Florida Department of Education

Summaries of Due Process Hearings

in Exceptional Student Education

conducted by
the Division of Administrative Hearings

January–June
2000

Bureau of Instructional Support and Community Services

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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 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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Broward County School Board
Case No. 98-5258E
Initiated by Parents
Hearing Officer: Claude B. Arrington
Date of Final Order: January 31, 2000

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 the parents were entitled to reimbursement for occupational therapy (OT) costs incurred from February 1997 through April 1999; whether the parents were entitled to reimbursement for a home-based speech and language therapy program from August 1997 through April 1999; whether the parents were entitled to reimbursement for private school tuition and costs for privately hired aides to assist the student while he attended a private school from January 1998 through May 1998; whether the parents were entitled to reimbursement for private school tuition for a second private school placement from May 1999 through August 1999; and whether the parents were a prevailing party entitled to attorney's fees and costs under IDEA.

FINDINGS OF FACT: The student was enrolled in district exceptional student education (ESE) programs for students with autism and with speech/language impairment. The student was first determined eligible for these services prior to the 1995-96 school year. However, the parents did not place him at that time. In October 1996 the parents requested that ESE services be initiated and the district responded in a timely manner. An individual educational plan (IEP) developed on October 29, 1996, provided for the student to receive services in a preschool autistic cluster located in a district school. This placement also provided for speech/language therapy from the classroom teacher and for the student to be screened for eligibility for OT services.

On an OT screening report dated November 15, 1996, the date section of the form had the inscription "11/15/96 Attempted." Under the results section was written "Passed Screening, No Further Testing." The form also included the following comments: "No need to

refer for [OT] at present time. Student appears to be functioning well within present classroom setting." The parents testified that they knew nothing about the screening or the conclusion that no further testing was needed. The parent asserted that no screening took place because the word "attempted" was used. However, the evidence presented, in particular the results and comments sections of the form, indicated that a screening did take place and the student was determined ineligible for OT services at that time.

An IEP staffing was held in December 1996. Because the student had become more aggressive toward peers and adults, the team decided to assign a paraprofessional to the classroom to assist the student in controlling his behavior. The team also recommended a more structured environment be found for the student. In January 1997 the parent withdrew the child from the autistic cluster and enrolled him in a program for autistic preschoolers at the student's assigned district school. He remained at this school through the end of the 1996-97 school year, attending on a shortened school day schedule because his parents wanted him to continue private therapy at home.

The parents had the student privately evaluated for OT services in February 1997 and January 1998. The evaluators observed that the student would benefit from OT services, but for reasons that were not made clear the parents did not share these evaluations with district staff until after the student had been withdrawn from public school.

On May 8, 1997, an IEP meeting was held to review and update the student's IEP for the 1997-98 school year. New goals and objectives were developed and three program options were considered, from most restrictive to least restrictive: (1) an autistic cluster consisting solely of students with autism, (2) an inclusive kindergarten class with both ESE and non-ESE students, and (3) a regular kindergarten classroom. The parents requested an opportunity to visit the various classrooms.

The IEP meeting was adjourned to give the parents the chance to make their visits. The team reconvened on June 12, 1997. The parents requested the student be placed in the inclusion classroom to help him acquire social skills. The team agreed to place the student in that class, agreeing that the student could receive services in the autistic cluster if necessary. At the time of the IEP meeting, members of the team did not know that the inclusion class would be located at an annex of the elementary school located 1.5 miles from the main campus. The student attended the inclusion class from August 25 to December 16, 1997.

Prior to the 1997-98 school year, district staff began developing a student profile for students placed in the inclusion class. When the IEP team met in June 1997, the profile had not yet been developed, so the team did not have the benefit of referring to the profile when discussing placement for the student. As it turned out, the student did not meet the characteristics outlined in the student profile that was adopted in September 1997.

Despite efforts by teachers at the beginning of the 1997-98 school year to help the student with the transition from the autistic cluster to the inclusion classroom, the student's behavior at school and at home deteriorated and, after several weeks, the inclusion teacher suggested the student needed another placement as well as possible OT services. The student

was again screened for OT eligibility on October 13, 1997; further testing was recommended.

The IEP team met on October 10, 1997, to discuss placement. They agree that a shortened school day would be appropriate, that programs that had worked at home would be tried at school, and that the lead autism teacher would provide support for the parents. The parents asserted that the IEP was not implemented because the lead autism teacher did not work with them on a regular basis. This assertion was a result of a misunderstanding of the services the teacher would provide, and it was rejected by evidence.

A referral was made on October 15, 1997, for an evaluation to determine what, if any, assistive technology or augmentative communication services or devices might help the student to understand the teacher's direction. A behaviorist hired by the parents attended the next IEP meeting on November 12, 1997. The team agreed that the student should be removed from the inclusion class. The experts in attendance also suggested the student be placed in an autism cluster class either in the student's present school or in another district school. The meeting was adjourned to give the parents time to observe both programs. The team reconvened on November 21, 1997, after the parents had observed three cluster classes at the student's zoned school. The team agreed that one of the classes would not be appropriate, and they discussed which of the other two (hereinafter called Class 1 and Class 2) would be the better classroom for the student.

The majority of the team members recommended Class 1, but the parents wanted the student to be placed in Class 2, which had a more challenging academic element and students who were not as behaviorally challenged as in Class 1. The team agreed to a ten-day trial placement in Class 2. Five days later the parents rejected in writing the proposed trial placement. They felt the student would not succeed in Class 2, yet would not progress in Class 1.

On December 1, 1997, the father notified the district of his intent to place the student in a private school at public expense. The following day the district informed the father that the district would not pay for a private placement because an appropriate program had been offered in a district school. The parents were notified on December 11 that an OT evaluation was in progress.

On February 2, 1998, the district received written notice from the parents that they had withdrawn the student from public school, effective January 5, 1998. The student attended a private school from January through June 1998. The classroom was a regular kindergarten class with no ESE services, other than a one-on-one aide to assist the student. The district sent the parents information on extended school year (ESY) services in May 1998; the parents did not register the student for ESY.

The student was home-schooled by his parents from June 1998 through April 1999. During this time, the parents retained the services of speech, language, and occupational therapists. They did not seek services from the district during this time. Three IEP meetings were held in August 1998, with the parents in attendance. After these meetings, the parents opted to continue home-schooling the student.

At the parents' request, a formal mediation was held in April 1999 to discuss issues of contention. Some of the issues were resolved, but not the issue of reimbursement for expenses. The district determined that the student was eligible for OT services in May 1999 and a schedule for the delivery of OT and speech/language therapy was developed. That same month, the parents enrolled the student in another private school. This school became a charter school in August 1999 and was then part of the public school system. The student was still attending this school at the time of the hearing.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The student was entitled to FAPE, which has been interpreted by the United States Supreme Court to be satisfied when the district provides a child with access to specialized instruction and related services individually designed to provide educational benefit to the child.

The IEP that placed the student in the inclusion class following meetings in May and June 1997 comported with the requirements imposed on the district by IDEA. The program was a reasonable placement designed to provide the student educational benefits in the least restrictive environment. The parents' assertion that the district failed to appropriately implement the IEP developed in May and June 1997 was rejected as being contrary to the greater weight of the evidence.

The parents' assertions that the district failed to provide meaningful speech/language therapy and one-on-one instruction also were rejected by evidence. Further, the parents' assertion that the district failed to advise them concerning related services after the student was withdrawn from public school was rejected. The evidence established that the parents were fully advised by the district of their procedural and substantive rights under IDEA.

There was no basis to require the district to reimburse the parents for private school expenses. Finally, there was insufficient evidence to establish the district failed to properly screen the student for behavior, speech, or occupational therapies.

ORDER: All claims were denied.

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Duval County School Board
Case No. 99-0273E
Initiated by District
Hearing Officer: Ella Jane P. Davis
Date of Final Order: January 14, 2000

ISSUES: Whether the district was providing the student with a free appropriate public education (FAPE) as required by the Individuals with Disabilities Education Act (IDEA) and, if not, whether the student was entitled to compensatory education.

FINDINGS OF FACT: This case arose by the parent's petition filed in January 1999. The parties entered into mediation. Pursuant to a mediation agreement, the district reevaluated the student and convened a meeting to review the student's individual educational plan

(IEP). A revised IEP was implemented in August 1999, and the parent requested additional services not included in the IEP.

Specifically, the parent was seeking compensatory education in the form of additional time and emphasis in speech and language therapy, tutoring at district expense outside the regular school day, and provision of an aide with specified intervention skills to be present with the student during certain classes. The parent contended that these services were necessary due to the district's failure to appropriately diagnose the student and to provide a free appropriate public education (FAPE) to him over a period of time.

The student, who was 10 years old at the time of the hearing, was found eligible at the age of three for services for students with mental handicaps, including speech and language services. At the age of five he was diagnosed as autistic and placed in a district communication-based program for students with autism, with an emphasis on language development.

In November 1997, speech and language services were discontinued based on the recommendation of the speech pathologist, because language development was commensurate with the student's intellectual ability. The services were added again in 1999 and were being provided to the student for two hours a week at the time of the hearing.

A review of the student's 14 IEPs that had been developed by the district indicated that the parent was always included in the meetings and that the student had made consistent progress in school. There was no evidence of procedural or other deficiencies in the IEPs.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The legal standards to determine whether FAPE has been provided are whether the district has complied with procedures set forth in IDEA and whether the IEP has been reasonably calculated to enable the student to receive educational benefits. The student in this case was appropriately placed in a program for students with autism, and all IEPs developed for the student were appropriately developed and reasonably calculated to enable him to receive educational benefits in the least restrictive environment. The district was not required to maximize the student's potential.

ORDER: The district was providing FAPE for the student and the requests for compensatory education, tutoring, and an aide for the student were denied.

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Escambia County School Board
Case No. 99-3212E
Initiated by Parents
Hearing Officer: Diane Cleavinger
Date of Final Order: April 21, 2000

ISSUES: Whether the district committed procedural and substantive violations of the Individuals with Disabilities Education Act (IDEA) in relation to the identification, evaluation, and placement of the student; whether the district provided the student with a free, appropriate public education (FAPE) in the least restrictive environment and, if not, what relief should be granted.

FINDINGS OF FACT: At the time of the hearing, the student was nine years old and had been diagnosed with autism. She was first referred for possible eligibility for exceptional student education (ESE) services in the spring of 1996, at the age of five. At that time, she was interviewed by a pediatric psychiatrist who observed that she displayed symptoms consistent with pervasive developmental disorder or mixed receptive-expressive language disorder. He recommended psychoeducational testing to better define the diagnosis and begin ESE services.

A psychoeducational evaluation was performed by a district school psychologist on May 6, 1996. The parents consented to the evaluation and the father cooperated with the psychologist during the session. According to the rating scale used by the psychologist, the student displayed a high frequency of autistic behavior as well as behaviors associated with obsessive-compulsive disorders. The psychologist did not diagnose autism because that would be a medical diagnosis and she was not licensed to make such a diagnosis. Her reports generally were sent to medical doctors for further diagnosis, but this report was not shared with a doctor. The psychologist concluded that the student would benefit from ESE services and recommended placement in a program for students with emotional handicaps (EH).

Also on May 6, 1996, the student was diagnosed by a district speech-language diagnostician as having severely delayed expressive and receptive speech/language abilities. Language services were recommended. A staffing was held on June 5, 1996, to review evaluations and prereferral information and to determine ESE eligibility. The student was found eligible for services not only in the EH program but also for services for students who are with severely emotionally disturbed and speech/language impaired. The parents did not object to the staffing committee's determination.

From May 1996 until the time of the hearing there were numerous incidents that increased the level of distrust and animosity between the parents and district personnel. These incidents included the parents accusing school staff of abuse, district staff alleging the parents were calling and threatening them with violence, complaints being filed with the Office for Civil Rights (OCR), and the parents being arrested and released after violating a bond restriction.

In December 1997, the parents established residency in a neighboring county, Santa Rosa, and enrolled the student in a district elementary school there. The student started school in

January 1998. Also in January 1998, Escambia County school staff received a copy of the OCR report regarding allegations by the parents. The report addressed issues raised by the parents including the district refusing enrollment for the student, lack of parental notice regarding individual educational plan (IEP) meetings, lack of implementation of the IEPs, shortened school day for the student, and the failure of the school to provide related aids and services. According to the OCR report, all accusations were unfounded.

When district staff arranged a meeting in January 1998 to discuss educational options for the student, the parents did not attend. The district ESE director called the father, who said he would not come to the school any more and asked the director to stop calling him. The student reportedly was successful in the Santa Rosa school she attended. She did not display many of the problem behaviors that were prevalent in her Escambia placements.

In October 1998 the parents were contacted by a social worker who had questions about their residency status. After several months of inquiries on this matter, the Santa Rosa School Board attorney informed the parents that Escambia County was the student's primary residence. Because of the child's success in the Santa Rosa school, the parents requested that the child be allowed to continue attending that school through an interagency agreement between the two school districts. Their request was denied.

An IEP meeting was held on July 27, 1999, and the team determined that the child would best be served in another district school, with a teacher with extensive training in working with children with autism. Also, most of the staff at that school had limited knowledge of the conflicts between the parents and district staff in the student's previous placements. The parents were concerned that the same district staff would be overseeing the implementation of the IEP and the bond restriction against the parents was still in effect.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The district is not required to provide an ideal educational program; a program may be appropriate even if it falls short of maximizing a student's potential. The parents in this case had the burden of proving by a preponderance of evidence that the district committed procedural and substantive violations of the IDEA by failing to properly identify, evaluate, or place the student in an ESE program or by failing to provide the student with FAPE.

Up until 1997, all of the student's IEPs were properly developed with appropriate annual goals and short-term objectives. After 1997, the school board failed to review all medical information and provide appropriate therapy for the student and failed to remedy the effects of the criminal charges on the parents' ability to communicate with the school in which their child was enrolled. Evidence showed that the district committed procedural violations that deprived the student of FAPE and deprived her parents of the opportunity to participate fully in significant phases of her education.

The bond restriction kept the parents from full participation and at one point resulted in the student missing school because no bus transportation had been provided. However, the bond terms were the responsibility of the criminal justice system and not the district. The district failed, however, to mitigate the effects of that bond on communication and school attendance.

As for the parents' concern about placement at another district school, none of the school personnel at the new placement had any involvement in the criminal case, and the program at that school would be appropriate to meet the student's needs. However, the parties' mutual mistrust and hostility could continue to hinder the student's progress. It was determined that the student would best be served by being placed in a private school, if one could be found, at the expense of the district. If an appropriate private placement could not be found, the last elementary school suggested by the district would be responsible for implementing the Santa Rosa IEP and providing the student with FAPE.

ORDER: The parents' claims were denied in part and granted in part, as outlined below.

Regarding the parents' OCR complaint, no violation of Section 504 occurred, but there was a basis for concluding that the district violated IDEA or that the hostility between the parties made it impossible for the district to provide FAPE to the student. It was ordered that the student's education be removed from Escambia County and placement under the Santa Rosa IEP should occur in a private school, if one could be found.

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Flagler County School Board
Case No. 00-1251E
Initiated by District
Hearing Officer: Stephen F. Dean
Date of Final Order: June 21, 2000

ISSUES: Whether the facts supported an administrative law judge's (ALJ) ordering of a medical evaluation for the student and whether homebound instruction was appropriate for the student.

FINDINGS OF FACT: The student was 16 years old and enrolled in district programs for students with autism and with speech impairment. As a manifestation of his disability, he was prone to behavioral outbursts that included aggression toward others and self-injurious behavior. Beginning in January 2000, the district repeatedly asked the parents to have the student evaluated medically at the district's expense to help determine the most appropriate steps to address the behavioral issues. The parents failed to have an evaluation conducted.

On April 3, 2000, a team met to develop a new individual educational plan (IEP) for the student. The team recommended the student receive 20 hours per week of homebound instruction until an appropriate residential placement was found. The parents refused to allow the homebound instruction.

On April 14, 2000, the Seventh Judicial Circuit Court for Flagler County issued an injunction prohibiting the student from entering school property for the purpose of attending school due to numerous incidents of the student's violent behavior and injury to staff.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The district had developed an appropriate IEP for the student, but the parents prevented the IEP from being implemented by refusing to have a medical evaluation performed and by prohibiting homebound instruction to be provided. An ALJ has the authority both to direct the parents to allow a medical evaluation and to find homebound instruction an appropriate placement.

ORDER: The parents were ordered to make the student available for a medical evaluation at the district's expense and to allow instructional personnel into their home for the purpose of providing 20 hours of homebound instruction weekly, but for no longer than six months, until an appropriate residential placement could be found. In six months, if an appropriate residential placement could not be found, the IEP was to be reviewed in order to determine whether services should be continued.

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Gadsden County School Board
Case No. 99-4932E
Initiated by Parents
Hearing Officer: Don W. Davis
Date of Final Order: January 25, 2000

ISSUES: Whether the district committed procedural and substantive violations of the Individuals with Disabilities Education Act (IDEA) in relation to the identification, evaluation, and placement of the student; whether the district provided the student with a free appropriate public education (FAPE) in the least restrictive environment and, if not, what relief should be granted.

FINDINGS OF FACT: The student was first placed in a district exceptional student education (ESE) program during the 1991-92 school year, when he was diagnosed with a need for speech/language therapy. He was dismissed from the program later that same school year.

The student had behavior problems in school from the time he was first enrolled. In 1995 one of his teachers spoke with the mother about these behavioral problems. Subsequently, a psychologist at a local mental health center diagnosed the student as having attention deficit hyperactivity disorder (ADHD), and the child was prescribed medication. The principal at the student's elementary school was aware that the child had a history of behavior problems and was taking medication for ADHD, but she could not recall whether he was ever referred for ESE services.

Disciplinary problems increased as the student's behavior worsened in middle school. He was retained twice in the sixth grade. During one of his years in sixth grade, the student was enrolled in a program designed to help students with disciplinary problems and teach students social skills. Upon completion of the program, the student returned to the sixth grade, where he subsequently was expelled for the remainder of the school year for bringing a gun to school. He was promoted to the seventh grade at the age of 15.

In September 1999 the student was again facing expulsion from school for allegedly hitting a school official. At a school hearing, the district was informed that the student was receiving counseling and had a diagnosis of ADHD. In November 1999 the student was evaluated by a clinical psychologist, who noted in his report that the student had a history of behavior problems from an early age, including hanging cats and terrorizing younger children. The psychologist testified that the student had oppositional/defiant disorder. Absent treatment, this disorder can evolve into antisocial personality disorder.

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 district (a) committed procedural and substantive violations of IDEA by failing to properly identify, evaluate, and place the student in a special education program, and (b) violated IDEA by failing to provide the student with FAPE.

A review of the evidence showed that the district committed procedural violations by failing to timely identify the student's disability and failed to provide the student with FAPE. The district did not convene a multidisciplinary team meeting to consider the student's eligibility for ESE services. Despite the student's aberrant behavior over several years, teachers and other district employees testified that his behavior offered no indication of a need for evaluation for ESE placement. The testimony of these individuals was not credited.

ORDER: The district was in violation of state and federal law for failure to identify, locate, and evaluate the student to determine whether he had a disability. The testimony of an expert in the area of clinical psychology that the student had emotional disturbance constituted a sufficient basis to establish the district's responsibility for further testing and evaluation of the student to determine his eligibility for special education and related services. Further, the district was ordered to provide the student with tutoring and counseling to the extent indicated by evaluations to be completed. Finally, the district was ordered to reimburse the parents in the amount of $500 for expenses incurred to procure an independent evaluation due to the district's failure to provide same.

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Hendry County School Board
Case No. 99-3582E
Initiated by Parent
Hearing Officer: William R. Cave
Date of Final Order: February 15, 2000

ISSUES: Whether the district failed to provide the student with a free appropriate public education (FAPE) by failing to develop and implement an appropriate individual educational plan (IEP) and by failing to provide transportation to school from August 9-12, 1999.

FINDINGS OF FACT: On September 8, 1998, a meeting was held at a district middle school to develop an IEP for the student. On September 23, 1998, a multidisciplinary review committee met and unanimously recommended that the student be sent to a residential

placement for treatment of her behavior problems. The residential center recommended by the team had a waiting list for enrollment, so the mother decided to home school the student until there was an opening at the center.

The student enrolled at the residential center on January 5, 1999, in a program within the center that was operated by the school district. An IEP was developed by the district on January 8. On June 8, 1999, the parent filled out forms required to enroll the student in a district high school summer program. The district in turn requested the student's records from the residential center. The IEP included in the records was the one developed on January 8, 1999, which had one annual goal and three short-term objectives, with no behavior management plan. The student was discharged from the residential school on June 9, 1999.

District staff compared the January 8, 1999, IEP and the September 8, 1998, IEP and determined that the September 8 plan was more appropriate for the student in order for her to obtain educational benefits from the summer program. This decision was based on two factors: the school setting was significantly less structured than the residential program and the behavior intervention plan (BIP) included in the September 8 IEP was still appropriate. Since district staff did not consider the transfer from the residential facility to a district high school a change of placement and they considered the September 8 IEP still valid and appropriate, a new IEP was not prepared.

During the summer school session, the student completed her assignments, attended class every day, and made academic progress. She had some instances of inappropriate behavior, but her teacher handled the problems without referring the student to the office. The teacher noted an improvement in the student's social skills.

On August 5, 1999, the parent registered the student for classes at a district high school. The parent contacted district staff on August 6 to arrange door-to-door bus transportation for the student. Due to the absence of the district transportation director, door-to-door transportation was not provided until the afternoon of August 12, 1999. The parent drove the student to and from school on August 9, 10, and 11, 1999, and to school on the morning of August 12. The parent arrived at work later than usual and left work earlier than usual on these days, but the evidence did not establish what this cost monetarily.

The September 8, 1998, IEP was in effect until an IEP review meeting was held on September 8, 1999, and a new plan was developed. The parent attended this meeting and was in agreement with the new IEP.

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

Although the BIP included in the September 8, 1998, IEP provided for teachers to develop a point system to manage the student's behavior, evidence indicated her behavior improved dramatically during her stay in the residential placement, without the use of the BIP. Further, the use of the September 8, 1998, IEP during summer school and the beginning of the 1999-2000 school year was appropriate and the student received some educational benefits.

ORDER: The district provided the student with FAPE during the summer of 1999 and the beginning of the 1999-2000 school year, notwithstanding that the district chose to utilize the September 8, 1998, IEP and failed to provide transportation on the days in question. The district was ordered to reimburse the parent for any expenses incurred or time lost in providing the student with transportation on the days in question, upon the parent presenting the district with an itemized statement of her expenses for transportation and time lost.

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Lee County School Board
Case No. 99-3959E
Initiated by Parents
Hearing Officer: Arnold H. Pollock
Date of Final Order: May 31, 2000

ISSUES: Whether the district failed to provide the student with a free appropriate public education (FAPE); what would constitute FAPE for the student; whether the district failed to provide the student with procedural due process; whether the district discriminated against the student due to her disabilities; and whether the student's rights pursuant to the Individuals with Disabilities Education Act (IDEA) were violated.

FINDINGS OF FACT: The student, 22 years old at the time of the hearing, was blind at birth as a result of congenital glaucoma. She wore a prosthetic eye and had glaucoma, with light perception, in her right eye. She also was mildly developmentally delayed but had demonstrated an excellent command of Braille contractions, leading some experts who had worked with or evaluated her to conclude she was capable of a much higher level of academic achievement than was demonstrated by her test scores and performance in school.

The student received instruction in several district placements throughout her educational career. She also attended the Florida School for the Deaf and the Blind for a short time. Evidence showed that in the tenth grade her individual educational plan (IEP) did not describe goals and objectives in measurable terms and did not differ significantly from previous IEPs, but the student was promoted. The IEP developed in the eleventh grade addressed a need for transition services as well as mobility training.

In her senior year, the student's reading level was identified as lower second grade. Her word recognition and direction words levels were near the 50% level, and she was found capable of adding two-digit numbers on a talking calculator. However, she had no concept of zero, and her levels performance appeared to have diminished from previous evaluations. During her period of transition from high school to the community, the student was enrolled in a work program at a local department store with a job coach. IEP meetings during this time were attended by representatives of the Florida Division of Blind Services (DBS).

The parents contended that the IEPs developed and the schooling provided for the student failed to enable her to read sufficiently. The evidence of record, however, reflected that she

was provided with one-to-one assistance throughout her early school years and with continued support in her later school years. The student testified that she does not like to read. If the student did not want to expend the effort to learn, the district could not force her to.

The student was retained in the twelfth grade to give her additional time to obtain needed skills. Her Braille teacher supported this decision and expressed the opinion that the student was resistant to training and regressed during breaks from school. In February 1998 the student was evaluated at a vocational training center run by a service organization that assists blind adults in obtaining training in employment. The evaluation covered the areas of adult living, communication, orientation and mobility, and vocational training. She scored low on an academic achievement test.

The evaluation took place over a two-week period, during which the student apparently felt homesick. The evaluation report recommended that the student enter sheltered workshop employment in her home community. The staff expressed concern about her ability to partake in the center's training at that time due to her lack of motivation toward independence and preoccupation with home and school. Nonetheless, it was recommended that she return to the center for a three-month extended evaluation at a later time. The student's case worker at DBS was satisfied that the center was capable of providing meaningful educational and career gains for the student by assisting her in the development of independent living skills and job skills.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. As a child with disabilities, the student was entitled to FAPE, including special education and related services at public expense. Decisions regarding her educational placement were to be made by a group of persons knowledgeable about the student, including the parents, and were to be based on her IEP. The district had the responsibility to afford the parents a full right to participate in all IEP decisions, including placement. In that regard, if the IEP team decided that a placement in a private facility was appropriate, that placement would be at no cost to the parents.

FAPE does not require that the potential of each student be maximized, or even that the best available educational service be provided—so long as meaningful educational benefits are provided. Neither an IEP nor the IDEA can promise perfect solutions to the problems inherent in educating students with disabilities. However, major procedural flaws in an IEP can render it inappropriate. Technical flaws, including a lack of specificity in goals and objectives and assessment of progress, do not, of themselves, render an IEP invalid so as to require a compensatory education award.

To support action, the student's parents needed to show the child was prejudiced by a procedural violation. In order to support a finding that the student had been denied FAPE, the demonstrated procedural flaws had to be sufficiently serious to cause the student to lose educational opportunity.

The IEPs prepared for the student during the earlier years of her education in the district were less than effective in certain aspects. However, only at the very last of the student's school career did the parents contest any of the IEPs. To the contrary, they attended each

IEP meeting and gave no indication they thought the plans were inappropriate. In fact, the IEPs prepared in the student's last few years in the district were far more meaningful than those prepared earlier.

Any deficiencies in the IEPs did not prevent the district from offering the student FAPE. Further, the parents failed to establish that the district in any way discriminated against the student based on her disability or that her civil rights had been violated as a result of the school's treatment of her.

Finally, the parents failed to establish any basis for compensatory education or relief.

ORDER: All claims for relief were denied.

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Miami-Dade County School Board
Case No. 99-4774E
Initiated by Parents
Hearing Officer: Susan B. Kirkland
Date of Final Order: May 31, 2000

ISSUES: Whether the parents gave informed consent to evaluate and place the student in a program for student with emotional handicaps (EH); whether the evaluation conducted by the district was appropriate; whether the student met the criteria for eligibility for the EH program; and whether the student should continue to receive services in the EH program and, if so, whether the student should be reevaluated without the consent of his parents.

FINDINGS OF FACT: The student started kindergarten in August 1995. He had trouble following directions and staying in his seat, and had a tendency to touch or push other students. He also complained of stomach aches and headaches frequently. After interventions were used in the classroom and the behaviors continued, the student was referred for evaluation for exceptional student education (ESE) services. A child study team met on April 23, 1996, and the parent signed consent for evaluation. From April 23 until May 10, the kindergarten teacher kept an anecdotal record on the student's behavior in class.

On November 26, 1996, the student was evaluated by a psychologist as part of a psychoeducational evaluation to assist in determining the appropriate educational placement. The psychologist opined that the student showed significant emotional adjustment difficulties such as very poor self-concept and self-esteem, insecurity, poor inner controls, and possibly depression. No psychological evaluation was performed by a psychiatrist.

An eligibility committee met on February 14, 1997, and established that the student was eligible for placement in an EH program in the district. The parents were notified of the eligibility through an informed notice of eligibility. On February 20, the parents were invited to attend a meeting of a district multidisciplinary team to review the evaluations, consider placement options, and develop an individual educational plan (IEP).

The team met on March 6, 1997, with the parents in attendance. A staffing specialist reportedly reviewed the procedural safeguards with the parents. When the parents were told that the student displayed behaviors associated with attention deficit disorder (ADD) and advised to consult with the child's health care provider to explore medication, the mother reportedly became very upset and the father spent the remainder of the meeting trying to calm her down. Evidence indicated that neither parent apparently comprehended that an EH placement was being considered. Neither parent recalled later being told that the student was to be placed in an EH program. An IEP was developed, with specific goals and objectives.

The student was placed in a full-time EH classroom in a district elementary school. The father testified that he thought the child was being temporarily placed in a smaller class in order to receive more individual attention; he said he did not realize the class was made up only of EH students. The student remained in the EH class through the end of the school year. Despite the structured environment, a counselor working with the students, and the behavior management program, the student continued to show frustration. He cried, complained of physical ailments, had difficulty concentrating, and was anxious. He was not aggressive, but had difficulty expressing himself appropriately.

A new IEP was developed on March 3, 1998. The father signed the cover page, indicating attendance, and initialed the space indicating he was in agreement with the IEP. He reported that the term "emotionally handicapped" was not on the form anywhere, and he would not have agreed to it had it been. He also said no one used the term during the meeting. An interim IEP review meeting was held on February 25, 1999. Again the father signed the form. He reportedly did not read the page that had the statement "The student has been determined eligible for the following ESE program(s): Emotionally Handicapped."

The parents received a notice from the school on September 23, 1999, requesting a psychoeducational evaluation, as the initial evaluation was nearly three years old. It was at this time that the parents realized the student was in an EH program. They gave permission for the reevaluation, but reserved the right to have an independent evaluation performed. On September 24, the mother met with the school's new EH behavior management teacher and began to ask questions about her son's placement, ADD, and the EH label. The teacher was new to the school and could not answer many of the questions.

By letter dated October 18, 1999, the mother advised the school that she was revoking any prior authorization for psychological evaluation by anyone employed by the district, and anyone wishing to interview the student would need her written consent. An IEP meeting was held at the mother's request on October 21. The parents were adamant about having the student removed from the EH classroom and placed in a regular classroom. In order to accommodate the request, the team decided the student would be placed in a regular classroom and participate in a varying exceptionalities class for language arts and math. He would also continue meeting with a counselor.

The parents had the student tested by a psychologist on October 26, 1999, who opined the student was not emotionally handicapped and suggested trying a regular education class-

room. The psychologist testified at the hearing that she did not know the criteria the district used in determining EH eligibility and that her evaluation was not done for the purpose of educational placement.

After the mother demanded answers to her questions and continued insisting the student be removed from the EH program and records making reference to EH be expunged, a regional level IEP meeting was convened on November 23, 1999. The team again determined that the appropriate placement was the self-contained EH program the student had previously attended. It was noted that the student made some progress while in the program.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. Based on the evidence, the mother gave informed consent to have the student initially evaluated. She also participated in the child study team meeting held on April 23, 1996, and was provided with the procedural safeguards and a notice of intent to conduct an evaluation form. She signed consent for evaluation, giving permission to conduct the evaluation described on the form. She later revoked authorization for psychological evaluations, but that did not apply retroactively to the consent given on April 23.

The evaluation conducted by the district did not meet the minimum evaluation requirements set forth in Florida law because a comprehensive psychological evaluation was not done by a psychiatrist. The independent evaluation provided by the parents also did not meet criteria in Florida law because it too was not done by a psychiatrist. Because neither evaluation was valid, the student's eligibility for EH services was invalid and the student should have been placed in regular education classes until an appropriate evaluation was done and a determination for eligibility and placement was made using an evaluation meeting the criteria set forth in Florida law.

At the time of the hearing, the parents were refusing to give consent for a psychological evaluation. Florida law provides that a parent's refusal to consent to evaluation may be overridden by a hearing officer in a due process setting. The parents argued that to require the student to be evaluated violated their right to privacy. In case law, however, the Florida Supreme Court has adopted the compelling state interest test in determining whether the state may intrude on a person's right to privacy. The test can be met if the state can demonstrate that a challenged regulation serves a compelling state interest and accomplishes its goal using the least intrusive means.

The district had the responsibility to ensure FAPE for all students with disabilities, which was a compelling state interest. The district demonstrated that there was sufficient information to warrant an evaluation of the student to determine eligibility for ESE services. Further, the psychologist who performed the independent evaluation opined that the student should be evaluated again to determine how he had progressed in the regular class setting.

ORDER: It was ordered that the district have a psychological evaluation performed on the student by a licensed psychiatrist, that the evaluation be used in making a determination whether the student was eligible for ESE services, that the student remain in regular educa-

tion classes until a new determination was made concerning ESE eligibility, and that the parents' request to expunge the student's school records regarding his placement in an EH program be denied.

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Osceola County School Board
Case No. 99-3473E
Initiated by Parents
Hearing Officer: Mary Clark
Date of Final Order: January 31, 2000

ISSUES: Whether the district provided the student with a free appropriate public education (FAPE) beginning in August 1996; whether the district must reimburse the parents for expenses of substitute educational services and evaluations, including evaluations necessary to identify his educational needs, incurred while the district denied him FAPE; whether the district must provide the student with compensatory, rehabilitative, or remedial educational services in connection with its past failures and in order to provide FAPE; and whether the district was responsible for paying the tuition and related expenses for the student's placement at a private school specializing in educational remediation and services to children with severe learning disabilities involving neurological deficits.

FINDINGS OF FACT: The student was placed in an exceptional student education (ESE) program for students with specific learning disabilities (SLD) in the fall of 1992, when he was in the first grade. Over the next three years, his parents enrolled him in a succession of public and private schools, trying to find one they felt would meet his needs. He had been adopted from an orphanage in Romania at the age of five and had significant cognitive, emotional, and language challenges.

The parents enrolled the student in a district school in August 1996 and a temporary individual educational plan (IEP) was developed for SLD support services and speech therapy. The ESE program at the school utilized inclusion in regular classes, with regular education teachers and ESE teachers working together. The student showed improvement in the classroom but continued exhibiting problem behaviors at home. In November 1996 an IEP team met and developed a permanent IEP based on evaluations by district staff. After screening for eligibility for occupational therapy (OT) and physical therapy (PT) services, it was determined that he did not qualify for services in those areas.

The parents were concerned about the student's progress during the 1996-97 school year, and felt he had regressed during the year. The teachers used assessments throughout the school year to monitor the student's progress, and found his progress was modest, but he did not regress. At the request of his parents, the student was screened again for OT and PT eligibility in August 1997; he was again determined ineligible. The parents disagreed with this assessment, and the IEP developed in September 1997 included OT consultation. In December 1997 school staff met with the parents again to discuss parental concerns and to give an update on the educational program and the student's progress. At the end of 1997-98 school year, the parents acknowledged that the student had made progress.

At some point during the summer of 1998, the parents decided to withdraw the student from public school and enrolled him in a private school. The only written evidence of a notice to the district was the student withdrawal form signed by the principal and dated July 23, 1998. The student was still enrolled in the private school at the time of the hearing.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. Arguing that the district had failed to provide FAPE beginning in August 1996, the parents sought reimbursement for a variety of evaluations and for the cost of his education at two private schools, and compensatory education for the student. Because the weight of the evidence established that FAPE was provided by the district, the remaining requests were moot. The United States Supreme Court unanimously held that a parent may receive retroactive reimbursement for private school expenses and tuition only if the public school was not providing FAPE and if the private school provided an education that was otherwise proper and appropriate under the Individuals with Disabilities Education Act (IDEA).

The IEP developed for the student was reasonably calculated to enable the student to receive educational benefit. The greater weight of evidence established that research and careful thought were put into the selection and implementation of curriculum and that dedicated staff worked with the student on the goals and objectives in the IEP. The student obtained an educational benefit and he progressed. Further, instruction was provided in the least restrictive environment.

Although the parents contended that the IEP was not written with sufficient detail, none of the identified deficiencies violated IDEA. Any procedural errors (short notice for meetings, for example) were harmless. The violations were not egregious and caused no actual harm or prejudice to the student or parents.

ORDER: The petition filed by the parents for relief was denied.

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Osceola County School Board
Case No. 00-2143E
Initiated by Parent
Hearing Officer: Daniel M. Kilbride
Date of Final Order: June 28, 2000

ISSUES: No issues were stated in the consent final order, but the order addresses invitations to meetings related to placement of the student, requests for information or meetings, and professional conduct.

FINDINGS OF FACT: The administrative law judge made no finding of fact in this case. The district maintained that all of the matters it had stipulated to do were standard operating procedure and that the district was merely agreeing to do things that it is legally obligated to do or was continuing existing practices with regard to the mother of the student who brought the petition on behalf of the student.

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

Absent a court order to the contrary, the parents would retain their rights under law as natural parents of the student, including the right to access to educational records, the right to receive explanations or to have records hearings pursuant to state law, and the right to have individual or joint parent-teacher conferences as mutually agreed when such conferences were not formal meetings for which notice and opportunity to both parents to attend would be available.

Since a district exceptional student education (ESE) employee was married to the natural father of the student, it would be inappropriate for it to appear that she would participate, in her official capacity, in the educational services provided to the student by the district. Therefore, any notices or documents provided to her relating to the student should be sent to her current residence and not provided at her place of employment, the same as any other parent or stepparent would be notified.

The natural mother of the student had the right to receive a response to her reasonable and legitimate inquiries regarding the student's education. In that regard, all requests that the mother put in writing and delivered to the district ESE director would be responded to within ten working days after receipt of the requests.

ORDER: The district was ordered to serve and give notice to both parents of all meetings and other matters pursuant to the provisions of the Individuals with Disabilities Education Act (IDEA) or the federal and state regulations implementing IDEA in Florida. Further, the parents would be permitted to attend all meetings that they had a legal right to attend. It was ordered that during such meetings, all persons in attendance were to behave in a professional and civilized manner.

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Palm Beach County School Board
Case No. 99-3921E
Initiated by Parent
Hearing Officer: Linda M. Rigot
Date of Final Order: April 13, 2000

ISSUE: Whether the student was eligible to be placed in a program for students who are gifted.

FINDINGS OF FACT: The student was eight years old and in the third grade at the time of the hearing. Prior to the 1999-2000 school year, the mother had the student evaluated by a licensed psychologist employed by the district, who also maintained a private practice. The student's verbal score fell within the gifted range, full scale score fell within the superior range, and performance score fell within the average range. When the evaluator discussed the unusual results with the mother, she told him that the student had suffered two eye injuries and suggested there might be a connection between the injuries and the test scores.

At the suggestion of the psychologist, the mother had the student examined by an optometrist, who suggested the student had tracking problems and recommended the child be examined by an ophthalmologist. As of the time of the hearing, the mother had not taken the student to an ophthalmologist. It was found that the student did not have a visual disability but rather has vision within the normal range. After receiving a copy of the optometrist's report, the psychologist finalized his report and recommended placement in the district gifted program, using only the student's verbal score.

The mother tried to enroll the student in a gifted program in a district school but the student was refused admittance since he had not been evaluated by the district and had not been referred to the program. When the district requested permission to conduct further testing to determine eligibility, the mother refused. She also did not produce any medical records regarding the alleged eye injuries. In the spring of 1999 the mother met with district staff and showed them the psychologist's and optometrist's reports. She also presented a gifted checklist allegedly completed by a professional. After the mother misrepresented who the person filling out the checklist was and lied under oath repeatedly about the identity, it was discovered that the person was the parent's sister.

With only the two reports and the checklist submitted by the mother, district staff did not have enough evidence to recommend eligibility. The child had not been observed in the classroom. They again asked for permission to test the child and the mother refused. When the child was enrolled in a district school in the fall of 1999, the mother demanded he be placed in the gifted program based upon his verbal score. Although admission to the gifted program had been permitted in the past based on a partial score, the student in that case had a visual impairment. The student in this case displayed visual acuity within the normal range.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. Florida law provides that a gifted student must be capable of high performance. The criteria for eligibility are a need for a special program, demonstration of the characteristics of gifted students according to a standard scale or checklist, and superior intellectual development as measured by an intelligence quotient of two standard deviations or more above the mean on an individually administered standardized test of intelligence. The student in this case had not demonstrated high performance or the capability for high performance in the classroom setting. Further, he had not demonstrated the need for a special program and had not achieved the required score on the gifted characteristics checklist.

ORDER: The request that the student be found eligible for a gifted program was denied.

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Palm Beach County School Board
Case No. 00-0878E
Initiated by Student
Hearing Officer: J. D. Parrish
Date of Final Order: April 10, 2000

ISSUE: Whether the district provided the student a free appropriate public education (FAPE), in particular in the area of social skills training.

FINDINGS OF FACT: The petitioner, who had graduated from a public high school in Palm Beach County with a regular diploma in June 1999, was a 19-year-old student at a community college at the time of the hearing. He had been suspended from college prior to the hearing.

The petitioner received services in exceptional student education the last three years he attended high school. During that time, neither the student nor his parents challenged the content of the individual educational plans (IEPs) developed and implemented by the district. In the filing of a request for a due process hearing, the student contended that the transition plan included in the IEPs was insufficient and did not provide adequate social skills training that would prepare him for adult life, leading to the disciplinary probation at the community college.

The petitioner did not challenge the IEPs or claim he was denied FAPE while he was a student in public school. Further, he made no allegations of wrongdoing on the part of the school district. He asserted that his disciplinary suspension in an academic forum not controlled by the school district was the result of not having received training in social skills while in high school.

CONCLUSIONS OF LAW: The Division of Administrative Hearings (DOAH) did not have jurisdiction over this matter. Once the petitioner graduated from the public school system with a regular diploma, the district was not obligated to provide additional opportunities for the student.

ORDER: Absent the authority to conduct an after-the-fact review of IEPs, the DOAH did not have jurisdiction to consider whether or not the petitioner received FAPE.

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Palm Beach County School Board
Case No. 00-2091E
Initiated by Parent
Hearing Officer: Susan B. Kirkland
Date of Final Order: June 28, 2000

ISSUES: Whether the district should reimburse the parent for tutoring in reading; whether the district should provide the student with one-on-one tutoring outside the school setting for one year; and whether the district provided the student with assistive technology and

services as required by the student's individual educational plan (IEP) for the 1999-2000 school year and, if not, whether the district should provide compensatory education.

FINDINGS OF FACT: The student, 15 years old, had been diagnosed with Down syndrome. He was enrolled in district exceptional student education programs for students classified as educable mentally handicapped and who have speech and language impairment. He attended a district magnet middle school for the arts, where he excelled in theater and dance.

An IEP developed on May 6, 1999, provided that the student would have access to a lap top computer during the 1999-2000 school year. He did not receive the computer, software, and training until November 1999. He reportedly did not like using the lap top computer because he felt it singled him out from his peers. He returned the computer to the school.

The May 1999 IEP also addressed reading goals for the student, as did subsequent IEPs developed in November 1999 and May 2000. In all three IEPs, his reading level was listed as primer or first grade level. It was noted that small gains had been made in his reading skills. The parent at the beginning of the 1999-2000 school year furnished school staff with a book about teaching people with Down syndrome to read. She requested a meeting in October 1999 to discuss concerns about the student's education, including his reading difficulties and the lack of assistive technology for him. Another meeting was requested in April 2000; at this time, the parent asked the district to pay for a private reading tutor for two hours each week during the summer at the rate of $35 an hour.

An IEP meeting was scheduled for May 4, 2000, but the parent was unable to attend. She met with a member of the IEP meeting early that morning and related her concerns about reading and the need for a private tutor. Her concerns were relayed to the IEP team. When the meeting was held later that day, the IEP team decided to deny the parent's request for a private tutor, stating that the student was making adequate progress and that he would be able to maintain his skills over the summer. They also agreed that the student needed a break from school because he had been working so hard during the school year.

The IEP team met again on May 26, 2000, to reconsider the request for a tutor after the parent requested a due process hearing in order to try to obtain private reading tutoring for a full year. The team developed an IEP for extended school year services to address the student's reading goals. The mother, who attended the meeting, was not given an informed notice of refusal to take action regarding the team's decision to deny the request for private tutoring.

The parent did not agree with the IEP team's decision regarding tutoring, and retained a private tutor to work with the student on reading. The tutor reportedly worked with the student two times a week for an hour each session and the mother worked with the student for 20 minutes each day. The mother reported remarkable progress in reading after only five sessions with the tutor.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. Both federal and state law provide that children with disabilities receive a free appropriate public education (FAPE) designed to provide the

student with educational benefit. The district did provide an opportunity for the student to receive some educational benefit in the 1999-2000 school year, as evidenced by the small gains he made in reading. The IEP developed on November 6, 1999, provided FAPE. Likewise, the IEP developed on May 4, 2000, was calculated to provide educational benefit in reading and to provide FAPE for the 2000-2001 school year.

No evidence was presented that if the student had received the computer at the beginning of the 1999-2000 school year that he would have used it any more than he did. He had access to computers in his classes and availed himself of those computers, particularly when classmates were using them. Thus, it could not be concluded that the failure of the district to provide a lap top computer at the beginning of the school year resulted in the student not receiving FAPE.

The parent was not entitled to reimbursement for the tutoring sessions already paid for at the time of the hearing, nor for one-on-one tutoring two days a week during the 2000-2001 school year. It was determined that the district would be able to provide adequate reading instruction for the student.

ORDER: The parent's requests for reimbursement and compensatory services were denied.

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Seminole County School Board
Case No. 00-0270E
Initiated by District
Hearing Officer: Mary Clark
Date of Final Order: February 28, 2000

ISSUE: Whether the district should be permitted to perform testing and evaluation of the student.

FINDINGS OF FACT: This case was filed by the district on the same day the parent filed for a hearing on the issue of whether the student should be placed temporarily in a homebound/hospitalized program. The administrative law judge denied a motion to consolidate the two cases but agreed to schedule both for the same date.

Although the record did not clearly establish when the student was first identified as a student in need of exceptional student education services, he had been treated since the second grade by a series of health care professionals, including pediatricians, psychiatrists, and psychologists for various diagnoses including attention deficit hyperactivity disorder (ADHD), depressive disorder, oppositional defiant disorder, obsessive compulsive disorder, and bipolar disorder. He had used a variety of medications and apparently had been hospitalized twice for his mental conditions. He was described as intelligent and had been tested for the district's gifted program.

In April 1999, when the student was in the fifth grade, his mother had him evaluated privately by a clinical neuropsychologist, who noted that the student continued "to show behavioral and test evidence of ADHD, despite his current medication regime. As well, he

demonstrates nearly all of the social learning disabilities typical of Asperger's Disorder." The student was also examined in June 1999 by another doctor whose report reflected findings from a physical examination and a statement that testing was deferred due to severe lack of cooperation, as the student was extremely anxious about the examination. The doctor's impression was that the child had Asperger's syndrome and minimal brain dysfunction.

The parent provided the former doctor's report to the staff at the Center for Autism and Related Disabilities (CARD) at the University of Central Florida to determine whether the student would be eligible for services from CARD. The acting director of CARD concluded that the student met the full criteria for Asperger's syndrome, based on the report from the mother. After a child study team reviewed the same report during the summer of 1999, the student's ESE eligibility was changed from emotionally handicapped to other health impaired.

An individual educational plan (IEP) was developed on August 3, 1999. The parent shared information about Asperger's syndrome, and the team agreed that someone from CARD would do a functional behavior analysis of the student. The parent agreed to this evaluation, as well as to other testing needed for determining eligibility for occupational therapy and other ancillary services.

Early in the 1999-2000 school year teachers began noting that the student did not appear to exhibit the sort of behavior described to them by the parent or their independent study of Asperger's syndrome. He exhibited appropriate social skills, would use eye contact, and would interact with other students. He would sometimes blurt out comments in class or would get frustrated when he was not called on for an answer, and he sometimes needed to be reminded to return to his seat. On one occasion he bounded out of a classroom, but quickly returned when the teacher approached him.

In October and November 1999 the student engaged in violent behavior (kicking and swearing) involving a school resource officer, and juvenile charges either were filed or threatened, and November 15 was his last day at school. The student's placement since that day was at issue in the companion case discussed above. From November 15 until the time of the hearing, a teacher from the student's last placement provided work for him to do at home.

An IEP meeting was held on January 13, 2000, to discuss appropriate placement for the student and the transition back into a school setting. A certified behavior analyst with experience in the area of Asperger's syndrome was retained to assist the district in developing a functional behavior assessment for the student in order to return the student to school. He told district staff that he did not find the array of behavior displayed by the student common to children diagnosed with Asperger's syndrome, but he did not offer an opinion of what a proper diagnosis would be.

The district also retained the services of a psychiatrist to review the same records reviewed by the behavior analyst. This doctor did not support the diagnosis of Asperger's syndrome, although he acknowledged that he cannot make a true diagnosis based on records alone.

Both of these experts opined that it was important for the district to obtain a proper diagnosis of the student in order to decide how the student would need to be treated in an educational environment. The people who diagnosed the student with Asperger's syndrome did not testify at the hearing.

Despite the opinions of these experts, the mother felt the Asperger's diagnosis was a "perfect fit" and did not want to expose her son to further examinations at the time of the hearing.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The issue was limited to whether the district was entitled to conduct its own evaluation of the student. State law requires a school district to provide a reevaluation of each student with a disability at least every three years "or more frequently if conditions warrant." Further, a parent or school district may initiate a due process hearing on the proposal or refusal to initiate or change an evaluation of a student.

Federal law and regulations likewise provide for reevaluation when "conditions warrant," as well as upon the request of a student's teacher or parent. Nothing in the federal statute or rules requires that an IEP team or child study team meeting must be convened on the issue of whether a reevaluation may be required.

A child study team met several times to discuss the student's placement and progress between August 1999 and January 13, 2000, when the parents requested a due process hearing. That the team did not expressly discuss a need for reevaluation did not preclude the district's request for one at the time of the hearing. The district met its burden of proving that "conditions warrant[ed]" additional testing and reevaluation of the student to determine whether he had Asperger's syndrome. The district's experts established that such a determination was essential for the district to meet its obligation to provide the student with FAPE.

The administrative law judge from the record of this proceeding could not conclude that Asperger's syndrome was an appropriate diagnosis for the student; significantly, the record did not establish that it was a diagnosis of Asperger's that should guide the district in meeting its obligation to provide a free appropriate public education for the student. The district was entitled to obtain a reevaluation because the mislabeling of the student would have far-reaching consequences in terms of how, where, and with whom he would receive services, and expectations for his future success would be affected.

ORDER: It was ordered that the district be permitted to conduct further testing and reevaluation of the student to determine whether the appropriate diagnosis for his educational services was Asperger's syndrome.

The New Department of
Education

Florida Department of Education
Jim Horne, Commissioner

ESE 312409