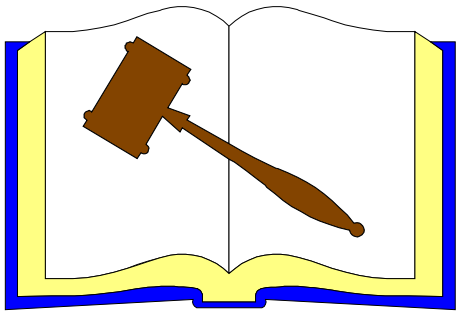
Summaries of Due Process Hearings

in Exceptional Student Education



July - December
1999

Florida Department of Education • 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), Department of Administration, between July 1998 and December 1998. 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 the 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.

Clay County School Board
Case No. 99-4752E
Initiated by Parent
Hearing Officer: Suzanne F. Hood
Date of Final Order: December 15, 1999

ISSUE: Whether the student would receive a free appropriate public education (FAPE) in the least restrictive environment (LRE) under the individual educational plan (IEP) developed by the district.

FINDINGS OF FACT: The student was 16 years old, in the tenth grade, and enrolled in a district program for students with specific learning disabilities at the time of the hearing. In the spring of 1998, he was charged with a crime. A court adjudicated him delinquent and committed him to a juvenile detention program for 18 months. During his commitment, the Department of Juvenile Justice placed him in a residential facility in Bradenton, Florida. The school district provided him with exceptional student education (ESE) services while he was in this facility.

An LRE form included in a January 1999 IEP for the student indicated that the goals and objectives of the IEP could not be met in a regular educational environment due to the student's placement in the juvenile justice program. The LRE form noted frustration and the possibility of injury to self or others made a less restrictive environment potentially harmful to the student.

The student completed the juvenile justice program and was withdrawn from the program on October 19, 1999. He enrolled in a district high school on October 20, 1999. The district sent

the student's grandmother, who was listed as legal guardian, an invitation to a meeting at Bannerman Learning Center (BLC), an alternative school in Green Cove Springs, Florida, with the purpose of reviewing the student's IEP and considering his transition placement to an alternative school. The meeting was held on November 4, 1999, with the grandmother in attendance.

After considering a number of factors including previous referrals, intellectual assessments, parental and teacher input, and behavioral/social concerns, the IEP team determined the student should receive ESE services in small group instruction at BLC. The team agreed that the student's behavior and/or emotional difficulties would affect his progress in a regular education curriculum. At the conclusion of the meeting, the grandmother objected only to the placement of the student at BLC. She stated that she did not feel the setting provided the student with LRE.

Another IEP meeting was held on November 18, 1999. District staff gave the grandmother an "in loco parentis" form for the grandmother to sign, verifying that she was acting as custodial parent for the student. The signed form was never returned to district staff.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and the subject matter of this case. Under the Individuals with Disabilities Education Act (IDEA), the district is required to provide the student with FAPE. The district presented persuasive evidence that the student would receive FAPE in the proposed placement. Considering the student's need for daily mental health counseling and continuous behavior interventions, a less restrictive environment would not be appropriate for the student.

ORDER: The student was ordered to be placed in a separate ESE classroom at BLC to receive the educational and related services set forth in the November 4, 1999, IEP.

Duval County School Board
Case No: 98-4708E
Initiated by Parents
Hearing Officer: Diane Cleavinger
Date of Final Order: December 7, 1999

ISSUES: Whether the district provided the student a free appropriate public education; whether educational services were provided in the least restrictive environment; and whether the student's parents were entitled to reimbursement for monies spent on private therapies and day-care services at home.

FINDINGS OF FACT: The student was six years old at the time of hearing. The student was tested at the age of two and found eligible for early intervention services. A meeting to develop an individual educational plan (IEP) was convened on October 13, 1997. The student was determined to be eligible as a trainable mentally handicapped student (TMH) under the Individuals with Disabilities Education Act (IDEA). The student required vision services,

occupational therapy, and physical therapy. The IEP team determined a district exceptional student center as the most appropriate setting. The mother, however, withheld her consent to the implementation of the IEP because the student was determined to be eligible for the TMH program but not for speech therapy. The parents also rejected placement of the student at a district school.

The child study team was of the opinion that the parents' preferred school of placement did not have the level of nursing services required by the student. However, the student was eventually placed at the center school determined by the IEP team. Due to frequent illnesses and hospitalizations while enrolled at the center, the student was officially withdrawn from public school by the parents. They did not request homebound/hospitalized services from the district.

An IEP meeting was convened on March 2, 1999. The parents agreed with the content of the IEP and accepted the TMH eligibility. Emergency and medical monitoring plans were included in the IEP at the parents' request. To address the parents' concerns, the school district offered an elementary school with a comprehensive program similar to the previous recommendation of the IEP team. The school district also offered a homebound/hospitalized program.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter of this case. The student was a disabled student under IDEA and eligible for placement in a special education program. The student was appropriately determined eligible for a TMH category. There was no evidence of procedural violations by the district, and all the IEPs proposed by the district for the student's education were appropriate and complied with the legal requirements of the law.

ORDER: The parents' demand for reimbursement for expenses was denied and dismissed. However, the district was obligated to offer and provide all previous accommodations made to the student if the parents should elect to seek placement once again in the school district.

Hendry County School Board
Case No: 99-2361E
Initiated by Parent and Student
Hearing Officer: Robert E. Meale
Date of Final Order: July 7, 1999

ISSUES: Whether the district provided the student with a free appropriate public education and, if otherwise, whether the district must provide the student with compensatory educational services.

FINDINGS OF FACT: The student was 19 years old at the time of hearing and had graduated from high school with a standard diploma. The student experienced many academic difficulties during his sophomore and junior years, and with his consent, the district placed him in an exceptional student education (ESE) program for students with specific learning disabilities.

Due to the difficulties that the student experienced within the first seven years of enrollment in the district school, the parents and the district agreed that the student could attend a school in another district for seventh grade. The purpose of the placement was to enable the student to receive intensive services in speech and language. The student made considerable academic progress while enrolled in this school for seventh and eighth grade but subsequently returned to his previous school for ninth grade. The student was reevaluated by the school district, and with the consent of his parents, he was placed in an ESE program until graduation. The issue was whether the district had provided the student with the best possible education that minimized the effect of his learning disabilities and fully utilized his talents.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the subject matter. The student failed to show that the district did not provide him with educational benefits.

ORDER: The claim that the district did not provide the student with a FAPE was dismissed.

Highlands County School Board
Case No. 99-3536
Initiated by Parents
Hearing Officer: Robert E. Meale
Date of Final Order: December 7, 1999

ISSUE: Whether the district has provided the student a free appropriate public education (FAPE).

FINDINGS OF FACT: The student was six years old at the time of the hearing. The student suffered from several chronic illnesses and at preschool age was determined to be eligible for exceptional student education (ESE) by an out-of-state school district where the student resided with the parents. The student received services in speech/language, fine motor, adaptive/self-help, and personal-social skills. An evaluation report prepared by this district described the student as moderately delayed and said that the delays interfered with the student's academic progress.

The student subsequently relocated to Florida with the parents in May 1998. A new temporary individual educational plan (IEP) based largely on information from the student's out of state records was developed for the student by the local school district. The IEP noted the student's exceptionality as speech/language impaired. The student also received occupational therapy. The IEP also identified several ESE service needs for the student commencing June 2, 1998, through December 30, 1998. All appropriate criteria to determine the student's mastery of set, short-term objectives were put in place.

On resumption of the student's enrollment in the local school district's kindergarten class, the child study team agreed to conduct a complete evaluation to determine the student's permanent placement in an ESE program. Shortly after, the student's father requested ESE services

for the student regarding an undiagnosed medical condition and the district declined. The district, however, failed to provide other ESE services as agreed in the June IEP due to lack of personnel. Subsequently and prior to the proposed evaluation, the relations between the parents and the school district deteriorated. As a result, the parents refused to sign a medical release form and also rescinded their consent for the student to be tested, except in the area of auditory processing.

At an IEP meeting held on November 19, 1998, which the student's mother attended, the district's representatives recommended the dismissal of the student from ESE services; the student's mother disagreed with the recommendation. The parents and district decided to go to mediation. As a result, it was agreed that the district should provide the student with a multidisciplinary evaluation including speech/language, psychological, medical, and occupational therapy evaluations at a specific institution of higher learning, as well as additional audiological testing. It was also agreed that all ESE services as set forth in the IEP be continued according to the stay-put rule.

The independent evaluation provided additional information regarding the child's academic performance. The district's staffing committee determined, however, that the child was not in need of special education service.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over this matter. The student met the four criteria for a specific learning disability. The tests indicated that the student demonstrated processing deficits that limited her abilities to adequately perform math and language tasks. There was a significant difference between the student's intellectual functioning and tasks required for mathematical reasoning. The student did not demonstrate a need for occupational therapy. The district failed to provide evidence to support its position that the student failed to meet the requirements for eligibility.

ORDER: It was determined that the student was entitled to specific learning disability ESE services in math and speech/language. The district and the parents were to arrange for the additional auditory processing testing as agreed at the hearing.

Indian River County School Board
Case No. 99-2496
Initiated by Parents
Hearing Officer: Susan Kirkland
Date of Final Order: December 20, 1999

ISSUES: Whether the student's individual educational plan (IEP) provided him with a free appropriate public education (FAPE) and whether the parents were entitled to reimbursement of monies spent on the student's education.

FINDINGS OF FACT: The student was diagnosed as developmentally disabled with autism. An IEP was developed for him in 1998. The parents challenged it at a due process hearing as

not being appropriate, but the administrative law judge (ALJ) ruled that it was appropriate. A subsequent IEP was developed to include an autistic program and language, speech, occupational, and physical therapies, as well as extended day service. The new IEP was to have been implemented at a facility different from the student's school of regular attendance but which could provide services that would have taught him self-help skills. However, the student's parents wanted an immediate implementation of the IEP and requested a second due process hearing to enforce the stay-put rule. Prior to the commencement of the summer session, the district wrote to the parents requesting to know if the student would still participate in the program at the district center placement, but the parents chose only to continue with the extended school day program pending determination of their request for a stay-put rule by the ALJ.

The request for a stay-put ruling was granted by the ALJ in June 1999, and the district wrote a letter to the parents in June 23, 1999, offering an autistic summer classroom program that included speech/language and occupational therapies and also extended day services, but they declined. The parents chose to home-school the student and sought reimbursement for expenses incurred to provide necessary therapies and services during the summer.

CONCLUSION OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter of this case. The district's offer outlined in the letter of June 23, 1999, to the parents did not violate the stay-put provision. The parents chose not to avail themselves of the extended day services offered by the district. The IEPs developed in May 1998 and June 1999 and the district's offer of placement provided FAPE. The parents did not provide any services related to the district's offer and could not show proof of the type of occupational therapy provided to the student. The parents were not entitled to any reimbursement for expenses incurred.

ORDER: The IEP developed on May 24, 1999, provided FAPE for the student. The services offered by the district in response to the stay-put rule did not violate IDEA provisions. The parents were not entitled to any reimbursements for expenses incurred.

Lee County School Board
Case No. 99-3958E
Initiated by Student and Parents
Hearing Officer: David M. Maloney
Date of Final Order: November 9, 1999

ISSUES: Whether the district failed to provide the student with a free appropriate public education (FAPE), whether copies of the student's cumulative file were provided when requested by her parents, whether appropriate notices were given by the district, whether the student was in the appropriate educational placement at the time of the hearing, and whether the student had been provided appropriate transition services, including community based instruction (CBI) and other related services.

FINDINGS OF FACT: The student observed her 21st birthday on the second day of this hearing. Diagnosed with cerebral palsy, mental retardation, and cortical blindness, she was enrolled in a small exceptional student education (ESE) class at Cypress Lake High School (CLHS), a district high school. She was also suspected of being autistic. While described as legally blind, she did have some vision. She exhibited tactile defensiveness and tended to draw back when touched by others, particularly if she was not expecting the touch. For much of her life, the student moved about through the aid of a wheelchair. The district was providing her with physical therapy, occupational therapy, practice with vision and speech/language specialists, and adaptive physical education at the time of the hearing.

There were six individual educational plans (IEPs) developed for the student between May 1995 and October 1998. The parents were duly notified of the IEP meetings, and one or both of the parents attended and actively participated in each conference. The parents did not object to or contest the propriety of any of the IEPs at the time they were written. At no time prior to the hearing did they notify the school district of withdrawal of their consent to any of the IEPs. The IEP in effect at the time of the hearing contained all required components, with the exception that no outside agencies participated in its development. The Department of Children and Families was invited but did not attend; the Division of Vocational Rehabilitation and the Division of Blind Services did not appear to have been invited.

While daily notes were not addressed in the student's IEP in effect at the time of the hearing, the parents had met with the school principal and requested that daily notes be sent home. The principal agreed that daily notes should be provided. The student's teacher sent notes home but not on a daily basis. While quarterly reports were not mentioned in the IEP, three reports were sent to the parents during the 1997-98 and 1998-99 school years.

In early October 1997, the parents decided to explore private sources to supplement related services being provided by the district. At the time of the hearing, they had paid for two years of physical therapy, six months of behavioral therapy, horseback riding lessons, and two camps.

The parents requested a copy of the student's cumulative file in the fall of 1998. They received a copy in June 1999. No evidence was presented to explain why there was such a long delay. The parents were not denied access to the file in order to review it.

CONCLUSIONS OF LAW: The Division of Administrative Hearings (DOAH) had jurisdiction over the parties and the subject matter of this proceeding. The student's IEP at the time of the hearing was properly designed in general, as established by the testimony of Mr. Feldman, expert witness and ESE director of Palm Beach County Schools. The IEP, however, did not outline what methodologies would be used to measure progress toward some annual goals.

The record did not support the parents' belief that the student's progress since the fall of 1997 was due solely to their private efforts. The student was receiving educational benefit from the ESE program at CLHS, most likely a result of a combination of the services provided by the

district and the private services provided by the parents. The placement of the student in the ESE class at CLHS was appropriate.

The district provided FAPE through the implementation of the student's IEP, with the exception of the area of communication. With the student's profound speech and language deficits, a therapist with credentials and training necessary to adequately serve an ESE student with this student's diagnosis should have provided therapy.

Although the district did not introduce at the hearing a policy on inspecting, reviewing, or copying educational records, it was determined that the parents did not receive the student's educational records in a timely manner. As for notices, there were none that could be determined that the petitioners did not receive as required by law.

As for transition services, in particular CBI trips, the number of trips called for in the student's IEP did not occur. The district argued that no harm was done because of the excellence of the on-campus program at CLHS. Given that typical CBI trips were trips to the grocery store to purchase food for lunches and to a beauty salon where the student sorted curling irons, the district prevailed on this point.

FINAL ORDER: The district was ordered to provide the student with speech and language therapy by a qualified speech and language pathologist or therapist. Also, the district was ordered to invite agencies that could assist in providing transition services to future IEP meetings. Further, future IEP meetings were required to detail methodologies for how progress toward annual goals would be measured. Otherwise, relief requested by the petitioners, including compensatory education, was denied.

Lee County School Board
Case No. 99-4279E
Initiated by Parent
Hearing Officer: J. Lawrence Johnston
Date of Final Order: November 24, 1999

ISSUES: Whether the school district failed to develop an individual educational plan (IEP) that was reasonably calculated to provide the student with a free appropriate public education (FAPE); whether the district failed to provide appropriate notices to the parent before implementing a change of placement for the student; whether the district made a change of placement without parental input at an IEP meeting; whether the student's placement at Cypress High School by the district was predetermined; whether the district failed to fund services at Eden of Florida; whether the district failed to provide transportation to and from Eden; whether Cypress Lake was an appropriate educational placement for the student; and whether Eden was an appropriate educational placement.

FINDINGS OF FACT: The student was 18 years old and receiving exceptional student education (ESE) services for students with autism at the time of the hearing. She was classi-

fied as profoundly mentally handicapped, had speech and language impairments, was diagnosed as mildly mentally retarded with possible underlying neurological component, and had sleeping disorders. She enrolled in Lee County Public Schools at or about the time she was entering middle school. She also had a history of behavior problems in school and at home.

When the student was attending LaBelle Middle School, where her mother worked, her mother contacted a teacher at Cypress Lake Middle School who was reputed to be having success with children with autism. She was told that her child was too old for the program. The teacher suggested the mother contact Edison Center, a district school with a program for children with autism. The mother visited Edison and talked with the teachers there.

The student was enrolled at Edison in May 1998. At that time, an IEP was developed, and the student was placed in a class for autistic students. A matrix of services form was completed on the student in July 1998. The form noted that an "intensive, individualized behavior management plan that requires very small group or one-on-one intervention" was recommended. The student's behavior problems continued at Edison. In February 1999, she was arrested for physical aggression. The mother requested a complete set of the child's educational records at that time; there was no evidence that the district did not comply with this request.

On February 18, 1999, the mother requested an independent education evaluation in the area of behavior to develop a behavior support plan. The parent requested a due process hearing in March 1999; the case was given to the Division of Administrative Hearings (DOAH) and assigned Case No. 99-1276E. This hearing was continued several times while the parties tried to settle. On March 25, 1999, an IEP development meeting was held without the student or parent involved. The district proposed to implement the IEP at Edison.

On May 13, 1999, the parties settled DOAH Case No. 99-1276E with an agreement that the IEP would be implemented at Eden Florida, a nonpublic school. The district agreed to fund this placement until August 20, 1999, at which time a meeting would be held to review and revise the IEP as necessary. According to therapy reports issued in July 1999, the student made significant progress in expressive use of speech and language. Her behavior also showed marked improvement.

On or about July 29, 1999, the district sent a letter to the parent to schedule an IEP meeting on August 19, 1999, at Cypress Lake High School. This location was selected because district staff felt that Cypress Lake might be the appropriate school for the student the next school year. At the parent's request, the meeting was rescheduled for August 20, 1999. On or about August 18, 1999, district staff held a conference to prepare for the parent's attorney attending the IEP meeting.

The August 20 meeting was not completed and was continued until August 26, 1999. Since members of the team were having trouble coming to an agreement on some issues, meetings were held and continued for several weeks. On September 20, 1999, district staff agreed to pay for placement at Eden from August 16 through September 10, 1999; to reimburse the

mother for transportation costs and lost wages for the period from August 13 through August 24, 1999; and to pay the parent a reasonable attorney fee.

During the month of September, several IEP meetings were held. The resulting IEP, dated August 20, 1999, indicated the date for initiation of services at Cypress Lake would be September 27, 1999. The mother agreed to the new IEP. The IEP team decided to reconvene in early December to examine how much the student regressed during the Thanksgiving holidays and to decide what kind of extended year services would be appropriate during the winter break in late December and early January.

On September 27 and 28, 1999, the mother visited classes and observed programs at three district schools. After these visits, she felt that none of the three schools was appropriate for her daughter, and she informed district staff that she would not agree to implementation of the IEP at any of the district schools. She stated that her daughter regressed when she was not in a structured program to control her behaviors and insisted that the child was not ready to leave the highly structured environment at Eden.

District staff reported that a letter was sent to the mother on October 5, 1999, "informing her that [the student] will be transitioned from Eden to Cypress Lake High School." On October 8, 1999, the mother, by and through her attorneys, wrote a letter to district staff demanding a due process hearing and demanding "a full and complete copy" of the child's educational records. District staff provided the requested information on November 4, 1999.

The district did not provide transportation to Eden after October 11, 1999. When the parent requested transportation services, the district refused.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the subject matter in this case. The parent contended for various reasons that the IEP developed during the meetings between August 20 and September 23, 1999, was not reasonably calculated to provide the student with FAPE. In some cases, the parent confused the IEP itself with the choice of facility for implementing the IEP. The parent also contended that the student's cumulative file was not at the IEP meetings and was not read in its entirety by all participants. There were no legal requirements for IEP team members to read the file in its entirety. Several participants stated they had read the most recent portions of the file; that information combined with other knowledge of the student acquired during the meetings was sufficient.

The parent's proposed final order contained several other contentions; none were supported by evidence.

FINAL ORDER: The district was allowed to proceed with implementation of the student's most recent IEP at Cypress Lake by beginning the transition of the student from Eden to Cypress Lake. The district was ordered to fund the placement at Eden (or, as appropriate, reimburse the parent for expenses at Eden) through the date of the order, plus pay for services required of Eden during the student's transition from Eden to Cypress Lake. Further, the

district was ordered to reimburse the parent for any outstanding expenses incurred in transporting the student to and from Eden since September 10, 1999.

Leon County School Board
Case No. 99-4491E
Initiated by Parent
Hearing Officer: Ella Jane P. Davis
Date of Final Order: December 6, 1999

ISSUES: Whether the student's incarceration in a juvenile facility or home confinement constituted a change of placement or deprived him of a free appropriate public education (FAPE) and whether the student's transfer to the Second Chance School, an alternative school, constituted a change of placement or deprived him of FAPE.

FINDINGS OF FACT: At the time of the hearing, the student was 10 years old and was receiving services in an exceptional student education (ESE) program for students classified as educable mentally handicapped. An individual educational plan (IEP) was developed for the student in June 1998.

At some point after the June 1998 IEP was developed, the student was arrested for multiple counts of sexual battery on younger students at the elementary school he was attending. He was incarcerated at the Leon County Juvenile Detention Center, an alternative setting that is not under the jurisdiction of the district school board. The district provides instruction to students at the facility. A temporary IEP was developed for the student by district staff in October 1998 while he was incarcerated. The evidence appears to indicate that the student's mother was invited to participate in the meeting but did not attend. The student attended the meeting.

Because a court order restrained the student from having contact with his victims, he was not able to return to the elementary school he had been attending when released from the detention center. When he was released from incarceration, a preliminary hearing was held in circuit court. Ward Spisso, Director of ESE and Special Services for the Leon County School Board, advocated that the student be sent to Second Chance School, a district alternative school, so he could be further evaluated and so ESE services outlined in his IEP could be provided. The judge agreed with the recommendation and ordered the student attend Second Chance School.

When the student's mother and aunt toured Second Chance School, they stated they did not like the school and went to another district elementary school to enroll the student there. Evidence showed that this school did not have the staff or facilities to meet the needs of the student or to provide the services stated in his IEP. Although the evidence presented was unclear as to the sequence of events and some conversations presented in evidence are hearsay, the mother and aunt stated that juvenile justice staff suggested they withdraw the student from school and educate him at home. The student was enrolled in Second Chance School, and the IEP was implemented in that setting.

An IEP was developed for the student on September 16, 1999, for the 1999-2000 school year. The same goals and accommodations as listed on the previous IEP were recommended to remain in place at Second Chance School. In October 1999, the student's family filed with the circuit court a motion for change in educational program, alleging that the student had been the victim of assaults and extortion at Second Chance School. The mother and aunt were concerned about the child's safety and testified that he had become withdrawn, nervous, fearful, and lethargic. They requested that he be removed from public school and enrolled in a private school that they said had agreed to provide scholarship support. The evidence presented in this case did not state the outcome of the October 1999 motion. The student's attorney stated that the family was not seeking private education financed by the school district.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter of this case. From the evidence presented, it was difficult to grasp what type of further evaluation or exploration could have been made by school authorities or what outcome the mother and aunt desired, other than they wanted the child removed from Second Chance School and registered in an elementary school.

The school board maintained that based on the November 1998 and August 1999 court orders, the district had no choice but to provide the student's education at the Second Chance School and that the September 1999 IEP met or exceeded the prior regular school IEP and constituted no change in placement. There was a broad range of case law that supported this position with regard to there being no change of placement under the circumstances.

As for the issue of the student's safety, the circuit court ordered eyesight supervision of the child at all times, including an adult to accompany him to the restroom. The need to protect other students from the student in this case also was a factor to consider.

FINAL ORDER: It was ordered that the September 16, 1999, IEP continue in effect for the 1999-2000 school year. Further, it was ordered that a new IEP conference be convened with appropriate notice to the grandparents, aunt, mother, and the Leon County Circuit Court before the close of the 1999-2000 school year so that an IEP would be in place for the 2000-2001 school year.

Orange County School Board
Case No. 99-4733E
Initiated by Parent
Hearing Officer: Daniel Manry
Date of Final Order: December 14, 1999

ISSUE: Whether the district violated federal and state law by filing a report of the student's misconduct with law enforcement authorities concerning an incident at school.

FINDINGS OF FACT: The student was 13 years old at the time of the hearing. He was enrolled in a district program for students with emotional handicaps and was assigned to an

alternative classroom for three hours a day. The student had been making progress academically and had displayed good behavior during the first part of the school year, when he was on a shortened day schedule. In early October 1999, after his school day had been increased by one period each day, his teacher wrote a conduct referral for the student. The student reacted by kicking a desk, screaming profanities at the teacher, and moving toward the teacher in a threatening manner. A behavior specialist who was in the classroom at the time restrained the student.

One week later, the student was reported to be out of his seat and disturbing other students. He challenged another student to a fight and leaned over the teacher's desk in a threatening way. A resource office responded to the teacher's call for help. Criminal charges were filed against the student.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction in this proceeding. At the outset of the hearing, the district made an "ore tenus" motion to dismiss for lack of jurisdiction. This motion was denied in part and granted in part. The administrative law judge in this case did not have jurisdiction to grant the relief requested by the petitioner but did have jurisdiction to determine whether the change in the student's individual educational plan that increased his school day by one period provided him with a free appropriate public education.

The petitioner had the burden of proof in this proceeding and showed a preponderance of the evidence that the change in the student's IEP failed to provide him with FAPE. After the district increased the student's school day by one period, his behavior and academic progress regressed. The student failed to make meaningful progress toward his educational goals. However, the petitioner failed to show that the student's arrest and criminal prosecution violated the Individuals with Disabilities Education Act.

ORDER: The petitioner's requests to prohibit the school district from filing criminal charges against the student and to compel the state attorney to drop the criminal charges against the student were denied for lack of jurisdiction. Further, it was ordered that the student's school day be reduced by one period to its previous level.

Osceola County School Board
Case No: 99-2436E
Initiated by Parents
Hearing Officer: Daniel M. Kilbridge
Date of Final Order: September 2, 1999

ISSUES: Whether the student's individual educational plan (IEP) failed to comply with federal or state law, thereby denying him access to a free appropriate public education (FAPE); whether placing the student in a school with specialized programs as proposed by the school board was an appropriate placement in the least restrictive environment (LRE) for him.

FINDINGS OF FACT: The student was 15 years old at the time of the hearing. The student was diagnosed with severe hearing loss and speech impediments. The parents withdrew the student from the local school district and enrolled him in the Florida School for the Deaf and the Blind. (FSDB). The student was subsequently withdrawn from FSDB by the parents and re-enrolled in the local school district.

While enrolled in the local school system between 1996 and 1999, the student was in the hearing impaired program on a full-time instructional basis. His IEP addressed language and speech goals, and he had a full-time attendant interpreter to assist him with on-campus communication with peers and teachers. The student was placed in a separate classroom for exceptional student education (ESE) students, and subjects included reading, science, and social studies. However, he took math and personal development education in a regular education class, and modifications were made for him. The services of a speech pathologist were also made available to him. In addition, the student received weekly tutoring at home. In an effort to enhance the student's reading and comprehension skills, the parents requested that he be provided only reading and language art classes. The school district denied this request as being a departure from standard middle school curriculum, but the student was provided an additional reading class.

Following several IEP meetings at the end of the 1998-1999 school year, the parents requested that the student be placed in a regular diploma curriculum that would afford him better career opportunities in the future. The school district proposed a regular classroom placement with interpretive and learning strategies class.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the subject matter and parties involved in this case. The district was required by law to provide an appropriate program of special instruction, facilities, and services for exceptional students. The district provided FAPE for the student while enrolled in the public school. The school district provided education in compliance with the legal requirements ofthe Individuals with Disabilities Education Act and the Florida law. Evidence provided clearly demonstrated that the student was qualified and should be placed in a regular diploma program with appropriate accommodations and services to meet his needs.

ORDER: The petition was dismissed. The school district provided FAPE in the least restrictive environment and was ordered to place the student in the recommended school. The school district was ordered to hire and train an educational interpreter for the student.

Palm Beach County School Board
Case No. 99-3027E
Initiated by Parents
Hearing Officer: Eleanor M Hunter
Date of Final Order: October 21, 1999

ISSUE: Whether the district's placement of student was adequate and appropriate as required by law.

FINDINGS OF FACT: The student was nine years old at the time of the hearing and had been diagnosed as profoundly mentally handicapped. She was determined eligible for early intervention services at the age of three and received appropriate services accordingly. An individual educational plan (IEP) was developed for the student, and she was enrolled in a class of eight students, an ESE teacher, and two aides who provided most of her personal assistance, as well as therapists.

With the aid of therapies, the student made substantial progress with her motor skills, but the parents requested more intensified speech therapy that would improve her speech and language skills. As a result, a communications disorder specialist recommended additional hours for all therapies. In addition, the parents suggested a school closer to the student's home as being a more appropriate placement for her to receive intensive speech therapy. They believed that enrollment in this district center school with a core autistic education curriculum would be more beneficial to the student, and they also preferred the services of the speech therapist at the center.

The student's parents were of the opinion that the student would benefit more from being around children who were more verbal and not profoundly delayed, but the district disagreed on this issue. To accommodate this request, however, the district made arrangements for district staff to observe the teaching methods at the parents' preferred school placement and also receive in-service training. Subsequently, the district developed a new IEP on May 11, 1999, and included a plan to reduce the student's speech therapy time from 60 minutes to 30 minutes a week. This change in the IEP was based on the fact that the student had accomplished more skills than projected by administered tests. The parents withdrew the student from the district's recommended summer school program after one day of attendance and enrolled her in a summer program for more active and mostly autistic children. The parents were satisfied with the student's new placement, but the issue at hand was determining the appropriateness and adequacy of her speech and language therapy program contained in the new IEP.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter of this proceeding. The school district conducted evaluations and developed an IEP for the student as required. The school district demonstrated that the IEP established adequate and appropriate services for student.

ORDER: It was ordered that there would be no change in the placement or services provided by the district.

Pasco County School Board
Case No. 99-3430E
Initiated by Parent
Hearing Officer: Carolyn S. Holifield
Date of Final Order: November 10, 1999

ISSUES: Whether the student was eligible for services under the trainable mentally handicapped (TMH) category. Whether the proposed individual educational plan (IEP) offered the student a free appropriate public education (FAPE) in the least restrictive environment (LRE).

FINDINGS OF FACT: The student was born on May 24, 1990, and diagnosed with severe cerebral palsy and visual impairment. The student started receiving early intervention services at the age of three and was determined eligible for physically impaired and speech/language impaired programs. Efforts made to mainstream the student in an academic program during kindergarten, first, and second grades proved unsuccessful and were discontinued. The student did, however, benefit from a social skills program.

At an IEP meeting held on August 26, 1998, it was determined that the student should be placed in a classroom for students with physical impairments and should receive physical, occupational, and speech/language therapies. Based on information provided by the parent, the team had inappropriately included third-grade-level academic goals in the students' curriculum. The parent signed the IEP and also gave consent to further evaluate the student.

Shortly into the 1998-1999 school year, the student was struggling academically and concerns were raised about the appropriateness of third-grade academic objectives and goals contained in her IEP. Due to these concerns, extensive psychological and visual evaluations were conducted to determine the student's intellectual ability and eligibility for a visually impaired program. Test results indicated that her cognitive and overall functioning were delayed in comparison to her chronological age. Based on these results, the student appeared to have met the eligibility criteria for a trainable mentally handicapped (TMH) program. The results from the visual evaluation also indicated that the student was moderately or severely visually impaired.

The eligibility staffing committee met on February 2, 1999, and determined the student to be eligible for a TMH category and visually impaired services program. The parent was invited, but she did not attend. A new IEP, commensurate with the student's present levels of performance, was developed. The parent was given two notices of a scheduled IEP meeting in May 26, 1999, but the parent declined to attend and requested a copy of the IEP instead. The IEP team recommended that the student be placed in an intermediate level TMH class with age peers. The hearing officer in this case questioned the basis for this determination because there was no indication that the team, while determining the student eligible for TMH services, considered her visual impairments. A review of the student's record indicated that although her teachers had expressed concerns about her vision in October 1997 and she was tested, the visual impairment had not been addressed by the district. It was clear that due to

the severity of the cerebral palsy and visual impairment that had impacted the student adversely, her academic grade level was significantly below her chronological and adaptive behaviors, and those impairments were only just recently addressed.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter. The district was required by law to provide appropriate programs and services for exceptional students. There was no dispute that the student was an exceptional student who needed special education. However, due to the student's severe impairments, psychological tests conducted did not accurately establish her aptitude and achievement level. The district, therefore, failed to establish the criteria for placement in a TMH program. The student's placement in the district's recommended TMH program would not provide her FAPE in the LRE, and the proposed 1999-2000 school year IEP which classified her as a TMH student to be placed in a self-contained classroom was inappropriate. Placement of the student in a self-contained classroom for students with physical impairments was appropriate pending further accurate determinations.

ORDER: The school district was ordered to provide independent evaluations in the following areas: psychoeducational, educational, vision, speech-language, physical and occupational therapies, and diagnostic teaching. The district was also ordered to provide assessment to determine the student's assistive technology needs, if any. The district was ordered to finance the full cost of the independent evaluation and assessment within 60 days. The IEP team was ordered to meet no later than two weeks after completion of independent evaluations and develop an appropriate IEP.

School Board of Seminole County
Case No: 99-0887E and 99-0888E
Initiated by Parents
Hearing Officer: Mary Clark
Date of Final Order: November 12, 1999

ISSUE: Whether the students were entitled to 504 accommodations by the school district based on residency status.

FINDINGS OF FACT: The students mentioned in this case were brother and sister enrolled in the tenth and eleventh grades at the time of hearing. They were diagnosed with asthma and allergies. Due to the frequency of allergy related ailments from exposure to molds and odors in their classroom environment, it was agreed that the students be transferred to another school district in a different county.

However, in the course of the school year, the school district terminated the agreement, and the parents requested that both students be determined 504 eligibile as in the previous school district placement. At a 504 eligibility meeting convened for this purpose, the district denied this request and also a claim by the parents on behalf of the students for damages and relief, such as adjustment in their test grades.

A subsequent 504 eligibility determination meeting was convened on September 16, 1998, at the parents' request. Based on evidence presented, both students did suffer from asthma and allergies. However, the ailments did not infringe on their academic abilities. Their course of treatment was very conservative. The male student's academic difficulties were results of his failure to turn in his assignments in a timely manner, and he did not take advantage of tutoring opportunities offered by several of his teachers. There was no evidence in the proceedings to indicate that the 504 team erred in their determinations.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction in this proceeding. The students were not entitled to accommodations under Section 504 of the Rehabilitation Act of 1973 by reason of asthma or allergies. The students were not residents of the county at the time of the hearing.

ORDER: The parents' request for 504 accommodation was denied.

The New Department of
Education

Jim Horne, Commissioner

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