

Summaries of Due Process Hearings

Resulting from Inquiries Conducted by the Bureau of
Exceptional Education and Student Services



**July–December
2004**

These summaries are available through the Bureau of Exceptional Education and Student Services, Florida Department of Education, and are designed to assist school districts in the provision of special programs for exceptional students. For additional copies, contact the Clearinghouse Information Center, Room 628 Turlington Building, Tallahassee, Florida 32399-0400 [telephone (850) 245-0477; Suncom 205-0477; FAX: (850) 245-0987; E-mail: cicbiscs@fldoe.org]. This publication is also available on the internet at the following address:
www.myfloridaeducation.com/commhome [click on “Publications”].

Table of Contents

Introduction 1

Summaries of Due Process Hearings

Broward County School Board.....1-5
Flagler County School Board.....5-6
Hernando County School Board.....6-8
Hillsborough County School Board.....8-9
Lee County School Board.....10-14
Miami-Dade County School Board.....14-16
Orange County School Board.....16-17
Palm Beach County School Board.....17-21
Santa Rosa County School Board.....21-23

Summaries of Due Process Hearings

The following are summaries of due process hearings conducted by the Division of Administrative Hearings (DOAH), Florida Department of Administration, from July through December 2004. Final orders were issued after the hearings and copies provided to the Bureau of Exceptional Education and Student Services.

These summaries are for informational purposes and are not intended to provide legal advice or assistance. Please refer questions to Patricia Howell, Dispute Resolution Program Director, Bureau of Exceptional Education and Student Services, 614 Turlington Building, Tallahassee, Florida 32399-0400; (850) 245-0476; Suncom 205-0476; or via electronic mail at Patricia.Howell@fldoe.org.

The heading of each summary list the school board or agency involved in the hearing, the case number, the party who initiated the hearing, the administrative law judge, and the date of the final order.

Broward County School Board

Case No. 04-1834E

Initiated by Parent

Hearing Officer: Florence Snyder Rivas

Date of Final Order: August 11, 2004

ISSUE: Whether the district failed to provide the student with a free appropriate public education (FAPE).

FINDINGS OF FACT: At the time of the hearing the student was completing the fifth grade at a district elementary school. The student had been receiving exceptional student education (ESE) services as a student who was other health impaired (OHI) due to attention deficit hyperactivity disorder (ADHD). The student's parents were aware of and understood their right to challenge the appropriateness of a past or current IEP. They were aware of their right to request evaluations, request an independent educational evaluation (IEE) and have the individual educational plan (IEP) team consider such an evaluation. There was no evidence to indicate that the parents were ever intimidated, silenced, discouraged or prevented from exercising their due process and other rights.

The student's parents expressed no dissatisfaction until it was learned that their child would have to repeat the fifth grade. The retention had to do with Florida law rather than requirements under the federal Individuals with Disabilities Education Act (IDEA). The retention was based on the student's performance on the Florida Comprehensive Assessment Test (FCAT). The student had failed every FCAT taken. However, until the fifth grade, the student was able to take an approved alternate assessment.

The student's parents agreed that there was no recourse to retention as, in the fifth grade, the student could neither pass the FCAT or any approved alternate assessments. The parents contended that this failure proved that the student was not receiving a FAPE. The law did not support this allegation.

The student had received an independent educational evaluation (IEE) from the psychologist of the parents' choosing. The evaluation data showed the student functioning in the low average range of intelligence. The school psychologist agreed that the student would function as a slow learner and would take more time to learn than the average student. The parents were advised to develop realistic expectations for the student.

As a credit to the student, the parents, and the teachers, the student was able to participate in general education classes and function in a less restrictive setting than many similarly disabled peers. The student was mastering IEP goals; however, limited reading ability prevented the student from passing either the FCAT or other approved alternate assessment.

There was no indication that the student was denied a FAPE. The district remained ready to provide the student with a FAPE according to the student's IEP at the then-current elementary school.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. School districts must provide an ESE student with an IEP reasonably calculated to provide educational benefit. At the time of the hearing, the district had fulfilled this requirement and all related IDEA requirements. The IDEA does not require that an IEP be tailored around a given evaluation such as the FCAT. Failing classes is not sufficient evidence by itself that the student did not receive educational benefit because the outcome of an IEP is not guaranteed.

ORDER: The parents failed to prove denial of FAPE.

Broward County School Board
Case No. 04-2154E
Initiated by Parent
Hearing Officer: Florence Snyder Rivas
Date of Final Order: September 17, 2004

ISSUE: Whether the district correctly determined that the student was not eligible for any exceptional student education (ESE) programs or services.

FINDINGS OF FACT: At the time of the hearing the student was a fifth grader attending a district elementary school. From second through fifth grade the student received articulation therapy through the ESE speech impaired designation. While an ESE student, individual educational plans (IEPs) were developed appropriately and all procedures followed.

At the end of the student's fifth grade year, the professionals on the student's IEP team determined that the student's speech problems were largely resolved and, therefore, met dismissal criteria. The student's parent did not challenge the decision at the time, but contacted district staff about the child's reading problems. The district staff person reviewed the student's records and informally observed the student. There was no evidence that the student's reading difficulties were related to articulation problems. If not eligible for ESE services, the student could be served through an academic improvement plan (AIP) which must be developed and implemented for students with academic needs. The student had an appropriate, implemented AIP to address the reading needs.

The student's parent obtained a private psychological evaluation to support her claim for the need of ESE services. The district considered the psychologist's report but did not agree to follow its recommendations. The psychologist who evaluated the student did not have any specific experience with students with learning disabilities and could not defend his recommendation under cross examination. The district's psychologists did have experience with students with learning disabilities and were able to defend their opinion that the student was not eligible for ESE services. A properly constituted evaluation team met, considered the independent evaluation as well as the district's evaluation, and determined the student ineligible. The team agreed to reconvene in a month to reconsider, did so, and again determined the student ineligible for services.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The ESE environment was more restrictive than a regular education classroom. ESE services could not lawfully be provided to students without disabilities. The student did not have a disability.

ORDER: The parent's request for ESE placement was denied.

Broward County School Board
Case No. 04-1681E
Initiated by Parents
Hearing Officer: Stuart M. Lerner
Date of Final Order: October 21, 2004

ISSUES: Whether the district committed violations and, if so what if any remedial actions were required.

FINDINGS OF FACT: The student was twelve years old at the time of the hearing. The student's parents were divorced and shared joint custody; however, they were not on speaking terms with each other. At the beginning of the 2003 school year the student went to live with the father.

The school had an intervention assistance team (IAT) to devise interventions for students experiencing difficulty. The IAT met to discuss the student in 2003 and recommended further evaluations of the student.

The student was referred for reevaluation and the notice and consent form, along with a procedural safeguards booklet, was mailed to both parents. The student's mother stated she did not receive the consent or the procedural safeguards booklet. She did independently write to the district requesting an evaluation. The father consented to the evaluation.

The ensuing report indicated that the mother and the father had been interviewed as part of the evaluation. At the father's home, the student stopped taking medication, which negatively impacted all areas of functioning.

A comprehensive psychological evaluation was conducted. Included in the report were statements that the student's IQ was in the low average range and achievement was commensurate with abilities. The student was seen as having behaviors consistent with attention deficit hyperactivity disorder (ADHD) as well as oppositional defiant behaviors and aggression.

Both parents were invited to discuss the evaluation. The student's mother stated this was the first time she received a procedural safeguards booklet. The student's father did not complete the form or attend the meeting. District staff recommended ESE eligibility based on speech impairment (SI), emotional handicap (EH), and other health impaired (OHI) for ADHD. The mother objected to the ADHD eligibility and left the meeting abruptly.

Both parents were invited to a follow-up meeting. The student's father did not attend and the mother walked out of the meeting, upset about the ADHD issue. Before leaving they were informed that the meeting would continue without them, which it did. The individual educational plan (IEP) team determined ADHD to be the student's primary disability and developed an IEP for the student.

School staff sent both parents a letter stating that the student had a right to the IEP that had been developed but parental consent was required. The father expressed approval and signed the required forms.

The student's mother remained firmly opposed to identifying the student as having ADHD and requested copies of the records to share with the student's psychiatrist. Dissatisfied with the district's response, she requested for a due process hearing to challenge the district's refusal to release certain records.

At the end of the school year a matriculation meeting was held to discuss the student's move to a middle school. At no time did the student's mother request a reevaluation. The district sent to the mother copies of 514 pages of the student's records. The student's mother wrote to the district requesting audio tapes, notes, and raw data utilized to determine eligibility and again wrote requesting raw data. The student's mother wrote again accusing the district of maliciously attempting to impede due process and listed specific records she requested, year by year including emails, telephone logs, notes, and other documents. The district subsequently sent an additional three-hundred and fifty pages of documentation, stating it was all they had "been able to locate." The due process hearing began five days later.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. School districts are required to provide a free appropriate public education (FAPE) to students with disabilities in accordance with federal and state regulations and district policy. The student's program must be reasonably calculated to confer educational benefit. It does not matter whether the district uses the appropriate label, as long as the IEP and the services it contains are appropriate. There have been multiple cases to support this determination. Prior written notice and written consent is required in order to evaluate and place a student and to develop an IEP. Procedural safeguards notification is required at specified points in the evaluation and IEP process and the content of the notice is required by law.

At the due process hearing, the student's mother amended her complaint to allege that the district failed to provide notice of evaluation, failed to provide procedural safeguards, did not reply to her request for an independent educational evaluation (IEE), and did not provide written documentation she requested five days prior to the hearing. The documents were, in fact, presented to the student's mother five days prior to the hearing. The fact that the documents were received at 5:30 PM was immaterial. Previous cases supported this determination. Legally, a day is a twenty-four hour period. The student's mother requested that a "mistrial" be declared because of the alleged violation of the five-day requirement. The only remedy allowable was to disallow evidence received not timely disclosed which the student's mother chose not to do.

Notices were sent to the student's mother with proper content at the appropriate times, even though the student's mother stated she did not receive one of the invitations to an earlier IAT meeting. Legally the district was not required to invite her to these "preparatory activities." The district attempted in good faith to notice the mother appropriately and to provide due process rights. Even if she had received the booklet prior to the evaluation, she would not have refused consent to evaluate because that was what she had asked the district to do. And, although she disagreed with the designation of ADHD, the student's mother did not actually request an independent educational evaluation.

ORDER: No relief was warranted or ordered.

Flagler County School Board
Case No. 04-1852E
Initiated by Parent
Hearing Officer: Diane Cleavinger
Date of Final Order: July 28, 2004

ISSUE: Whether the student was receiving a free appropriate public education (FAPE) under the Individuals with Disabilities Education Act (IDEA).

FINDINGS OF FACT: At the time of the hearing the student was diagnosed as having autism and, perhaps, post-traumatic stress disorder. The student's emotional and behavioral problems were such that removal from the school environment was necessary. All parties agreed that the

student's IEP was appropriate and provided the student with a FAPE. The IEP provided for the student to receive instruction at home. The student received instruction three times a week for one hour, beginning at 10:00 AM. Instruction was terminated due to health concerns of the home based instructor. District staff offered to continue the student's instruction at 8:00 AM at the student's home or at the instructor's home during the afternoon. Both offers were reasonable and remained available to the student at the time of the hearing.

The parents declined both offers. The morning may have been difficult for the family because of medical issues, though this was not specified. The student's parents did not attend the hearing. The student did not receive instruction from district staff and it was not known whether the parents provided instruction through private means. District teachers were unable to provide instruction at times requested by the parents because most of them taught regular hours at district schools. The district continued to advertise for a home based teacher who could teach the student during hours desired by the parents.

The student received no home based instruction for nine months. However, there was evidence that the student did make some progress during that time. The student was not denied a FAPE because of the lack of home based instruction. The district declined to prosecute the parents for failing to provide an education for the student. It was up to the student's parents to take advantage of the opportunity the district offered them to receive instruction for the student or to provide evidence as to why the offer was not appropriate.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. Free appropriate public education was defined as the student's having an individual educational plan (IEP) designed to confer educational benefit. No one disputed the fact that the student's IEP was designed to provide a FAPE to the student. Services were not provided to the student because of the parents' refusal to avail themselves of services or explain why the district's offer of services was not reasonable for the student.

ORDER: The parents' claim was denied.

Hernando County School Board
Case No. 04-1916E
Initiated by Parents
Hearing Officer: P. Michael Ruff
Date of Final Order: December 28, 2004

ISSUES: Whether the student should be sent to a forty-five day inpatient evaluation and/or treatment program to address special needs; whether the district offered the student a free appropriate public education (FAPE) during the 2003-04 school year; and, whether the district continued to offer the student a FAPE such that inpatient services would not be needed.

FINDINGS OF FACT: At the time of the hearing the student was eleven years old, was deaf

and had autism. The student was determined eligible for these special programs during the 2003-04 school year. Prior to eligibility determination, district staff performed a complete psychological evaluation, which addressed both the student's autism and hearing impairment, an assistive technology and communication evaluation, an occupational therapy (OT) evaluation, and an educational assessment. All of the professionals involved in the student's evaluation were expert witnesses in their respective fields and each observed the student both at school and at home and reviewed educational records. Following the extensive evaluation procedure, it was determined that the student was both deaf and had autism.

Prior to the 2003-04 school year an IEP was developed for the student, including as many as eleven staff members in conference for approximately twenty hours over a two-day period. The family invited an attorney as well as an expert in the field of deafness. The IEP meetings were properly constituted, included all evaluations and available information, and afforded the family adequate opportunity to ask questions and express opinions. In the end, all in attendance agreed upon the student's placement.

The student's family reported that a private psychiatrist recommended inpatient services to evaluate and stabilize the student's medications. District staff reported on the positive progress the student was making and the IEP team determined that inpatient evaluation was not required for the student to make educational progress.

The student's primary disability was considered to be autism. The Office of Special Education Programs (OSEP) and the National Academy of Sciences provided recommendations on appropriate educational programs for students with autism.

The IEP addressed the interventions included in the National Academy of Sciences recommendations. The IEP provided for instruction in a separate classroom, and included speech language (S/L) therapy and OT. The student's class had a ratio of ten students to four adults, one of whom was fluent in sign language. The student had the opportunity to interact with nondisabled peers with assistance from the paraprofessional who was fluent in sign language. The student's teacher had extensive training and experience in dealing with all aspects of education of students with autism and continued to receive additional specialized training in the field.

The IEP was appropriately developed and included services required for the autistic student. Communication through the year progressed from picture communication to the teaching and use of sign language and was practiced in interactions with disabled and nondisabled peers. The student's academic instruction utilized a developmentally appropriate curriculum. Behavioral management was also an integral part of the student's program and included a token economy and the services of a behavioral analyst who developed an individualized behavioral plan for the student.

The student's placement and educational environment were appropriate to meet the student's unique needs. The student was well integrated within the classroom and progress was deemed "impressive" by the professionals who worked with the student. The student made progress in independent functioning, academic skills, and behaviors, all of which was regularly reported to

the student's family.

The only professional who supported the family's request to remove the student from the home and place the student in an inpatient program was a private psychiatrist with limited experience with students with autism. The student was the only person with a dual diagnosis that the psychiatrist had ever treated. Her proposed placement, the National Deaf Academy, operated on a medical model and included procedures which went against those prescribed for and successful with the student. None of the professionals associated with the school system agreed with the need for an inpatient program for the student to receive a FAPE. Even the student's family agreed that the student made progress under the IEP. No evidence was presented indicating the need for inpatient treatment for the student.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The family bore the burden of proof to prove that the student's IEP and educational setting was inappropriate. The district complied with the requirement of providing educational benefit to the student and violated no procedural safeguards or procedures. All IEP meetings were properly constituted and participated in by the student's family. Experts with appropriate knowledge were included. The IEPs included all required components, with appropriate goals and objectives. Evaluations were conducted by appropriate professionals using appropriate instruments, taking the student's communication needs into account. Although results are not guaranteed through the Individuals with Disabilities Education Act (IDEA), the student made significant progress. Public funding was not required for a parent's unilateral decision to change a student's placement outside the IEP process.

ORDER: The in-patient evaluation and treatment of the student at public expense was denied. The district provided FAPE to the student during the 2003-04 school year and continued to do so.

Hillsborough County School Board
Case No. 04-2967E
Initiated by Parent
Hearing Officer: Daniel Manry
Date of Final Order: December 17, 2004

ISSUES: Whether an existing individual educational plan (IEP) developed in Orange County and adopted by Hillsborough County provided the student with a free appropriate public education (FAPE); whether the student's transfer to Hillsborough County violated procedural safeguards; whether the student should be placed in a residential program in Manatee County; and, whether the district discriminated against the student.

FINDINGS OF FACT: The student was eight years old at the time of the hearing and resided in a group home in Hillsborough County. During the time relevant to the hearing the student resided either at the group home or at a residential facility in Orange County. The student's parent did not have physical custody of the student. The student was identified as eligible for programs for

students who are trainable mentally handicapped (TMH) and have traumatic brain injury (TBI).

During the 2003-04 school year, the student attended an Orange County elementary school and received services for students with mental handicaps and TBI as well as speech and language therapy.

In [specific date] 2004, the student's parent filed a request for a due process hearing to challenge the student's IEP. The result was that the final order indicated that the student was receiving a FAPE. The student's parent appealed the final order to the Fifth District Court of Appeal and filed a Writ of Certiorari with the Florida Supreme Court.

Prior to [specific date] 2004, Orange County transferred the student to a residential program in Hillsborough County, in which he registered as a student at the Willis Peters Exceptional Center. The IEP from Orange County was implemented and educational records were requested and received in a timely manner. The student's parent repeatedly refused to cooperate with Hillsborough County staff to revise the student's Orange County IEP.

The allegations of the due process hearing include: Orange County's transfer of the student denied FAPE and violated procedural safeguards; the Orange County IEP was inappropriate; the student's needs required a residential placement in Manatee County; and the district discriminated against the student.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The appropriateness of the Orange County IEP was previously challenged and an administrative law judge ruled it appropriate. It was this ruling that the student's parent had appealed.

The Division of Administrative Hearings (DOAH) lacked jurisdiction over Manatee County and Orange County, as they were not parties to the hearing, nor did staff from these districts attend. Also, DOAH had no authority to order Hillsborough County staff to place the student in a Manatee County residential facility. Finally, there was no evidence that the student was the target of discrimination. As of the date of the hearing, the student's parent had yet to meet with the district to revise the student's IEP.

ORDER: There was no evidence of discrimination against the student. The remaining claims were dismissed based on the doctrines of collateral estoppels and for lack of jurisdiction over the matters at hand.

Lee County School Board
Case No. 04-1892E
Initiated by Parent
Hearing Officer: Carolyn S. Holifield
Date of Final Order: September 10, 2004

ISSUE: Whether the district denied the student a free appropriate public education (FAPE) by failing to develop and implement an appropriate individual educational plan (IEP).

FINDINGS OF FACT: At the time of the hearing the student was thirteen years old and had medical and psychiatric illnesses and behavioral problems. The student was also diagnosed with attention deficit hyperactivity disorder (ADHD) and bipolar illness and was served in exceptional student education (ESE) through programs for severely emotionally disturbed (SED) and other health impaired (OHI). The student attended a district exceptional student center since second grade. The student was in seventh grade at the time of the hearing. Staff-to-student ratio was low there and staff was highly trained in dealing with students with severe behavior issues. The school itself was designed for the safety of its students. There a behavioral system was in place for all students. When a student earned a level seven, the highest, a plan was written to return the student to a less restrictive setting.

The student began the 2003-04 school year with more problematic behaviors than previously had exhibited. Several changes were occurring in the student's life both at school and at home. The student's father left the home, and the student followed a middle school class schedule for the first time, which included leaving a teacher the student was close to. The student also experienced adolescent issues and received many discipline referrals for aggressive, sexually inappropriate, and acting out behaviors. The student's parent was informed by telephone when such incidents occurred and had requested that being informed when the student was having a particularly difficult day in order to pick the student up. School staff never called the student's parent for pick up due to such issues.

In 2004 the student expressed suicidal plans twice in one week. Each time the student was hospitalized under the Baker Act for two days. Since returning to school after the second hospitalization the student made no further suicidal threats. Also upon release, the student's behavior improved significantly and continued to do so through the rest of the school year. The student's medications were changed about this time, and as the behavior improved, so did acceptance by peers and classroom performance.

During the first part of the school year the student's academic performance was negatively affected by behavior issues and frequent tardiness and school absence due in part to many doctor's appointments. At the end of the seventh-grade year, an IEP was developed. The student's parent attended the IEP meeting, participated, and contributed to the IEP development including making corrections to information as needed. The parent did not express disagreement with the IEP at that time. The student had made significant academic improvement after new medications.

The IEP under consideration included measurable goals and documented present levels of per-

formance. The IEP included a statement that the medication changes made the student drowsy and “militate[d] against steady academic improvement.” The IEP included academic, social, and behavioral goals. By the end of the school year the student had progressed to level seven of the school’s behavior program. The student’s occupational therapy was terminated because the student had obtained maximum educational benefit. Placement continued to be at the special school, and the student would continue to receive special transportation with an attendant or assistant because of behavior concerns. However, the IEP did not indicate the need for a safety harness or special seating, as previous IEPs had done. Extended school year (ESY) services were recommended and attended. The student’s parent was satisfied with the student’s services.

Although the student’s parent did not object to the IEP when it was written, the parent then alleged that the IEP was not appropriate because it only called for a half-year rate of academic improvement during the upcoming academic year. This was reasonable for the student, given her cognitive abilities. At the IEP meeting, the student’s parent did not raise any issues about the student’s transportation needs. The student’s parent stated that daily living activities were needs of the student at home. The school did not observe such problems. The student’s parent stated that the student was a danger to herself and others because of uncontrollable rage behaviors. At school the student did not exhibit behaviors that school staff could not control.

The student’s parent obtained a private psychological evaluation. The psychologist recommended residential placement based on evaluations and information from the student’s parent, without contacting school staff or reviewing student records. He saw the student once, prior to the improvements on new medications. At the hearing he admitted that if he saw the student now that the behaviors were different his opinion would change. There were no services on the IEP that could not be provided in the special school placement and no educational need for residential placement.

The student’s parent requested student records prior to the due process hearing and received some hundreds of pages of records. However, some documents referred to by witnesses were not present, including anecdotal records, time-out logs, and daily point sheets. The whereabouts of the anecdotal records is unknown but not an essential part of this student’s record. The time-out logs were at the school, but the student’s parent was almost always made aware of times when the student was in time-out. The point sheets were received daily by the student’s parent, and signed and returned to the school. There was no evidence of violation of the parent’s rights in this issue.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. Free appropriate public education was defined as the student’s having an individual educational plan (IEP) designed to confer educational benefit. The student’s parent claimed that her rights were violated because of not receiving adequate notice of the meeting at which the IEP in question was developed, that the district failed to provide requested educational records, and that the district failed to provide all the student’s records in 2001 when an earlier request was made.

The district did fail to provide the teacher’s anecdotal record, time-out logs and point sheets. If

the records still existed they were to be provided to the parent. However, despite a procedural violation, there was no harm done to the student or the parent as a result.

Whether the IEP was appropriate was judged by whether the student could receive some educational benefit from it. The student's parent claimed that the IEP in question failed to provide related services, specifically occupational therapy (OT), transportation related equipment and accommodations (a safety harness and preferential seating) and instruction in activities of daily living. In order for the district to provide services, there must be an identified need. There was no documentation that the student needed these services to benefit from special education.

The student's parent claimed that the IEP would not confer educational benefit because the annual goals were for a half-year of academic improvement rather than a whole grade level. Evidence showed that the annual goals, as well as benchmarks and objectives, were appropriate for the student. The student's parent failed to prove that the IEP would not provide the student with a FAPE. Finally, there was no indication that the student required residential placement to benefit from education.

ORDER: The student's parent's claim was denied and the IEP was to be implemented as written.

Lee County School Board
Case No. 04-0726E
Initiated by Parent
Hearing Officer: Daniel Manry
Date of Final Order: December 7, 2004

ISSUES: Whether the proposed individual educational plan (IEP) would provide the student with a free appropriate public education (FAPE); whether the district violated any procedural safeguards.

FINDINGS OF FACT: At the time of the hearing, the student was eight years old and had been determined eligible for special programs for students who have specific learning disabilities (SLD), speech impairment (SI), and language impairment (LI). The student was diagnosed with microcephaly and attention deficit hyperactivity disorder (ADHD) and had an IQ over 100. The student had been served at the home-zoned school for kindergarten and first grade and received educational services in the regular education environment. Though educational progress was made, the student exhibited behavioral problems that interfered with learning and experienced regression during times when instruction was interrupted.

The IEPs were developed during the student's kindergarten year. The student's kindergarten teacher recommended promotion to first grade because, although the student had made inconsistent progress, she felt the first grade environment would provide the additional structure the student needed.

Both in kindergarten and first grade the student exhibited disruptive behaviors. In the first-grade year, the parents and school staff developed an IEP. Most significant was the proposal to place the student in a varying exceptionalities (VE) classroom at a different school. The parents attended the IEP meeting but did not agree to the proposed placement. The parents filed a due process hearing and the “stay put” provision maintained the student’s then-current placement and then-current IEP. It was agreed that, by the time the hearing took place many months later, the IEP written for the student’s first-grade year was no longer appropriate. Development of a modified stay-put IEP failed.

Shortly after the proposed IEP was written, the student began taking medication for ADHD. Improvement was significant, making the proposed IEP inadequate to address the student’s post-medication behavior and progress.

The parents objected to the proposed transfer to a VE classroom, the amount and frequency of services, and the lack of a behavioral intervention plan (BIP), inclusion of a special diet for the student, visual therapy, assistive technology, and a unique aide.

The IEP in dispute was developed for kindergarten, during which the student made progress. However, the IEP was not appropriate for first grade. Although progress was made, the student was retained in first grade. Therefore, the IEP was not adequate to ensure the student’s promotion to second grade. The IEP did not include a BIP. Although district staff stated that the BIP that was ultimately developed was intended to be part of the IEP, it was not completed in a timely manner. Nor was the functional behavioral assessment (FBA), prerequisite to the BIP, conducted in a timely manner. When finally developed, the BIP did not address antecedent events at the school, nor did it take into account home behaviors, which school staff prevented the parents from discussing. This omission rendered the BIP inadequate to meet the student’s needs.

The unique educational needs of the student required a one-on-one aide. The proposed IEP did not include this. The district refused to provide it because of concerns that the student would become dependent on the aide. However, fading techniques could have reduced the student’s need for the aide over time, so this argument was not acceptable.

The proposed IEP failed to include a special diet for the student, which the student required to reduce inappropriate behaviors. The proposed IEP failed to include extended school year (ESY) services even though evidence showed the student regressed during periods of not receiving services and did not indicate occupational therapy (OT) on a weekly basis, but rather on a monthly basis. The proposed IEP did not include vision therapy, which greatly improved the student’s performance, nor did not include assistive technology, to assist the student with spacing between words

Neither the existing nor the proposed IEP adequately addressed the student’s unique needs. School staff destroyed the student’s actual work and test scores prior to the due process hearing. There was no objectively measurable documentation of the student’s progress toward annual goals. The student’s IEPs lacked consistent documentation of quarterly assessments. The student’s record did not include correspondence from the parents documenting the student’s need

for the special diet.

Had all these factors been taken into consideration, the student may have progressed to the second grade. However, the student began taking medication for ADHD in the first-grade year which significantly improved problematic behaviors in all areas of need. The student's academic performance also improved. This further demonstrated that the proposed VE placement was not appropriate for the student. Despite the inadequacies of the IEPs and procedural violations, evidence demonstrated that it was the medication for the student's ADHD that most impacted the student's success.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. District staff challenged this jurisdiction, stating that the modified stay-put IEP rendered moot the proposed IEP. However, because the student was still at the same school, staff would still be involved with developing an adequate IEP for the student and the inadequate IEPs would still be at issue.

The existing IEP was not designed to provide a FAPE to the student. District staff failed to satisfy the burden of proof that the IEP met the student's unique educational needs. However, the weight of evidence did not demonstrate that the inadequate IEPs, proposed change of placement, or procedural violations deprived the student of educational benefit. Rather, the student's medication for ADHD was what made the student able to obtain educational benefit.

ORDER: The existing IEP did not adequately address the student's needs in first grade. The proposed IEP did not adequately address the student's needs during first grade. The district committed procedural violations. The student's success following medication for ADHD precludes a finding that IEP deficiencies and procedural violations denied the student from making educational progress.

Miami-Dade County School Board
Case No. 04-0898E
Initiated by Parent
Hearing Officer: John G. Van Laningham
Date of Final Order: July 12, 2004

ISSUE: Whether the student was provided a free appropriate public education (FAPE) according to federal, state and district regulations.

FINDINGS OF FACT: At the time of the hearing the exceptional student education (ESE) student had a diagnosis of attention deficit disorder (ADD) and was nearing the end of eleventh grade.

The student was retained twice during high school; however, the evidence did not show which grades were repeated or the reason for the retentions. It was inferred that the retentions were for

lack of academic performance.

By the student's fourth year in high school, while in the tenth grade, the student's parents became very concerned about the lack of academic achievement. The student's parent took the student to a pediatrician who stated the student was not likely to excel in challenging fields due to IQ and wrote a note to the school suggesting that the student might have a learning disability and could benefit from a "complete psychological profile."

The child study team (CST) determined that the student should be evaluated to determine possible ESE eligibility and the parents gave consent. School staff offered the student after-school and Saturday tutoring as well as dropout prevention services, which the parents rejected. The student was advised to bring a tape recorder to classes to assist with comprehension. Classroom observations were conducted; however, a psychological evaluation was not completed until the following school year because the student missed appointments with the school psychologist. The psychological evaluation revealed that the student had low average intelligence with no discrepancies between ability and performance, and that there was no behavior suggestive of an emotional handicap. The psychological report recommended tutoring and vocational counseling.

The multidisciplinary team determined the student ineligible for ESE services. The parents requested an independent educational evaluation (IEE), which was denied. The parents had an IEE conducted at their own expense. Meanwhile, the student's pediatrician completed a district form indicating that the student had attention deficit disorder and a visual/spacial cognitive disorder and stated that the student needed close supervision in special classes, participation in sports, and behavior therapy to improve the student's self-esteem. The results of the IEE concurred with this diagnosis, but also agreed with the school's psychologist in that the student did have a low average IQ.

The school held an individual educational plan (IEP) meeting, reviewed the IEE and other school data, and determined the student ineligible for ESE services. However, when presented with the medical diagnosis of ADD the team determined the student eligible under the other health impaired (OHI) designation. An IEP was written which provided for placement in several ESE classes and participation in baseball, a strong interest of the student.

The student was eighteen years old when the IEP was written. The student did not attend the IEP meeting. School staff mistakenly believed the student was seventeen, not eighteen, and the parents signed the IEP. This was provided to the student and parents on the student's nineteenth birthday. School staff did not inform the parties that the information was incorrect and, therefore, misleading, until the due process procedures were underway.

The parents did not dispute the student's IEP and the student did make progress. However, the student did not obtain a physical and did not submit the required insurance form and was, therefore, not allowed to practice with the baseball team.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The parents did not dispute the ESE services the student

was receiving. They did claim that the student should have been identified earlier which would have resulted in better grades, allowing him to join rather than just practice with the baseball team. District staff claimed that the parents did not have jurisdiction because the student had already reached the age of majority before the first IEP was written. However, the parties did not receive pre-transfer notice in a timely manner. Because of the mistaken understanding of the student's age, the parents acted in good faith as the student's representative, which the school did not dispute at the time because of the error in determining the student's age. School staff failed to provide proper notice of the transfer of rights. Therefore, the parents had the right to proceed on the student's behalf.

The district had the responsibility under Child Find to identify students with disabilities, regardless of the severity of the disability or the student's progression from grade to grade. School and district staff failed to suspect the student of a disability even after he twice failed to progress to the next grade in high school. However, there was not sufficient evidence to determine that the school breached its child find responsibilities because of lack of evidence of the student's behavior and the fact that they could have reasonably believed that the student was achieving commensurate with his abilities. Therefore, the student's bad grades alone would not have been sufficient for the school staff to suspect a disability.

ORDER: The school did not violate regulations or deny the student a FAPE. The parents' request for relief was denied.

Orange County School Board
Case No. 04-2678E
Initiated by Parent
Hearing Officer: Jeff B. Clark
Date of Final Order: September 8, 2004

ISSUES: Whether the district denied the student's guardian's request for an independent educational evaluation (IEE) and whether the district provided the guardian with appropriate notification for an individual educational plan (IEP) meeting held on [specific date] 2004.

FINDINGS OF FACT: The student was served in a district kindergarten for the 2003-04 school year and was determined eligible for students with developmental delays and language impairments, and an IEP was developed on [specific date] 2003.

A psychoeducational evaluation was conducted on [specific date] 2004, which indicated that the student's academic achievement was at or above age expectancy for the student's learning ability and no process deficits were identified. The student's cognitive abilities were described as "below average."

In [specific date] 2004, an IEP team convened at the guardian's request, at which the guardian expressed concerns about the evaluations. The guardian then requested a list of independent eval-

uators. An IEP meeting was scheduled for two specific dates. On [specific date], the guardian requested an IEE in writing, and stated that the desire to postpone the IEP meeting scheduled for [the second date]. The district held the IEP meeting that day; the guardian did not attend. At that meeting, staff determined that the evaluation was appropriate and a Notice of Refusal to Take a Specific Action was sent to the guardian. The guardian was informed that an IEP meeting would be rescheduled to discuss the district's evaluation as well as any IEE obtained by the guardian. In the summer of 2004, the guardian filed a due process hearing seeking an IEE. The parties met prior to the hearing and agreed to an IEE and a change of school placement for the student. The district mailed and faxed a list of independent evaluators to the guardian; however, the guardian did not receive them. The guardian filed another due process hearing request. The district has agreed to provide an IEE and to place the student in the guardian's school of choice.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The guardian contended that the district denied a free appropriate public education (FAPE) due to procedural violations and that the student was denied an IEE. The guardian also alleged that the district failed to provide appropriate notice of the [specific date] 2004 IEP team meeting.

Notice for the [specific date] 2004 IEP meeting was provided on [specific date] 2004. The time of the meeting was rescheduled to accommodate the guardian. An abbreviated IEP meeting was held on [specific date] 2004, and a full IEP meeting was rescheduled at the request of the guardian. The district offered the guardian the IEE and at the time of the hearing, the guardian had received that list. The district did not refuse to provide the IEE.

ORDER: The guardian's allegation that the district failed to provide appropriate notice was dismissed. Regarding the IEE, the district agreed to provide the IEE, and the guardian should select an evaluator from the list provided by the district and implement the independent evaluation.

Palm Beach County School Board
Case Nos. 04-1967E, and 04-1968E (Dismissed)
Initiated by Parents
Hearing Officer: Florence Snider Rivas
Date of Final Order: July 21, 2004

ISSUES: Whether the district unlawfully determined that the student did not meet exemption criteria for the Florida Comprehensive Assessment Test (FCAT) for the 2004 school year; whether the student was legally entitled to be promoted to the fourth grade.

FINDINGS OF FACT: At the time of the hearing the student was enrolled in third grade and received exceptional student education (ESE) services in the areas of speech and language. The student was a slow learner but could reasonably progress in the general curriculum to obtain a regular diploma.

All third grade students were required to take the FCAT and attain a Level 2 or higher in reading. At the end of the student's second-grade year, school staff saw that the student was functioning well below grade level. They wanted to provide the student with an opportunity to strengthen reading skills without the additional academic pressure of third grade. So the IEP team proposed that the student be retained in second grade. The student's parent opposed this recommendation. The IEP team knew the retention had a low potential for benefiting the student, specifically that the student would likely be retained in third grade because of difficulty with reading.

Because the law recognizes that some ESE students may not be able to pass the FCAT, provisions are made for exemption criteria. The IEP team knew that, unless the law changed, the student would not meet exemption criteria by the student's third-grade year. The student was passed on to third grade and an IEP team met in September of that year. The IEP team determined correctly that the student did not meet exemption criteria. Appropriate testing accommodations were provided. At the same IEP meeting, the team determined that further evaluations were necessary to determine whether the student's educational needs were being met. The parents did not consent to the evaluations and the district did not pursue the matter legally at the time. The parent signed consent in the spring of that year; too late to affect the third grade FCAT participation. The student took the FCAT, did not obtain a Level 2, and the student's parent received timely notice that he would likely be retained in third grade.

Students in such a situation were able to take an alternate assessment, the SAT-9. Students who passed this evaluation could be promoted to fourth grade despite failing the FCAT. Law required that students who repeat third grade because of FCAT failure receive intensive reading instruction. Such remediation was more than that which was normally required for ESE students. Although the student was a willing learner, the hearing served to clarify to the student's parent the legal climate in which the FCAT existed and under which the IEP team must function.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The Florida Administrative Code (FAC) required that third-grade students take the FCAT and obtain a Level 2 in reading to continue on to fourth grade. The decision to exempt a student must be made by the student's IEP team, based on legal requirements: that the student's ability prevents the student from completing the required coursework and achieving the designated Sunshine State Standards and that the student require extensive direct instruction to apply skills needed for domestic, community living, leisure, and vocational activities. Based on these requirements, the IEP team correctly determined that the student did not meet exemption criteria. Unless the student took and passed the SAT-9, the student would have to be retained in third grade.

ORDER: The district appropriately determined the student ineligible for exemptions from taking the FCAT and appropriately determined that it was mandatory to retain the student in third grade.

Palm Beach County School Board
Case No. 04-3484E
Initiated by Parent
Hearing Officer: Robert E. Meale
Date of Final Order: November 18, 2004

ISSUES: Whether the district failed to provide the student with a free appropriate public education (FAPE) by failing to implement the student's individual educational plan (IEP).

FINDINGS OF FACT: At the time of the hearing, the student was seventeen-years old with a specific learning disability (SLD), attending tenth grade at the zoned high school. During middle school the student attended the Dreyfoos School of the Arts, and studied visual arts. The student had been receiving special services for students with a specific learning disability since he was in the fifth grade. One of the provisions of the student's IEPs was additional time to perform certain tasks.

Admission to the Dreyfoos School is by audition. The visual arts audition is divided into four parts, each with time constraints. The student passed the audition as a middle school student and again in the ninth grade, then withdrew to the zoned school for tenth grade and reapplied for eleventh grade. Before the [specific date] 2004 audition, an exceptional student education (ESE) coordinator met with ESE students and their parents to answer questions and distribute a form detailing the accommodations available for each of the four-part audition. Included was an explanation of the amount of additional time the applicant would be allowed in each section. The parent and student attended this meeting.

The form indicated additional time for some portions of the audition, but not the essay. There was a place on the form for parent signature. The form included a handwritten note stating that no accommodations were needed. The ESE coordinator and the parent disagreed about whether the handwritten notation was on the form prior to the parent's signature. They also disagreed about whether the ESE coordinator went over all possible accommodations or just the availability of a computer for the essay portion of the application, which the student did not need. The form included eight possible accommodations. It appeared to imply that all would be provided except the use of a computer or scribe, for which prior provision would have to be made. The form also indicated that the parent would need to contact the school in a timely manner prior to the audition if additional accommodations were needed. The ESE coordinator stated that she personally followed up with parents of students who attended the meeting and did not complete the form there, as well as all who indicated no accommodations were needed.

The student and the parent did not request additional time to complete the essay prior to the audition. A score of ninety-five was required for entrance into the school, with each of the four parts being worth twenty-five points. The student earned a seventy-three. Even with perfect scores in the two areas in which he did not later claim to require accommodations, the student would not have meet eligibility criteria. The student then claimed bias on the part of one of the raters and was allowed to retake two portions of the audition. They had still not requested accommodations. The student arrived with a parent at a re-audition later in 2004 without having notified the ESE

coordinator. There, she gave them an accommodations form to sign which included the same January deadline as the earlier form. The student retook the drawing class and still-life drawing portions, again without requesting or receiving accommodations, and scored an eighty-two, or eighty-three if allowed to use the highest of the scores on each section. Had accommodations been provided and a perfect score obtained for the two sections in question, the student would still only have scored an eighty-five.

After the later audition, the parent requested a received a copy of the accommodations form, which was not routinely provided. At this point, the parent claimed that additional time was needed for still-life drawing and the essay. At the hearing, the student stated a learning disability and the time limit hurt the performance on the two areas in question. However, school officials stated that the essay was rated not on writing skills, but on a demonstrated understanding of content. The student and parents were not able to link the performance on the essay with the learning disability.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The student's IEP included accommodations according to law. The purpose of the accommodations, for this student, was to assist to compete fairly with nondisabled peers. It did not require the provision of an advantage to the student over nondisabled peers. Even if the parent had requested additional time in a timely manner, this accommodation was not needed by the student to participate fairly and thus receive a FAPE.

ORDER: The parent's claim that the district failed to implement the student's IEP was denied.

Palm Beach County School Board
Case No. 04-3879E
Initiated by Parent
Hearing Officer: Patricia Hart Malono
Date of Final Order: December 22, 2004

ISSUE: Whether the district provided the student with a free appropriate public education (FAPE).

FINDINGS OF FACT: At the time of the hearing the student was an eighth grader with specific learning disabilities (SLD). The student had an individual educational plan (IEP) dated [specific date] 2004. Per that IEP, the student received specialized instruction in mathematics and language arts. All other instruction was in a regular class setting. The student began the school year at the River Beach Academy Charter School, and then transferred to Watkins Middle School.

On [specific date] 2004, teachers and students observed the student in a fight with two other students. The ESE coordinator was summoned to the scene. One of the students was injured and required stitches and the student was suspended for ten days. The IEP team met and modified the student's IEP to verify that the student's disability had been considered, and decided to place the

student in the Roosevelt Full Service Center, an alternative placement. The Roosevelt Center was a small, highly structured environment which employed a token economy within a level system. Students must progress through levels in order to transition back to their zoned school. The Roosevelt Center employed regular education teachers, two exceptional student education (ESE) teachers, and a behavior specialist. The student's IEP could be implemented at the Center.

The student's parent was shown the Roosevelt Center and strongly disagreed with the change in placement. The ESE coordinator believed that the Roosevelt Center would be a more appropriate placement for the student, given the serious behavioral problems at the middle school.

The parent was provided with prior written notice of change of placement/FAPE at the IEP conference with the new placement to begin [specific date]. However, it appeared that there was no manifestation determination prior to the IEP meeting. The ESE Referral Procedures Checklist indicated "N/A" in the portion of the form used to document manifestation determination. Even so, it was determined that the student's IEP could be implemented at the Roosevelt Center and that the student would benefit from the placement.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. State and federal regulations describe the requirements of a change of placement for a student with disabilities to ensure that the student receive a FAPE in the least restrictive environment. Requirements for a change of placement without a manifestation determination are also regulated. Based on the findings, the district could not place the student at the Roosevelt Center, a disciplinary placement, because a manifestation hearing had not been held to determine whether the student's behavior problems were a result of the disability. Such a hearing should have been held prior to the [specific date] IEP. Without such, it must be concluded that the student's behavior was a manifestation of the disability. However, the change in placement was necessary to provide the student with a FAPE in the least restrictive environment.

ORDER: The IEP team decision to place the student at the Roosevelt Center was sustained.

Santa Rosa County School Board
Case No. 04-1176E
Initiated by District
Hearing Officer: P. Michael Ruff
Date of Final Order: August 12, 2004

ISSUES: Whether the district's educational evaluation met requirements of the Individuals with Disabilities Education Act (IDEA); and, whether the student should receive an independent educational evaluation (IEE) at public expense.

FINDINGS OF FACT: At the time of the hearing the student was eleven years old and had been eligible for exceptional student education (ESE) services since preschool, initially as having a speech impairment (SI) and later a specific learning disability (SLD). At the time of the hearing

the student was being home schooled.

A reevaluation was conducted in 2003. There were two outside psychological evaluations were done and the reports were summarized into one report by the school psychologist, which was an appropriate practice. No information was changed. One of the psychologists had extensive experience and was considered an expert in psychometric testing of students with disabilities. In his evaluation of the student he interviewed multiple sources, reviewed the student's records, interacted with the student, and conducted extensive evaluations. He had intended to complete the evaluation on one day but when he determined that the student was tired and not performing at the student's best, he rescheduled the remainder of the evaluation for early the following month. He completed the assessment over a two-day period, in short intervals, to ensure valid responses. He assessed the student's adaptive behavior, social and psychological development, academic aptitude and achievement, learning styles, developmental history and attention issues. The instruments he used were appropriate for the student and were used properly.

At particular issue was the Woodcock-Johnson Test of Cognitive Abilities, which was considered to be the most appropriate evaluation to measure the student's IQ, more so than the Wechsler administered to the student two years earlier. The use of the Woodcock-Johnson was consistent with professional practice and was administered according to the publisher's instructions. The report issued by the evaluator included narrative data, tables, subtests, and cluster scores. There was discussion at the IEP meeting that the cluster scores were difficult to follow and may not have been useful; however, the school psychologist stated that these were not the only scores the IEP team had to work with. The evaluator's data was consistent with previous evaluations done on the student.

District staff stated concern about a bias in the evaluator's report which the evaluator denied. Evidence showed that the evaluator's findings were not influenced by the party that hired him. The report itself did not include recommendations because, he stated, he felt these should come from the IEP team itself. He offered to assist the IEP team if needed. The final report, generated by the school psychologist, included recommendations based on the evaluator's findings as well as the findings of the other evaluator.

At the IEP meeting following the evaluations, the school psychologist was present to assist in explanation of the evaluations. Although complex, district staff stated that they were able to understand the evaluator's report, calling it "extraordinarily complete." It was the complexity of the student's needs that required the complex evaluation. The evaluation contained sufficient information to develop the student's IEP. There was no reason to question the validity of the evaluator's report. Therefore, there was no need to have performed an additional IEE.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The IEP team had the responsibility to review existing evaluations to develop an appropriate IEP for the student. The scope of the evaluation did not need to be as comprehensive as the student's initial eligibility evaluation. The evaluations in question were done by a competent, experienced, properly licensed psychologist who used an appropriate variety of instruments and multiple sources to develop a reliable and comprehensive

report. Regulations do not require evaluators to include recommendations, which is the responsibility of the IEP team rather than the evaluator. The student's evaluation fulfilled all requirements of the law. If the student's parents continued to desire an additional evaluation they may do so, but not at public expense. The school district showed that it took information from the family into consideration when educational decisions for the student.

ORDER: The district provided an adequate independent educational evaluation and was not required to provide another one.