Florida Department of Education

Summaries of Due Process Hearings

in Exceptional Student Education

conducted by
the Division of Administrative Hearings

July–December
2001

Bureau of Exceptional Education and Student Services

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"].

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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 July through December 2001. 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 for each summary provides 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.

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Broward County School Board
Case No. 99-5001E
Initiated by Parents
Hearing Officer: Patricia Hart Malono
Date of Final Order: November 2, 2001

ISSUES: Whether the district should reimburse the parents for the expenses associated with a home program of one-on-one discrete trial training with the student's attendance at a private school for children with autism and with his attendance at a charter school for children with autism in another Florida school district. In order to resolve these issues, the district needed to show whether the student had been provided appropriate early intervention services as required by the Individuals with Disabilities Education Act (IDEA). If it was established that the district did not provide the student with a free appropriate public education (FAPE), the appropriateness of the home program and private school placement chosen by the parents needed to be examined.

FINDINGS OF FACT: When the student was given a preliminary diagnosis of autism in June 1996 at the age of 20 months, the parents were advised by a pediatrician that they should enroll him in a preschool program for autistic children in a private school. The school was under contract with the district to provide exceptional student education services to children from birth to five years old in the district. At the parents' request, a meeting was held on October 9, 1996, to determine whether the student was eligible for early intervention services under IDEA. A portion of the student's family support plan was developed at that meeting.

The parents signed consent for formal evaluation for ESE eligibility on October 11, 1996. The evaluation consisted of a review of existing evaluation reports, including neurological and psychological evaluations and results of vision and hearing tests. A meeting was held on November 4, 1996, to develop the education component of the family support plan. Both parents attended the meeting. When the parents were notified of both the October 9 and

the November 4 meetings, they signed a parent participation form indicating that they previously had received a copy of the procedural safeguards and understood their rights and responsibilities described in the safeguards. The form also included a box for the parents to check if they wanted an additional copy of the procedural safeguards. The box was not checked on either form.

The student was determined eligible for services in a district program for student with autism as well as speech and language services. He was placed at an oral school with a family support plan, developed on November 4, 1996, in place. A notation on the plan indicated that the educational portion of the plan would be reviewed on April 9, 1997; this review did not take place.

Evidence indicated that the student made progress at the oral school, and the parents observed this progress. By April 1997 the parents requested the discrete trial training employed at the school be intensified in order to accelerate the student's progress. Around this time, the parents heard about a private school in Palm Beach County that provided services for students with autism. The school did not have any openings for admission at that time, so the student was placed on a waiting list.

Also in April 1997 the parents advised the district that they intended to implement a home program for the student as an "outreach family" for the Palm Beach County private school. The parents paid the private school a consulting fee for assistance in developing the home program. At no time did the parents indicate dissatisfaction with the public school placement or services being provided by the district. The student continued receiving services both at the district school and through the home program until May 1998.

In May 1998, the parents were informed of an opening at the private school and they enrolled the student at the school in June 1998. No individual educational plan (IEP) was developed for the student, as the school was private and one was not required. The school became a Palm Beach County charter school in August 1999, and the parents were informed that the student could no longer attend the school unless he was a resident of Palm Beach County. After contacting the governor's office, the parents were given approval to have the student reassigned to the charter school in Palm Beach County. Because the school was a public school, an IEP was developed in September 1999. In addition to services for students with autism, the student was to receive speech therapy every day.

The student attended the Palm Beach County charter school for nearly three years, making significant progress. In the spring of 2001, the parents requested and were granted a reassignment to a Broward County public school in order to help the student improve his social skills and provide more interaction with nondisabled peers.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The IDEA requires states to provide early intervention services to infants and toddlers with disabilities and their families and sets forth the procedures that states must follow to ensure that the appropriate services are provided. In Florida, the responsibility for providing early intervention services to infants and toddlers has been given to local school districts.

In this case the parents alleged that the district failed to provide the student with FAPE, and they sought reimbursement for expenses they had incurred in providing a home program, including transportation, tuition, and other expenses while the student attended a private school and a charter school. In order to establish entitlement to reimbursement, the parents needed to prove that the district did not provide the student with an appropriate early intervention program. If they succeeded in proving this, they then needed to prove that the home program and the private and charter school placements were appropriate.

Based on the findings of fact, the parents did not prove that the district failed to substantially comply with the IDEA's procedural requirements governing early intervention services or that, if there were minor deviations from the requirements, the student's family support plan should be invalidated for procedural irregularities. The parents' contention that their participation in the development of the plan was meaningless because they were not knowledgeable about autism and were forced to rely on the education professionals at the meeting was rejected.

Further, there was nothing in the record to establish that the student's placement had been determined prior to the November 4, 1996, meeting; that the decision to place the student in the oral school was made without seriously considering his parents' input or suggestions; or that placement in the oral school was the result of a rigid policy rejecting all other alternative placements or programs. At the time of the meeting, the parents wanted the student placed in the oral school and never suggested an alternative placement or program to the district.

The parents were provided copies of the procedural safeguards on at least two occasions in 1996, and they waived their right to have those safeguards explained to them. Therefore, they could not complain that they were ignorant of their rights to request a due process hearing prior to September 1999.

It was clear from the evidence that the primary motivation for the parents to withdraw the student from the preschool program at the oral school was that the program did not include the minimum of 30 hours per week of one-on-one discrete trial training that they felt offered the only opportunity for the student to maximize his potential. The IDEA, however, does not require that the potential of a child be maximized, and Florida law does not require districts to provide a student with disabilities the best possible education or the placement preferred by the parents. The district was obligated to provide a basic floor of opportunity through the family support plan. The education portion of the plan developed on November 4, 1996, satisfied the requirements of the IDEA and relevant Florida rules.

Consistent with the procedural and substantive requirements of the IDEA, the district provided the student with an appropriate early intervention program from November 1996 through August 1997. Therefore, it was unnecessary to determine if the home program and the program provided by the parents at the private school were appropriate.

ORDER: The relief requested by the parents was denied.

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Duval County School Board
Case No. 01-0785E
Initiated by Parents
Hearing Officer: Harry L. Hooper
Date of Final Order: August 3, 2001

ISSUE: Whether the district provided the student an opportunity to receive a free appropriate public education (FAPE), specifically by placing the student in an appropriate learning environment with qualified staff trained to meet his needs.

FINDINGS OF FACT: The student was first referred for screening to determine eligibility for exceptional student education services while enrolled in an early intervention program in early 1999. District staff obtained permission from the parents in March 1999 to access records from a private school for deaf children that the student was attending. The parents also gave consent for the district to evaluate the student in the areas of adaptive behavior, social development, and occupational therapy.

In May 1999 the parents informed the district that the student was to have a cochlear implant and would not be attending a district school; he was going to continue attending the private school. One year later, in May 2000, the parents informed the district that the student had received a cochlear implant in June 1999 and indicated that they wanted to enroll the student in a district school. After reviewing the student's records and conducting evaluations, the district held a meeting to develop an individual educational plan (IEP) for the student on August 24, 2000.

Although the student, four years old at the time, had a cochlear implant, he still had mild-to-moderate hearing loss and spoke only a few basic words. The IEP team concluded that the student could benefit from speech as well as language therapy. The plan also called for the student to spend most of his school day in a classroom with other hearing-impaired students with similar educational needs and with some students who could hear but who had speech difficulties. The class was to be taught by a teacher certified in teaching the hearing impaired and two classroom assistants.

The parents disagreed with the IEP because they believed it would not result in the student learning to speak, and they chose to keep the student enrolled at the private school. The district presented expert testimony stating that the district would be able to provide the services called for in the private school IEP and that the plan addressed the spectrum of needs of the student.

The parents presented an expert who testified that while the student had some degree of hearing because of the cochlear implant, there was a distinction between hearing and comprehending. While the IEP developed by the district encouraged the student to be around other students in the hope of learning from them and their language, the parents' expert noted that being around other children is not as important as being around teachers and other adults who understand what hearing loss is like in order to assist the student to comprehend the sounds he now hears and to help him learn to talk.

Another expert testified that a hearing-impaired person with a cochlear implant had no potential for understanding the language of instruction when it is presented to a group of students. After a period of time, the student might learn through incidental language learning, but this student had not reached that stage.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. To provide FAPE, a district must comply with the procedures of the Individuals with Disabilities Education Act (IDEA) and must develop an appropriate IEP calculated to enable the student to receive educational benefits. In this case, the district complied with the IDEA procedures. Therefore, the issue remaining was whether the services in the IEP would provide educational benefits. An appropriate education does not have to maximize a student's potential; rather, it must provide a basic floor of opportunity for the student to receive educational benefit.

While the district IEP team's goal to include the student with nondisabled peers was important, the primary goal for this student should have been learning how to communicate, with his socialization needs secondary. It was determined that this student could only make progress while being taught in a self-contained classroom with a student-to-teacher ratio of no more than three to one.

ORDER: The district was ordered to provide a self-contained classroom for the student that would address his severe communicative skill deficiencies to include intensive specialized instruction. If the district was unable to accomplish this, the parents were to be reimbursed for the cost of an appropriate private school placement. The self-contained classroom was to be taught by classroom teachers with substantial expertise in the education of children with cochlear implants. Further, the district was ordered to reimburse the parents for the amount of the tuition and school transportation costs incurred during the 2000-2001 school year in connection with private school placement in the amount of $8,500.00 plus the statutory interest provided by Florida law.

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Escambia County School Board
Case No. 01-2207E
Initiated by Parent
Hearing Officer: Suzanne F. Hood
Date of Final Order: July 27, 2001

ISSUE: Whether the district provided the student with a free appropriate public education (FAPE), specifically whether the district correctly determined that the student no longer required occupational therapy and physical therapy; whether the district correctly determined that the student did not need a language device; whether the individual educational plan (IEP) of May 23, 2001, sufficiently addressed transition services; whether the district appropriately designated the student as trainable mentally handicapped (TMH); whether the district appropriately utilized the Brigance test to evaluate the student; and whether the district appropriately communicated with the student's legal guardian as directed by the parent.

FINDINGS OF FACT: The student, who was 14 years old at the time of the hearing, transferred to Escambia County in November 2000 after a period of home schooling and public school attendance in another state. An IEP written on November 20, 2000, listed mental retardation as the student's primary disability and stated that the student was eligible for exceptional student education services in district programs for students who are trainable mentally handicapped and in need of speech/language services, occupational therapy, and physical therapy. During the IEP development meeting, the mother requested a neuropsychological evaluation to support a placement in a program for students with traumatic brain injury (TBI). The IEP also indicated the student would use an electronic voice output device that served as a talking word processor for teaching the student how to read and compose written material.

On March 29, 2001, district staff administered the Brigance Diagnostic Comprehensive Inventory of Basic Skills to the student. The test indicated that the student was functioning at the prekindergarten level in reading, mathematics, and writing. After proper notice, the district conducted an IEP meeting on May 23, 2001. Neither the parent nor the student's legal guardian attended the meeting. The IEP team determined that the student had met the dismissal criteria for occupational and physical therapy and remained eligible for placement in the TMH program and for speech/language services.

The May 2001 IEP also included a form for addressing transition services, which was appropriately completed; a form addressing goals and objectives for extended school year services; and an assistive technology checklist, which indicated that the student did not need assistive technology in order to receive FAPE in the least restrictive environment.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The parent had the burden of showing that the district had failed to provide the student with FAPE. The district complied with the essential requirements of state and federal law in classifying the student as TMH rather than TBI, in utilizing the Brigance test as an alternate assessment tool to evaluate the student, in issuing meeting notices to the May 2001 IEP meeting, and in planning for the student's transition services. Because the student was 14 years old at the time of the May 2001 IEP meeting, the district was not required to include a statement of transition services; the IEP team completed the form to the extent possible.

The parent presented no evidence to show that the student continued to meet the criteria for the receipt of occupational or physical therapy services. Further, no persuasive evidence was presented to show that the student needed to continue using a voice output device in order to receive FAPE. The parent did not meet her burden of persuasion that the district failed to properly implement the student's IEPs or that the IEPs did not provide a basic floor of educational opportunity as required by law.

ORDER: The parent's requests were dismissed as without merit.

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Hillsborough County School Board
Case Nos. 01-2071E, 012072E, 01-2073E, 01-2074E
Initiated by Parents
Hearing Officer: Lawrence P. Stevenson
Date of Final Order: October 5, 2001

ISSUES: Whether the district failed to provide the students, four students with disabilities from the same family, a free appropriate public education (FAPE) pursuant to the Individuals with Disabilities Education Act because the district did not transport the students to the charter school of their choice. The district also raised two procedural issues: whether the Division of Administrative Hearings had jurisdiction to enter an order requiring the district to transport the students to the charter school and whether the case should be dismissed due to the parents' failure to join indispensable parties.

FINDINGS OF FACT: All four students in this case were eligible for exceptional student education services and had been placed by their parents in a district charter school for high school students diagnosed with learning disabilities, with a focus on those with pervasive processing and language difficulties.

After giving initial approval to the school's charter, the district negotiated a charter school contract for a five-year period commencing on July 1, 1999. The contract provided that the school would provide transportation of students consistent with the requirements of Florida law. The school further agreed to ensure that transportation would not be a barrier to equal access for any student residing within a reasonable distance of the school, as determined in the school's transportation plan.

In fall 1999 the principal of the charter school met and otherwise corresponded with district staff in an effort to enlist the district's assistance in transporting eight of the school's students. The preliminary estimate for the cost of the transportation was never refined because the principal rejected it as too high. The charter school could have limited the geographical scope of students it would serve, but chose to serve the entire district. Further, the school could have spent a portion of its capital outlay money to provide transportation, but chose not to do so. The school also declined the opportunity to bid on a school bus at a semiprivate auction for charter schools.

CONCLUSIONS OF LAW: The Division of Administrative Hearings (DOAH) had jurisdiction over the parties and subject matter in these cases. The district contended that DOAH was deprived of jurisdiction by Florida statutes and that DOAH's jurisdiction would be triggered only after the Florida Department of Education had attempted and failed at mediation. This contention was rejected. The district further argued that, because the chief issue was the alleged inequity in transportation services made available to the charter school, these matters should be dismissed for failure to join the charter school as an indispensable party. This argument also was rejected.

Students with disabilities are entitled to FAPE, including special education and related services, provided at public expense. Florida law provides that parents may initiate a due process hearing when dissatisfied with the district's evaluation or educational decision

regarding their child. Assuming that the parents properly invoked the due process hearing procedure in this case, they nonetheless failed to demonstrate that the district had not provided their children with FAPE.

The parents' requested relief was "buses free of charge to parents and to charter schools." Assuming that DOAH had authority to direct such relief, the relief was not appropriate because the relevant statutes and the specific and unambiguous language of the contract entered into between the charter school and the district directly placed the transportation burden on the school. Under the contract, the charter school agreed to provide transportation consistent with Florida law, thus assuming the responsibility of providing transportation.

In fact, the district had attempted on several occasions to assist the charter school in arranging transportation for students at the school, offering the charter school several choices, all of which were declined. The school's failure to address its transportation problems did not mean that the district had failed to provide FAPE to the students. FAPE does not mean that the school district must provide the best possible education as if its resources were unlimited.

The parents' decision to enroll their children in the charter school did not create a transportation obligation on the part of the district, unless the parents could prove that FAPE was not available at a location closer to their home. While it was undisputed that the parents were more pleased with the charter school than with previous public school placements, no evidence was presented to show that the other schools did not or were not able to provide FAPE to the students.

ORDER: The petitions in these consolidated proceedings were dismissed.

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Hillsborough County School Board
Case No. 01-1308E
Initiated by District
Hearing Officer: Daniel Manry
Date of Final Order: October 30, 2001

ISSUES: Whether the district's proposed placement of the student in classes for students with autism and language impairment provided the student with a free appropriate public education (FAPE).

FINDINGS OF FACT: At the time of the hearing, the student was nine years old and enrolled in a district exceptional student education program. He first enrolled in the district in August 1998. When his class at a district elementary school became too large, the class was split in two and the student transferred to another district elementary school. In November 2000 the student began attending a class for students with language impairments at another district school, where he was enrolled at the time of the hearing.

The student did not make meaningful progress toward his educational goals in any of the classes provided by the district. He experienced developmental delays and engaged in disruptive behavior that included banging his head against the floor and other objects, butting his head against the heads of others, screaming, shouting, running around the classroom, and throwing objects. The disruptive behavior distracted other children and impeded or stopped the education of other students. One-on-one instruction outside the classroom reduced but did not eliminate the behavior.

While the district and parents agreed that the student had disabilities, they disagreed over the correct diagnosis and a permanent placement that would be appropriate for the student's unique needs and abilities. The district asserted that the student had a pervasive developmental disorder, such as autism, and sought to place him in an autism spectrum class for half of the school day and in a language impairment class for the remainder of the day.

The district had not conducted a recent evaluation of the student. In fact, the student's mother did not sign a parental consent form authorizing an evaluation until after the district had commenced with this proceeding on April 5, 2001. Thereafter, the mother did not make the student available so the district could conduct its own evaluation. The district relied on three evaluations conducted prior to 1995 that supported a diagnosis of pervasive developmental disorder such as autism.

Testimony was presented from two separate evaluations of the student that said the student did not have a pervasive developmental disorder but rather static (nonprogressive) encephalopathy with speech and language, motor, sensory, and affective dysfunction; an expressive/receptive language disorder; and sensory modulation difficulties.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The district asserted that the parents bore the burden of proving that the proposed placement was not appropriate. The burden of proof in an administrative hearing generally is on the party asserting the affirmative of an issue. The district affirmatively asserted that the proposed placement provided the student with an appropriate education and would bear the burden of proof.

Federal courts interpreting the Individuals with Disabilities Education Act generally place the burden of proof on the party who objects to an existing individual educational plan (IEP). In this case, both parties objected to the existing IEP that placed the student in the language impairment class. However, neither party bore the burden of proof regarding the existing IEP, placing the student in a language impairment class because the parties did not dispute the IEP. The parties agreed the IEP would not provide the student with an appropriate education. The IEP at issue was one proposed by the district to place the student in an autism class for half of the day and in a language impairment class for the remainder of the day.

The proposed IEP satisfied the requirements for an appropriate education if it complied with the procedural requirements of the IDEA and if it was reasonably calculated to enable the student to receive educational benefits. Neither party claimed that the proposed IEP

failed to satisfy the procedural requirements. The only issue was whether the proposed IEP was reasonably calculated to enable the student to receive educational benefits. The preponderance of evidence showed that the IEP was not designed to provide educational benefits that would enable the student to make meaningful progress toward his educational goals.

Autism classes tend to be overly structured and obtrusive for children like the student in this case who are hypersensitive. An appropriate placement for the student would require an environment in which the student and his teacher could work one-on-one without interruption by other children for half of the school day, or approximately 20 hours per week, focusing on academic subjects such as math, reading, and language skills. The student would be placed in a language impairment class for the remainder of the school day.

One-on-one instruction by a qualified teacher for half of the school day was the least restrictive environment appropriate for the student's unique needs. The restrictive nature of one-on-one instruction should have been required for approximately six months to a year, after which the student should have been able to make meaningful progress in a less restrictive environment.

The administrative law judge (ALJ) did not have jurisdiction to order a particular placement for the student or for the district to adopt a particular methodology for instructing him. The ALJ's jurisdiction was limited to a determination of the appropriateness of the IEP proposed by the district and a recommendation of an appropriate placement, but the ALJ remanded the matter to the district to develop an IEP.

ORDER: The IEP proposed by the district did not provide the student with FAPE and the matter was remanded to the district for further action in accordance with this final order.

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Lee County School Board
Case Nos. 01-1482E and 01-1960E
Initiated by Parent
Hearing Officer: William R. Cave
Date of Final Order: October 26, 2001

ISSUE: Whether a district center school was the least restrictive environment (LRE) in which the student could achieve meaningful educational gains.

FINDINGS OF FACT: At the time of the hearing, the student was 12 years old and eligible for exceptional student education services for students with emotional handicaps and with specific learning disabilities. He had a significant history of misconduct that eventually led to his temporary placement in a district alternative school for students with behavior problems.

During the first half of the 2000-2001 school year, he continued displaying disruptive behavior at the alternative school. He returned to his previous middle school in January 2001, where his pattern of misbehavior continued. He demonstrated an inability to control his

behavior and showed a need for additional assistance to control his conduct. Numerous individual educational plans (IEPs) were developed for the student during the 1999-2000 and 2000-2001 school years.

On April 2, 2001, the IEP team recommended placement at a district ESE center school with smaller classes and stricter supervision than previous placements. The student's parent refused to sign the April 2 IEP because she did not agree with the suggested placement.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter of this case. Congress has expressed through the Individuals with Disabilities Education Act (IDEA) a preference for placement of students with disabilities in regular classrooms with nondisabled peers. The burden in this case was on the district to prove that placement of the student in an ESE center school was in compliance with IDEA. The district met its burden to show that the LRE where the student would best benefit educationally was the ESE center school.

ORDER: The district was entitled to implement the IEP of April 2, 2001, which was appropriately designed, including the placement of the student at the district center school. The placement, which had been ordered on an interim basis, was to become permanent upon entry of the final order, and the parent was not entitled to any relief. The issue of reassignment of the student to an alternative center was moot, and case number 01-1960E was dismissed.

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Leon County School Board
Case No. 01-2094E
Initiated by Parents
Hearing Officer: Suzanne F. Hood
Date of Final Order: July 9, 2001

ISSUE: Whether the district provided the student with a free appropriate public education (FAPE) by enrolling him in Algebra IA during his ninth-grade year (2000-2001 school term) and by denying a request to enroll him in Algebra IB at an adult education center during the summer of 2001.

FINDINGS OF FACT: At the parents' request, the student was evaluated in the eighth grade for eligibility for the district's program for students who are gifted. He was placed in the gifted program in April 2000 and an educational plan (EP) was developed. The student's mother participated in the meeting and his father signed his consent for the placement in May 2000.

In October 2000 the student's mother met with school staff to discuss a problem with the student's behavior at school. She expressed her concern that the student's behavior problems may have stemmed from the fact that he was not enrolled in gifted courses. Her main concern was the fact that he was not in an appropriate math and social science classes. The student was enrolled in two honors/gifted classes.

The student was assigned to take Algebra IA in the ninth grade, based on his prior performance and test scores in math. When school staff recommended Algebra IB in the tenth grade, the mother felt that the student would not be sufficiently challenged and wanted him to take Algebra IB during summer school and a higher level math class in the tenth grade to give him an opportunity to associate with peers of like ability and skills in math.

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 by a preponderance of evidence that the district did not provide the student with FAPE. While the student's placement in a gifted program entitled the student to certain procedural safeguards, the placement did not refer to the details of an established curriculum for a particular subject area.

According to the parents, one of the student's school counselors advised that the student's grades should have nothing to do with his eligibility for special classes commensurate with his superior intellectual ability. Even if this were true, there was no persuasive evidence that the student needed to take Algebra I in the ninth grade or needed to take Algebra IB in a summer adult education class, as the parents requested, in order to receive FAPE. There was no competent evidence that the student needed to have specially designed classes in all subject areas in order to meet the goals and objectives of his EP. Further, there was no evidence that taking Algebra IA in the ninth grade failed to challenge the student intellectually or caused him to be bored.

ORDER: The parent's request for a due process hearing was dismissed on its merits.

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Manatee County School Board
Case No. 01-2577E
Initiated by Parents
Hearing Officer: Robert E. Meale
Date of Final Order: July 30, 2001 (revised August 24, 2001)

ISSUE: Whether the student's individual educational plan (IEP) dated April 26, 2001, provided the student with a free appropriate public education (FAPE).

FINDINGS OF FACT: The student, six years old at the time of the hearing, sustained a brain injury at the age of seven months when a caretaker shook him violently. At the time of the hearing, the record was incomplete concerning the nature, extent, and specified educational consequences of the student's brain injury as well as his diagnosis and prognosis. The four most recent health-care examinations contained in the record were helpful but incomplete, given the amount of time that had passed since they were done, the young age of the student, and the possibility of change in his development.

The evidence was clear, however, that the student had various significant disabilities that substantially restricted his rate and modes of learning. Neither party disputed whether the student was entitled to exceptional student education (ESE) services. The basic dispute was

whether the proper ESE classification was trainable mentally handicapped (TMH), as the district proposed, or physically impaired, traumatic brain injured (TBI), or developmentally delayed, as the parent proposed. Other disputes arose under the issue of whether the district complied with the procedural requirements of state and federal law with preparing the student's IEP dated April 26, 2001.

The student was classified as developmentally delayed and the district set up a meeting on April 26, 2001, to develop an IEP for the student's transition from a prekindergarten program to a kindergarten-level program. Because of his age, he also needed to be classified in a different ESE program area, as developmental delay was a term used for students through age five. The first notice of the meeting was sent home to the parents in the student's backpack. While the notice was not fully filled out, it gave sufficient notice to the parents of the time and place of the meeting. A second notice was sent, and the father signed a copy of the notice, indicating his intention to attend. Two subsequent notices were sent, with changes indicating other people who would attend the meeting. The parents did not sign and return either of those notices.

When the meeting was held on April 26, 2001, the parents were not in attendance. The team agreed that the student would remain classified as developmentally delayed until of the end of the 2000-2001 school year, at which time he would be classified as TMH. The IEP reflected this change. The parents objected to various portions of the IEP, including short-term objectives and the accompanying Matrix of Services form, which they correctly pointed out had mistakes in the calculation of ESE and non-ESE hours. The matrix form was an internal funding instrument and did not raise an issue in this case.

The parents also objected that the district took six weeks to supply them with a copy of the IEP; however, the delay was without legal consequence. All of the components of the IEP were realistic and reasonable. The only point of legitimate concern was the failure of the IEP to contain a plan for managing the student's behavior. However, the student's behavior did not influence the TMH classification and, as the student's communication skills improved, his behavior improved markedly in the months preceding the IEP meeting.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter of this case. In determining whether the district was providing the student with FAPE, it was necessary to determine whether the IEP was reasonably calculated to provide educational benefit to the student and whether the district substantially complied with the various procedural requirements of state and federal law. The parents had the burden of proving that the IEP and the procedures under which it was adopted failed to provide FAPE.

The evidence supported a classification of the student as TMH but did not support a classification of the student as physically impaired or with TBI. The parents failed to supply a medical examination report not more than three months old as required by law. However, even if the parents provided such a report, nothing in state law suggested that the student would receive different services than he would under the TMH classification. The focus of ESE planning is on the services provided, not the student's label or classification in a particular program.

ORDER: The original order used the wording "…ordered that the School Board of Manatee County enter a final order dismissing Petitioner's challenge to the [IEP] date April 26, 2001." The order was later revised to say "…ordered that petitioner's challenge to the individual education plan date April 26, 2001, is dismissed."

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Miami-Dade County School Board
Case No. 01-1496E
Initiated by Parent
Hearing Officer: Florence Snyder Rivas
Date of Final Order: July 23, 2001

ISSUES: Whether the district failed to provide the student with a free appropriate public education (FAPE) as required by the Individuals with Disabilities Education Act (IDEA) and whether the student was entitled to a private school placement or to the assignment of a full-time teacher in his home until such time as he attained a sixth-grade achievement level.

FINDINGS OF FACT: The student, in the sixth grade at the time of the hearing, was enrolled in a program for students with emotional handicaps (EH) at a district center for severely emotionally handicapped (SED) students. There was no dispute that the student was entitled to FAPE under the IDEA. The student's family had a history of turbulent relations between the parents and emotional trauma. When the district first recommended placing the student at the district SED center in a EH program in 1999, the mother contended that the student's lack of progress, particularly in reading, was entirely the fault of the district. In October 2000 the parent agreed to the SED placement.

The student continued to exhibit inappropriate behavior at the SED center. He injured a teacher with a ruler, an offense that normally would result in expulsion. A manifestation determination meeting was held, and it was determined that the behavior was a manifestation of the student's disability. The student was suspended several times during the 2000-2001 school year. The parent asserted that the suspensions were improperly motivated and constituted an unlawful change in placement. The evidence established that the suspensions were justified.

Evidence also showed that the student could and did make progress when he was highly reinforced, redirected, and provided with substantial teacher attention, all of which were available to him in the SED center. As for the parent's request for a private school or home placement, the benefit of such a placement was speculative. The parent had not identified a private school that would accept the student. Further, a full-time teacher in the home would deprive the student of appropriate peer role models. The evidence established that the ESE professionals working with the student were doing their best to provide him with an appropriate education.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter of this case. The district had the burden to prove that the

student was being provided FAPE. The record was bereft of proof of any procedural defect in the development of the student's individual educational plans that had any impact on the family's right to meaningful participation in their development. There was no evidence to support either placement in a private school setting or the assignment of a full-time teacher to the student's home.

ORDER: The parent's demand for a private school placement or a full-time in-home teacher was denied, and the student was ordered to be placed in an SED program at a district middle school pursuant to the April 26, 2001, IEP.

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Miami-Dade County School Board
Case No. 01-3324E
Initiated by District
Hearing Officer: Robert E. Meale
Date of Final Order: October 19, 2001

ISSUE: Whether the district's evaluation of the student for eligibility for exceptional student education (ESE) services was appropriate or, if not, whether the student was entitled to an independent evaluation at the district's expense.

FINDINGS OF FACT: At the time of the hearing, the student was in the fifth grade and attending basic education classes. She reportedly had problems in visual functioning and had problems with oculomotor functioning and focusing. As corrected by eyeglasses, her vision was satisfactory. The parents requested an independent evaluation of her visual processing at the district's expense. The district declined.

On May 14, 2001, a school psychologist employed by the district administered two tests to the student. Both tests indicated that the student was functioning within the average range in intelligence and in achievement. The tests revealed no discrepancies between her intellectual functioning and achievement. The parents believed that the intelligence test underestimated the student's intellectual functioning due to her visual processing problems. However, the test results did not support this assertion, but rather suggested the student's academic achievement was not hindered by any visual perceptual processing difficulties.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. State law provides that the district has the right to initiate a due process hearing in order to show the appropriateness of its evaluation. The burden of proof was on the district. The district proved that the student failed to satisfy the three requirements for classification as a student with specific learning disabilities (SLD) as stated in Florida law. First, general education interventions effectively met the student's educational needs. Second, the student did not demonstrate a clear processing deficit. Third, the student exhibited no discrepancy between her intellectual functioning and achievement.

The student was not eligible for SLD placement, and no purpose would be served by requiring the district to pay for a visual processing test. Further, the parents did not contend that the student had any of the medical conditions that would make her eligible for ESE services for students with visual impairment. Therefore, the student was not eligible for classification as visually impaired.

ORDER: The district's evaluation of the student was appropriate, and the student was not entitled to an independent evaluation at the district's expense.

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Palm Beach County School Board
Case No. 01-3899E
Initiated by District
Hearing Officer: Florence Snyder Rivas
Date of Final Order: November 13, 2001

ISSUE: Whether the student should be evaluated to determine eligibility for placement in an exceptional student education (ESE) program.

FINDINGS OF FACT: The student, in high school at the time of the hearing, had been enrolled in a district ESE program for students diagnosed as educable mentally handicapped (EMH) for most of his elementary and middle school years. At his mother's request, he was withdrawn from the EMH program during middle school. When he entered high school at the start of the 1999-2000 school year, his teachers reported that it was immediately apparent that his enrollment in regular education classes was not appropriate.

All of the student's teachers observed from the first day of class in ninth grade that he was unable to interact appropriately with teachers and classmates. He also was unable to take notes, follow directions, or converse in a manner expected of a ninth grader in a regular education setting. At the same time, his mother was making daily appearances in the classes, asking that class materials and assignments be sent home with the student daily so she could help him with his work. The demands made by the parent were both irregular and inappropriate and crossed the line from proper parental involvement and supervision and aroused concern among teachers that her intent was to do the work for him.

The student's family had been implored by school officials to work with them as a team to assist the student in obtaining a meaningful education in an environment in which he could succeed. Because the evaluation records necessary to certify the student's ESE eligibility were not current, the district undertook to obtain parental consent to conduct the necessary evaluations. Although the district had a right to immediately seek a due process hearing if parental consent was withheld, district staff chose to defer litigation in hopes of persuading the parents to grant consent.

The evidence presented by the district was sufficient to establish a reasonable likelihood that the student was eligible for some type of ESE services. The evidence further estab-

lished that the district adhered to all procedural requirements necessary to determine eligibility.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case and had jurisdiction to authorize testing not generally given to other students upon proof, by a preponderance of the evidence, that the student may have been eligible for ESE placement and that the parents had unreasonably withheld written consent for such testing. The student's placement in regular education classes denied him a free appropriate public education (FAPE), as required by law.

ORDER: The district was allowed to conduct a comprehensive evaluation to determine the appropriate educational placement for the student in accordance with its legal obligation to provide him with FAPE. The Division of Administrative Hearings retained jurisdiction to hear appropriate motions or other proceedings related to the student's placement following the completion of the evaluations, provided such motions were filed on or before December 21, 2001.

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Palm Beach County School Board
Case No. 01-4149E
Initiated by District
Hearing Officer: Florence Snyder Rivas
Date of Final Order: November 20, 2001

ISSUE: Whether the student should be evaluated to determine if dismissal from exceptional student education (ESE) would be appropriate and/or to determine her educational needs.

FINDINGS OF FACT: The student was in the seventh grade at the time of the hearing and eligible for ESE services for students with speech and language impairments and with hearing impairment. She was enrolled in a district middle school. By the time the student enrolled in the middle at the beginning of sixth grade during the 2000-2001 school year, her mother had become extremely hostile to district ESE staff. She believed that problems being experienced by her older child had been caused by his enrollment in ESE classes and the teachers who taught them.

At the beginning of the 2001-2002 school year, the parent demanded the student be removed from ESE classes. Despite that the student's elementary school teachers said that the student was enthusiastic about speech therapy and was showing improvement in her conversational speech, the mother could not be convinced of the value of ESE programs. School personnel decided to retreat on that issue in hopes of building goodwill with the parent. They agreed to mainstream the student into a regular sixth grade English class.

In order to appease the parent, the student's involvement in ESE was limited to monthly consultations between the school speech pathologist and each of the student's teachers. The student made no meaningful progress in the regular sixth grade English class. In the sev-

enth grade, the student was placed in an inclusion class for English, with both a regular education and an ESE teacher working with the class. The student was enrolled in this class at the time of the hearing. She was maintaining a C average largely because students can earn academic credit for effort alone. The student was not functioning on a seventh grade level.

An individual educational plan was developed for the student on August 18, 2001. The team rejected the parent's demand that no further testing be conducted, feeling that even if the student were placed in regular education classes, they lacked sufficient information regarding the student's individual needs in order to provide her with FAPE in the least restrictive environment.

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 requires that ESE students be provided with a free appropriate public education (FAPE). Once a student has been determined eligible for ESE services, reevaluation is required no less than once every three years, and more frequently if conditions warrant. Reevaluation is also required when a student is being considered for dismissal from an ESE program. Based on the evidence, the district satisfied all of the requirements necessary to conduct evaluations in the areas of speech and language, hearing, and nonverbal intelligence in order to determine whether or not the student should be dismissed from the ESE program and to determine her educational needs.

ORDER: The district was allowed to proceed to conduct all evaluations necessary to determine the appropriate educational placement for the student in accordance with its legal obligation to provide her with FAPE.

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Palm Beach County School Board
Case No. 01-4546E
Initiated by Parent
Hearing Officer: Michael M. Parrish
Date of Final Order: December 20, 2001

ISSUE: Whether placement at a district alternative education center would deprive the student of a free appropriate public education.

FINDINGS OF FACT: The student in this case was 14 years old, in the eighth grade, and eligible for exceptional student education (ESE) services for students with language impairment. He had an extensive history of behavior problems at school and had received 10 student discipline referrals between November 2000 and May 2001. Problem behaviors included disobedience, disruption, battery, and fighting. Interventions attempted by teachers and school staff included conferences with the student, telephone calls to his mother, detention, and out-of-school suspensions for a combined total of four days. From August through November 2001 the student received an additional 11 discipline referrals and three bus conduct reports.

The student demonstrated his ability to do grade-level work in math when he chose to complete his assignments. His inappropriate behaviors were based on poor choices he made. He responded well to positive reinforcement and demonstrated that he had the ability to act appropriately if he felt it would benefit him to do so. On November 6, 2001, the student entered into a behavior contract, with expectations that he would follow classroom rules, speak respectfully to other students and staff, and avoid fighting. Two days later, the student and two other male students participated in a sexual assault on a female student. The student admitted that he pushed the victim against the wall and held her while the other two students groped her.

On November 16, 2001, an individual educational plan (IEP) team met to discuss the incident and to discuss an alternate placement for the student. The parent attended and participated in the meeting. The team reviewed the student's IEP, which was written on April 17, 2001, and considered his behavior history. The team concluded that the student would benefit from a more structured environment and recommended an alternative education placement in the district. The parent agreed that the student would benefit from a more structured environment, smaller classes, positive reinforcement, and anger management counseling, but she objected to the proposed school because of its location, which she perceived as being in a bad neighborhood. She was invited to visit the campus, but declined.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The student met the criteria for eligibility for ESE services as a student with language impairment but not as a student with an emotional handicap. There was no indication that his behavior was caused by his language impairment or by any other disability. The reassignment to the alternative school and the related revisions to his IEP were reasonably calculated to enable the student to receive educational benefit, as required by law. The greater weight of the evidence was that the quality of the neighborhood in which the school was located did not detract from the ability of the student to receive an appropriate education.

ORDER: The district was allowed to implement the IEP developed for the student, as revised on November 16, 2001.

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St. Johns County School Board
Case No. 01-0101E
Initiated by Parents
Hearing Officer: Diane Cleavinger
Date of Final Order: August 17, 2001

ISSUES: Whether the district provided the student with a free appropriate public education (FAPE) in the least restrictive environment and whether the parents were entitled to reimbursement for private speech and language therapy.

FINDINGS OF FACT: The student was five years old at the time of the hearing and enrolled in a district elementary school. When he was evaluated by district staff for eligibility

for exceptional student education (ESE) services, district staff concluded that he did not qualify for pull-out speech and language therapy because his speech was commensurate with his intellectual functioning. They did, however, recommend goals for speech, language, and communication be included in his individual educational plan (IEP). The activities to be used to achieve those goals would be provided by teachers and instructional aides.

After the student experienced a grand mal seizure at home in October 2000, a new IEP was developed to reflect new procedures to be used with the student, including medical interventions and maintenance. District staff discussed three options with the parents regarding an appropriate school and classroom for the student. Only three district schools were equipped to handle students with profound disabilities. Because of transportation problems related to two of the schools, the district recommended placement at the third elementary school. The parents argued that the school did not have the personnel available to meet the student's needs because there was no full-time nurse available to handle his medical needs. The district assured them that a full-time nurse and an additional full-time ESE teacher would be hired. In spite of the disagreement over location, the IEP team, which included the parents, agreed on most of the goals and objectives for the IEP.

The student had not returned to school since the grand mal seizure in October 2000. Because his speech was regressing, his parents hired a private speech/language therapist to work with him three times a week. The student reportedly made some progress toward regaining his 12-word vocabulary.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The primary issues were whether the placement at the elementary school recommended by the district was appropriate and whether appropriate services were provided on his IEP, which would place him in a self-contained ESE program. There was no dispute regarding the fact that the student should not be mainstreamed into a regular classroom. Further, the school recommended by the district was the only one of the three considered that would meet his medical needs.

While the district was not required to provide an education according to the parents' dictates, the evidence showed that the student was in need of extensive speech and language therapy provided by a speech therapist. Denial of such a service denied the student FAPE. Therefore, such services should have been included in the IEP.

ORDER: The parents' claims were denied, in part, and granted, in part. The placement at the recommended school was appropriate, but because the denial of appropriate speech/language services caused the parents to obtain private therapy, the district was ordered to compensate the parents for the speech therapy services.

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Seminole County School Board
Case Nos. 99-5013E and 99-5326E
Initiated by Parent and District
Hearing Officer: Susan B. Kirkland
Date of Final Order: October 17, 2001

ISSUES: Whether the district should grant the parent's request for a temporary change of placement to hospital/homebound and whether the district should be permitted to re-evaluate the student to determine if he qualified for a change of program placement from emotionally handicapped (EH) to severe emotional disturbance (SED).

FINDINGS OF FACT: At the beginning of the 1999-2000 school year, the student was placed in an EH classroom and received services for students with specific learning disabilities and who had speech/language impairment. Because of persistent impulsive and explosive behavior, a behavior plan was developed for the student. The student's behavior did not improve, resulting in suspensions for hitting, kicking, and open defiance. The parent requested the student be placed in a hospital/homebound program. The other members of the individual educational plan (IEP) team felt that he should be evaluated for possible placement in an SED setting.

In November 2000 the principal of the elementary school the student attended received a copy of a report by the student's physician. The report said the student had severe dyslexia and a complex psychiatric disorder, including bipolar disorder, attention deficit hyperactivity disorder, and Asperger syndrome. By this time, the student was not attending school and the mother was picking up homework assignments for him.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The district complied with the procedures for referring the student for evaluation for possible placement in an SED program. Based on the student's behavioral problems and lack of educational progress, he should be evaluated for SED eligibility.

ORDER: The parent's petition was dismissed, and if the parent desired to have a public education provided by the district, the district was permitted to reevaluate the student to determine eligibility for an SED program.

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Wakulla County School Board
Case No. 01-2015E
Initiated by Parent
Hearing Officer: Harry L. Hooper
Date of Final Order: July 2, 2001

ISSUE: Whether the parent was entitled to original records maintained by the district.

FINDINGS OF FACT: When the student first enrolled in a district school in October 2000, records from his previous school in another state indicated that he had been served in an exceptional student education (ESE) program at that school. At some point between October 2000 and January 16, 2001, the district ESE director determined that the student should be evaluated for continued ESE eligibility. On January 16, 2001, the parent signed a form giving consent for evaluations in several areas.

The student was evaluated and found eligible for the ESE program for students with specific learning disabilities. When the evaluation results were provided to the parent, he objected to some of the matter in the psychological section of the report. The parent requested that the school give him all of the original reports so there would be no record in the district that revealed the outcome of the evaluations administered. The district offered to discuss the portions of the reports that the parent found objectionable, but he refused the offer. Despite the parent's insistence, the district refused to divest itself of the reports.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The parent had the burden of proving his entitlement to dispossess the district of its documents. Florida law gives parents the right to challenge the content of any record or report to ensure that the record or report is not inaccurate, misleading, or otherwise in violation of the rights of the student. The parent did not avail himself of this provision.

Florida law provides that educational records are confidential and divides them into two categories. The first category includes records that must be maintained permanently, while the second category includes records that are subject to periodic review and elimination. The records in this case are in the second category. Florida law permits the district superintendent to destroy records and paper documents over three years old which do not have value as permanent records.

The district in this case was not permitted under law to divest itself of the records by turning them over to the parent. The superintendent had the option, after three years, to determine whether the records had value as permanent records and, if not, destroy them.

ORDER: The petition of the parent was dismissed and the district superintendent was ordered to maintain, or destroy, the records of the student, insofar as they address his status as an exceptional student, in accordance with the law.

Florida Department of Education
Jim Horne, Commissioner

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