Florida Department of Education

Summaries of Due Process Hearings

in Exceptional Student Education

conducted by
the Division of Administrative Hearings

July–December
2000

Bureau of Instructional Support and Community Services

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Table of Contents

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 2000. 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 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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Bay County School Board
Case No. 00-4225E
Initiated by Parent
Hearing Officer: Ella Jane P. Davis
Date of Final Order: November 3, 2000

ISSUES: Whether the student was entitled to a properly functioning assistive technology device in accordance with her individual educational plan.

FINDINGS OF FACT: The student's parent and staff from the student's school were in dispute regarding how long a laptop computer had been provided to the student and how often the computer had malfunctioned. The parent requested a due process hearing to resolve the matter. The district consented to providing the student with a new laptop computer, and the parent agreed to withdraw the petition on the condition that the district allow the student to use the laptop both at school and at home for homework assignments.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter of this case. The findings of fact indicated that all the issues of contention material to the case had been resolved. The school district agreed to provide the student with a properly functioning laptop computer that could be used at home for homework assignments.

ORDER: It was ordered that the school district provide the student with the required computer within ten days from the date of the final order, and that the student be permitted to use the computer both at school and at home. The school district would be responsible for the maintenance and servicing of the computer.

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Charlotte County School Board
Case No. 00-2715E
Initiated by Parent
Hearing Officer: J. Lawrence Johnston
Date of Final Order: August 9, 2000

ISSUES: Whether the school district provided the student with a free appropriate public education (FAPE), specifically related to requirements laid out under the Individuals with Disabilities Education Act (IDEA) for mainstreaming students in exceptional student education (ESE) programs; whether the district had in place a written Comprehensive System of Personnel Development for acquisition and dissemination of promising education practices; whether the district provided appropriate training in a particular reading program for staff working with the student; whether the district considered extended school year (ESY) services for the student; and whether a notice to the parent dated May 10, 2000, omitted mention of what other reading programs were available and considered.

FINDINGS OF FACT: The student was eight years old and in the second grade at the time of the hearing. At the beginning of the 1999-2000 school year, he was enrolled in a regular education class and received reading services under Title I. In the spring of that school year, he was identified as having a specific learning disability and eligible for ESE services. When the individual educational plan (IEP) team met on several occasions, the parent wanted the student to be served full-time in a general education class with a general education aide to meet his individual needs, and wanted the school to commit to use a specific reading instruction program. The district declined her request to commit to a specific instructional program and offered a placement that combined regular education classroom instruction, ESE instruction in the resource room, continued Title I reading instruction in the general education classroom, and consultation services. The parent declined to consent.

The team did not think ESY services were appropriate for the student because he had been making steady progress with his Title I reading program and there was no evidence of out-of-the-ordinary regression or slow recoupment after school breaks. However the parent believed that the team denied ESY because the district had cancelled summer school.

Mediation was tried and failed. The parent notified the district that the parent would seek private school placement and ESY at public expense. The district denied this request. The parent requested an independent evaluation at public expense; the district conditioned payment on review and approval of the written qualifications of the evaluator of the parent's choice. However, the parent did not provide the written qualifications.
After mediation was requested, the district sent the parent a letter that detailed why the district refused to meet the parent's demands referred to earlier. The letter verified that the district considered and rejected the specific teaching methods requested and reiterated that the district considers and draws from several different reading programs to tailor an individualized program for ESE students. The content of the district's notice of refusal met the requirements of IDEA.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter of this case. It was determined that district-wide compliance issues would not be decided in this proceeding.

School districts have the right to choose teaching methodology, as long as it is calculated to confer educational benefit. The evidence did not prove that the teaching methods to be used by the district are so seriously flawed that they are doomed to failure. Likewise, the evidence did not prove that the district's teachers and aides are so poorly trained that they will be incapable of teaching the student. There was ample evidence of training made available to the ESE teachers. Also, the evidence was that the IEP, as written, was appropriate and would result in FAPE. School districts are not required to provide the best possible education, but rather a basic floor of opportunity. The evidence was that the team did consider providing all the student's ESE services in the general education classroom, but rejected that approach because of the student's distractibility. The evidence at the final hearing did not establish that ESY was required for the student.

A school district may be required to pay tuition for private special education only if public special education has failed. In this case, it was deemed premature to say that public special education had failed, as it had not been given a chance.

ORDER: The district may proceed with implementation of the student's IEP.

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Duval County School Board
Case No. 99-3960E
Initiated by Parent
Hearing Officer: Stephen Dean
Date of Final Order: August 21, 2000

ISSUES: Whether the school district provided the student with a free appropriate public education (FAPE); whether the district should be required to provide the student with compensatory education; whether the district should be required to provide the student with extended school year (ESY) services in math in order for him to receive educational benefit; and whether the district should be required to reimburse the parent for an individual educational evaluation and other services provided by a private psychologist.

FINDINGS OF FACT: At the time of the hearing, the student was 13 years old and was not enrolled in school; he was being educated at home by his mother. His teacher in kindergarten noted academic problems and he was found eligible for exceptional student education (ESE) services in kindergarten. At that time, he was placed in a district program for students with specific learning disabilities (SLD). He was placed in a self-contained ESE classroom in the first grade.

In the sixth grade, the student was placed in an ESE resource class for language arts and inclusion classes for the other academic courses. After two weeks of this arrangement, the parents requested the student be placed in ESE resource classes for all academic classes.

The school principal agreed and changed the student's schedule to reflect the changes. The student was provided with modifications and accommodations in academic classes.

Also during his sixth grade year, the student's teachers observed a change in his behavior. They reported there were observable differences in the student's behavior when he was medicated in comparison to nonmedicated periods. His mother had discontinued his medication because he had complained that it made him feel "detached." The student spent more time in the assistant principal's office for behavior problems as the school year progressed. He sometimes walked out of class and demonstrated a lack of respect for his teachers. His mother condoned the student's behavior.

In May 1999, near the end of the student's sixth grade year, the mother consulted a private psychologist, who outlined a six-step plan to help the student deal with his frustrations. The doctor's findings did not present any information that would have contradicted the district's placement for the student. Also in May 1999 the team developing the student's individual educational plan (IEP) recommended the student attend a summer science camp as a way to make learning more fun for him. His mother did not allow his to attend the camp. The student did receive individualized reading instruction during the summer. The IEP team felt the student had made extended progress in math, and did not recommend ESY services in math, other than the math camp.

An IEP, including a behavior intervention plan, was developed at the beginning of the 1999-2000 school year. The student walked out of class without permission on at least two occasions, prompting referrals to the office from the teacher. The mother withdrew the student from school after approximately three weeks. The district retained an expert to evaluate the student. The expert's professional opinion, after reviewing all IEPs developed for the student over the years and interviewing the student's teachers and mother, was that the district understood and appropriately the student's disability.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter of this case. The petitioner alleged that the student had been denied FAPE. The legal standard to determine whether FAPE has been provided is (1) whether the school district has complied with procedures set forth in the Individuals with Disabilities Education Act (IDEA) and (2) whether the IEP developed through IDEA's procedures has been reasonably calculated to enable a child to receive educational benefits.

In this case, the student was appropriately placed in a program for students with SLD. The student's parents were afforded every opportunity to participate in the development of his IEP each year, and the mother actively took part in the decision-making process concerning the student's educational program. The student ceased receiving special educational services when his mother unilaterally withdrew him from public school in order to teach him at home. Evidence indicated that the student, upon re-enrollment in public school, went through a school year on an observational IEP. However, that school year was one of the student's more successful years, and there was no evidence this error impacted his education.

There was no evidence that any procedural errors committed by the district adversely impacted the student and warranted relief. Further, all IEPs in the extensive record were appropriate and complied with the essential elements of the law. The IEPs were clearly designed to enable the student to receive educational benefits and provided, at a minimum, a "basic floor of opportunity." Any special services needed to accommodate the student's special needs were available and provided by the district. Although there was evidence the district worked with the child's parent to maximize the student's potential, the district was not required to maximize potential, but rather to provide an individualized opportunity for the student.

The evidence indicated that the student had always been staffed in the least restrictive environment, and he had not been denied any services that were necessary to meet his needs as required by IDEA. At the time of the hearing, the district was ready and able to provide the student with all services deemed educationally appropriate.

The parent was not entitled to reimbursement for the private therapies. The initial evaluation by the private psychologist and his participation in developing IEPs was a reasonable expense, and the district was expected to pay a reasonable professional fee for a reasonable number of hours.

ORDER: The school district was ordered to compensate the parent for the reasonable costs of the private psychologist's diagnostic work with the student and for the doctor's participation in two IEP meetings, but none of the other requested relief was granted. Because of the passage of time, it was ordered that a new IEP be developed if the student was enrolled in a different school.

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Duval County School Board
Case No. 99-4329E
Initiated by Parents
Hearing Officer: Diane Cleavinger
Date of Final Order: December 22, 2000

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

FINDINGS OF FACT: The student was six years old at the time of the hearing and had been diagnosed with autism; she was enrolled in district programs for students who are trainable mentally handicapped and who require speech therapy. The parents had declined placement in a district autism program.

Specifically, the parents alleged that the student was regressing behaviorally and that the school was not appropriately implementing the curriculum as outlined in the student's individual educational plan (IEP). Although evidence showed that the student's program had been imperfectly implemented, she was making academic and language progress in

school, and she was achieving her IEP goals. As for the alleged regression in behavior, the evidence presented in support of this was too tentative and speculative to be given credit. Some of the imperfections of the school's implementation were found to be troubling and should be considered if the student were to regress or stop making progress.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter of this case. According to the Individuals with Disabilities Education Act (IDEA), FAPE means special education and related services provided to a student at public expense. One of the key concepts of IDEA is the requirement that an "appropriate" education be provided. However, there is no one test to be applied to the definition of "appropriate" under the act.

The parents in this case alleged that the student was being denied FAPE. The legal standard to determine whether FAPE has been provided is (1) whether the school system has complied with the procedures set forth in IDEA and (2) whether the student's IEP is reasonably calculated to enable the child to receive educational benefits. In this case, the student was appropriately placed in a program for students with autism, and no procedural violations were alleged or shown. Further, the parents failed to prove that the district was unwilling or unable to provide any program or services necessary to comply with IDEA or the student's IEP. Therefore, the petition was found unsupported by the facts or the law and was dismissed.

ORDER: The parent's demands set forth in the request for a due process hearing were denied.

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Flagler County School Board
Case No. 99-4933E
Initiated by Parents
Hearing Officer: Suzanne F. Hood
Date of Final Order: September 6, 2000

ISSUES: Whether the school district provided the student with a free appropriate public education (FAPE) and, if not, whether the student's placement in a private school was an appropriate placement that should be funded by the district.

FINDINGS OF FACT: The student attended kindergarten and first grade in North Carolina, where he received services in an exceptional student education program in the area of speech therapy. His kindergarten teacher recommended retention at the end of the school year, but the parents decided to place him in first grade, where he was provided with assistance in reading and speech from a teacher who specialized in the area of specific learning disabilities (SLD). When the student transferred to Flagler County in the second grade in early fall 1991, he reportedly had no phonetic skills and did not know the entire alphabet. Initially, he was placed in a regular second grade classroom with an SLD resource teacher. In December 1991 the student was placed full-time in a self-contained SLD classroom and continued receiving speech and language services.

In May 1992 a new individual educational plan (IEP) was developed for the student and the decision was made to place him in a varying exceptionalities (VE) classroom during the 1992-93 school year. In April 1993 the IEP team assigned the student to an SLD classroom and provided him with speech and language services. The student's mother requested a psychological evaluation in June 1993, which was performed in September 1993. The school psychologist reported that the student's full scale IQ was 77 and determined that the SLD placement was appropriate. In March 1994 the student was evaluated for determination of eligibility for occupational therapy. The test indicated that his postural control, motor planning, and ocular skills were adequate.

The student was continually placed in SLD/VE classes each year, with some instruction in regular education classes, through the 1996-97 school year, at which time he was promoted to the eighth grade. Beginning in the eighth grade, the student was placed in a variety of settings and classes in a attempt to implement the goals of his IEP. In July 1999 the parents had the student evaluated for admission to a private school.

An IEP meeting was held in August 1999 by the district to develop new annual goals and short-term objectives. During the meeting, the parents announced that they were withdrawing the student from public school and enrolling him in a private school. The IEP was not finalized. While the private school setting did not have smaller classes or one-on-one instruction, as the parents had hoped, the school did provide the student with one teacher throughout the school day, a highly structured classroom setting, and a carrel in which to work on individualized lessons with no distractions. In contrast, the district schools exposed him to a rotation of teachers in middle school and a need to be pulled out of class for exceptional student education instruction in high school. At the private school, the student did not have to go to a learning lab to receive tutoring or special assistance for taking tests, as he had done in public school.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter of this case. Under federal law, a school district does not have to pay for private school education if the district has made FAPE available to the child and the parents unilaterally placed the child in a private school. A school district may, however, be ordered to reimburse parents for the cost of a previously eligible child's unilateral placement in a private school if it is found that the district did not provide the child with FAPE in a timely manner prior to enrollment and if the private placement is appropriate.

In this case, the district correctly identified the student as having learning disabilities with auditory processing problems and appropriately ruled out the student's need for occupational therapy. Further, the district had the child thoroughly evaluated for possible attention deficit hyperactivity disorder and dyslexia. There were no procedural or substantive violations in the identification and evaluation of the student. The greater weight of the evidence also indicated that the district did not commit any procedural violations in developing the student's IEPs. However, a review of the student's IEPs indicated that the district failed to develop and implement goals and objectives for the student that met his unique needs given his potential and ability level. Therefore, the district committed substantive violations in the development and implementation of the student's IEPs.

The evidence further indicated that the district should have provided the student with a more restrictive learning environment in order to lessen the adverse impact of his distractibility and poor impulse control. Due to substantive violations in the student's education placement and/or in the development and implementation of his IEPs, he was not provided with FAPE in seventh through ninth grades. The deficiencies were more severe than failing to provide him with an ideal educational program or an educational environment in which to maximize his learning potential.

ORDER: The district was ordered to reimburse the student's parents for tuition and related expenses at the private school for the 1999-2000 school year and to provide the student with compensatory education by paying for his tuition at the private school for the 2000-01 and 2001-02 school years.

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Leon County School Board
Case No. 00-2088E
Initiated by Parents
Hearing Officer: Stephen F. Dean
Date of Final Order: December 13, 2000

ISSUES: Whether the district appropriately evaluated and identified the student in 1997 and 2000; whether the district offered an appropriate educational program for the student; and whether the parents were entitled to reimbursement and future costs incurred in providing the student with educational services.

FINDINGS OF FACT: The student received services as a student with Limited English Proficiency (LEP) in another Florida school district prior to transferring to the Leon County School District (hereafter referred to as the district). The district was provided the student's results from a standardized achievement test, which showed deficiencies in reading comprehension, language mechanics, math computation, and math application. Over the parent's initial objection, the district placed the student in an LEP program instead of an exceptional student education (ESE) program. The parents agreed with the placement after district staff advised that the LEP placement was the only way to get certain accommodations for the student.

When the student was in eighth grade, she did not even partially master a single objective on the districtwide assessment. In August 1996, the parents presented the district with the results of an independent educational evaluation (IEE) that showed the student had multiple disabilities. The parents contended that the student should be enrolled in an ESE program, but the district rejected the results of the IEE and denied the request for ESE services. The parents arranged for private tutoring for the student and retained the services of a speech pathologist.

The district did not begin its own testing until October. It administered the OWLS Listening Comprehension test and several other tests, on which the student's scores met the state definition of 1.5 standard deviations between achievement and IQ, but the district failed to

use the scores on these tests to determine eligibility. Eventually, the student was evaluated through Florida State University. The student scores on the Wechsler Intelligence Test for Children-Third Edition (WISC-III) reflected significant disparities, with more than one standard deviation between her verbal and performance IQ cores, but her overall scores just barely failing to qualify her for the specific learning disabilities (SLD) program based on discrepancy between ability and performance. There were other indications that her verbal performance was pulling down her IQ scores, such as the fact that she had passed the math portion of the High School Competency Test. The district continued to deny ESE services, over the parent's objections, arguing that the student's lack of academic skills and processing problems were primarily due to environmental, cultural, or economic disadvantages. However, there was no evidence to support this. The claim was apparently based only on the student's early exposure to another language. Throughout the student's tenure in the district, she continued to fail courses or pass only with "Ds." The parents continued to request ESE services.

When the student was retested in August 1999, she showed either little improvement or even a slip in some scores. In May 2000, the district finally convened an eligibility staffing and determined that the student was eligible under the language-impaired category. The IEP team determined that the student needed one-on-one services from a speech-language pathologist. The team declined summer services because the speech pathologist was not available over the summer, not because the student did not need the services. The IEP developed for the student did not contain measurable objectives.

The parents had the student evaluated further during the summer of 2000 and as a result of the findings of the evaluation, arranged for the student to receive private cognitive therapy to address her processing difficulties. The parent notified the district of her intention to obtain this therapy at the district's expense.

In August 2000, the IEP team met to develop an IEP for the upcoming school year. There is a dispute about exactly what services were offered at that time. The IEP developed for the student did not contain measurable objectives. It also did not establish goals in all areas in which petitioner needed remediation. Additionally, the student had already taken the classes offered by the district and had not benefited from them in terms of meaningful educational opportunity. The parent notified the district at the meeting of her intention to seek direct, one-on-one, structured multisensorial, language-based instruction at Dyslexia Research Institute Literacy Life Skills Program (DRILLS) at the district's expense.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter of this case. It was found that the district delayed an unwarranted period of time before screening the student, and when the student was finally screened, the district improperly focused on indicators of ability that were impacted by her disability, which lowered her intellectual performance score, and on indicators of academic performance that reflected the effects of the tutoring provided by her parents, thereby narrowing the discrepancy between ability and achievement intellectual functioning; as a result, she just barely missed being found eligible as a student with an SLD. If the results of the other tests had been used, or if the student's WISC-III IQ score had been compared with

her performance on the eight grade Florida Comprehensive Achievement Test, she would have been found to meet the definition of a student with a specific learning disability.

When she was finally staffed, it was as a student with a language impairment. It was determined that the district failed to properly staff the student and, as a result, failed to provide FAPE. The district also did not provide summer services although they were clearly an educational necessity for the student; again FAPE was denied.

The parent requested reimbursement for the expense of private tutoring and private testing in 1997. However, the parents did not provide the required notice to the district, so this request was denied.

However, with regard to the testing in 1999 and the educational services provided by DRILLS, it was found that the district failed to adequately test the student and the testing paid for by the petitioner helped the district. It was also found that the educational placement offered by the district on its latest IEP was wholly inadequate and of no reasonable educational benefit, while the DRILLS program was reasonably calculated to provide the student with appropriate education.

ORDER: The district was ordered to reimburse the parents for educational testing in 1999 as well as for their educational expenses at DRILLS. The district was further ordered to develop, in accordance with applicable law, an IEP that would provide educational services for the student, including individual testing necessary for her to obtain an educational benefit.

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Marion County School Board
Case No. 00-3815E
Initiated by District
Hearing Officer: Diane Cleavinger
Date of Final Order: November 21, 2000

ISSUES: Whether the placement of the student in an exceptional student education (ESE) program for students classified as educable mentally handicapped (EMH) was appropriate and would provide the student with a free appropriate public education (FAPE).

FINDINGS OF FACT: Due to persistent academic difficulties experienced by the student in the third grade, the student was referred for evaluation in the areas of vision, speech-language, psycho-educational, audiological, and social needs. The evaluations were conducted and the parents were invited to attend a staffing committee meeting on March 21, 2000, to discuss eligibility for ESE services and to determine an appropriate placement for the student. The individual educational plan (IEP) developed by the team recommended the student be placed in an EMH program. The parents disagreed with this placement and withheld their consent. They requested an independent educational evaluation (IEE) at the expense of the district, and the district consented.

The report from the IEE, conducted in mid-August 2000, indicated the student would benefit from ESE services. A meeting was scheduled for August 21, 2000, to review the evaluation; the parents did not attend. Based on the IEE report, the staffing team developed an IEP for the student and determined a setting for provision of ESE services.

Near the end of August 2000, the student's family moved and the parents transferred the student to another public school in the district. The district, after giving the parents reasonable notice, filed for a due process hearing to request placement of the student in an EMH program without the consent of the parents.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter of this case. The school district was required by law to provide the student with FAPE. The district appropriately determined the student eligible for ESE services and placed the student accordingly. The delay in provision of ESE services was a result of the parents' objection to the recommended placement. The EMH program was the least restrictive environment for the student.

ORDER: It was ordered that the school district place the student in a EMH program consistent with and pursuant to the IEPs developed for the student in March and August 2000.

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Miami-Dade County School Board
Case No. 00-1040E
Initiated by Parent
Hearing Officer: Susan B. Kirkland
Date of Final Order: July 5, 2000

ISSUES: Whether the proposed placement of the student in a program at a district center school for students diagnosed as severely emotionally disturbed (SED) would provide the student with a free appropriate public education.

FINDINGS OF FACT: The student was 13 years old at the time of the hearing and had been determined to be eligible for services in a program for students who were emotionally handicapped. The student was enrolled in an exceptional student education program during his fourth- and fifth-grade years. Due to sudden traumatic incidents when the student was in the sixth grade, he was placed in a nine-week transitional program at a center for students with mental illness.

The student made steady improvement and the district convened an individual educational plan (IEP) meeting on January 24, 2000; the IEP team determined that the student should be transitioned into a less restrictive environment. An IEP was developed and the team recommended placement at a school near the student's home. The parents objected to the new placement, contending the racial disparity at the school could have an adverse impact on the student. On March 8, 2000, they requested that the student be allowed to remain at the SED center and requested a due process hearing on the matter.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter of this case. Due to the stay-put rule of law, the student remained in the SED center placement longer than necessary. The program was appropriate to meet his needs when he started there, but he had progressed beyond his peers and had no appropriate role models in that placement. Placement in a regular school setting that would promote opportunities for the student to interact with nondisabled peers would be beneficial to the student. The recommended school of placement close to the student's home was appropriate.

ORDER: It was ordered that the student's January 24, 2000, IEP be implemented at the school near the student's home.

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Miami-Dade County School Board
Case No. 00-2407E
Initiated by District
Hearing Officer: Patricia Hart Malono
Date of Final Order: August 2, 2000

ISSUES: Whether the student should be placed in an exceptional student education (ESE) program for emotionally handicapped (EH) students.

FINDINGS OF FACT: The student was in the second grade at the time of the hearing. Due to inappropriate behavior and uncontrollable outbursts of anger by the student during school, the district, with the consent of one of the student's parents, conducted a psycho-educational evaluation of the student. The evaluation indicated that the student functioned in the borderline range of intellectual ability and suffered deficiencies in the areas of verbal and visual functions. The student also had significant emotional, social, and behavioral problems that interfered with his academic success and his interpersonal relationships at school. The evaluation report concluded that the student should be placed in an appropriate program that would address his needs.

On April 22, 1999, a staffing committee determined that the student was eligible to receive services in an EH class in his home school as well as services for students with speech impairments. An individual educational plan (IEP) was written at this meeting. The student's parents were invited to this meeting but did not attend. Subsequent to this meeting, the principal of the school had explained to one of the parents the benefits of enrolling the student in the EH program, but the parents disagreed with the recommended placement.

An IEP development meeting was held on October 20, 1999. The IEP team determined that the student's placement in the EH class and the speech services should be continued. The committee also agreed that the student needed to be placed in a structured behavior management program with direct specialized instruction, daily progress reports, close supervision, and therapeutic services. A new IEP was written to reflect these recommendations. The parents were invited to the meeting but did not attend.

The parents attended a follow-up staffing conference on November 17, 1999, to review the student's academic and behavioral problems as well as an evaluation report, but they withheld their consent to the placement. In June 2000, the district staff scheduled an IEP meeting; the parents did not attend, and no new IEP was developed. The district filed for a due process hearing, alleging that placement of the student in an ESE program was necessary.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter of this case. The district satisfied all the procedural requirements necessary to identify and evaluate the student as a student with emotional handicaps eligible for instruction and services as an ESE student. The student's IEP was calculated to provide him with educational benefit and to address his emotional needs in the least restrictive environment.

ORDER: The school district was allowed to implement the second IEP that was developed for the student.

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Palm Beach County School Board
Case No. 00-0877E
Initiated by Parent
Hearing Officer: Claude B. Arrington
Date of Final Order: November 27, 2000

ISSUE: Whether the district provided the student a free appropriate public education (FAPE), in particular in the area of social skills training; whether the district must reimburse the parents for private school tuition and transportation expenses; and whether the student was entitled to compensatory education in the form of tuition and transportation expenses at a private school placement.

FINDINGS OF FACT: The student had been determined eligible for exceptional student education services in the third grade. At the time of the hearing, he was 15. The student had difficulties working in symbolic language that affected him in the areas of reading, arithmetic, and writing. He had made little or no progress in these areas and had been exhibiting a negative attitude toward learning and was having behavior problems. At the beginning of the ninth grade, the student was enrolled in a residential military-style alternative school operated by the district. The student made progress in the district's residential school and his attitude greatly improved; however, in the middle of the school year, he decided to withdraw from that school. An IEP meeting was convened and the district offered the student several alternative placements, finally settling on a placement at a district high school. The parents declined the offered placements and unilaterally withdrew the student and enrolled him in a private school. The student made progress at the private school and it was an appropriate placement for him. The parents expressed concern that the district high school was overcrowded and would reduce the number of electives available to the student.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over this matter. To successfully claim private school tuition, the petitioner must show that FAPE cannot be provided by the district. Here, the district established that it was capable of providing FAPE at its proposed placement.

ORDER: The parent's claim for reimbursement of tuition and transportation costs was denied. Further, the parent's claim for compensatory education in the form of future tuition and transportation expenses was denied.

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Palm Beach County School Board
Case No. 00-1281E
Initiated by Parents
Hearing Officer: Stuart M. Lerner
Date of Final Order: December 8, 2000

ISSUE: Whether the Palm Beach County School Board should be required to reimburse the student's parents for costs associated with the student's placement at a charter school in Hillsborough County.

FINDINGS OF FACT: At the time of the hearing, the student was eligible to receive services in a program for students with emotional disabilities, specific learning disabilities, and language impairment. The student was involved in several incidents in the fall of 1999, resulting in both in-school and out-of-school suspensions. A hearing was held in February 2000 to determine if the behavior was a manifestation of the student's disabilities. At the hearing, it was determined that the behavior was a manifestation of his disabilities. In March 2000 the parents decided to stop sending the student to school and began searching for an alternative placement for him, including private schools. The student returned to school in May 2000.

The parents withdrew the student from school in July 2000 and enrolled him in a charter school in Hillsborough County in September 2000.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter of this case. Reimbursement for unilateral placement applies only to private school placement. Unilateral placement in a public school in a different school district shifts the obligation to provide a free appropriate public education (FAPE) to the new district. Therefore, the parents should have sought redress from the Hillsborough County School Board, not Palm Beach County. Moreover, the Palm Beach County School Board made FAPE available in the least restrictive environment. In that light, even if the unilateral placement had been determined private, reimbursement would not have been available. Evidence did not demonstrate that the district committed any procedural violations that resulted in the loss of educational opportunity for the student.

ORDER: The parents' request for reimbursement was denied.

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Palm Beach County School Board
Case No. 00-2418E
Initiated by Parent
Hearing Officer: J. D. Parrish
Date of Final Order: December 4, 2000

ISSUE: Whether the student was entitled to reimbursement for private school tuition because she was a student with disabilities and the district was unable to provide her with a free appropriate public education (FAPE).

FINDINGS OF FACT: At the time of the hearing, the student was 17 years old and enrolled in a private school in New York. While attending public school in Palm Beach County prior to the private school placement, the student had been determined eligible for services in an exceptional student education program for students with specific learning disabilities. Prior to the 1999-2000 school year, the student had an individual educational plan (IEP) and the parent at that time did not claim that the IEP was inappropriate or unable to provide the student with an opportunity for learning.

During the summer before the student was to enter the seventh grade, she experienced a devastating physical and emotional trauma. Due to the trauma, the student and her mother moved to another home. After the move, the student attended two district middle schools, where her academic progress was acceptable but not exceptional. When the parent enrolled the student at the second of these schools at the beginning of the 1997-98 school year, she did not disclose information about the trauma nor any potential emotional repercussions that the event may have caused.

On or about September 30, 1997, an IEP was developed for the student and the IEP team determined that placement in a varying exceptionalities class was appropriate. Over the course of the next years, until November 1999, several IEP meetings were held to discuss services for the student. The parent was invited to attend each meeting, but did not attend all of them. Further, the parent never challenged any IEP team decisions, even when the student was dismissed from language therapy in June 1998.

In November 1999 the parent executed a consent for release of academic records and authorized a private school in New York to obtain the student's academic, health, and immunization records from the district. The parent unilaterally enrolled the student at the private school.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter of this case. The IEP for the student as drafted for the 1999-2000 school year adequately addressed her needs and would have provided her with an appropriate educational opportunity. Further, the parent's unilateral transfer of the student did not recognize the district's ability to provide the student with FAPE. The parent was not entitled to recover the costs associated with the private school placement under the circumstances of this case.

ORDER: The parent's request for reimbursement was denied.

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Florida Department of Education
Jim Horne, Commissioner

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