAPE to ██████, and, if not, whether the program selected by ██████'s parents at Scenic Land was proper.

3. Pursuant to Georgia Department of Education Rule 160-4-7-.18(1)(g)(8), the school system has the burden of proving that the proposed placement for the 2000-2001 school year is appropriate, while Petitioner has the burden of establishing that the more restrictive environment at ██████ is appropriate. With regard to prior, expired, or already-implemented IEP's, the general rule of administrative law applies so that, in this matter, Petitioner has the burden of proving the inappropriateness of the educational programs for the 1998-1999 and 1999-2000 school years. (See e.g., U.S.C. §556(d), Administrative Procedure Act; In the Matter of: Jensine B., OSAH-DOE-96-046).
4. Under IDEA, school systems are required to provide students with disabilities with a free appropriate public education"FAPE). (20 U.S.C. §1400 et seq., 20, U.S.C. §1400(d)). FAPE is defined as specially designed instruction to meet the unique needs of a child with a disability and related services provided in conformity with an individualized education program (IEP). (20 U.S.C. §§1401(8), 1401(25)).
5. The Supreme Court has provided the standard by which the appropriateness of an IEP is to be determined. (Bd. Of Educ. Of the Hendrick Hudson Central Sch. Dist. V. Rowley, 458 U.S. 176 (1982)), the Supreme Court enunciated the following two-fold standard:

"First, has the State complied with the procedures set forth in the Act? And second, is the Individualized Education Program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits?"

6. The Education of the Handicapped Act (EHA) was enacted to encourage and assist in the provision of a free and appropriate education by the states to all handicapped children. The EHA provides federal aid to state and local agencies that comply with its provisions. In order to qualify for federal assistance the agency must "have in effect a policy that assures all handicapped children the right to a free appropriate public education". (20 U.S.C. §1412(1)).
7. The EHA (IDEA) defines "free appropriate public education" as:

"... special education and related services which (A) have been provided at public expense, under public supervision and direction, and without charge, (B) meet the standards of the State educational agency, (C) include an appropriate preschool, elementary, or secondary school education in the State involved, and (D) are provided in conformity with the individualized education program required under Section 1414(a)(5) of this Title."
7. The Supreme Court has held that in order to satisfy its duty to provide a free appropriate public education, a state must provide "personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction". (Hendrick Hudson Central School District Board of Education v. Rowley, 458 U.S. 176, 203, 120 S.Ct. 3034, 3049, 73 L.Ed.2d 690 (1982)).
8. The "personalized instruction" required by the IDEA is carried out in accordance with an "individualized educational program" (IEP), which must be developed for each handicapped child. The IEP is developed as a written statement for each child in a meeting between the teacher, parents or guardian, and local educational agency representatives. The statement must include a discussion of the child's present level of performance; annual goals and short-term instructional objectives; the specific educational services to be provided to the child;

the extent to which the handicapped child is able to participate in regular educational programs; the projected date of initiation and duration of the services; and the means of determining whether the instructional objectives are being met. (20 U.S.C. §1401(a)(19).

9. Other health impairment (OHI) 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 (1) is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficient hyperactivity disorder, diabetes, epilepsy, or heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell anemia; and (2) adversely affects a student's educational performance. In some cases, heightened awareness to environmental stimulus results in difficulties with starting, staying on and completing tasks; making transitions between tasks; interacting with others; following directions; producing work consistently; and, organizing multi-step tasks. (34 C.F.R. §300.7(c)(9)).
10. Evaluation for initial eligibility for OHI shall include the following: (a) a medical evaluation from a licensed doctor of medicine ...; (b) a comprehensive developmental or educational assessment to indicate the effects of the health impairment on the student's educational performance ... (34 C.F.R. §300.7).
11. Full and effective parental participation in the IEP process is the actual purpose of the IDEA's parental notification requirement. A school's violation of the requirement does not require relief where parents fully participated in the IEP process and there was no harm flowing from the procedural violation. (Doe v. Alabama State Dept. Of Educ., 915 F2d. 651 (11<sup>th</sup> Cir. 1990)).

12. Compensatory education is a court-created equitable remedy under the IDEA that is designed to replace lost educational services resulting from a denial of FAPE where the denial of FAPE has resulted in academic regression. (Parents of Student W. v. Puyallup Sch. Dist. No. 3, 31 F.3d 1489, 1496 (9<sup>th</sup> Cir. 1994)). Appropriate relief is designed to ensure that the student is appropriately educated within the meaning of the IDEA. (Id.).
13. In considering the appropriate equitable relief, the conduct of both parties should be reviewed, along with the nature of relief requested, to determine whether an award of compensatory education is appropriate. (Parents of Student W., 31 F.3d at 1496-97).
14. The IDEA provides that during the pendency of an administrative or judicial proceeding, the child shall remain in his/her current educational placement, i.e. stay put, unless the parents and the district otherwise agree. (20 U.S.C. §1415(j); 34 C.F.R. §300.514).
15. The 1997 Amendments to the IDEA require that the IEP team “consider whether the child requires assistive technology devices and services” in developing an IEP for a student. (20 U.S.C. §1414(d)(3)(B)(v)). Students who require assistive technology (AT) to receive FAPE are entitled to AT devices and services. (Ga. Dept. Educ. Rule 160-4-7-.19).
16. Section 504 prohibits recipient institutions from retaliating against persons who assert rights or file claims under Section 504. (34 C.F.R. §104.61). In order to establish a prima facie case of retaliation a plaintiff must prove the following: (1) the plaintiff engaged in a protected activity; (2) the recipient had knowledge of the plaintiff’s engaging in the activity; (3) the recipient subjected the plaintiff to adverse action following the activity; and (4) there is a nexus between the protected activity and the recipient’s adverse action. The defendant then has the opportunity to demonstrate nondiscriminatory reasons for the action taken. It

is then the plaintiff's responsibility to prove that the defendant's proffered nondiscriminatory reason is pretextual. (Wooster City Schs., 33 IDELR 253 (OCR June 2000); Redding Public Schs., IDELR 37 (OCR May 2000)).

17. The IDEA obligates a school district to conduct a re-evaluation "if conditions warrant" or "if the student's parent(s) ... or teacher request a re-evaluation" but at least once every three years. (20 U.S.C. §1414(a)(2)(A); 34 C.F.R. §300.536).
18. Under Georgia law, hearsay is evidence that "does not derive its value solely from the credit of the witness but rests mainly on the veracity and competency of other persons". (O.C.G.A. §24-3-1(a)). It is generally accepted that hearsay is not only inadmissible, but wholly without probative value. (Howell Mill/Collier Assoc. V. Pennypacker's, Inc., 196 Ga. App. 169, 390 S.E.2d 257 (1990)).
19. Reimbursement of costs for placement of children in private schools is governed by 34 C.F.R. §300.403 as follows:
  - (a) General. This part does not require an LEA to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the public agency shall include that child in the population whose needs are addresses consistent with §§330.450-330.462.
  - (b) Disagreements about FAPE. Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures of §§300.500-300.517.
  - (c) Reimbursement for private school placement. If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary, or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State

standards that apply to education provided by the SEA or LEAs.

- (d) Limitation on reimbursement. The cost of reimbursement described in paragraph (c) of this Section may be reduced or denied -
- (1) If -
    - (i) At the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or
    - (ii) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in paragraph (d)(1)(i) of this Section;
  - (2) If, prior to the parents' removal of the child from the public school, the public agency informed the parent, through the notice requirements described in §300.503(a)(1), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or
  - (3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.
    - (e) Exception. Notwithstanding the notice requirement in paragraph (d)(1) of this Section, the cost of reimbursement may not be reduced or denied for failure to provide the notice if -
      - (1) The parent is illiterate and cannot write in English;
      - (2) Compliance with paragraph (d)(1) of this Section would likely result in physical or serious emotional harm to the child;
      - (3) The school prevented the parent from providing the notice; or
      - (4) The parents had not received notice, pursuant to Section 615 of the Act of the notice requirement in paragraph (d)(1) of this Section.
20. The IDEA provides that during the pendency of an administrative or judicial proceeding, the child shall remain in his/her current educational placement, i.e., stay put, unless the parents and the district otherwise agree. (20 U.S.C. §1415(j); 34 C.F.R. §300.514).

## VI. DISCUSSION AND RULING

### PLACEMENT AND COMPENSATION

The decision on the merits of Petitioner's claims against the Dade County School District turns almost exclusively on the validity of the allegations of mistreatment the [REDACTED]'s made against personnel at the [REDACTED] Middle School during the Fall of 1998. If those allegations are indeed true, then it would follow that [REDACTED]'s education was either set back considerably or not advanced appropriately during that year and that he is entitled to some type of compensatory education for that loss. However, after nineteen total days of hearings in which multiple witnesses testified, and after review of reams of documents, the undersigned Special Administrative Law Judge has found no evidence that any of the alleged incidents took place. The only evidence that anything happened in the way of [REDACTED] being hit, struck or otherwise abused by any of the personnel at Dade County Middle School is hearsay evidence, as [REDACTED] himself never testified. [REDACTED] alleged that the principal, Gayle Gallaher, hit him on the back on October 14, 1998. Dr. Gallaher, herself, did not testify as she has now retired from the school system and is no longer within the state of Georgia. However there was more than one witness around Dr. Gallaher and [REDACTED] at the time Dr. Gallaher has alleged to have hit him and no one could corroborate [REDACTED]'s story. Additionally [REDACTED]'s father called the Sheriff and the GBI to investigate. The GBI investigated by sending a child abuse special agent to the home. Although the agent observed some bruising on [REDACTED]'s back, the bruising was not consistent with the time frame, or the type, of alleged strike.

[REDACTED] accused Linda Gregory, his special ed teacher for a while at [REDACTED] Middle School, of hitting him with her cane. Ms. Gregory did testify and credibly denied hitting [REDACTED]

In fact, Ms. Gregory was testifying in great pain and under obvious stress. Both her personal demeanor and her professional approach was entirely in keeping with this denial.

██████ accused the school resource officer, Cheri Robinson, of arresting him and handcuffing him. Ms. Robinson also testified and her testimony was clear that her interaction with ██████ was calm and limited to a discussion, part of which occurred on the steps of the ISS trailer and part of which occurred with ██████ in her Bronco, but none of which involved an arrest or handcuffing.

██████ accused his original special ed teacher at ██████ Middle School, Donna Allen, of flipping him out of a chair. Ms. Allen was totally unaware of the charges until they showed up in a complaint filed by ██████'s parents in the Northern District of Georgia, Rome Division alleging abuse and asking for compensatory and punitive damages. Ms. Allen testified and, once again, the witness testified credibly that the allegation was baseless.

██████ accused Brian Watkins of holding him down in late October or early November. Mr. Watkins was the Vice Principal who also testified credibly that this did not happen. Mr. Watkins, instead, stood by a doorway watching ██████ to make sure that he did not run away from school.

Although ██████'s father spoke to some of these individuals who denied ██████'s allegations, ██████'s father chose to believe ██████. He did this in spite of the fact that both he and his wife had sought professional help many times for ██████, reporting to the professionals that one of ██████'s problems was that he lies. ██████'s father did this in spite of the fact that ██████'s grandmother, ██████, testified that, while ██████ is generally truthful, he will, like any other child, lie to stay out of trouble. No evidence was presented that ██████ no longer lied and

██████ himself was never brought in as a witness. Hearsay testimony can be admitted to prove the truth of the matter only in certain circumstances. One of those circumstances, at least under the Georgia rule of evidence, is that it is sufficiently reliable and trustworthy to be admitted. ██████'s father's belief in his son's truthfulness is simply not a sufficient basis to allow any of ██████'s allegations to be admitted as evidence and thus to be considered as a basis upon which to make a decision concerning his education.

The evidence did show that, for three years prior to 1998, ██████ had been classified as learning disabled and had been provided special education services in the areas of reading, written expression, and math. As he exhibited virtually no behavior problems, there was no behavioral intervention plan for him in place in 1998. However, when ██████ went to middle school, he became extremely withdrawn initially and then began fighting with other students. The teachers on ██████'s sixth grade teaching team discussed him in their meetings and attempted to find ways among themselves and in conjunction with the parents to assist ██████ in his adjustment to sixth grade. The special education director, Loyd Gass, contacted the State Department of Education and as a result, had ██████'s teachers fill in functional behavioral evaluation forms. On September 18, 1998, after several contacts with the parents, a detention and disciplinary referrals, they had a meeting with ██████'s parents who requested that they wait ten more days to see if ██████'s medication could be adjusted to alleviate his problems.

The ten days passed without a meeting because the parents requested a postponement. When the IEP meeting was finally convened on October 19, 1998, it was clear that ██████'s behavior had not become any better in spite of some apparent medication adjustment. ██████ was still fighting with students, still being extremely disrespectful, still cursing, still drawing obscene pictures, still

trying to leave class, and by this time had threatened the principal. The teachers participated in functional behavioral assessments to see if they could determine what were some behavioral triggers. They asked the parents for insight and assistance for ideas on how to deal with [REDACTED] and no one was able to come up with any suggestions that would cause [REDACTED] to behave any better. At the October 19, 1998 IEP meeting, the school system requested a forty-five day crisis diagnostic placement for [REDACTED] in order to be able to do an evaluation to identify [REDACTED]'s problems and determine how to address the issues so that [REDACTED] could be provided with a free appropriate public education. The parents refused to agree to a forty-five day crisis diagnostic placement and instead requested home bound services which the school provided on a shortened day basis with Linda Gregory. On November 3, 1998 another IEP meeting was held and the family did agree to a forty-five day crisis diagnostic setting with Linda Gregory as the teacher on a shortened day schedule with an evaluation to be done by the TEAM Center. This placement had not been in effect particularly long when [REDACTED] accused Ms. Gregory of hitting him with a cane. Ms. Gregory reacted unfavorably to the accusation and was quite upset. She did address this in a professional manner however with [REDACTED] and his father on or about November 13, 1998. After that meeting, [REDACTED] did not return to school.

On November 11, 1998 the parents took [REDACTED] for his first TEAM evaluation. He was apparently not particularly cooperative and thereafter the parents cancelled all other appointments. They failed to notify the school system of this and Loyd Gass only became aware of this upon calling the TEAM evaluation center in January, 1999. In the meantime, even though he did not know that the evaluation had not been completed and was not going to be completed, Mr. Gass was

able to enlist the services of Connie Lea to provide two hours per day instruction after school for ██████ at the library. This lasted until February when Ms. Lea had another commitment to fulfill. During the sessions with Connie Lea, Andrew had been working on his goals and objectives from the February 1998 IEP and he continued to do so during the rest of the 1998-1999 school year. He was placed in summer school partly with Karen DeMarche and Connie Lea.

In spite of the fact that the school asked for assistance from ██████'s parents with any information or suggestions as to insights into ██████'s behavior, Mr. and Mrs. ██████ failed to inform the school that Mr. ██████ had been in a week long criminal trial in Indiana in late August, 1998 at the end of which he was convicted of conspiracy and wire fraud. Before the sentencing hearing, Mr. ██████ enlisted the child psychiatrist, Dr. ██████, Bonnie Ford, and Jane Everett, a family advocate, to write letters to the judge in Indiana explaining the hardship on the family of Mr. ██████'s absence should he be sent to prison. Mr. ██████ was finally absolved of the charges by the Seventh Circuit's reversal of the lower court verdict, but that did not happen until December, 2000. Mr. ██████ testified very cavalierly that he always knew that that would be the outcome of the case because the law was on his side. He also testified that he was positive that his conviction and absence from home had no effect upon his family since he and his wife kept that information to themselves.

Since ██████ stopped receiving services in February, 1999, Dade County School District noticed another IEP meeting which was held on March 4, 1999. ██████'s parents and now ██████'s attorneys were present at this meeting and participated in designing a program for the rest of the year. Summer services were discussed and arranged at an IEP meeting held on May 25, 1999 in which the parents and ██████'s counsel participated as well. It was also arranged that ██████

would have complete evaluations including a neuropsychological, auditory processing, and psychiatric. The psychiatric was never done because the parents changed their minds about having [REDACTED] going through a psychiatric exam. The school system was allowed to have access to the records of [REDACTED]'s treating psychiatrist, Dr. [REDACTED], but that was not until the Spring of 2000. Thus, although [REDACTED] had many tests run on him and his learning disability was confirmed and some of his processing difficulties were further and more elaborately identified, there was never any psychiatric or psycho-social evaluation done that would effectively address the serious behavioral problems that [REDACTED] was exhibiting in the Fall, 1998. The records of Dr. [REDACTED] were sketchy as he, in the past two years, had only seen [REDACTED] approximately once every three to four months for fifteen or twenty minutes.

Following a discussion with Linda Gregory and [REDACTED]'s father in the hallway of [REDACTED] Middle School which was also attended by Annice Goodwin, Brian Watkins and Lloyd Gass, [REDACTED]'s father basically kept him at home and failed to notify the school that he was not going to send [REDACTED] back. After many attempts by Mr. Gass to contact [REDACTED]'s father, [REDACTED]'s father stated that he was going to home school [REDACTED]. He made this verbal commitment but never filled out the appropriate forms for that purpose.

It is clear from the testimony and the documents that the school system made considerably more than just a good faith effort in the fall of 1998 to provide [REDACTED] with appropriate services and to determine what services he needed. [REDACTED] was assigned in-school suspension for several days in the fall of 1998, however, because of numerous absences, he only served nine of the approximately sixteen days assigned. [REDACTED] was marked absent for ten days from the beginning of school in August until early November. The sixteen days were not assigned consecutively and

did not constitute a change of placement under the circumstances. [REDACTED] did receive special education services on many of the days. [REDACTED] was not only a danger to other students, but threatened the principal as well. Isolating [REDACTED] was a reasonable way to maintain the safety of the other students and the functioning of the school. No matter what the underlying cause, [REDACTED] projected the blame for his problems on the teachers and administrators, accusing five people of hitting or other otherwise physically abusing him. His parents withheld critical information that would have helped the school determine what was really going on with [REDACTED] and consistently refused to allow for the types of evaluation. Lacking appropriate evaluation, the school system could thus never conduct a manifestation determination. [REDACTED]'s parents unilaterally withdrew him from school, and in spite of verbal commitments to do so, never returned the home schooling forms for home schooling.

The August 30, 2000 due process request was careful to include numerous educational deficits in [REDACTED]'s program. Much was made during many cross examinations about various goals and objectives, teachers' qualifications, OHI categories, and assistive technology. Expert testimony was offered both in support of and in detraction of the IEP's as developed by the teams. Ms. Wright and others were questioned extensively about the scope of the notice to the parents concerning the matters to be addressed at the IEP meetings. While Drs. Hynd, Oakland, [REDACTED], and Rostetter were all highly competent and well spoken, their evaluations and opinions cannot substitute for those of the classroom teachers and other school personnel who directly and daily interacted with [REDACTED]. It was the teachers who testified clearly that the goals and objectives were developed as a team, that they were aware of and worked specifically on the goals and objectives, that they made classroom modifications as they went, and that [REDACTED] in fact made meaningful progress and received

educational benefit, all based upon in-class performance. It was also clear that goals and objectives had to remain the same for quite some time because ██████'s IEP was in stay-put status from the fall of 1998 at least through May, 2000. Although an IEP meeting was held in October, 1999, it was more of an update than a full-blown re-working of the IEP, which was reserved for the spring of 2000.

The evidence showed that all of the teachers who had been or would have been involved with ██████ had special education certification in Georgia, either current or currently provisional. The evidence further showed that the parents always had notice of the IEP meetings and participated fully in the process. The possible failure of the school system to fully detail all topics addressed at an IEP meeting does not alter the fact that the ██████'s were afforded the opportunities and in fact did take all opportunities to participate in IEP meetings, along with their counsel, other advocates, and psychologists. Petitioner raised over and over issues about the availability of access to records. The transcript of the meetings show clearly that requested files were copied and provided. Individual teachers maintained their own files that were not maintained centrally, however, the testimony and the exhibits show that the parents were given all relevant information concerning ██████'s behavior and his educational progress, either verbally or in writing, at some if not many points prior to August, 2000. Incredibly, Mr. ██████ testified that he kept no records himself, such as report cards, progress reports, or the daily notebook sent home by teachers. The evidence also showed that the special education teachers all had the goals and objectives for ██████ and that they were able to implement them to ██████'s benefit. Thus, there is no evidence to support Petitioner's claim of

procedural violations of IDEA.

It is clear that based upon his previous three years at ██████ Elementary, the ██████ Middle School was offering ██████ a program that was designed to provide him a meaningful education for the 1998-1999 school year. The school system made every attempt to ascertain if there needed to be a change of placement for ██████ given his behavior problems of 1998. All efforts were met with resistance by the parents, either passively or overtly. Not only did ██████'s parents cancel all but the initial evaluation appointment in the fall of 1998, they failed to appear at a mediation that had been scheduled to avert the legal due process and provide a happier solution for all parties involved. Instead of approaching ██████'s problems from a psychological and psychiatric standpoint, as they had done in the past with seeking help from professionals, having placed ██████ in a residential setting a couple of times, ██████'s parents chose to make this a legal matter and brought in attorneys. By May 25, 1999, the attorneys filed first a due process hearing request accusing Dade County School and various middle school personnel of basically child abuse, and then converted that into a full blown federal case in District Court in Rome. ██████'s parents unjustifiably removed him from school in the fall of 1998. They missed a crucial opportunity to assist their son in coping with change. Dade County School District made available to ██████ a free appropriate public education for the 1998-1999 school year and provided a free appropriate public education in the Summer, 1999 which was designed to maintain and advance the social and educational skills that ██████ had. In 1999, he spent summer school partly with Karen DeMarche and partly with Connie Lea. With both sessions, he made progress and interacted well. ██████ is not entitled to compensatory education for the 1998-1999 school year.

It is also clear that the school system offered and ██████ obtained a free appropriate public

education for the 1999-2000 school year. In August, 1999 the school system and the parents met twice in a IEP meeting to establish [REDACTED]'s program for the fall. Although there was no agreement reached on the goals and objectives, there was an agreement reached on his placement which was in the [REDACTED] Elementary School in the fifth grade classroom with an inclusion model and a special ed teacher being involved in the specific areas of [REDACTED]'s learning disabilities during the day. OHI evaluation was discussed at the August 6, 1999 meeting when Dr. [REDACTED] was present, however, the school system never received the required medical form to proceed further with that evaluation. In fact, during the fall, the teachers discussed with the parents the fact that [REDACTED] did not appear to need the special ed services in math as he was progressing in understanding the regular math in the fifth grade. The parents agreed that he would be served in this math with the regular education program. Both the regular ed and special ed teachers for the 1999-2000 school year testified that [REDACTED] made meaningful progress and received a meaningful education during that year. In May, 2000, another IEP meeting was held to establish a program for the 2000-2001 year. Ms. Boatner, Ms. Shepard and Ms. Lea set out the present level of performance and developed a draft of the goals and objectives for [REDACTED]'s next level. At this point the false accusations that [REDACTED] had made came back into play. [REDACTED] had additional attorneys who attended the May, 2000 IEP meeting and who basically agreed with everything developed by the IEP team including the goals and objectives, the behavior intervention program and the extended school year services, but insisted that the IEP team had to address the specific personnel to be teaching [REDACTED] and the exclusion of personnel from interaction with [REDACTED] at [REDACTED] Middle School. Both Mr. [REDACTED] and the attorneys expressed concern about Gayle Gallaher and Linda Gregory. Even though Mr. [REDACTED] had been informed personally by the superintendent that Dr. Gallaher had resigned, he was not satisfied as

this was not yet in writing pending school board approval. They were all told at the meeting that Linda Gregory would not have interaction with [REDACTED]. They were not told, however, who would

be the teachers as the staff was in flux as it usually is between school years with retirements, reassignments, etc. Although personnel issues are not part of an IEP, [REDACTED]'s parents and his attorneys refused to agree to and sign the program developed at this particular meeting.

Additionally, a thoughtful and thorough program for [REDACTED]'s summer had been designed at the meeting and then prepared by the school system. Unfortunately, without explanation, [REDACTED] never attended the extended school year program planned for him. Not only that, Mr. [REDACTED] testified upon questioning by the Administrative Law Judge that [REDACTED] received no educational services from any source during the Summer, 2000.

The precipitating factor in the parents sending their children to another school, however, was unrelated to the educational program developed and made available to their children. It was also unrelated to the personnel issues raised at the May, 2000 IEP meeting. The triggering event was Mr. [REDACTED]'s perception, based upon a conversation with [REDACTED], that Judy Bean, the superintendent, was spreading rumors about him. Even though he had had several conversations and an informal meeting with Ms. Bean (and Ms. Bean had called him personally with regard to Gayle Gallaher's retirement), Mr. [REDACTED] did not take any steps to corroborate the statements of [REDACTED]. He chose instead to put total faith in her statements and then take what he saw as defense moves to protect his

family, i.e. removing his children from the school. In weighing the credibility of the two participants to the July conversation, it is clear that, while there was a discussion about the [redacted]'s during Ms. [redacted]'s unscheduled meeting with Ms. Bean in July, 2000, the discussion was initiated by Ms. [redacted] as were the unfavorable comments. In reaction, not only did Mr. [redacted] withdraw his children from school, but he initiated another lawsuit against Ms. Bean personally for slander.

Mr. [redacted] was not the only one suing the school superintendent and the Board in the summer of 2000. Both Bonnie Ford and Connie Lea sued claiming harassment and intimidation stemming from their efforts to serve [redacted]. Connie Lea, during her service to [redacted] during the 1998-99 school year, had received two threatening notes that mentioned [redacted] and had her car tires slashed. Although the school administration reported the incidents to the sheriff, the case went unsolved. Ms. Lea also had her classroom moved, had to ask for Board approval for a field trip, and was written up for leaving school to take a child to the doctor, which she felt was unfair and retaliatory for voicing an opinion different from others at [redacted]'s IEP meeting. Ms. Lea recently dismissed her lawsuit concerning these claims. Bonnie Ford was reassigned from [redacted] Elementary principal to assistant principal at the high school. Overlooking serious job performance issues, Ms. Ford sued the school system requesting a temporary restraining order for their actions and asking for her old position back. Ms. Ford's TRO was not granted. [redacted] has sought to link the school system's reassignment of Ms. Ford, the room changes, and other issues with Ms. Lea, to their support of him. The evidence did not provide substantiation for this position, as all of the alleged retaliatory events had independent bases unrelated to [redacted]. Nor was there any evidence presented that showed that the affected personnel could not effectively teach [redacted]. (Tr. 12-01-00, p. 416-418). Ironically, shortly after Ms. Lea dismissed her lawsuit, Mr. [redacted] had her arrested on

a charge concerning a check, then bailed her out of jail. Petitioner has not met his burden of proof on the §504 claim of harassment and retaliation.

As I have found that the Respondent had made available and planned for the provision of the appropriate educational services and meaningful educational programs for ██████████ all of which the parents and their representatives had evidently agreed to for the 2000-2001 year, the issue of reimbursement for private school tuition does not need to be addressed. The regulations that govern reimbursement for private school tuition not only require a finding that the school system did not provide FAPE to the child, but also address the actions taken by the parents. Specifically, if the parents' actions were unreasonable, then that is a limitation providing for either reduction or denial of reimbursement. (34 C.F.R. §300.403(d)(3)). Under the circumstances, it is clear from Mr. ██████'s own testimony that the decision was not an educational one but was centered around his personal perception of the town gossip about him and his family. While there are court decisions that allow the existence of hostility between parents and a school system to be a factor in deciding upon things such as compensatory education or free appropriate public education, where the placement of trust is so misguided and the parents' actions so subversive of all the school's efforts as they are here of consideration of any feelings of hostility is totally inappropriate.

In this case, the hostility seems particularly one-sided. None of the school system teachers or administrators expressed either by their words or tone of voice any hostility towards ██████████ or his parents. If anything, they expressed sympathy and concern in different circumstances. On the other hand, in addition to suing the school system, its teachers, board members and administrators, the ██████'s published ads objecting to the school taxes and even published the entire 1999 federal complaint in the newspaper. After publication, ██████████'s attorneys questioned, to an extent,

witnesses about rumors of the slander allegations contained in the complaint.

The testimony and the exhibits show a history of concern by the parents in seeking professional help for [REDACTED], but the actions that they took with regard to [REDACTED] and his education

in 1998 through 2000 were unreasonable and unjustifiable. Even if there had been a finding that the school system had not provided FAPE for [REDACTED] these types of actions would act to substantially reduce if not totally deny reimbursement for private school tuition for [REDACTED].

#### EVALUATION

The school system's request for a due process hearing to allow a psychiatric evaluation of [REDACTED] was consolidated with the other matters of this hearing. The school system has the burden of proof to show that circumstances have changed to warrant a required re-evaluation of [REDACTED] including a psychiatric examination in order to provide a free appropriate public education to him. The discussion above relating to the facts surrounding the issues which developed in 1998 and 1999 and thereafter, along with the exhibits and testimony of the experts who have evaluated [REDACTED] provide substantial evidence to show that the school system has met its burden of proof and that [REDACTED] should undergo a thorough psychiatric examination in order to allow the school system to prepare an adequate program for him.

Although evidence of [REDACTED]'s progress or lack thereof at [REDACTED] Schools was presented as was testimony by the teachers there to describe the program that [REDACTED] was involved

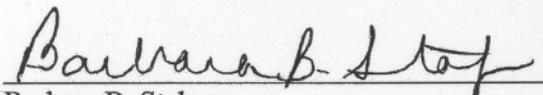
in, that evidence is actually irrelevant to the educational decision concerning [REDACTED]. It is relevant, however, to the evaluation issue as well as to the further understanding of [REDACTED]'s behavior in the fall, 1998. Clearly [REDACTED] reacts poorly to transitions and new circumstances as he is doing the same thing at [REDACTED] that he did at [REDACTED] Middle. He is withdrawing, he is being disrespectful, and he is fighting with other students. [REDACTED]'s deterioration at [REDACTED] undermines his contentions that the [REDACTED] Middle School personnel were ever the real issues, except for his claims of being hit by teachers, are virtually identical to the behaviors he exhibited during 1998 when he was in a new middle school. The personnel is not the issue as the parents would have the school system believe. It is something internal in [REDACTED]. It may be simply that change is the issue for [REDACTED], but that has only been alluded to by his treating psychiatrist, Dr. [REDACTED], who himself had very little contact with [REDACTED] in the past couple of years. Dr. [REDACTED], who did a neuropsychological examination of [REDACTED] in the fall of 2000, indicated that the possible Tourette's Syndrome diagnosis would need further evaluation as well. The 1998 behaviors were perhaps exacerbated by his father's absence and the tension that had to result from his father's criminal trial and conviction. Three years before he went to [REDACTED] Middle School, [REDACTED] was in fact hospitalized for some period of time because of violent behavior towards his brothers. It is clear that there is a periodic bubbling up of behaviors that are both socially inappropriate and at times physically dangerous to others. If [REDACTED] were to transition back to Dade County Schools, that would constitute another life change for him for which the school system should be able to be prepared fully. Upon questioning by the Special Assistant Administrative Law Judge, however, [REDACTED]'s parents, through his attorney, made it clear that there were no plans to return [REDACTED] to the Dade County School System. If that is not to happen, there is no need for [REDACTED] to have a

psychiatric evaluation. Thus, it is the Order of the undersigned Special Assistant Administrative Law Judge that, in the event that [REDACTED] returns to Dade County Schools, the school system will be permitted to have a psychiatric evaluation of [REDACTED] conducted by a qualified independent psychiatrist.

Petitioners had filed a Motion for Summary Determination on the issue of evaluation claiming that there was either an agreement the school system's access to the records of Dr. [REDACTED] precluded any further psychiatric or psychological evaluation of [REDACTED] or that the school system, in their most recent hearing request, had failed to request an evaluation within the proper time limits. The evidence did not support that there was an agreement between the parties to limit the evaluation to the review of Dr. [REDACTED]'s records. There was substantial correspondence about that issue and testimony from Matthew Wagner concerning that. However, the written correspondence simply did not support that the agreement limited the school system if the records were not informative, which they were not. Additionally, counsel for Petitioner has argued over and over again about a 10-day limitation on a request for an evaluation and claimed that neither the Motion nor the due process hearing request met the ten-day rule. In support of that ten-day rule, they have cited 34 C.F.R. §300.403. The only ten days that can be found in that Section refers to the removal of a child from public school and the requirement of the parents to give written notice to the public agency so as to avoid a denial or reduction of reimbursement for private school tuition. Paragraph (d)(2) addresses evaluation, but it is parallel to (d)(1), and contains no ten-day time frame. That paragraph is just one more circumstance under which reimbursement can be reduced or denied. There is therefore no legal basis for that argument and the decision on the evaluation must be decided strictly on a change in circumstances which, as outlined in depth above, there certainly was.

In conclusion, the school system has met its burden of proof on provision of free appropriate public education for the year 2000-2001. Petitioner is not entitled to either compensatory education or reimbursement for private school tuition based upon any alleged defects in the 2000-2001 educational program for [REDACTED]. Petitioner has failed to meet his burden of proof that he is entitled to compensatory education for the 1998-1999 school year or the 1999-2000 school year. In the event that Petitioner returns to the Dade County School System, the school system will be entitled to have a full-blown psychiatric evaluation of [REDACTED] done at that time.

SO ORDERED this 7<sup>th</sup> day of June, 2001.

  
Barbara B. Stalzer  
Special Assistant Administrative Law Judge

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