

Summaries of Due Process Hearings

in Exceptional Student Education

conducted by
the Division of Administrative Hearings



January–June
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; email: 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

| District | Page |
|--------------------------------------|-------------|
| Bay County School Board | 3 |
| Flagler County School Board | 4 |
| Miami-Dade County School Board | 6 |
| Palm Beach County School Board | 11 |

Summaries of Due Process Hearings

Following are summaries of due process hearings conducted by the Division of Administrative Hearings (DOAH), Florida Department of Administration, from January through June 2002. Final Orders were issued after the hearings and copies provided to the Bureau of Exceptional Education and Student Services. Complete copies of the Orders are available from the bureau.

These summaries are for informational purposes and are not intended to provide legal advice or assistance. Please refer questions to Conflict Resolution Unit, Bureau of Exceptional Education and Student Services, 614 Turlington Building, Tallahassee, Florida 32399-0400; (850) 245-0475; Suncom 205-0475; or via electronic mail at eileen.amy@fldoe.org.

The heading of each summary lists 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.

* * *

Bay County School Board
Case No. 02-1752E
Initiated by Parent
Hearing Officer: Diane Cleavinger
Date of Final Order: June 26, 2002

ISSUES: Whether the district provided the student with a free appropriate public education (FAPE) and whether discipline under specific circumstances was appropriate.

FINDINGS OF FACT: The student was 14 years old and in the eighth grade at the time of the hearing. He was receiving exceptional student education services for students identified as emotionally handicapped and as having specific learning disabilities. Between May and November 2001 the student was referred for discipline about 14 times. Each time, a meeting was held to determine whether the behavior was a manifestation of the student's disabilities. In all instances, the behavior was found to be related to his disabilities because it was spontaneous and not planned or well thought out.

Sometime in late March or early April 2002, the student called in three bomb threats to the school and one to a local boys club over a five-day period. A manifestation meeting was held on April 4, 2002. The parent was invited but did not attend. The committee determined that the behavior was not a manifestation of the student's disabilities and that his individual educational plan (IEP) was appropriate. He was arrested and charged with several counts of making bomb threats. He confessed and was sentenced to secure supervision by the Department of Juvenile Justice for 36 months.

The student was also suspended from school, with eventual expulsion proposed. At the time of the hearing, the district had not expelled the student and had continued to provide him with an IEP while he was incarcerated.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter of this case. Federal law mandates that a district convene a conduct review no later than 10 days after the date a disciplinary decision was made in order to determine whether the student's actions were a manifestation of his or her disability. If the conduct was not a manifestation of the disability, then the student may be disciplined in the same way as any other student.

At the manifestation determination hearing, the committee reasonably concluded that the student's IEP was satisfactory and the conduct that led to his discipline was not a manifestation of his disabilities. The hearing concerning the student's bomb threats was conducted properly and in a timely manner, with adequate notice to the parent. Further, the student was being provided with FAPE.

ORDER: The district discipline of the student was appropriate and FAPE was being provided.

* * *

Flagler County School Board

Case No. 01-4542E

Initiated by Parents

Hearing Officer: Stephen F. Dean

Date of Final Order: February 4, 2002

ISSUES: Whether the district was providing the student with a free appropriate public education (FAPE), specifically in relation to an individual educational plan (IEP) developed in May 2001. The parents raised several sub-issues which related to the district's prior provision of educational services to the student: whether the district had performed educational evaluations on the student, whether the district in performing an educational evaluation chose tests and methods that considered the student's disabilities, whether the district in placing the student in an exceptional student education (ESE) classroom considered the student's disabilities, whether the district placed the student in the least restrictive environment, and whether the IEP developed by the district was reasonably calculated to provide the student with FAPE.

FINDINGS OF FACT: The student was 14 years old at the time of the hearing. He had a genetic disorder, Angelman's syndrome, which severely impacted his ability to speak and communicate. He could not speak and used a wheelchair for mobility. When the student first enrolled in the district in 1999, the parents presented an IEP that had been developed while the student was attending a private school in another state. While the IEP was not developed by an ESE staffing team, the district accepted that the student had disabilities and placed the student in regular classes. Teachers noted within the first few weeks of school that there was a discrepancy between the student's abilities reported by the parents and their observations of his abilities in the classroom.

An IEP meeting was held and the student was placed in an ESE classroom for the majority of the school day. The goals stated in the IEP provided by the parents remained the same.

While the district continued to try to find someone able to evaluate the student's academic level, the student remained in the ESE classroom. Several meetings were held during the 1999-2000 school year, but no changes were made to the IEP. The parents filed for a due process hearing in May 2000, and a final hearing was begun in April 2001. The case was dismissed and a new IEP was developed on May 3, 2001.

After numerous meetings, the parents and district continued to disagree about the appropriateness of the student's participation in regular classes. The parents asserted that the student had benefited from participation in regular classes, but provided no objective support for this assertion. When the district tested the student's math skills three times in three separate settings, he performed at the lowest level, well below the levels at which the parents said he was able to perform. The test was administered with due regard for the student's communication challenges.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter of this case. The parents had the burden of proving that the district had not provided the student with FAPE. Regarding procedural issues, the district did not initially test the child, but this did not adversely impact the student. As for the issue of reevaluation, the district did not find anyone or any institution capable of evaluating the child, although the district diligently pursued reevaluation and did not cease to provide services. Regular IEP meetings were held to address the student's needs, and the parent attended these meetings.

The student's program, developed by the school with a temporary IEP and later with the IEP under challenge, was based upon observations of the student's teachers and addressed his most critical needs, including his need to be with peers his own age. He made progress under the IEP toward his nonacademic goals, but the district was unable to engage someone to assess his academic progress. While the student's communication skills were not consistent enough for him to participate meaningfully in academic classes, he needed the opportunity to put into practice the skills he was learning in his communication classes.

Regarding inclusion in regular classes, the Individuals with Disabilities Education Act (IDEA) addresses inclusion in the context of whether placement in a regular classroom will result in any potential harmful effect on the child or on the quality of the services the student receives. A district is not required to include a student with disabilities in a regular classroom if the student will not receive a sufficient educational benefit, even with the provision of supplementary aids and services. The district presented evidence that the student was not receiving benefit from education in a regular classroom.

The specific matter at issue, the May 2001 IEP, provided for the services necessary to address the student's needs and provided opportunities for the student to interact socially with peers who do not have disabilities. The IEP addressed the goal for the student to communicate with people outside of his family and other than his speech therapist.

ORDER: The issues raised by the parents were without merit, the district substantially complied with the letter and spirit of IDEA, and the district was providing FAPE in the least restrictive environment to the student.

* * *

Miami-Dade County School Board
Case No. 01-3572E
Initiated by Parents
Hearing Officer: Patricia Hart Malono
Date of Final Order: March 28, 2002

ISSUES: Whether the district was providing the student with a free appropriate public education (FAPE) because the student was not placed in a classroom with an appropriate class size and class environment.

FINDINGS OF FACT: The student, who was 13 years old and in the seventh grade at the time of the hearing, was first found eligible for exceptional student education services in 1991 when she was diagnosed with pervasive developmental delay. An individual educational plan (IEP) was developed in March 1993, at which time the student was placed in a district program for students with specific learning disabilities (SLD) and with language impairment (LI).

A meeting was held in May 2000 to develop an IEP and to discuss the student's impending transition to middle school in July 2000. The student's eligibility for SLD and LI services was continued, and the IEP noted that the student needed a "small structured setting allowing for more individualized instruction," as she was easily distracted and required redirection in class. Although classes in middle school ranged from 13 to 25 students, the student made consistent progress in achieving the academic objectives in her IEPs.

In 1999 and 2000 the student was reevaluated by both a private psychologist and a school psychologist. The private psychologist recommended a student-to-teacher ratio of 8:1 in order for the student to succeed academically; the school psychologist disagreed with this recommendation. The parents first made a request for the student to be placed in a classroom with an 8:1 ratio during the 2000-01 school year. The only classes with such a small ratio were not appropriate for the student because of the special needs of the students in the classes.

In requesting a due process hearing, the parents contended that the student be placed in smaller classes and be provided with qualified teachers. The evidence established that the teachers working with the student in middle school were certified to teach students with a variety of special needs and were experienced in teaching such students.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The parents alleged that the district had failed to provide the student with FAPE because she had not made progress in her educational program. They contended that the student would receive FAPE only if she were placed in a classroom with a student-to-teacher ratio of 8:1. Because the parents previously had indicated agreement with the IEP developed in August and September 2001, they had the burden to prove the student had been denied FAPE.

The procedural requirements of the Individuals with Disabilities Education Act (IDEA) are designed to involve a student's parents in the process of determining eligibility for services,

to apprise them of the district's proposal or refusal to evaluate and consider a student for placement, and to permit them to participate in a meaningful way in the development of the student's IEP. The parents did not allege that the district failed to comply with the procedural requirements of IDEA.

Based on the facts of this case, the district satisfied the substantive requirements of IDEA. During the time the student was enrolled in SLD and LI programs, she made meaningful progress in meeting both her academic and communication objectives. The parents failed to prove that the district could provide her with a meaningful educational benefit only if she were placed in a class with an 8:1 student-to-teacher ratio.

While the parents wanted the best possible education for the student in order to maximize her potential to be an independent adult, the district was not required by IDEA to place her in an "ideal" classroom environment in order to provide her with FAPE. Case law has held that parents do not have a right to compel a school district to provide a specific program or use a particular methodology. Further, case law has stated that courts should not examine whether certain methods might produce maximum benefits of a student who has progressed in a district program.

ORDER: The relief requested by the parents was denied.

* * *

Miami-Dade County School Board
Case No. 02-0143E
Initiated by Parent
Hearing Officer: Florence Snyder Rivas
Date of Final Order: March 20, 2002

ISSUES: Whether the student was eligible for exceptional student education (ESE) services as a student with specific learning disabilities (SLD), whether the parent was entitled to reimbursement for a privately obtained psycho-educational evaluation, and whether the student was entitled to what the parent characterized as compensatory services in the form of unspecified private tutoring.

FINDINGS OF FACT: The student was 17 years old and in the twelfth grade at the time of the hearing. She received ESE services in a district SLD program from January 1993 until October 1997, when a staffing team determined she met the criteria for dismissal from ESE. She excelled academically after being dismissed from ESE, taking some honors and advanced classes. In the tenth grade, the student passed the math portion of the Florida Comprehensive Assessment Test, which exempted her from having to take that portion of the High School Comprehensive Test (HSCT), required for graduation. In the eleventh grade, she passed the communications portion of the HSCT.

The first evidence of any dissatisfaction on the part of the student's parent was when she filed a petition for a due process hearing in November 2001. That case was closed 15 days later. The present case was commenced by the parent and an advocate who represented her

and the student. According to the advocate, the district had failed to provide the student with a free appropriate public education (FAPE), in spite of the fact that the student had been dismissed from ESE with the consent of her mother.

After making what her parent alleged were subpar scores on the Scholastic Aptitude Test and other tests for college admission, the parent commissioned an independent psycho-educational evaluation in the fall of 2001. The parent did not request an evaluation by the district, nor did she dispute any previous evaluation performed by the district. Had she requested an evaluation, the request would have been referred to a child study team for review.

While the district was not required to review the evaluation report, a multidisciplinary team met to review the results of the evaluation and to determine if the student was again eligible for ESE services. The team determined that the student continued to meet dismissal criteria for ESE services and that she was performing well in school and accessing the general education curriculum successfully. The district staff in the meeting offered to explore whether the student would qualify for any accommodations pursuant to Section 504 of the Rehabilitation Act of 1973, but the parent instead filed for a due process hearing.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The parent had the burden to prove that the student's placement was inappropriate, but failed to do so. According to Florida law, a parent has the right to an independent evaluation at public expense if the parent disagrees with a district evaluation. In this case, the parent never objected to any district evaluations nor did she request a reevaluation from the district. Therefore, the parent was not entitled to reimbursement for the independent evaluation.

The student was not denied FAPE because she was not eligible for ESE services. Accordingly, the parent was not entitled to any compensatory services, including the private tutoring expenses demanded.

ORDER: The student was not a student with disabilities within the meaning of the Individuals with Disabilities Education Act and was, therefore, ineligible for enrollment in an ESE program. Accordingly, she was not entitled to compensatory education in the form of private tutoring. Further, the parents were not entitled to reimbursement for the psycho-educational evaluation or for private tutoring.

* * *

Miami-Dade County School Board
Case No. 02-0564E
Initiated by Parent
Hearing Officer: J. D. Parrish
Date of Final Order: April 23, 2002

ISSUE: Whether the district failed to provide the student a free appropriate public education (FAPE) and violated procedural safeguards by not determining the student's eligibility for exceptional student education (ESE) services in 1999.

FINDINGS OF FACT: During the 1998-99 school year, while in the first grade and enrolled in English for speakers of other languages classes, the student was evaluated for eligibility for ESE services. The evaluations were completed in March 1999. She was found ineligible, and a recommendation was made to retest her at a later date. In September 2000, the student was tested by an audiologist and found to have a central processing deficit. Strategies were used by the student's teacher to assist the student to participate and make progress in class.

The process of reevaluation began in November 2001 and concluded in January 2002. The student was found to have a discrepancy between her cognitive ability and academic achievement. The discrepancy was sufficient to make the student eligible for services for students with specific learning disabilities. An individual educational plan was developed in March 2002.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The burden of proof in this case fell to the parent to establish that the student was not provided with FAPE. Additionally, the burden of establishing that procedural safeguards were violated rested with the parent. In fact, the student was tested in 1999, with the parent's consent, and the evaluations were performed in a timely manner. Although the student was found ineligible for ESE services, strategies were used to assist the student, who made academic progress.

When the student was reevaluated, the discrepancy was identifiable and ESE eligibility was established. Further, the district did not unreasonably delay the evaluation process. As to the parent's claim that due process rights were violated, evidence established that the district substantially met all due process requirements.

ORDER: The student was not eligible for ESE services prior to March 2002, the district at all times material to the claims of this case had provided the student with FAPE, and the district substantially complied with all due process requirements.

* * *

Miami-Dade School Board

Case No. 02-1485E

Initiated by Student

Hearing Officer: Florence Snyder Rivas

Date of Final Order: May 30, 2002

ISSUES: Whether the student was able to access a free appropriate public education (FAPE) as required by the Individuals with Disabilities Education Act (IDEA) in the school where he was assigned at the time of the hearing and whether an interdistrict school transfer constituted a change of placement.

FINDINGS OF FACT: The student was 18 years old and enrolled in an exceptional student education program at his neighborhood high school, where he attended classes sporadically. At all times material to this case, the student was provided with an individual educa-

tional plan (IEP) that was reasonably calculated to provide educational benefit to him and that could be implemented at his neighborhood school. However, because of the student's lack of a minimal work ethic necessary to succeed, the placement at that school was not in his best interests.

The student had shown that he could succeed in a small and closely supervised environment, but the neighborhood school was a large urban school with numerous distractions, both positive and negative. While the school had done all it could to help the student make good choices about how and where to spend his school day, he spent much of his time in a park adjacent to the school where law enforcement reported there was drug use taking place.

The evidence established that while lethargy and lack of motivation were the student's biggest problems, he had no reluctance to argue with teachers, disrupting his own learning environment and that of his classmates. The school contracted with a job coach to assist the student in filling out applications and arriving at interviews on time. The student sometimes failed to show up for interviews or was dressed inappropriately for others. Based on the student's history of truancy and lack of cooperation with school personnel, the district determined that he was unable to resist the influences of the adjacent park and that he lacked the ability to access FAPE at the neighborhood school.

The district recommended a transfer to a school with a smaller student/teacher ratio and with more security in place. The proposed school would provide a similar academic and life management program as the neighborhood school and could provide all the services in his IEP.

CONCLUSIONS OF LAW: The Division of Administrative Hearings (DOAH) had jurisdiction over the parties and subject matter of this case. The student waived his right to affirmative relief with respect to this due process hearing. The district established that the student was unable to access FAPE at his neighborhood school and that his IEP could be implemented at the proposed school. Educational placement, as defined in the IDEA, refers only to the general educational program in which a student is enrolled. A transfer from one school to another within a school district is not a change of placement. Rather, it is a decision within a district's discretion and does not trigger a student's right to a due process hearing. In other words, so long as the student's IEP remained unchanged, the district was free to move him to any school in the district where the IEP could be implemented.

ORDER: The student waived his request for a due process hearing with respect to the proposed transfer, which was not a change of placement and did not require DOAH approval. However, if DOAH authorization were required, the request for a hearing would be granted because the district demonstrated that the student was unable to access FAPE at his neighborhood school, and his IEP could be implemented at the school proposed by the district. The district was therefore authorized to transfer the student from his neighborhood school to the proposed school.

* * *

Palm Beach County School Board
Case No. 02-0942E
Initiated by Parent
Hearing Officer: John G. Van Laningham
Date of Final Order: April 17, 2002

ISSUE: Whether the parent was entitled to reimbursement for three independent educational evaluations (IEEs).

FINDINGS OF FACT: The student was in the third grade and receiving services in a district program for students with language impairment at the time of the hearing. On May 16, 2000, the parent refused to sign a proposed individual educational plan (IEP) that was developed for the student because she did not believe it addressed what she felt was the student's underlying problem, a central auditory processing (CAP) deficit. A district audiologist attempted to perform a CAP test, but the test equipment malfunctioned. The audiologist suggested she try the test again at the beginning of the 2000-01 school year, but the parent had the student tested by a private audiologist during the summer.

The parent presented the private report to the staffing committee at the student's next IEP meeting in August 2000, and the committee considered the information in the report. The IEP developed resembled the IEP proposed three months earlier. The private evaluation did not suggest a different area of exceptional student education (ESE) eligibility and did not undermine the district's evaluation or otherwise cause a change in ESE instruction or services.

The student's second grade teacher reported in January 2001 that she was having problems getting the student to pay attention in class. The teacher suspected that the student might not be hearing well. The mother said she had been told by district staff that the child's hearing had been tested and found to be normal, so the mother worried that the student might have been suffering from petit mal seizures. She had the student tested for seizure activity in the summer of 2001. The tests, a magnetic resonance imaging and an electroencephalogram, revealed no signs of seizure activity.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. Under Florida law, for a parent to be entitled to be reimbursed for an IEE, the parent must disagree with the district's evaluation, and the district's evaluation must be found inappropriate. The district contended that the parent was not entitled to reimbursement because she failed to notify the district of her disagreement with its evaluation. In fact, the parent did voice dissatisfaction with the district's failure to perform a CAP test before taking the student for an independent evaluation. However, she obtained all of the IEEs without first notifying the district of her intent to do so, depriving the district of opportunities to conduct its own additional evaluations or to initiate due process hearings to determine the appropriateness of the existing evaluations.

ORDER: The parent's request was denied.

* * *



The New Department of
Education

ESE 312496