

Summaries of Due Process Hearings

in Exceptional Student Education

conducted by
the Division of Administrative Hearings



January–June
2001

These summaries are available through the Bureau of Instructional Support and Community 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 January through June 2001. Final Orders were issued after the hearings and copies provided to the Bureau of Instructional Support and Community 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 Instructional Support and Community 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.

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Broward County School Board

Case No. 00-3454E

Initiated by Parents

Hearing Officer: Michael M. Parrish

Date of Final Order: June 18, 2001

ISSUES: Whether the district procedurally and/or substantively denied the student a free appropriate public education (FAPE). Specifically, whether the district failed to properly implement the student's individual educational plans (IEPs) and provide services specified in them from April 1999 to August 2000; whether the student failed to make meaningful progress from April 1999 to August 2000; whether the district failed to respond to concerns regarding the student's self-stimulatory behavior of spinning objects; whether the district failed to provide sufficient one-on-one instruction to the student when needed in order for him to make educational progress; whether the district failed to respond to concerns regarding the student's progress in communication and in a specific communication program; whether the district was required by law to provide instruction that would maximize the student's abilities; whether discrete trial methodology was required in order for the student to make meaningful educational progress; and whether the parents were entitled to reimbursement from the district under the Individuals with Disabilities Education Act (IDEA) for costs associated with the employment of private home therapists for speech/language, behavior, and occupational therapy or for costs associated with a home program from April 1999 to August 2000.

FINDINGS OF FACT: The student was four years old at the time of the hearing. When he was first staffed and found eligible for exceptional student education (ESE) services for students with autism in April 1999, he was placed in a preschool autistic cluster class. A family support plan was developed, and the student attended school part-time to allow the parents to provide home programming, at their request. The student reportedly made progress the first few months in the cluster. In July 1999 school staff began using the Picture Exchange Communication System (PECS) with the student. A speech/language pathologist trained in PECS assisted the teachers and supervised the implementation of the program.

The speech/language pathologist reported that the student progressed from phase 1 to phase 3 of the program between September 1999 and June 2000. An assistive technology specialist reportedly observed the student using techniques from PECS when she visited his home in October 2000. Even though the student made meaningful educational progress in the cluster class, he did not meet all of the goals and objectives in his IEP, particularly in the area of self-feeding. This may have been due to the fact that he rarely attended school during lunch time and, when he did attend, the foods in his special diet were often not appropriate for working on the goal.

One of the criticisms voiced by the parents regarding the student's participation in the cluster class was that social skills and play were not properly addressed. In particular, the student had a tendency to spin objects, requiring constant redirection. Over time, he learned to become less upset when being redirected or when the object was taken away. The applied behavior analyst working with the class did not feel the spinning was so disruptive that the student would lose his focus on the task he was doing and did not view the spinning as severe enough to affect his learning.

A staffing committee met with the parents in August 2000 to address the parents' concerns that the student had not made progress while enrolled in the cluster class. The parents requested one-on-one teaching for the student. A speech/language pathologist, a school psychologist, and another expert witness stated that the student did not need one-on-one instruction all day and he could benefit from teaching in small groups. The staffing committee recommended placement in another program in the district.

The parents chose to place the student in a more intensive home-based program. They later proposed an alternative placement in which the student would attend the recommended district program with the assistance of a one-on-one aide while still receiving services at home. It was determined in the hearing that the student would not receive an appropriate education in such a placement because of the structure of the class. Further, an expert witness stated her opinion that the home-based program would not provide the student with an appropriate education because it would not afford him the opportunity for social interaction with other children, or the use of a schedule.

No evidence was presented by the parents that any material procedural errors were committed by the district.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The parents had the burden of proof in this proceeding. In a previous case, the U. S. Supreme Court had ruled that the disparity between a child's achievements and a child's potential did not necessarily lead to the conclusion that the child was not receiving FAPE. The Court held that the basic floor of opportunity required by the IDEA consists of access to specialized instruction and related services that are individually designed to provide educational benefit to a student.

The evidence was clear that the district proposed and implemented programs and services for the student that provided him with FAPE. Although there was conflicting evidence

regarding the student's progress while enrolled in the autistic cluster class, the greater weight of the persuasive evidence was to the effect that he made meaningful progress in the program. Even if the facts had been otherwise and the student had made no progress, the IEPs prepared and implemented would have been sufficient because they were reasonably calculated to provide the student with a meaningful educational benefit. The district made reasonable efforts to implement all of the IEPs. The district was not required to maximize the student's educational potential.

ORDER: All relief requested by the parents was denied and the case was dismissed.

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Broward County School Board
Case No. 01-0847E
Initiated by District
Hearing Officer: Florence Snyder Rivas
Date of Final Order: May 29, 2001

ISSUE: Whether the district failed to provide an appropriate reevaluation of the student and, if not, whether the parents were entitled to be reimbursed for an independent educational evaluation (IEE) for which they had paid.

FINDINGS OF FACT: The student was diagnosed with autism at the age of three. When the student was referred for evaluation to determine eligibility for exceptional student education, the parents opted to have him evaluated privately, at their expense, in order to expedite the process. Evaluation services would have been provided by the district at no cost to the parents, but delivery would have been delayed due to the high demand for evaluations in the district.

Based upon the independent evaluation, the student was placed in a district program for students with autism in January 1998 and was assigned to the district's autistic cluster program at another school in 1999. A staffing was held in May 2000 to develop a new individual educational plan (IEP) and to make plans for reevaluation. The team determined that the student should be reevaluated in several areas. Evaluations were conducted by the district.

When the parents were presented with the findings of the reevaluation in December 2000, they were dissatisfied with the findings, saying the evaluations overlooked significant strengths of the student. The district evaluator reportedly became defensive when the parents requested an IEE. The parents then asked the same private evaluator who had done the student's original testing to reevaluate the student. Her findings were largely consistent with those of the district evaluator. The IEE did not add any additional information necessary to assist the IEP team in the development of an IEP.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The material facts and the controlling law of this

case were essentially undisputed. The disagreement was whether the IEE provided material information that was not contained in the district's reevaluation. If so, the district would have been obliged to pay the cost of the IEE.

The evidence established that the district fulfilled its legal obligations to provide a reevaluation that was appropriate in all material aspects. The district provided a timely and appropriate evaluation using valid tests and evaluation materials, each of which was administered and interpreted by qualified personnel. The evidence failed to establish that the IEP would have been changed or modified based upon the information provided in the IEE.

ORDER: The district reevaluation was appropriate and the parents were not entitled to reimbursement for the IEE.

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Escambia County School Board

Case No. 00-4112E

Initiated by Parents

Hearing Officer: Ella Jane P. Davis

Date of Final Order: January 22, 2001

ISSUES: Whether the Division of Administrative Hearings (DOAH) could enforce its final order in case 99-3212E (with same petitioners and respondents) or was obligated to continue an interim order entered during the pendency of the case as a "stay put" placement, pending review by federal court, and whether the Florida Department of Education (FDOE) could be properly named as a party.

FINDINGS OF FACT: In a previous case involving the same parties, the administrative law judge (ALJ), in an interim order, placed the petitioner in a private school at district expense, pending the conclusion of the hearing. In the final order, the ALJ ordered placement in an appropriate private school, if one could be found, or in a public school. The district developed an individual educational plan (IEP) for the public school that was never implemented. The parents alleged that the FDOE had "taken sides" by attempting to assist the district, but not the parents, in this matter.

CONCLUSIONS OF LAW: The DOAH had jurisdiction over the parties and subject matter in this case. There was no provision in Florida statutes to permit FDOE to be included in this matter. Moreover, the September 21, 2000, request for a due process hearing did not demonstrate any legal ground upon which FDOE could properly be named as a respondent, and documentation submitted in this case demonstrated that FDOE and its personnel had declined to take sides in the parties' protracted and continuing disputes.

In case number 99-3212E, the only substantive issue was the location of services to be provided by the district. This also was the basis for all issues before the federal court and the sole remaining issue presented in this case. The de novo review of 99-3212E by the federal court deprived DOAH of jurisdiction of that issue.

ORDER: It was ordered that the FDOE was not an appropriate party respondent to these proceedings and was dismissed as a party respondent. This cause concerned the appropriateness of the September 5, 2000, IEP, which had been withdrawn prior to the hearing. The only other substantial issue, the request for a due process hearing dated September 21, 2000, was dismissed in part as moot and in part as without jurisdiction.

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Leon County School Board

Case No. 00-4422E

Initiated by Parents

Hearing Officer: P. Michael Ruff

Date of Final Order: February 28, 2001

ISSUES: Whether the district properly evaluated the student and properly determined her eligibility as a student with a disability and whether the student was entitled to special accommodations in taking part of the High School Competency Test (HSCT).

FINDINGS OF FACT: The student was 19 years old and enrolled in the district but not taking any courses because she had met all graduation requirements with the exception of passing the math portion of the HSCT. She was a talented musician and had received a two-year music scholarship to community college pending graduation. She had a long record of struggles with mathematics and had received extensive tutoring and assistance.

The parents presented expert testimony that the student had a type of dyslexia called dyscalculia. This testimony was not accepted because the assessment had not been performed using appropriate, current normed instruments in evaluating the student and the evaluator did not meet the licensing or certification requirements necessary to conduct evaluations in Florida.

An appropriate evaluation conducted by the Florida State University Multi-disciplinary Center found no evidence of a disability under the appropriate state rules complying with the Individuals with Disabilities Education Act. However, it did demonstrate a learning disability under college guidelines.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The parents had the burden of proving by a preponderance of the evidence that the student's prior and proposed educational programs were not appropriate. Further, the parents had the burden of establishing that the district failed to timely and adequately evaluate and determine the student's eligibility for exceptional student education (ESE) services.

While not eligible for ESE services in high school, the student did meet the broader standard of Section 504 of the Rehabilitation Act. In consideration of the broader standard, the student was shown to have a mental impairment consisting of a specific learning disability.

ORDER: The claim of discrimination under Section 504 was denied. However, the student was eligible for accommodations under Section 504, and the district was ordered to provide appropriate accommodations to ensure that her disability did not interfere with her opportunity to pass the math portion of the HSCT or, in the alternative, the district could waive the math portion of the test.

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Miami-Dade County School Board
Case No. 00-4193E
Initiated by Parent
Hearing Officer: Florence Snyder Rivas
Date of Final Order: February 26, 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); whether, pursuant to IDEA, the student was entitled to reclassification as a student who was educable mentally handicapped (EMH) and entitled to placement in a regular eighth grade classroom for the balance of the school year with related supports and services; and whether the student was entitled to compensatory education and the parent to monetary damages and reimbursement.

FINDINGS OF FACT: At the time of the hearing, the student was enrolled at a district occupational training center that served students diagnosed with autism or as trainable mentally handicapped (TMH). He had been placed in a district program for EMH students in December 1992, and his classification was changed to TMH at an individual educational plan (IEP) meeting in June 1993. At another IEP development meeting in May 1998, he was placed at the training center.

There was no dispute that the student was entitled to FAPE. At all times material to the case, the parent and district had acted as partners in planning and developing appropriate educational services for the student and services had been delivered pursuant to an IEP. The parent had participated meaningfully in the development of the student's IEPs.

Sometime after the development of the April 24, 2000, IEP, the parent attended a parent-organized workshop on exceptional student education and became convinced that the student was entitled to full inclusion with placement in a regular eighth grade classroom. The IEP in effect at the time of the hearing was reasonably calculated to provide educational benefit, and no credible evidence supported a regular eighth grade classroom placement. Professional and expert testimony supported the training center placement. Petitioner would not benefit from inclusion in a regular or EMH classroom.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The IDEA's requirement for FAPE has been interpreted to be satisfied when a district provides a student with a basic floor of opportunity consisting of access to specialized instruction and related services that are individually

designed to provide educational benefit to the student. Further, IDEA's preference for mainstreaming each child to the maximum extent of his or her abilities does not create a right of full inclusion on demand.

In this case, the record was bereft of proof of the existence of any procedural defect in the development of the student's IEPs that had any impact upon the family's right to meaningful participation in the development of an IEP or on the services provided to the student. Absent such proof, there was not legal basis to rescind the IEP.

ORDER: The parent's claim for full inclusion in regular eighth grade classes and related testing, services, compensation, and compensatory education was denied.

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Miami-Dade County School Board
Case No. 01-0114E
Initiated by Parent
Hearing Officer: Patricia Hart Malono
Date of Final Order: June 6, 2001

ISSUES: Whether the district must reimburse the parent for the cost of tuition at a private school when the parent placed the student unilaterally at the school, whether the district must reimburse the parent for related services, and whether the district should pay for the student's continued placement in the private school and to provide related services to the student while enrolled there.

FINDINGS OF FACT: When the student first enrolled in the district in August 1998, she was found eligible for exceptional student education (ESE) programs for students with autism and for students with speech and language impairment. An individual educational plan (IEP) was developed and the student was placed in a self-contained kindergarten class for students with autism.

An IEP developed in February 1999 provided for the student to receive speech therapy for 30 minutes, three times per week, with the goal of improving communication skills. The speech therapist hired to work at the student's elementary school quit before school started, and a replacement was not hired until late October 1999. Despite the missed sessions, the student made some progress in communication skills.

The student's behavior problems were also addressed in the February 1999 meeting, specifically tantrums during which she rolled on the floor, jumped up and down, screamed, and kicked the walls. After the teacher kept a comprehensive daily log of the student's behaviors and formal observations were conducted, the IEP team agreed that the tantrums interfered with the student's ability to learn and that a plan should be developed to address the behaviors. A plan was developed but not included with the IEP.

The IEP developed in April 2000 specified that the student would receive make-up speech therapy sessions for seven weeks at 90 minutes per week, in addition to the 90 minutes of speech therapy per week. These extra sessions were intended to make up for the missed sessions at the beginning of the 1999-2000 school year. The student received only eight 30-minute make-up sessions.

In May 2000 the parent informed the district of her intent to enroll the student in a private school for autistic children and stated that the placement should be at public expense because the district failed to provide the student a free appropriate public education (FAPE). The evidence presented by the parent was not sufficient to support that assertion. Evidence established that the district had the resources to carry out the goals and objectives set forth in the student's IEPs, that the teachers and aide monitored the student's progress consistently, and that the student's behavior problems were being addressed in a behavior intervention plan.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. Federal and state law and case law hold that a school district must reimburse parents for expenses related to private school education if it is determined that the district did not offer a free appropriate public education (FAPE) for the student.

Further, the procedural requirements of the Individuals with Disabilities Education Act (IDEA) are designed to involve a child's parents in the process of determining eligibility for ESE services, to apprise the parents of the district's proposal or refusal to evaluate the student for consideration of eligibility, and to permit the parents to participate in a meaningful way in the development of the IEP for the student. The IDEA notice requirements are designed to apprise parents of their due process rights if they do not agree with the substance of the IEP.

Based on the facts of this case, the district provided the parent with all of the procedural rights conferred by IDEA and the parent was aware of and exercised her rights under IDEA and Florida law. The parent was an active participant in the development of the student's IEPs and in her education. District personnel were responsive to the parent's requests for information on the student's programs, for detailed reports of the student's progress, and for additional services such as a full-time aide and increased one-to-one discrete trial training.

ORDER: It was ordered that the district was responsible for providing the student with speech therapy in an amount sufficient to make up for the sessions she missed at the beginning of the 1999-2000 school year. The district was not required to use a speech therapist chosen by the parent, and the parent was ordered to cooperate with the district in arranging a convenient time and place for the sessions. In all other respects, the relief requested by the parent was denied.

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Palm Beach County School Board
Case No. 00-2981E
Initiated by Parent
Hearing Officer: J. D. Parrish
Date of Final Order: February 23, 2001

ISSUE: Whether the student was entitled to the services sought in order to obtain a free appropriate public education (FAPE) or whether such services would be required as remediation.

FINDINGS OF FACT: The student, 10 years old and in the third grade at the time of the hearing, was performing below grade level. As a result, an academic improvement plan (AIP) was developed for him. At the end of the school year, he was performing above grade level in math, but remained below grade level in reading. The school offered summer school instruction, but the parent refused.

The student had serious academic struggles in third grade and per mother's report was subject to frequent adjustments to his medication for attention deficit with hyperactivity disorder (ADHD). The school was unaware of his ADHD and medication adjustments. The mother never provided medical documentation other than prescriptions.

The student was considered by school personnel to be able to do academic work but was very resistant and defiant. The student's AIP for third grade included assistance and weekly progress reports to the parent. The student was appropriately screened for a learning disability, but none was detected. At the meeting to discuss the results of the screening, the mother for the first time indicated the student had ADHD but never produced documentation, even after school personnel requested it. The student continued to refuse to complete schoolwork and was retained in the third grade.

The mother initiated a due process action alleging failure to provide appropriate accommodations under Section 504 of the Rehabilitation Act of 1973. The parties agreed to mediate, which resulted in an agreement for a full evaluation for eligibility for exceptional student education under the Individuals with Disabilities Education Act (IDEA). The results of the evaluation indicated that the student had a specific learning disability. An individual educational plan (IEP) was developed and included behavior management strategies. The parent contended, however, that FAPE mandated by IDEA required two additional services: daily after-school tutoring for one hour to compensate for lost educational opportunity and private counseling by a licensed therapist independently selected by mother.

Neither was necessary for FAPE, as tutoring would be counterproductive since the student covets play time and school personnel were adequate for the student's counseling needs.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of disability. The act requires that students with disabilities be afforded accommodations when their disabilities or impairments substantially limit one or more major life activities. In this case the parent alleged that the student's

impairment (ADHD) substantially limited his ability to learn in the school environment such that the district should have made appropriate accommodations to meet his needs. Because the district did not, the parent maintained that the student was entitled to the relief sought as compensation for the violation of law.

In order for accommodations to be made under Section 504, a district must first establish the eligibility of a student. In this case the student was never identified for services as an eligible student with ADHD. In fact, at the time of the hearing the parent had not provided documentation regarding the student's diagnosis and treatment plan for ADHD. The district accepted the parent's representations regarding the student's medication but did not request formal documentation regarding the alleged disability until May 2000, when the student was about to be retained for another year in the third grade.

ORDER: The requests of the parent for remedial tutoring and independent counseling were denied.

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Sarasota County School Board

Case No. 01-0532E

Initiated by District

Hearing Officer: Arnold H. Pollock

Date of Final Order: April 17, 2001

ISSUES: Whether the district should have provided the student an independent educational evaluation (IEE) to determine an appropriate placement and, having refused to do so, whether the district should reimburse the parents for the cost of an IEE for which they had paid.

FINDINGS OF FACT: When the student entered the seventh grade at the beginning of the 1999-2000 school year, the parents requested he be evaluated by an independent expert. They were concerned about his welfare due to his self-injurious behavior and felt the district's evaluation was inadequate and did not give clear direction as far as his educational needs. They made three requests in writing for an IEE, and each time the district refused to pay for it, stating that the student would have a three-year reevaluation conducted in March 2000.

The parents had an independent evaluation conducted in July 2000.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. Federal and state laws require the district to properly review the student's progress and conduct assessments in all areas related to the suspected disability. Under both federal and state rules, a parent has the right to an independent evaluation at public expense if the parent disagrees with an evaluation obtained by the district and can establish the district's evaluation is inappropriate.

In this case, the district provided an evaluation to which the parents took exception. Evidence indicated the student would benefit from special education services. He clearly was not progressing effectively in the middle school setting, and the parents were legitimately concerned for his safety due to a realistic fear he would harm himself.

ORDER: The district was ordered to reimburse the parents for the IEE.

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Sarasota County School Board
Case No. 01-0556E
Initiated by District
Hearing Officer: Arnold H. Pollock
Date of Final Order: April 3, 2001

ISSUE: Whether the proper method of communication to be used in any reevaluation of the student to determine whether he was eligible for exceptional student education (ESE) services was verbal communication or sign language.

FINDINGS OF FACT: Lack of progress on the part of the student was noted in early October 2000. Based on this, the parents requested an individual educational plan (IEP) meeting. The student was due for reevaluation; however, his parents requested information on the instruments to be used for reevaluation and the method of administration, specifically, mode of communication.

Over the summer of 2000 the student received 20 hours of instruction in sign language at a private facility. By the end of the summer, he had shown some progress, including the ability to make sentences as opposed to using only single word labels. The director of the private facility testified that because of the student's lack of ability in either sign or verbal language, any testing done would be invalid and not meaningful. The parents' expert was not a licensed teacher in Florida or any other state. The district disputed this and believed it had appropriate tests and methods to evaluate the student.

The parents requested an IEP mandating that sign language be used for instruction and evaluation. The district requested an evaluation prior to making such a major change. The parents refused to consent to an evaluation and demanded an informed notice of refusal. The district complied with the demand and noted that no services were ruled out after an evaluation. The district submitted two audiology reports showing the student had a mild hearing loss demonstrating a need for an FM amplification device. The district maintained that the student did not need sign language training or services, that more evaluation data were needed, and that evaluations should be administered with the FM amplification device.

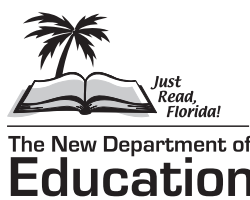
CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. Federal and state law require that a district conduct a proper review of a student's progress and an assessment in all areas related to the suspected disability, including hearing, social and emotional status, general intelli-

gence, academic performance, communicative status, and motor abilities. An assessment is not required if the district makes a determination that no additional data are needed to determine whether the child continues to have a disability, unless the parent requests it.

In this case, both the district and the parents agreed that a reevaluation was appropriate. The question for resolution was what means of communication would be used in the evaluation. The parents contended that the use of sign language was appropriate. The fact remained, however, that the student was not yet fluent in any type of sign language, even though he had made some progress during the 2000 summer session.

Evidence indicated that the student could hear to some degree and his hearing deficiency was not total. It appeared that his inability to communicate fluently stemmed as much from unfamiliarity with concepts and a lack of cognition as from an inability to hear. The evidence also indicated that there were tests available that were designed for individuals with the student's disability. Two educational psychologists said that these tests, given with appropriate amplification, could produce meaningful data upon which reliable conclusions could be based.

ORDER: The district was ordered to conduct a reevaluation of the student's disability, social and emotional status, general intelligence, academic performance, and communication status. The method of communication to be used for the reevaluation was verbal with appropriate amplification to ensure the student could hear and be meaningfully tested. The tests to be utilized were to be specifically designed for students who demonstrated the student's hearing deficiencies, identified in the testimony of educational psychologists. Upon completion of the appropriate testing, the district was ordered to develop an IEP based on the cooperative input of both appropriate school staff and the student's parents prior to the commencement of the 2001-2002 school year.



Florida Department of Education
Jim Horne, Commissioner

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