STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

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Petitioner,

vs. Case No. 19-0696E

BROWARD COUNTY SCHOOL BOARD,

Respondent.
_____/

FINAL ORDER

A final hearing was held in this case before Diane Cleavinger, an Administrative Law Judge of the Division of Administrative Hearings (DOAH), on April 9 through 10, 2019, in Fort Lauderdale, Florida.

APPEARANCES

For Petitioner: Allison Louise Hertog, Esquire
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For Respondent: Susan Jane Hofstetter, Esquire
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STATEMENT OF THE ISSUE

The issue for determination in this proceeding is whether Respondent, Broward County School Board (District or School Board), is required under the Individuals with Disabilities

Education Act (the IDEA), § 20 U.S.C. 1400, et seq. to provide necessary medical services to Petitioner in order to provide Petitioner with a free appropriate public education (FAPE) in the least restrictive environment (LRE).

PRELIMINARY STATEMENT

On February 7, 2019, Petitioner, through her parent, filed a request for due process hearing that raised various procedural and substantive claims pursuant to the IDEA related to the Petitioner's need for medical services while at school. Petitioner's request was promptly forwarded to the DOAH. On February 27, 2019, after discussion with the parties, a Notice of Hearing was issued, scheduling the due process hearing for April 9 and 10, 2019.

The hearing was held as scheduled with all parties in attendance. During the hearing, Petitioner presented the testimony of five witnesses and introduced 18 exhibits, numbered Petitioner's Exhibits 1 through 18. Respondent presented the testimony of four witnesses and introduced 39 exhibits, numbered Respondent's Exhibits 1 through 39.

At the conclusion of the final hearing, the post-hearing schedule was discussed. Based on that discussion, it was determined that proposed final orders would be filed on or before May 10, 2019, and the undersigned's final order would be issued on or before June 11, 2019. The schedule was memorialized by the

undersigned's May 7, 2019, orders establishing deadlines for the Proposed Orders and the Final Order.

After the hearing, Petitioner filed a Proposed Final Order on May 10, 2019. Likewise, Respondent filed a Proposed Final Order on May 10, 2019. Both parties' proposed orders were accepted and considered in preparing this Final Order.

Additionally, unless otherwise indicated, all rule and statutory references contained in this Final Order are to the version in effect at the time the subject individualized education plan (IEP) was drafted.

Finally, for stylistic convenience, female pronouns are used in the Final Order when referring to the Student. The female pronouns are neither intended, nor should be interpreted, as a reference to the Student's actual gender.

FINDINGS OF FACT

1. The Student was born on October 5, 2009. She is a social child who benefits from interacting with peers and adults. At the time of the hearing, she was 9 years old and weighed around 77.11 kilograms.

2. The Student has Autism; P-Ten abnormality, a genetic condition related to development of tumors; and Dravet Syndrome, a genetic condition that causes intractable epilepsy with a significantly higher rate of Sudden Unexpected Death from Epilepsy (SUDEP). Because of Dravet Syndrome the Student takes

antiepileptic drugs on a daily basis. Additionally, the Student has undergone many years of medical treatment and medication/dosage trials to develop a highly individualized seizure plan to treat her seizures. The evidence was clear that seizure plans on which a patient is stable should not be changed without significant medical reasons for the change. Further, the evidence was clear that because of the Student's medical needs, she would need nursing services in order to attend public school.

3. In this case, the seizure plan on which the Student is stable was put into place in 2015. When seizures occur, the plan requires Diastat[1/], a form of benzodiazepine (diazepam), to be administered rectally in two steps. The first dose of 12.5 milligrams of Diastat is given within 30 seconds of the onset of the seizure. The second dose of 12.5 milligrams of Diastat is only given if the Student's seizure has not stopped after 5 minutes of observation.

4. The evidence showed that the District has a Rectal Diazepam Medication Protocol that prohibits its staff from providing a second dose of Diastat to a Student. Notably, the protocol does not place a limit on the dosage amount of Diastat. The protocol permits one dose of Diastat to be administered, followed by a call to 911. The evidence demonstrated that, after administration of Diastat, calling 911 and transporting to the hospital are reasonable actions by the District given the

potential impact of the medication on any student and the need for monitoring the Student for an extended time after administering the medication. Such safety measures do not violate the IDEA.

5. The evidence demonstrated that the protocol is based on guidelines provided by the manufacturer of Diastat. Importantly, a careful reading of the drug manufacturer's guidelines reveals that the guidelines do not prohibit a second dose of Diastat or a dose over the maximum dosage amount recommended by the manufacturer, but defers to the dosage process and amounts prescribed by the medical doctor.

6. In this case, the expert evidence was clear that the Student's medically-prescribed two-step process of dosing is essentially the same as giving a 25-milligram dose of Diastat. Moreover, given that the two-step process of dosing is tantamount to one dose, the District's objection to providing the two-step process for medicating the Student is not well-founded and cannot serve as a basis for refusing implementation of the Student's seizure plan. For similar reasons, the fact that the medically prescribed amount of medication might be (in rare circumstances) 5 milligrams over the maximum dosage of 20 milligrams recommended by the drug manufacturer cannot serve as a basis for the District not to implement the Student's seizure plan.

7. Sometime in 2018, the Student was enrolled in a Broward County Public School. Previously, the Student had attended a private school for two years. While in the private school, the school implemented the Student's emergency seizure plan. However, the Student only experienced two seizures while in private school, and did not require a second dose of medication. The evidence did demonstrate that the Student has only had two seizures while at home where she required a second dose of Diastat. On both occasions the second dose was administered but did not result in dangerous side effects and controlled the Student's seizures.

8. In public school, the Student was eligible for ESE services under the Intellectual Disability (IND), Autism Spectrum Disorder (ASD) and Language Impaired (LI) eligibilities. However, the Student has been unable to attend public school because the Respondent refuses to provide the second dose of Diastat should the Student experience a seizure at school lasting longer than 5 minutes and before emergency medical services (EMS) or the parent arrives. Should EMS or the parent arrive before the 5 minute period has elapsed, those entities would take over the health care of the Student.

9. Around December 4, 2018, the IEP team, including the parent, met to determine placement, services and accommodations necessary for the Student to attend public school. During the

meeting, the parent provided an overview of the Student's medical diagnoses, a seizure plan dated November 19, 2015, and medication authorization and treatment forms/orders.

10. After discussion, the IEP team placed the Student in a separate class where she would spend less than 40 percent of her time at school with non-ESE peers with almost all services and education provided in an ESE class. The program she was to attend was on a regular school campus. The evidence showed that the placement, in the IEP, was appropriate and the least restrictive environment for the Student's education. Further, the evidence showed that the education of the Student in a general education setting, with appropriate nursing services, remains the appropriate placement and least restrictive environment for the Student. Indeed, there is nothing in the evidence which shows that the Student cannot or should not socialize or be around other students and adults or that placement in a home education program was appropriate.

11. Notably, the evidence did not show that the Student's doctor certified her for Hospital/Homebound study. As such, she did not qualify for Hospital/Homebound study. Further, such a program was not shown by the evidence to be appropriate, or the least restrictive, since the Student was not medically restricted to either the hospital or the home.

12. During the December 4, 2018, meeting, the IEP team discussed the medical needs of the Student and that health care and/or nursing services would be necessary for the Student to attend school. At the time, the team did not list health care or nursing services in the IEP. However, the IEP under the special consideration section details the medical issues of the Student. The intent of the team was to add those services to the IEP when they became better defined after input from the District's Coordinated Student Health Services (nursing services). The decision did not violate the IDEA.

13. On December 5, 2018, a school district field nurse from the District's nursing services assessed the Student to determine, what, if any, health care services were needed. The assessment revealed the Student required oxygen and seizure management while in school. The assessment also concluded that the Student required a one-to-one nurse in order to safely attend school. Additionally, the better evidence showed that the parent, at some point, was informed about the District protocol, regarding Diastat administration. However, the parent may not have understood the implications of that protocol relevant to administration of a second dose of Diastat at school.

14. From December 4, 2018 through March 5, 2019, there were four versions of medical forms provided to the District with the first set on December 4, 2018, handwritten and signed by the

physician and dated November 28, 2018; the second set on December 6, 2018, handwritten and signed by the doctor, dated November 28, 2018; a third set on January 15, 2019, typed and unsigned dated January 11, 2019; and a fourth set of forms on March 5, 2019, typed and signed by the doctor dated January 11, 2019.

15. From December 7, 2019 until January 28, 2019, the District's nursing services attempted to contact the Student's physician by telephone, facsimile and mail to discuss the medical forms/orders that had been provided to the District because those forms lacked critical information necessary to carry them out. However, the evidence was clear that after the January 15, 2019, set of forms, the District had sufficient understanding of the Student's medical requirements to provide health/nursing services at school, but continued to object to the second dose of Diastat, required in the Student's emergency seizure plan, based in part on the District's protocol and, at hearing, based on licensed nursing practice.[2/] Prior to January 15, 2019, the District needed clear healthcare/treatment information for the Student in order to safely provide those services at school. Given these facts, until January 15, 2019, the delay in allowing the Student to attend school did not violate the IDEA.[3/] However, no school personnel obtained or reviewed the Student's medical records or consulted with appropriately informed professionals to determine

if the Student's potential need for a second dose of Diastat was appropriate healthcare treatment that could be provided in a school setting.

16. In that regard, the evidence demonstrated that providing the second dose of Diastat did not violate medical or nursing standards and could be provided at school. The medical emergency the Student would be in, for the second dose to be administered, would be life threatening to her if she did not receive the second dose, as prescribed by her physician.

17. The second dose would only be required of school staff to administer, if EMS did not arrive within five minutes of school staff calling 911, after the onset of a seizure when EMS would take over the provision of medical care or if the parent did not arrive during that same time period.

18. While emergency healthcare at school is limited to monitoring and basic life support, the evidence did not demonstrate that any other monitoring or additional life support techniques were required after a second dose of Diastat was administered. In essence, nursing staff would be providing the same healthcare before and after the second dose of Diastat. Given these facts, the evidence demonstrated that the Student's emergency seizure plan could be implemented in a school setting and that the refusal to implement the plan failed to provide FAPE to the Student and violated the IDEA.

19. Further, since the Student's LRE was in a separate class ESE program, in a general education environment, home instruction placement did not provide FAPE, and was not in the LRE for the Student. The District's offer to provide home education, the most restrictive form of educational environment, violated the IDEA.

CONCLUSIONS OF LAW

20. DOAH has jurisdiction over the parties to and the subject matter of this proceeding. §§ 1003.57(1)(b) and 1003.5715(5), Fla. Stat., and Fla. Admin. Code R. 6A-6.03311(9)(u).

21. Petitioner bears the burden of proof with respect to each of the claims raised in the Complaint. Schaffer v. Weast, 546 U.S. 49, 62 (2005).

22. In enacting the IDEA, Congress sought to "ensure that all children with disabilities have available to them a free appropriate public education that emphasized special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A); Phillip C. v. Jefferson Cnty. Bd. of Educ., 701 F.3d 691, 694 (11th. Cir. 2012). The statute was intended to address the inadequate educational services offered to children with disabilities and to combat the exclusion of such children from the public school system.

20 U.S.C. § 1400(c)(2)(A)-(B). To accomplish these objectives, the federal government provides funding to participating state and local educational agencies, which is contingent on the agency's compliance with the IDEA's procedural and substantive requirements. Doe v. Alabama State Dep't of Educ., 915 F.2d 651, 654 (11th Cir. 1990).

23. Parents and children with disabilities are accorded substantial procedural safeguards to ensure that the purposes of the IDEA are fully realized. See Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 205-06 (1982). Among other protections, parents are entitled to examine their child's records and participate in meetings concerning their child's education, receive written notice prior to any proposed change in the educational placement of their child, and file an administrative due process complaint "with respect to any matter relating to the identification, evaluation, or educational placement of [their] child, or the provision of a free appropriate public education to such child." 20 U.S.C. § 1415(b)(1), (b)(3), and (b)(6).

24. Local school systems must also satisfy the IDEA's substantive requirements by providing all eligible students with FAPE, which is defined as:

> Special education services that--(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 school, or secondary school education in the State involved; and (D) are provided in conformity with the individualized education program required under [20 U.S.C. § 1414(d)].

20 U.S.C. § 1401(9).

25. "Special education," as that term is used in the IDEA, is defined as:

> [S]pecially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including--
>
> (A) [I]nstruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings. . . .

20 U.S.C. § 1401(29).

26. The components of FAPE are recorded in an IEP, which, among other things, identifies the child's "present levels of academic achievement and functional performance," establishes measurable annual goals, addresses the services and accommodations to be provided to the child and whether the child will attend mainstream classes, and specifies the measurement tools and periodic reports that will be used to evaluate the child's progress. 20 U.S.C. § 1414(d)(1)(A)(i); 34 C.F.R. § 300.320. "Not less frequently than annually," the IEP team must review and, as appropriate, revise the IEP. 20 U.S.C. § 1414(d)(4)(A)(i).

27. In Rowley, the Supreme Court held that a two-part inquiry must be undertaken in determining whether a local school system has provided a child with FAPE. As an initial matter, it is necessary to examine whether the school system has complied with the IDEA's procedural requirements. Id. at 206-07. Importantly, a procedural error does not automatically result in a denial of FAPE. See G.C. v. Muscogee Cnty. Sch. Dist., 668 F.3d 1258, 1270 (11th Cir. 2012). Instead, FAPE is denied only if the procedural flaw impeded the child's right to FAPE, significantly infringed the parents' opportunity to participate in the decision-making process, or caused an actual deprivation of educational benefits. Winkelman v. Parma City Sch. Dist., 550 U.S. 516, 525-26 (2007). See also Van Duyn v. Baker Sch. Dist., 502 F.3d 811 (9th Cir. 2007).). Notably, this standard "does not require that the child suffer demonstrable educational harm in order to prevail." Id. at 822 (emphasis added); Colon-Vazquez v. Dep't of Educ., 46 F. Supp. 3d 132, 143-44 (D.P.R. 2014); Turner v. Dist. of Columbia, 952 F. Supp. 2d 31, 40 (D.D.C. 2013). Rather, the materiality standard focuses on "the proportion of services mandated to those actually provided, and the goal and import (as articulated in the IEP) of the specific service that was withheld." Wilson v. Dist. of Columbia, 770 F. Supp. 2d 270, 275 (D.D.C. 2011).

28. The second prong of the test is whether the IEP developed through the IDEA's procedures was reasonably calculated to enable the disabled child to receive educational benefits. Rowley, 458 U.S. at 206. Towards that end, the IDEA requires that the education to which access is provided "be sufficient to confer some educational benefit upon the handicapped child." Rowley, 458 U.S. at 200. However, there is no one test to be applied to the definition of "appropriate" under the IDEA. Rowley, supra. In determining whether a handicapped child has received educational benefits from the IEP and related instructions and services, courts must determine only whether the student has received "the basic floor of opportunity." J.S.K. v. Hendry Cnty. Sch. Bd., 941 F.2d 1563, 1572 (11th Cir, 1991). Educational benefits need not achieve the handicapped child's "maximum potential," so long as the student received "personalized instruction with sufficient support services to permit the child to benefit educationally." Rowley, 458 U.S. at 203. Notably, such services must be provided and the IEP materially implemented in order to receive such educational benefit. See L.J. v. Sch. Bd. of Broward Cnty., 850 F. Supp. 1315 (S.D. Fla. 2012); Sumter Cnty. Sch. Dist. 17 v. Heffernan, 642 F.3d 478 (4th Cir. 2011); and Van Duyn v. Baker Sch. Dist. 5J, 502 F. 3d 811 (9th Cir 2011).

29. In addition to requiring that school districts provide students with FAPE, the IDEA further gives directives on students' placements or education environment in the school system. Specifically, 20 U.S.C. § 1412(a)(5)(A) provides as follows:

> Least restrictive environment.
>
> (A) In general. To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

30. Pursuant to the IDEA's implementing regulations, states must have in effect policies and procedures to ensure that public agencies in the state meet the LRE requirements. 34 C.F.R. § 300.114(a). Additionally, each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. 34 C.F.R. § 300.115. In turn, the Florida Department of Education has enacted rules to comply with the above-referenced mandates concerning LRE and providing a continuum of alternative placements. See Fla. Admin. Code R. 6A-6.03028(3)(i) and 6A-6.0311(1).

31. In determining the educational placement of a child with a disability, each public agency must ensure that the placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. 34 C.F.R. § 300.116(a)(1). Additionally, the child's placement must be determined at least annually, based on the child's IEP, and as close as possible to the child's home. 34 C.F.R. § 300.116(b).

32. With the LRE directive, "Congress created a statutory preference for educating handicapped children with nonhandicapped children." Greer v. Rome City Sch. Dist., 950 F.2d 688, 695 (11th Cir. 1991). "By creating a statutory preference for mainstreaming, Congress also created a tension between two provisions of the Act, school districts must both seek to mainstream handicapped children and, at the same time, must tailor each child's educational placement and program to his special needs." Daniel R.R. v. State Bd. of Educ., 874 F.2d 1036, 1044 (5th Cir. 1989).

33. In Daniel, the Fifth Circuit set forth a two-part test for determining compliance with the mainstreaming requirement:

> First, we ask whether education in the regular classroom, with the use of supplemental aids and services, can be achieved satisfactorily for a given child. See § 1412(5)(B). If it cannot and the

> school intends to provide special education or to remove the child from regular education, we ask, second, whether the school has mainstreamed the child to the maximum extent appropriate.

Id. at 1048.

34. In Greer, infra, the Eleventh Circuit adopted the Daniel two-part inquiry. In determining the first step, whether a school district can satisfactorily educate a student in the regular classroom, several factors are to be considered: 1) a comparison of the educational benefits the student would receive in a regular classroom, supplemented by aids and services, with the benefits he will receive in a self-contained special education environment; 2) what effect the presence of the student in a regular classroom would have on the education of other students in that classroom; and 3) the cost of the supplemental aids and services that will be necessary to achieve a satisfactory education for the student in a regular classroom. Greer, 950 F.2d at 697.

35. With respect to the first step, the Third Circuit has observed that where an IEP team "has given no serious consideration to including the child in a regular class with such supplementary aids and services . . . to accommodate the child, then it has most likely violated [the IDEA's] mainstreaming directive." Oberti v. Bd. of Educ., 995 F. 2d 1204, 1216 (3d Cir. 1993); Greer v. Rome City Sch. Dist., 950 F. 2d 688,698

(11th Cir. 1991)(finding a violation of the IDEA where the IEP team failed to "consider the full range of supplemental aids and services . . . that could be provided to assist [the child] in the regular classroom"). A team's failure to give appropriate consideration to the use of supplementary aids and services constitutes a substantive violation of the IDEA. H.L. v. Dowingtown Area Sch. Dist., 2015 U.S. App. LEXIS 9742, at *9-13 (3d. Cir. June 11, 2015); Greer, 950 F. 2d at 698-99.

36. Further, every District must create and offer accommodations and related services for children with a variety of health impairments and reliance on medical devices so that they may be educated to the maximum extent with nondisabled peers. See Cedar Rapids Cmty. Sch. Dist. V. Garret F., 526 U.S. 66 (1999)(requiring the school to provide health services at school to a student who was ventilator-dependent, as well as dependent on other health procedures and equipment, so that they could attend school); Irving Indep. Sch. Dist. v. Tatro, 468 U.S.883 (1984)(requiring the school to provide health services at school to a student who required intermittent clean catheterization); and Martinez v. Sch. Bd. of Hillsborough Cnty. Fla., 861 F. 2d 1502, (11th Cir. 1988)(discussing the Education of the Handicapped Act (EHA), and Section 504 of the Rehabilitation Act of 1973 (Section 504) for a student with AIDS). See also, In re: Student with a Disability, 103 LRP 57786

(2003)(Finding that administration of a medication may be a related service for a student with a disability who must take medication during the school day to participate effectively in his educational program); Dist. of Columbia Pub. Sch., 114 LRP 3327 (December 5, 2013) citing Birmingham City Bd. Of Educ., 33 LRP 6531 (November 10, 2000)(An Independent Hearing Officer required a district to devise a strategy to ensure the student received his medication at the proper intervals and dosages).

37. Here, the evidence establishes that the Student cannot be satisfactorily educated in the regular general education classroom, with the use of supplemental aids and services. However, the evidence was clear that the Student can be satisfactorily educated in an ESE classroom with the use of supplemental aides and related healthcare services. Indeed, the only thing preventing the Student's return to an ESE program at school is the Respondent's refusal to administer a second dose of Diastat as required in the Student's emergency seizure plan. The District's refusal, while initially and appropriately born out of the need to have clear medical and healthcare information from the Student's doctor, was not supported by the evidence in this matter once that information was received by the District on January 15, 2019. Given the District's continued refusal to provide a second dose of Diastat to the Student, the District failed to provide reasonable and related services to the Student

to enable her to attend school. As such, the school violated the IDEA and failed to provide FAPE to the Student. Further, without giving thorough consideration to whether a separate ESE classroom at either public or private school was the Student's LRE, the school determined that the Student should be educated in the home setting, the most restrictive environment. In that regard, the evidence was clear that such home placement was not appropriate for the Student and was not the LRE for the Student. Given these facts, the District violated the IDEA and failed to provide FAPE to the Student.

38. Finally, Petitioner is the prevailing party and has established ongoing violations of the IDEA, both, of a procedural and substantive nature by the District, which resulted in services and education that were improperly withheld. For that reason, the appropriateness and reasonable level of reimbursement will match the quantity of services improperly withheld throughout that time period, unless the evidence shows that the Student requires more or less education to be placed in the position she would have occupied absent the District's deficiencies. See Jana K. v. Annville Cleona Sch. Dist., 39 F. Supp. 3d 584, 608 (M.D. Pa. 2014).

39. In this case, the services the Student should have received should be based on the number of school days that the Student was not in school, during regular school, and multiplied

by the number of hours during those days that the Student should have received in the program established in the December 4, 2018, IEP. The amount of such lost education will be determined by the undersigned should the parties fail to agree on said amount.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that:

1. The Student shall be returned to her least restrictive environment in her separate ESE classroom as soon as practicable, but not later than 30 days from the date of this Order.

2. Compensatory education is awarded for the regular school year. Jurisdiction is reserved to determine such amount should the parties fail to agree. Petitioner shall have 45 days from the date of this Final Order within which to file a motion for determination of compensatory education (under this case number), to which motion, if filed, Petitioner shall attach appropriate affidavits and essential documentation in support of the claim.

DONE AND ORDERED this 10th day of June, 2019, in Tallahassee, Leon County, Florida.

DIANE CLEAVINGER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 10th day of June, 2019.

ENDNOTES

[1/] Diastat is a standard treatment for seizures that is absorbed quickly from the rectum. It has been approved by the FDA for use by family members and non-medical caregivers in the management of certain types of epilepsy. The medicine comes prepackaged in special applicators or syringes that are used to give the medicine rectally. The applicator allows the pharmacist to lock the syringe to deliver the dose prescribed by the patient's doctor. The dose is prescribed according to body weight and other factors related to the amount of medication, which works best for the patient. As is the case here, it is up to the doctor to develop specific instructions on when to use Diastat and whether a second dose of medicine can be used. Importantly, the medical literature on Diastat does not prohibit a second dose of Diastat and does not prohibit a doctor from prescribing a dose higher than the highest recommended dose of 20 milligrams if, as in this case, that is what the doctor has determined works for the patient. The medication is a depressant and has a calming or relaxing effect. The most common side effects of Diastat are sleepiness and trouble with coordination. Serious side effects, such as decreased breathing, are rare.

[2/] While the limits of nursing practice are a legitimate reason for District's to decline to provide a nursing service at school,

the evidence demonstrated that following the Student's emergency seizure plan did not violate such nursing standard where that plan was prescribed and individualized for the Student by her doctor who is also a leading expert on the treatment of Dravet Syndrome and very much aware of the medication he prescribed and the authority under which he prescribed such medication. The testimony by the expert on nursing presented by the District, whose expertise in her field was impressive, demonstrated that generally nurses could and should question a doctor's orders if they fall outside manufacturer recommendations. However, those orders should be discussed with the doctor and followed if they comply with good health care. In this case, the expert had not discussed the orders with the Student's doctor and had not reviewed the Student's medical history to determine if they complied with good health care. Such general expert testimony on general nursing standards does not outweigh the overwhelming medical testimony regarding the Student's emergency seizure plan constituting appropriate health care for her.

[3/] The evidence was not clear what educational services were provided to the Student outside of school or in a private school such as the private school previously attended by the Student, where staff did not object to implementing the Student's emergency seizure plan. What is clear from the evidence is that the LRE of the Student is not in the most restrictive setting of the home as offered by the District in this case.

COPIES FURNISHED:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

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

a) brings a civil action in the appropriate state circuit court pursuant to section 1003.57(1)(c), Florida Statutes (2014), and Florida Administrative Code Rule 6A-6.03311(9)(w); or

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