

Summaries of Due Process Hearings

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



**July–December
2002**

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”].

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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 2002. 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.

Miami-Dade County School Board

Case No. 02-2286E

Initiated by Parents

Hearing Officer: John G. Van Laningham

Date of Final Order: August 14, 2002

ISSUES: Whether the student was eligible for exceptional student education (ESE) services in a district program for students who are gifted in accordance with State Board of Education Rules.

FINDINGS OF FACT: In [specific date] 2002, the student was referred to be evaluated for eligibility for the district's gifted program. The parents had requested in writing that the student be evaluated for the program in [specific date] 2002. The Florida Administrative Code set forth two sets of criteria for eligibility for gifted programs, Plan A and Plan B. Plan B was amended and the revised rule took effect on [specific date], 2002, just two days before the end of the final hearing in this case. During the course of meetings to examine and consider evaluations to determine eligibility, the parents contended that the student, being Hispanic, could have been considered for gifted placement under the previous Plan B. However, the revised Plan B was in effect when this case was settled, and under the new Plan B, racial/ethnic background was no longer a category for eligibility.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. Since the student was clearly ineligible for a gifted program under either Plan A or the revised Plan B, the only legal question warranting discussion was whether, as the parents contended, Plan B as it existed prior to [specific date] 2002, was applicable for the purpose of determining eligibility.

The revised Plan B contained no language mandating retroactive application, and the amended rule could not be described as a mere clarification of pre-existing eligibility criteria. Therefore, the revised Plan B could not be applied retroactively unless it was exempt from the general rule against retroactive application for some reason. The revised Plan B did not create new rights, impose new legal burdens, or take away vested rights; accordingly, because the revised rule was a current version of a remedial rule, it was appropriate to apply the new rule here rather than the old Plan B, which was in effect when this case was first filed.

ORDER: The student was ineligible for ESE services in the district's gifted program.

Palm Beach County School Board
Case No. 02-3246E
Initiated by Parents
Hearing Officer: Florence Snyder Rivas
Date of Final Order: November 27, 2002

ISSUES: Whether the district provided the student with a free appropriate public education (FAPE) in the least restrictive environment (LRE) and whether the district should be required to place the student in a residential program.

FINDINGS OF FACT: The student, experienced poor peer relations and medical, behavioral, emotional, and academic problems from an early age. In middle school, the student was determined eligible for exceptional student education (ESE) services as a student with emotional handicaps (EH) and placed in a varying exceptionalities (VE) class. When the VE class was not meeting the student's needs, the student was placed in a full-time EH program.

On [specific date] 2002, a new individual educational plan (IEP) was developed and the student was determined to be eligible for ESE services as a student with severe emotional disturbance (SED). On [specific date] 2002, the parents reluctantly agreed to send the student to a district school for SED students. They viewed the SED classification as prejudicial, and felt the student's behavioral problems were due to the fact that the student had Tourette's syndrome. They asserted that the student had not been provided with FAPE because the student's teachers were not trained to educate children with Tourette's. No competent evidence was presented to support this assertion.

At all times material to this case, the parents and the school administration did not have a healthy working relationship. While the parent was a tireless advocate for the student, school staff resented the contention that the student was inappropriately handled, especially in regard to discipline. School staff also felt frustrated that the parents did not avail themselves of auxiliary services offered at the school, such as family counseling. The district felt that family participation in such programs was an important element of the therapeutic environment at the school.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. It was undisputed that the student's disabilities entitled the student to FAPE pursuant to the Individuals with Disabilities Education Act (IDEA) and relevant state law. The parents had the burden of proving that the district violated IDEA and that they were entitled to the remedies sought. They failed to carry this burden.

The evidence established that the student had been provided with an IEP which was reasonably calculated to provide educational benefit to the student and which could be implemented at a district school, specifically at the school the student was attending. Evidence presented by both sides suggested that the student would be better able to access FAPE if the parents and school administrators put aside past differences and focused on presenting a united front. While IDEA encourages meaningful communication between home and school, the inability of parents and school staff to respect one another does not provide legal grounds to relocate a student who is receiving FAPE in a local school to an out-of-state residential school.

ORDER: The district was providing the student with FAPE in the least restrictive environment, and the petition for residential placement was dismissed.

St. Lucie County School Board
Case No. 02-2504E
Initiated by Parent
Hearing Officer: Claude B. Arrington
Date of Final Order: July 11, 2002

ISSUE: Whether changing the delivery location for the student's twenty-day extended school year (ESY) services substantially or materially altered the student's individual educational plan (IEP) and therefore constituted a change in educational placement.

FINDINGS OF FACT: The student, diagnosed with moderate mental disabilities, was scheduled to receive ESY services at a particular school during the summer of 2002. Due to structural problems at the school, the district closed the school during the summer in order to make necessary repairs. The student was reassigned to another district school for ESY services. After attending school for only four of the scheduled twenty days, the student was removed from the school by the parent, who then initiated this hearing.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. Moving the physical location for a program or service does not constitute a change in educational placement unless the move substantially or materially alters the student's educational program.

ORDER: The parent's request was denied.