

Summaries of Due Process Hearings

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



**January–June
2003**

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

Introduction1

Summaries of Due Process Hearings

Broward County School Board.1–5

Clay County School Board.5

Columbia County School Board.6

Duval County School Board.7–8

Highlands County School Board8–9

Lee County School Board.10–11

Leon County School Board11–12

Miami-Dade County School Board13–16

Palm Beach County School Board16–17

Pinellas County School Board17

Polk County School Board18

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 January through June 2003. 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. 02-2765E

Initiated by Parent

Hearing Officer: Florence Snyder Rivas

Date of Final Order: January 8, 2003

ISSUE: Whether the district failed to provide a free appropriate public education (FAPE) and whether the student was entitled to compensation.

FINDINGS OF FACT: The student was a third grader with autism who received instruction in a separate class placement. Much emphasis was placed on speech and language (S/L) by the student's teacher and others with whom the student came in contact throughout the school. The student received private therapy at home. At school S/L therapy was provided by a staff member who had a bachelor's degree and a state-issued credential. When the student left the district, an assistant who was similarly credentialed, but without a state license, took over the student's instruction. There was no evidence that the change hindered the student's progress. The parent alleged that the district failed to conduct a diligent search for a master's level S/L pathologist, the lack of which denied FAPE to the student. The district did try to find such a staff member and testified to the shortage of such professionals.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The student's individual education plan (IEP) was constructed to confer educational benefit to the student. The adequacy of the student's educational program was not disputed. The parent's only contention was that, because the professional providing S/L services did not hold a master's degree, the student had been denied a FAPE. The law did not support this argument. District policy required a master's degree; federal and state

regulations did not.

ORDER: The district did not deny FAPE and the student was not entitled to compensatory education.

Broward County School Board
Case No. 01-1848E
Initiated by Parent
Hearing Officer: Claude B. Arrington
Date of Final Order: March 31, 2003

ISSUES: Whether the district violated procedural safeguards by failing to identify the student as eligible for exceptional student education (ESE) services within a reasonable period of time; by failing to implement the individual educational plan (IEP) in a timely manner and if the student was entitled to relief; and, whether the student's parents were entitled to reimbursement for private school placement.

FINDINGS OF FACT: The student sustained a closed head injury in a car accident and began receiving ESE services slightly more than two years later. One year later, the parents withdrew the student and home schooled, and then placed the student in a private school. Prior to the accident the student's behavior was consistent with attention deficit hyperactivity disorder (ADHD). The parent requested that the student be evaluated for ESE services and was given the required documentation, along with procedural safeguards. The parent twice completed the documentation but each time did not include a medical evaluation. School staff left multiple messages on the parent's answering machine, received no response, and then closed the case. Finally, the parent completed all required documentation and the evaluation of the student was expedited.

The physician indicated that the student had ADHD and a traumatic brain injury and the student was determined eligible for special programs for students who are S/L impaired, specific learning disabled (SLD) and other health impaired (OHI). An appropriate IEP was developed. The IEP would have provided a free appropriate public education (FAPE) had the student remained enrolled in a public school. However, the student received multiple suspensions at an off campus alternative site for behavior problems, and during one of these suspensions the parents withdrew the student from school. After being home schooled, the student was placed in a private school where grades improved and the inappropriate behavior was under control.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The student was evaluated, determined eligible and provided with an appropriate IEP once all the required documentation had been submitted. Although the student's second ten day suspension to an alternative facility constituted a change in FAPE for disciplinary purposes and, therefore, was a technical violation of procedural safeguards, the student continued to receive all IEP services and the placement did not cause harm to the student. Because the parents withdrew the student, the impact of the second withdrawal

without a manifestation determination could not be determined.

ORDER: The parent's claim for relief was denied.

Broward County School Board

Case No. 03-0413E

Initiated by Parent

Hearing Officer: Patricia Hart Malono

Date of Final Order: April 11, 2003

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

FINDINGS OF FACT: The student had cerebral palsy and spastic diplegia and was therefore orthopedically impaired. When the student arrived in the district from another state, the student was enrolled in a private school and provided with physical therapy (PT) by the district as a related service. Services were provided this way for approximately one and one-half years, when an individual education plan (IEP) meeting was held, it was determined that the district would no longer provide PT as a related service. The parents requested a due process hearing and mediation ensued. The district was to conduct a meeting to reevaluate the student to determine any eligible special needs and to schedule an IEP meeting prior to the coming school year. The IEP included a provision to provide assistive technology should the student enroll in public school. PT was not included in that IEP. The district agreed to provide the parents with a list of physical therapists who could evaluate the student at district expense. The student then enrolled in a district school for seventh grade. The district did not review the PT evaluation until the following school year. The parents expressed concerns about the student's muscle tone and the IEP contained the same information. The parents provided a prescription for PT and a reevaluation was conducted. The evaluator documented no deficits using a functional assessment and did not recommend eligibility for PT. At a subsequent meeting it was explained that eligibility was based on the need for services to access special education services and could not take the place of private therapy. The parents provided private physical therapy and worked with the student themselves. The evidence did not support the district's contention that the student did not meet eligibility criteria for physical therapy. Evidence showed that people with the student's disability do not improve without intervention and it could be reasonably inferred that he would need physical therapy to maintain the student's current level of functioning.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The district consistently found the student eligible for special programs for students with orthopedic impairments. Inherent in that classification was the implication that the impairment significantly limits the student's ability to function physically in the school environment. The parents provided private therapy which enabled the student to access education. Had the student not received that, the student would not have been able to benefit from education. The district failed to prove that the student did not require physical therapy

to access education.

ORDER: The district was ordered to promptly reevaluate the student for eligibility and need for PT, taking into account the provision of therapy provided at the parents' expense.

Broward County School Board
Case No. 03-0621E
Initiated by Parent
Hearing Officer: Florence Snyder Rivas
Date of Final Order: May 27, 2003

ISSUE: Whether the district unlawfully determined that the student did not meet exemption criteria for the Florida Comprehensive Assessment Test (FCAT).

FINDINGS OF FACT: The student was had speech and language (S/L) impairments and was incorrectly evaluated and placed as a student with an educable mental handicap (EMH) in a sending district. In the present school district, the student was reevaluated, determined to have S/L impairments and a specific learning disability (SLD) and placed in a classroom for such students, where the student made significant academic progress. The student's individual education plan (IEP) team did not determine the student exempt from the FCAT because the student did not have a cognitive impairment which would cause an exception. The second possible exemption was more subjective and the student did not meet these criteria either. The parent claimed not to have received sufficient notice of the FCAT requirement and in fact did not learn of the situation until January. However, there was no evidence to indicate the oversight had been deliberate, nor was the district required by law to provide any notice other than the determination at an IEP meeting. Although the IEP team agreed that taking the test would not benefit the student, there were no legal grounds to exempt the student. The parent kept the student out of school during the testing.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The IEP team's inclusion of the FCAT in the student's IEP was a correct interpretation of the law. The district did not intentionally provide late notification to the family, nor was such notice required. The parent failed to offer evidence that taking the test would be detrimental to the student. The FCAT had already been administered at the time of the hearing and a favorable ruling would not benefit any of the parties.

ORDER: The student did not meet exemption criteria and the IEP team appropriately determined that the student was required by law to sit for the examination.

Broward County School Board
Case No. 02-4778E
Initiated by District
Case No. 03-0206E
Initiated by Parent
Hearing Officer: Florence Snyder Rivas
Date of Final Order: June 2, 2003

ISSUE: Whether the comprehensive evaluation ordered by the student's individual education plan (IEP) should include evaluation of intellectual functioning.

FINDINGS OF FACT: The student had Down syndrome and was placed in a regular education kindergarten class. Behavior problems precluded progress toward the student's IEP goals and an IEP team meeting was convened. The district proposed a comprehensive educational evaluation. The parents agreed, with the exception of intelligence quotient (IQ) testing, believing that results of such an evaluation would remove the student from the general education setting and result in substandard education. A psychologist who worked with the student's behavior therapist stated that the student's behavior problems would prevent effective testing, and that medication would alleviate the behavior problems. However, he believed that this would be a further reason not to evaluate the student's IQ. If authorized, a licensed and qualified school psychologist would conduct the evaluation for the purpose of obtaining information about the student and would choose evaluation instruments appropriate to the student. At the time of the writing of the report, two months following the hearing, there was no evidence that medication had been tried with the student.

CONCLUSIONS OF LAW: The Division of Administrative Hearings (DOAH) had jurisdiction over the parties and subject matter in this case. The district has the responsibility to evaluate an exceptional student in order to provide appropriate education, and the district attempted to do so. The parents' concerns about the outcome are not sufficient reason not to conduct the evaluation. Procedural safeguards provide sufficient protection. The Administrative Law Judge (ALJ) retained the right to jurisdiction over the case because litigation had continued for twelve months without enhancing the student's education.

ORDER: The district was ordered to expeditiously conduct a comprehensive evaluation to include an appropriate IQ test and to consider the results at an IEP meeting as soon as lawfully possible afterwards. Parties were ordered to inform DOAH of the outcome and the plans for the student's first grade year, as well as earliest possible dates they would be available for a hearing, should another hearing become necessary.

Clay County School Board
Case No. 03-1306E
Initiated by Parent
Hearing Officer: Don W. Davis
Date of Final Order: June 2, 2003

ISSUE: Whether the student's individual education plan (IEP) provided the student a free appropriate public education (FAPE) in the least restrictive environment.

FINDINGS OF FACT: The student was eleven years old at the time of the hearing and was eligible for services as a student with a specific learning disability (SLD), language impairment (LI), and emotional handicap (EH). The student was served in a varying exceptionalities (VE) program. The student had a history of behavior problems and had difficulty following school rules. In addition, the student was a danger to self and others within the classroom. An IEP team met and determined that a self-contained class for students with EH would be more appropriate for the student and could provide services the student needed. It was determined to be the most appropriate placement for the student at the time.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. There were no procedural violations and the IEP was designed to convey educational benefit to the student.

ORDER: The parents' claims were denied.

Columbia County School Board
Case No. 03-1648E
Initiated by Parent
Hearing Officer: Suzanne F. Hood
Date of Final Order: June 16, 2003

ISSUE: Whether the administrative law judge (ALJ) had the authority in a due process hearing to order the district to purge the student's exceptional student education (ESE) records.

FINDINGS OF FACT: The parties agreed that the student's participation in ESE be terminated. Issues of independent educational evaluations and access to records were moot. The only dispute was whether the ALJ could order the district to purge the student's ESE records from the file.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. There were no state or federal regulations which granted such authority to an ALJ.

ORDER: The request for purging ESE records could not be resolved by an ALJ.

Duval County School Board
Case Nos. 02-4767E, and 02-4768E
Initiated by Parent
Hearing Officer: Don W. Davis
Date of Final Order: April 3, 2003

ISSUE: Whether the students were receiving a free appropriate public education (FAPE).

FINDINGS OF FACT: Both students were receiving services through the district's gifted program. While enrolled, the district's education plan (EP) format changed, as did the state's requirements for teachers of gifted students. Both students demonstrated difficulty with organizational skills. However, the students both consistently refused to complete assignments. Staff asked the parents to encourage the students to complete assignments but their help was not forthcoming. Budgetary shortfalls at the middle school the students attended resulted in fewer teachers for gifted students.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. State regulations do not require a specific number of gifted classes or a specific amount of time students are to receive services. The students' EPs complied with state law. Reduction of staff did not violate that law.

ORDER: The parent's claims were denied.

Duval County School Board
Case No. 03-1132E
Initiated by Parent
Hearing Officer: Suzanne F. Hood
Date of Final Order: June 24, 2003

ISSUES: Whether the district properly identified the student's disability; whether the student's individual education plan (IEP) provided appropriate services including counseling and remediation; whether the district should have enrolled the student in a technical school; and, whether the district refused to provide an independent educational evaluation (IEE).

FINDINGS OF FACT: The student was in high school at the time of the hearing and transferred to the district already identified as having language impairment (LI) and emotional handicap (EH) and enrolled in a district middle school. A reevaluation was conducted and an IEP developed. During middle school the parent transferred the student between two district middle schools three times, withdrew the student from school, enrolled the student in a private school and home schooled. Because of very excessive truancy, the student was not promoted in the district schools or in the private school. The district attempted to conduct reevaluations of the student but the excessive absences precluded the required activities. The student attempted to enroll in a district high school but could not prove that the student had completed the eighth

grade. The student then enrolled in a district vocational school but still could not provide proof of completion of eighth grade. The student attended provisionally until it was determined that the ninth grade was an appropriate placement. An IEP was developed and consent given for a re-evaluation. It was determined that the student no longer needed language therapy and had attention deficit hyperactivity disorder (ADHD) which had been an earlier diagnosis as well, instead of an emotional handicap (EH).

The student was to participate in an outside psychological evaluation for a non-educational reason. The parent would not tell the district what evaluations the private evaluator was using, nor would the parent share information received by the evaluator. The district's evaluation could not continue because duplication of evaluations so close together could invalidate results. Subsequent attempts to develop a transition IEP for the student failed as communication broke down. The student did well in school when attended, which was not consistent. The student's main problem appeared to be truancy.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The student was no longer eligible for services for language impaired (LI) and the new IEP needed to reflect that. The district attempted to conduct triennial reevaluations; however, the student's truancy thwarted the efforts. However, the process should have been started as soon as the student enrolled at the vocational school. Neither the delay in initiating the reevaluation nor the failure to properly label the student resulted in the denial of FAPE. There was no evidence that the student needed counseling or remedial services to receive FAPE. The student claimed not to like the ESE label so did not attend school but there was no evidence presented that the student would attend school more with no label. No evidence was offered that the student's then current IEP was inadequate. The parent did not request an IEE after requesting a due process hearing. The district's reevaluation was adequate and there was no evidence that student needed further evaluation.

ORDER: The district was providing a FAPE to the student.

Highlands County School Board
Case Nos. 02-3627E and 03-0323E
Initiated by Parent
Hearing Officer: T. Kent Wetherell, II
Date of Final Order: April 4, 2003

ISSUES: Whether the district complied with orders of two previous due process hearings; whether functional physical therapy (PT) and occupational therapy (OT) evaluations were appropriate or whether the student was entitled to independent evaluations at public expense; and, whether the district acted in bad faith in its dealings with the student in these matters.

FINDINGS OF FACT: At the time of the hearing the student was four years old and would be turning five and attending a district kindergarten. The student moved from another state with an

individual education plan (IEP), having been classified as developmentally delayed and having learning disabilities. The district “declassified” the student, the parent objected, and two due process hearings were held. The district was ordered to pay for a specified number of occupational therapy (OT), physical therapy (PT), and speech therapy sessions for the student by a designated provider. The district complied. When the term of the therapies expired, the parent requested an evaluation to determine the student eligible for exceptional student education (ESE) services, which was processed as an initial evaluation rather than a reevaluation. The parent requested very specific evaluations. Following the evaluations, the parent challenged the results of the occupational and physical therapy evaluations because they were functional rather than norm-referenced. The evaluations were conducted in an educational setting. Considerations for Educationally Relevant Therapy (CERT) forms were completed and concluded that the student had no deficits relevant to the educational setting. The reports did not address age appropriate behavior. The evaluations were done in the prekindergarten classroom and, therefore, provided no information about how the student would function in a kindergarten classroom. There was a misunderstanding between the parent and the district as to whether a prescription was required prior to a physical therapy evaluation and whether one was present in the student’s file.

The parent sent sixteen letters to the district in a three week period. District staff responded verbally because of the volume of the letters and because once a draft was prepared another letter was received. District staff then began sending acknowledgment of receipt letters, which satisfied the parent. The parent also stated that the district was responsible for co-payments made by the parent for services the district was ordered to pay. However, the district had never been made aware of the co-payments and the parent did not supply evidence that they had paid them.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. Florida regulations require that a student being evaluated for suspected developmental delay use standardized instruments, among other evaluation measures. The parent disagreed with the district’s evaluation as appropriate and, therefore, had a right to an independent educational evaluation (IEE) at public expense. Neither evaluator knew that the purpose of the evaluations were to determine eligibility for services, so were not appropriate for that purpose. The district complied with the earlier due process hearing orders, paid the bills for services when presented, and attempted to accommodate the parent.

ORDER: The parent was entitled to an IEE for occupational and physical therapies, at district expense, to include norm referenced as well as functional full day kindergarten assessments. The district was to provide or reimburse the parent for transportation to the evaluations. All other claims were dismissed.

Lee County School Board
Case No. 03-0525E
Initiated by Parent
Hearing Officer: Carolyn S. Holifield
Date of Final Order: June 3, 2003

ISSUES: Whether the district was required to pay for an independent educational evaluation (IEE) conducted privately unilaterally determined by the parent; whether the district denied the student a free appropriate public education (FAPE) by facility to provide extended school year (ESY) services; whether the district must reimburse the parent for unilaterally placing the student in a private therapy setting; and, whether the district failed to notice the parent in writing of its refusal to provide ESY services and for not allowing a specified evaluator to provide an IEE.

FINDINGS OF FACT: The student was determined eligible and received services as a student with developmental delays until this designation was no longer age appropriate. Evaluations conducted by the district appeared to indicate the student would be eligible for a program for students who were educable mentally handicapped (EMH). The parent objected to this and believed the student to be autistic, which is why an IEE was requested. The district provided the parent with three names of evaluators for the S/L evaluations and one evaluator for the psychological evaluation. The parent rejected all the evaluators and requested a specific evaluator for the S/L evaluation who already knew the student. The district agreed, the evaluation was performed, and the district paid the evaluator. The parent requested that a specific psychologist evaluate the student, believing this professional's evaluation would show the student to be autistic. An individual education plan (IEP) meeting was held and the parent objected to the EMH classification as well as many goals and objectives on the IEP. Although ESY services were recommended by the IEP team, they were only to go into effect if an IEP was finalized. The parent preferred not to finalize an IEP until the IEE was completed.

The parent requested the preferred evaluator and objected to the proposed IEP in writing. Another IEP meeting was convened with the same results. The parent declined ESY services then wrote multiple letters to the district requesting a timely response, an emergency IEP meeting, and provision of ESY services. The parent also requested a written explanation of why the district did not allow the preferred evaluator to conduct the psychological evaluations. An emergency IEP meeting during the summer was held, after which the parent unilaterally placed the student in a private program for students with autism. The district was billed for services which included a portion of the regular school year, during which the parent did not send the student to the district school but rather to the private program. After many exchanges, the parent unilaterally had the desired evaluator conduct specified evaluations, for which the district was billed. The district considered this evaluation at a subsequent IEP meeting.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The parent has the right to an IEE if they disagree with the district's evaluation. The district may request a due process hearing to show that their evaluation was correct. The district provided the parent a list of evaluators which included only one evaluator for the psychoeducational evaluation. The parent chose an evaluator unilaterally

who was qualified to conduct appropriate evaluations and who did so appropriately. The district stated that the IEE should have been conducted in a school setting; however, this was not a valid requirement because it would unduly limit to professionals willing to go to a school to conduct an evaluation. The district did not fail to provide ESY services; the parent failed to avail themselves of the services offered. The parent did not make a good faith effort to develop an IEP. The parent was not entitled to reimbursement for private therapy over the summer because they did not provide a description of the program or what actual therapy services were provided, but only sent invoices to the district. Failure to provide an exhaustive list of possible evaluators did not deny FAPE the student. Nor was the district required to provide written notice of refusal to provide ESY services, as the district did not deny those services but rather repeatedly attempted to arrange to provide them.

ORDER: The district was ordered to pay for the IEE provided by the parent's preferred evaluator. The parent's request for reimbursement for private therapy was denied.

Leon County School Board

Case No. 02-4428E

Initiated by Parent

Hearing Officer: Stephen F. Dean

Date of Final Order: January 29, 2003

ISSUES: Whether the district denied a free appropriate public education (FAPE) to the student by refusing to provide summer school, failing to provide adequate transportation, failing to provide adequate education while the student was incarcerated, failing to provide supplementary aides and services requested by the parent, failing to provide the least restrictive environment, failing to fund inpatient treatment for the student; whether procedural violations occurred; whether the student's rights were violated when the school issued a trespass warning against the student; and, whether the district's failure to provide self-paced curriculum resulted in the student's suspension for conduct that was a manifestation of his disability.

FINDINGS OF FACT: While in middle school, the student attended a special school for students with emotional and behavioral disabilities in which the student had success. Because of juvenile offenses, the student was committed to a wilderness program. Upon completion, the student was placed in a district high school. The student was diagnosed as having post traumatic stress disorder (PTSD). The student was again arrested and the parent asked the court to remand the student to "an appropriate residential trauma treatment" to be paid for by the district. An individual education plan (IEP) meeting was held at which the parent requested extended school year (ESY) services. The team considered this appropriately, decided against it, and properly noticed the parent. There was no evidence that the student needed the service, or that the parent provided it privately.

During the school year in question, seventh period was optional, with no exceptional student education (ESE) classes offered during that period. Any student at the school who did not choose

to attend this period was required to provide their own transportation. At an IEP meeting, it was determined that the elective the student wanted was not necessary to provide FAPE, or as a credit toward graduation, and special transportation was denied in writing. Financial relief was sought but the parent did not prove that they incurred transportation expenses. The student's grade deteriorated and the student slept in class. The parent requested a personal aide but did not request an IEP meeting. A conference was held and the student and staff rejected a personal aide.

The student was arrested and incarcerated. An IEP was developed for the detention center which was comparable to the IEP from the student's regular high school. Notice was appropriate and the parent attended the meeting. The student was educated by certified teachers and made academic progress. Upon release, an IEP meeting was held and placements discussed. A letter from the student's counselor was presented recommending inpatient treatment but included no evaluation data. The team decided to return the student to the special school in which the student had been successful while in middle school. Staff there had experience and training in dealing with students with PTSD. The student's counselor, and a counselor from a drug treatment program the student attended, both testified that the student needed inpatient treatment; however, no written documentation had been provided prior to the hearing. District staff believed the student could succeed at the proposed district placement. An appropriate IEP was developed and proper procedures were followed. However, a judge ordered the student to return to his regular high school. There was no evidence that the student was given a trespass warning. The student remained at the school and near the end of the school year struck another student and was suspended.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The proposed treatment was a medical and not an educational placement. There was no evidence of procedural violations. The district was not required to maximize the student's potential, and the IEPs written for the student conferred educational benefit. The district demonstrated that the special school would be an appropriate placement for the student. The student wanted to attend the school and had turned eighteen by the time of the hearing. The student had the right to reject inpatient treatment. Such a placement would not be the least restrictive environment for the student. The district was not required to provide transportation for the seventh period elective class for the student because it was not required for the student to benefit from special education. The student was not denied FAPE while in juvenile detention and was not entitled to a manifestation hearing because suspensions for the school year totaled only eight days, not the required ten. There was no evidence of denial of FAPE on any of the issues.

ORDER: The district was not required to provide compensatory education or pay for inpatient treatment.

Miami-Dade County School Board
Case No. 02-2494E
Initiated by Parent
Hearing Officer: Errol H. Powell
Date of Final Order: January 28, 2003

ISSUE: Whether the district failed to provide a free appropriate public education (FAPE) by failing to follow the student's individual education plan (IEP) by failing to provide designated services, transportation, and technology.

FINDINGS OF FACT: The student was evaluated for eligibility for exceptional student education (ESE) programs while being retained in first grade. The student was determined eligible for special programs for students with specific learning disabilities (SLD). When reevaluated in the third grade, it was determined that the student's primary problems were emotional and, though the student's eligibility was not changed, the student was placed in a program for students with emotional handicaps (EH), which continued into middle school. The student's parent requested specific assistive technology devices to help the student and, although they were not included on the student's IEP, the student was permitted to use the devices. The student changed schools in seventh grade. The instruction in this class included reading instruction daily and the student was reported to be making progress academically and behaviorally.

At the student's request, the student was mainstreamed for art when the IEP was reviewed, and the parent requested tutoring. The assistant principal stated that they would arrange for bus transportation because the student was not attending the zoned school. The IEP team agreed to meet in one month to ensure that all services were in place. At the parent's request, the student was given an additional assistive device for home use. An initial miscommunication about bus transportation was resolved; however, the mother refused to allow the student to stay for tutoring.

The student's parent expressed concern about the student's academic progress. Testing showed that the student's verbal scores were declining. However, it was determined that the student's achievement were appropriate for the student's level of intellectual functioning. Testing further revealed that emotional and behavioral issues were impacting the student's ability to achieve. The student's learning disabilities, while not sufficient to qualify the student for that special program, were being addressed by the student's teacher. A private evaluation revealed comparable results. At the IEP meeting which followed the reevaluation, the assistive devices were added to the IEP. The student's IEPs were reasonably calculated to confer educational benefit to the student.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The Individuals with Disabilities Education Act (IDEA) does not require that a district maximize a student's potential. The student's IEPs met the requirement of conferring educational benefit.

ORDER: The district provided FAPE and the current IEP was appropriate.

Miami-Dade County School Board
Case No. 02-4721E
Initiated by Parent
Hearing Officer: Robert E. Meale
Date of Final Order: April 18, 2003

ISSUES: Whether the parent proved that the district's implementation of an earlier individual education plan (IEP) provided the student with a free appropriate public education (FAPE) and whether the district proved that the later IEP provided a FAPE.

FINDINGS OF FACT: The student had significant developmental delays in all areas. Initial psychological evaluations indicated autism; later evaluations did not. At age eight evaluations showed the student to be functioning at the trainable mentally handicapped (TMH) level and was placed in a classroom for such students. At age eleven, evaluations again indicated mild to moderate autism. While in the TMH class in elementary school, the student's behavior improved markedly. The student's parent stated that the student's time in a mainstream after school program caused the success. The parent requested more inclusion.

Despite the reservations of some IEP team members, the student was placed in a general education class with exceptional student education supports and a one-on-one aide for fifth grade. The student's IEP outlined the student's present levels of functioning and included seven priority educational needs. Much of the IEP focused on communication needs. The parent did not challenge the IEP but the district's failure to implement it. A subsequent IEP was written which would place the student in a more restrictive setting. Many testified that the student did not receive significant educational benefit from the year in which the student was mainstreamed. The student was disruptive and self-injurious. The functional behavioral assessment indicated triggers for the student's behaviors and a behavior intervention plan (BIP) outlined interventions. The parent alleged that the district did not train staff to implement the BIP; however, documentation showed that much training had been provided. The student became very physically aggressive. An IEP meeting was held but the student's parent and advocate left prior to completion. The team proposed placement in a self-contained class for autistic students at a middle school, so the student would not have multiple transitions and could remain in that class during the next school year. The new IEP contained meaningful goals and benchmarks for the student. The district failed to incorporate the BIP into the new IEP.

The earlier IEP failed to provide a FAPE because the mainstream setting did not allow the student to obtain academic, behavioral or social benefit. The later IEP failed to provide a FAPE solely because the BIP was not incorporated into it. The parent refused the self-contained placement and returned the student to the mainstream setting; however, the student attacked two other students. The parent enrolled the student in a private school, but was asked to leave in three weeks. At the time of the hearing the student was not enrolled in any school.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The student did not receive a FAPE with the first IEP, not because of the IEP itself, but because the setting did not allow the student to receive educational

benefit. Because it did not include the BIP, the later IEP also did not provide a FAPE because the student's behavior was the major deterrent to academic progress.

ORDER: The parent's request for implementation of the earlier IEP was denied. The district's request for implementation of the later IEP was denied unless the district incorporated a meaningful BIP into the IEP.

Miami-Dade County School Board

Case No. 02-0484E

Initiated by Parents

Hearing Officer: Stuart M. Lerner

Date of Final Order: June 25, 2003

ISSUE: Whether the district failed to offer the student a free appropriate public education (FAPE) when it refused to provide the student with audio-verbal therapy and, if so, what relief would be required.

FINDINGS OF FACT: The student was diagnosed as having a profound bilateral hearing loss prior to turning one year old and was fitted with hearing aids. The parents decided they wanted the student to be educated to speak rather than use sign language. At nine months old, the student began receiving auditory-verbal therapy (AVT) therapy from a certified therapist. The student received a cochlear implant which an AVT surgeon endorsed. The student was enrolled in a private preschool. Until age three, the student's therapy was paid for by the county's early intervention program.

Prior to the student's third birthday, the parents provided the district with reports of recent private evaluations and requested further evaluation by the district. Extensive evaluation revealed at least an average IQ with language delays secondary to hearing impairment, with needs in the areas of fine motor skills and visual motor integration. The student was determined eligible for special programs for students who are hearing impaired, language impaired, and have specific learning disabilities. The parents wanted the student to continue in the private preschool, which was free, and for the district to pay for the student's ATV. The district adhered to the verbotonal approach, and offered placement in a preschool class using this approach as well as other placement options. There was no mainstream program for nondisabled three year-olds operated by the district at that time. The parents rejected these placements. Finally, they agreed to have the student receive speech and language instruction on a walk-in basis at a local elementary school. An individual educational plan (IEP) was written to reflect this agreement. However, the parents never brought the student to the school for the services and disagreed with the approach.

Mediation was conducted but the parents did not follow through and initiated a due process hearing because they wanted only the current private placement and AVT for the student. The IEP written earlier expired and the parents did meet and write a successor IEP. An IEP was written that included accommodations and provisions for the student's cochlear implant and for the

student's speech and language needs, including instruction in the verbotonal method. However, the parents declined and continued the student in private programs. Throughout the hearing process, the student was not of mandatory school age and was never enrolled in a district school or program.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The student was appropriately evaluated and an IEP was written which would reasonably calculate to confer educational benefit to the student. Financial considerations did not constitute denial of FAPE to the student. The program requested by the parents exceeded the requirements of the Individuals with Disabilities Education Act (IDEA) and a district is not required to create a preschool program to accommodate one student. When a parent waives appropriate educational placements and unilaterally selects a private placement, the parent assumes all financial responsibilities for that placement.

ORDER: The parents' claims were denied.

Palm Beach County School Board

Case No. 02-4402E

Initiated by Parent

Hearing Officer: John G. Van Laningham

Date of Final Order: January 3, 2003

ISSUE: Whether the district denied or threatened to deny the student a free appropriate public education by assigning the student to an alternative education site where the student would continue to receive exceptional education services.

FINDINGS OF FACT: The student was determined eligible for special programs for students with specific learning disabilities and those who have language impairments. The student had had many discipline referrals and documentation showed the student chronically disrupted classes and interfered with the learning of other students. In one case, the student's behavior necessitated involvement of law enforcement. Documentation of the ensuing suspension was discrepant. An individual education plan (IEP) meeting was scheduled and the parent was noticed verbally and in writing of the date, time, and purpose. Although the parent indicated they would attend, but did not. A new IEP was drafted and the student was referred to the alternative education site, which was able to provide the exceptional student education (ESE) services indicated on the IEP. The parent was informed verbally and in writing and attempted to return the student to the regular middle school and was informed of the need to go to the alternative education site. The parent withdrew the student and home schooled because the parent did not approve of the offered alternative site. When the parent invoked the "stay put" provision at the student's regular middle school, the school challenged this placement.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The student was not invited to the IEP meeting held to

review placement. However, the student was not old enough for transition services to be required. Notice provided to the parent, though not ideal, was adequate. The school took reasonable measures to inform and involve the parent both before and after the IEP meeting in question. Placement was determined at the IEP meeting, not prior to it. Since no procedural violations took place, the impact of alleged deficiencies need not be considered. The alternative school was a more restrictive environment; however, the student demonstrated a need for such restrictions. The district did violate the “stay put” provision. The district was required to provide one summer’s worth of summer school to the student.

ORDER: The district neither denied nor threatened to deny FAPE to the student. However, the district did violate the “stay put” provision and was required to provide one summer’s worth of summer school as remedy.

Pinellas County School Board
Case No. 03-0208E
Initiated by District
Hearing Officer: Daniel Manry
Date of Final Order: March 6, 2003

ISSUE: Whether an initial evaluation was appropriate for the student.

FINDINGS OF FACT: The student was in third grade at the time of the hearing and was not making adequate academic progress. Screenings indicated concerns in speech and language. The district attempted to meet the student’s needs without further evaluation and held multiple conferences with the parent. Numerous observations and subsequent interventions were attempted without significant result. The district had special programs and procedures in place containing mandatory requirements for an initial evaluation. The student, faced with repeated failure, was giving up. The student’s parent repeatedly refused to provide consent for the district to conduct an evaluation.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The district complied with the requirements of the Individuals with Disabilities Education Act (IDEA) in identification, screening and pre-referral activities, and had written policies to address mandatory evaluations.

ORDER: The district was ordered to conduct an appropriate evaluation of the student.

Polk County School Board
Case No. 03-1727E
Initiated by Parent
Hearing Officer: Daniel Manry
Date of Final Order: June 4, 2003

ISSUE: Whether the student's individual education plan (IEP) provided the student with a free appropriate public education (FAPE).

FINDINGS OF FACT: The parent objected to an earlier IEP as well as the current IEP, claiming to have had no input into its development or implementation. The current IEP was not implemented and, therefore, there was insufficient evidence to determine if the IEP provided a FAPE. The parent sought to establish that the student and the parent were entitled to damages because of the current IEP.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties in this case but not the subject matter. The ALJ had no jurisdiction to determine if the student was entitled to damages.

ORDER: The hearing was dismissed for lack of jurisdiction of subject matter.