Florida Department of Education

Summaries of Due Process Hearings

in Exceptional Student Education

conducted by
the Division of Administrative Hearings

January–June
1999

Bureau of Instructional Support and Community Services

These summaries are available through the Bureau of Instructional Support and Community Services, Florida Department of Education, and are designed to assist school districts in the provision of special programs for exceptional students. For additional copies, contact the Clearinghouse Information Center, Room 628 Turlington Building, Tallahassee, Florida 32399-0400 [telephone (850) 245-0477; Suncom 205-0477; FAX: (850) 245-0987; email: cicbiscs@fldoe.org]. This publication is also available on the internet at the following address: http://www.firn.edu/doe/commhome.htm.

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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, between January and June 1999. 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 Dr. Margot Palazesi, Program Director, Conflict Resolution, 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 palazem@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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Baker County School Board
Case No. 98-5502-E
Initiated by Parent
Hearing Officer: Don W. Davis
Date of Final Order: February 10, 1999

ISSUE:
Whether the district provided the student with a free appropriate public education (FAPE) by implementing the student's individual educational plan (IEP), specifically by following the behavioral component.

FINDINGS OF FACT: The student was in the ninth grade at the time of the hearing. She has been in the respondent's school system since 1989. In September 1989, the parent received a referral for an evaluation to determine eligibility for exceptional student education (ESE) services. Such evaluations took place, including a psychological evaluation. In January 1990, the student was determined eligible for the Educable Mentally Handicapped (EMH) classification. Following the evaluations and eligibility determination, an IEP meeting took place and a plan was developed for the student.

From 1990 and thereafter, the district held IEP meetings on a regular basis for the purpose of re-evaluating the student for EMH eligibility and adjusting, where appropriate, the student's IEP. Based on tests and evaluations, the student has an Intelligence Quotient (IQ) which ranges between 54 and 55. As recently as September 1997, she was functioning at a second grade level.

The district made appropriate effort to involve the mother in the evaluation process. The mother essentially declined or failed to attend any such meetings with district personnel although approximately 22 meetings were scheduled, properly noticed, and ultimately held between October 5, 1989, and December 16, 1998.

Prior to the request for a due process hearing, the mother participated in mediation under the auspices of the Florida Department of Education on December 2, 1998. The parent attended the mediation and agreed to participate in the next IEP meeting to review and modify, where necessary the behavior and academic portions of the existing plan. However, the parent did not attend the IEP meeting and instead initiated this due process proceeding.

A major concern of the mother is the treatment accorded her daughter by district personnel with regard to incidents on the school bus that her daughter rides. The evidence presented tends to establish that physical and verbal confrontations between the daughter and other students on the bus are generally initiated by the daughter. The bus driver confirmed that the daughter had exerted aggressive behavior toward him from time to time. The high school's guidance counselor made numerous attempts to involve the mother in the IEP process and to make herself (counselor) available for participation in efforts to deal with problems the student had been experiencing at school.

The Behavioral Plan adopted by the district was designed to gradually deal with the student's problem behavior by requiring the student to demonstrate five types of good behavior (replacement behaviors) which, when accomplished, would be reinforced with rewards as set forth in the plan. Parental help was considered important for the plan to be effective. The behavior problems of the student were not caused by her educational environment. The educational program established for the student was attentive to her problems, and district personnel were working diligently toward resolution of the student's difficulties, without the benefit of participation by the mother in the development of the student's IEP or her Behavior Plan.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties to and the subject matter of this proceeding. The evidence in this case showed that the student's inappropriate conduct in the classroom was not the result of her diagnosis of EMH. Such conduct could be managed through the behavioral management plan in effect at the time of the hearing. The district has also found that such behavior can be modified through the use of video cameras on school buses.

ORDER: The student's IEP was appropriate to meet the student's needs, with the exception of the consideration of possible benefits which could be recognized through placement of a video camera on the student's school bus.

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Bay County School Board
Case No. 99-0119E
Initiated by Parent
Hearing Office: Donald R. Alexander
Date of Final Order: February 17, 1999

ISSUE:
Whether the student was being provided a free appropriate public education (FAPE); specifically, whether the student's placement should be changed from a mainstream Section 504 program to a special program for students identified with specific learning disabilities (SLD), including a full-time tutor/aide in the classroom or, in the alternative, residential placement.

FINDINGS OF FACT: The student was in the third grade at the time of the hearing. He was enrolled in a general education program with no special services, but did receive additional services under a Section 504 program. By requesting this hearing, the parent wanted the child to be reclassified as a student with SLD, and requested a full-time qualified tutor or aide to assist the student with reading and written language expression. As an alternative to this request, the parent asked that the child be immediately placed in a residential setting to "receive remedial work to bring him up to the level of education he should be at, and [that it] continue to be taught with the appropriate techniques in educating a student with his Learning Disabilities." The district had denied the request for placement in exceptional student education (ESE), citing that four sets of

evaluations had been conducted over a three-year period and these had demonstrated that the student was not eligible for special services.

At his mother's request, the student was evaluated in March 1996, while in kindergarten, by a private clinical psychologist, who noted a discrepancy between the child's verbal and performance Intelligence Quotient (IQ), which "might suggest some learning irregularity." The psychologist recommended the child be retested a year later and further stated the child "may have some features of ADHD, but not [to] an extent that is dramatic."

In November 1996, the student was referred for further testing; at that time, a child study team noted he had an "inability to remain on the task for any length of time" and he was "very active and easily distracted." The student received a psycho-educational evaluation by a school psychologist, who noted that while the child had a "significant weakness…in short-term memory skills," he "appeared to have acquired the appropriate knowledge base for a six-year-old…child at that particular time in the one-to-one setting." In December 1996, a child study team held a meeting and concluded that under state and district guidelines, the student did not meet the eligibility criteria for an ESE program.

In December 1996, a child study team implemented a Section 504 plan on behalf of the child. The plan called for special accommodations for him with respect to the physical arrangement of the classroom, lesson preparation, assignments/worksheets, and behaviors. The plan was still in place at the time of the hearing.

In April 1997, the mother, at her own expense, had a psychological evaluation conducted by a private psychologist. The purpose of the examination was to rule out attention deficit hyperactivity disorder (ADHD) and/or a learning disorder. The psychologist concluded that, among other diagnoses, the child had a learning disability in reading. The diagnosis of ADHD was ruled out. The psychologist offered several recommendations, including "ESE/SLD consideration at school" and that the child have a "private SLD tutor." The psychologist further contended that district and state procedures and rules for determining SLD eligibility were unfair, produced inaccurate results, and failed to take into account clinical interpretations of the child. Another psychologist, who was treating the child and other family members in a clinical setting, opined that the child had "a learning disorder in a clinical sense," and agreed the child should be placed in a special program. Both psychologists agreed that under standards adopted by the state, the child was not eligible for a program for students with SLD.

Because of on-going academic difficulties, the child was referred for further testing and evaluation in November and December 1998 to determine whether he had a learning disability and qualified for services. In January 1999, the child again was found ineligible for an ESE program. In November 1998, the mother requested a meeting to update the child's 504 plan. At the meeting, the mother stated that no one at the meeting was qualified to update the plan and she left the meeting. No changes were made to the plan at that time.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties to and the subject matter of this proceeding. The evidence in this case shows that the student did not "exhibit a discrepancy of one (1) standard deviation or more" between his Verbal Scale IQ of 107 and his Performance Scale IQ of 93. Therefore, the request for reclassification was denied. The mother's request for a hearing called for both a due process hearing under IDEA and a hearing under Section 504 of the Rehabilitation Act of 1973. At the final hearing, however, the school board took the position that the 504 plan was "not the issue," but rather the issue was the child "qualifies under IDEA." Because the record contains only generalized criticisms of the plan's

features, and there are no specific suggestions on how it might be improved, there is an insufficient record on which to make specific changes to the 504 plan.

ORDER: The parent's request that the child be reclassified as a student with learning disabilities was denied.

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Brevard County School Board
Case No. 99-0594E
Initiated by Parent
Hearing Officer: Daniel M. Kilbride
Date of Final Order: April 8, 1999

ISSUE:
Whether the placement of the student in the emotionally handicapped (EH) program at the Devereux Day School, as proposed by the district, would provide the student with a free appropriate public education (FAPE) and would follow the requirements of federal, state, and local statutes and regulations.

FINDINGS OF FACT: The student was a seventh grade student enrolled in an EH program at the time of the hearing. He exhibited behavioral difficulties in middle school, resulting in conferences with school and district staff and the child's mother. Numerous interventions were tried without success. A manifestation determination meeting was held on October 27, 1998, where it was determined that the student's disruptive and aggressive behaviors were related to his disability. The district proposed a reevaluation in order to review the child's placement. The mother refused to grant permission for the reevaluation. An individual educational plan (IEP) meeting, for which the mother was notified but did not attend, was held on December 15, 1998. The IEP team recommended a reevaluation and a possible change of placement to the Devereux Day School in Mims, Florida.

A follow-up IEP meeting was held on January 26, 1999; the mother attended but refused to participate. She informed the members of the IEP team that she intended to withdraw her son from public school and would "home school" him. She then left the conference. Another IEP meeting was held for the student at Devereux on February 3, 1999, and the new IEP indicated a need for a change of placement to a special day school program. The student's mother was notified of the meeting but failed to attend. The mother was notified by mail on February 4, 1999, of the IEP team's decision and told that her child was to be registered at Devereux by February 15, 1999, or the child would be considered truant. The child was not registered at Devereux by February 15.

On February 18, the mother informed the district that the Devereux placement was unacceptable. She proposed that her child remain in the EH program at the middle school he was already attending. She requested an impartial due process hearing, and a formal hearing was scheduled. The mother notified the district by letter dated March 17, 1999, that she was withdrawing her child from public school in order to "home school" the child, but did not withdraw her request for a due process hearing. On March 23, district staff contacted the mother and discussed several points related to the case. The mother did not appear at the hearing and could not be located.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties to and the subject matter of this proceeding. The student's behavioral history demonstrates that placement in his middle school EH program was detrimental to his educational program and was not likely to adequately address his needs. The testimony of the witnesses established that the

student met the state standards for eligibility for a special program for emotionally handicapped students. The student's middle school tried a number of interventions, yet the student failed to make academic progress in the special setting. His disability also interfered with his social-personal development as well as his behavioral progress and control. The placement of the student in the EH program at Devereux Day School would best meet his social development needs and was best suited to provide personalized instruction with sufficient support services to permit him to benefit educationally from the instruction.

ORDER: The student's educational placement as a student in the Brevard County School District was to be Devereux Day School until the placement was changed pursuant to a review and revision in the student's IEP. If he were re-enrolled in Brevard County schools, the district would be authorized to conduct appropriate testing and reevaluate the student.

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Broward County School Board
Case No. 98-5254E
Initiated by Parent
Hearing Officer: Errol H. Powell
Date of Final Order: April 7, 1999

ISSUE:
Whether the district's proposed provision of speech and language therapy to the student was appropriate.

FINDINGS OF FACT: The student was a 17-year-old senior enrolled in a public high school in Broward County at the time of the hearing. She had a diagnosis of selective mutism and obsessive compulsive disorder, and had been determined by the district to be a student with specific learning disabilities (SLD) as well as speech and language impairment. She was eligible to receive services in both an SLD program and a speech/language program.

During her freshman and sophomore years in high school, the student received speech and language therapy after school to accommodate the speech therapist's schedule. Her mother agreed to this arrangement. When the individual educational plan (IEP) was developed for the student's junior year, the IEP team determined that the speech and language therapy would be provided during her learning strategies class, which was an elective class. The student had other elective classes, but this class was selected because it was the only class that did not require homework or class work. Therefore, it was the only class from which the student could leave without having severe anxiety over what she may be missing in class during the time of the therapy. The IEP team agreed that the learning strategies class was the least restrictive environment (LRE). The mother agreed with the team's decision.

In the student's senior year, the 1998-99 school year, the school changed its scheduling to a block schedule format. Due to block scheduling, the learning strategies class was not offered the first semester of the school year. From early August until mid-September, the mother made several telephone inquiries to the district in an attempt to find out when the student would be receiving speech and language therapy. On September 14, 1998, a district curriculum specialist faxed the mother a letter informing her that her child would receive the therapy during her elective class, food and nutrition. At the beginning of the school year, the school did not have a speech/language therapist to provide therapy.

On September 15, 1998, the mother faxed a letter to the district expressing her concerns about this change. The mother had three concerns: (1) that her daughter would miss part of the elective class on days she had therapy, (2) that she would become anxious because of missing class time and academic material, and (3) she would miss the opportunity to learn skills which were stated in her IEP transition goals, including money management and cooking. The mother included with her fax a letter from the child's psychiatrist that stated that providing therapy during the food and nutrition class, which was an academic class that offered hands-on experience and encouraged social interaction with others, would be clinically detrimental to the student's progress. The mother requested an immediate response to her letter; she did not receive a response. After unsuccessfully receiving a response to her letter and telephone calls, the mother then contacted the Office for Civil Rights (OCR) in an attempt to reach a quick resolution to the question of when her daughter would receive therapy. After two months, OCR reached no formal resolution.

The district scheduled an IEP meeting for November 18, 1998. At the meeting, an ESE specialist presented the mother with three options for the student to receive her speech and language therapy: (1) two hours of therapy provided during the food and nutrition class; (2) one hour of therapy provided during the food and nutrition class and one hour during the High School Competency Test (HSCT) math class, totaling two hours per week; and (3) one hour per week of therapy for the remainder of the first semester, and returning to two hours per week for the second semester, being provided during the learning strategies class. The mother wanted the student to receive therapy after school. At no time during the meeting did the ESE specialist discuss with the principal or district curriculum specialist the option of providing therapy after school. At the time of the IEP meeting, the student had expressed an interest in participating in the drama club, an after-school activity. The meeting time for the club would allow time for her to receive her therapy and have time to participate in the club.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over these proceedings and the parties thereto. There was no dispute that the student was entitled to receive services in the district's speech and language program. A state is not required to maximize the potential of a child with disabilities commensurate with the opportunity provided to a child without disabilities. Rather, a child's IEP must be reasonably calculated to enable the child to receive educational benefits, which need to be measurable, and adequate gains in the classroom. The unique educational needs of a particular child must be met by the IEP.

Changing the provision for this child's speech and language therapy from one class period to another was a change in the child's IEP. An IEP meeting would have been the appropriate forum for revising her IEP, rather than sending a letter to the student's mother notifying her of the change. Furthermore, the district failed to schedule an IEP meeting in a timely manner to make these changes, even though the district was aware of schedule and class offering changes which would impact the delivery of speech and language therapy to the student. The district also failed to evaluate the student to determine the effect of reducing her therapy by 50 percent due to her selective mutism. A delay occurred in the attempt to develop an IEP; however, the mother did not cause the delay. Finally, the district failed to follow the IDEA procedures as well as its own procedures in changing the child's IEP.

ORDER:
The district failed to provide the student with FAPE for the 1998-99 school year. The district should provide the student's speech and language therapy after school hours. The student also should receive compensatory education from the district for the speech and language therapy that she did not receive during the 1998-99 school year.

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Collier County School Board
Case No. 98-5075E
Initiated by Parent
Hearing Officer: Arnold H. Pollock
Date of Final Order: March 15, 1999

ISSUES: Whether the most appropriate placement for the student would be a placement in a nonpublic school; whether the district should be required to pay the costs of two earlier nonpublic school placements; and whether the individual educational plan (IEP) that was current at the time of the hearing was appropriate.

FINDINGS OF FACT:
The student, who was 12 years old at the time of the hearing, attended a private preschool at age four. She was dismissed from the preschool for aggressive behavior. She continued to display aggressive behavior in subsequent preschool settings. At age five, she was diagnosed as having attention deficit hyperactivity disorder (ADHD), possible visual fine motor integration weakness, possible motor dyspraxia, behavioral problems, conduct disturbance, and visual retrieval memory weakness. The doctor who made these diagnoses recommended continued placement in a regular classroom with a low teacher-student ratio, a consistent behavior management program, medication, and classroom modifications. These recommendations were shared with school personnel by the parent.

In the first grade, the child was referred for further testing after what the mother described as "violent episodes." A series of psychological tests further revealed that the child was anxious and depressed and showed deep fears of loss, abandonment, and rejection. She had a verbal intelligence quotient (IQ) score of 107, a performance IQ of 108, and full scale IQ of 109. Other tests showed that she functioned on the first-grade level in both reading and math. The test administrator believed that emotional and behavioral factors adversely affected her performance and the scores were an underestimate of her abilities. She further opined that anxiety and depression created conflicts that fueled acting-out behavior and suicidal ideations.

After further testing, a staffing was held on January 4, 1993, in which it was determined that the student was eligible for placement in the district's program for students classified as emotionally handicapped (EH), to which the parent agreed. The student received exceptional student education (ESE) services in the EH program throughout elementary school. During that time, the parent participated in IEP meetings on a regular basis. The child had several documented incidents of behavior problems during this time, but overall she was reported as "functioning well." In the fifth grade, she was diagnosed as being bipolar-mixed, ADD with hyperactivity (ADHD), and oppositional defiance disorder (ODD). She was prescribed both Ritalin and Prozac, medications meant to treat these conditions. Toward the end of the school year, she reported that she was hearing voices in her head.

The IEP developed when the student entered sixth grade called for her to participate with nondisabled peers during meals, assemblies, transportation, general education instruction and environment, and extracurricular activities. The parent was identified as being responsible for medications and psychiatric counseling, the Code of Student Conduct was identified as the discipline plan, and the "other needs" section of the IEP was left blank. Upon starting sixth grade, the student's special needs were not shared with the general education teachers and the child began to exhibit behavioral difficulties. On the first day of school, she was reported to be violent, angry, and using gang signals. At the parent's request, an IEP meeting was held immediately and the team determined the child would best be served in the school's Students for Collaborative Instruction (SCI) program. No changes were made to her IEP. Throughout sixth grade, she continued to display behavior problems and her grades were reported to be "mixed."

In February 1998, when the student was still in sixth grade, the mother requested an interim IEP meeting to discuss, among other issues, the development of a behavioral plan. Several more meetings were held until the end of the school year, as the child continued having incidents of behavior problems, some of which resulted in suspension from school. An alternate placement was attempted during the summer of 1998; the student was discharged for aggressive behavior and the use of foul language. During that summer, the parent and two private therapists who had been working with the child discussed various schools that might be appropriate for the child, including private boarding schools with regular education, special education schools, and residential therapeutic schools. The mother visited the Hunter School in New Hampshire and determined that this was an appropriate setting. The child started attending this private school in September 1998, placed there by the parent.

The child was discharged from the Hunter School in October 1998. After a brief stay in a psychiatric hospital, she was admitted to the McLean Hospital in Massachusetts, which had a pediatric psychiatric ward. When the child and mother returned to Collier County in November 1998, the possibility of residential placement was discussed. The parent agreed to visit residential schools in the area as well as public middle schools to determine the appropriate placement. By November 11, 1998, the mother had visited three potential middle school placements in the district. District staff concluded that Gulf View Middle School, a public school, would best serve the child. The parent disagreed with this decision and filed a request for due process. Counsel for the parent indicated that the mother did not intend to limit her request for assistance to that available under the Individuals with Disabilities Education Act (IDEA); she intended to seek relief under Section 504, as well.

In November 1998 the child was admitted to LaAmistad, a residential treatment facility for adults and children with medical and educational needs in Maitland, Florida. During the next two months, while at the residential placement, the child was examined by two psychiatrists, at the district's expense. Both doctors stated that they believed the child did not need to be served in a residential environment. They noted that she had made academic progress in the public middle school and believed she could be educated successfully there, with her "mood instability" being controlled by proper medication on an outpatient basis.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and the subject matter in this case. The parties agreed that the student was entitled to services under IDEA. In an IDEA case, as here, the party challenging the appropriateness of a public school placement bears the burden of proving that the placement is inappropriate.

ORDER: The most appropriate placement for the child was found to be a district middle school. The parent's request for reimbursement for the costs of enrollment at two nonpublic schools and for costs of medical treatment at Bournewood and McLean Hospitals was denied. The district was ordered to develop, in consultation with the parent, an IEP for the education of the student in an SED program in a Collier County public middle school.

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DeSoto County School Board
Case No. 99-1228E
Initiated by Parent
Hearing Office: William R. Cave
Date of Final Order: May 17, 1999

ISSUES: Whether the district failed to provide the student with a free appropriate public education (FAPE) by failing to place him in an appropriate educational program upon his entry in a public school in DeSoto County, and what would be an appropriate placement for the student in which he could receive FAPE.

FINDINGS OF FACT: The student was 15 years old and had a diagnosis of severely emotionally disturbed (SED) at the time of the hearing. He had experienced difficulties with peers, at home, and in school since he was of pre-school age. In addition to the SED diagnosis, he had the diagnoses of attention deficit hyperactivity disorder (ADHD); bipolar disorder, not otherwise specified (NOS); and psycho-sexual disorder, NOS.

The student was placed in Amistad, a residential treatment program in Maitland, Florida, for the 1997-98 school year. The Division of Alcohol, Drug Abuse, and Mental Health, Department of Children and Family Services (ADM) provided funding for this placement. In April 1998, an individualized educational plan (IEP) was prepared for continued placement of the student for the following school year. In September 1998, another IEP was prepared for continued residential placement. Due to lack of funding, he was discharged from Amistad in October 1998. At this time, he went to live with his mother in DeSoto County.

Around the time of the student's discharge from residential placement, the mother contacted the district exceptional student education (ESE) director concerning the child's placement in DeSoto County schools. The district requested that the mother furnish, among other records, a copy of the child's latest IEP. The mother complied with the request. A district staffing specialist suggested the student be place in the Homebound/Hospitalized (H/H) program until he could be placed in a residential facility. The student was placed in the H/H program and an IEP was developed in October 1998. School records indicate the he initially benefited educationally in the program, but in January 1999, his family involuntarily placed him in a facility for treatment of his mental illness. He returned to the H/H program in February 1999.

At the time of the hearing, the district continued to provide the student with a qualified teacher in the H/H program. However, due to his challenging behavior, which neither his teacher nor his mother could control, as well as the fact that he had failing grades in all subjects, it was evident that the child was no longer benefiting educationally from the program, and the program was inappropriate. The district continued to explore appropriate residential placements and eventually concluded that three programs in the state were appropriate for the student. A meeting was held in February 1999 to revise the IEP. While the IEP team determined that the student needed to be placed in a therapeutic residential program, there was disagreement as to which therapeutic center could provide an appropriate program.

The district contended that the program at University Behavior Center (UBC) in Orlando, Florida, was the appropriate residential program. The family felt that the program at UBC too closely resembled the residential program at Amistad, which did not prove to be successful. The family contended that Carlton Palms in Mount Dora, Florida, offered the appropriate program for their child. While the programs at Amistad and UBC were similar, there was insufficient evidence at the time of the hearing to show that UBC's implementation of its program would be the same as Amistad's implementation or that the same results would be obtained. While both programs

would deal with the child's behavioral problems while providing the child with an education similar to what would be received in a regular school setting, their methods of dealing with behavioral problems were somewhat different.

In addition to these differences, the yearly cost for placement at Carlton Palms was approximately twice the cost for placement at UBC. Funding for placement would normally come from the district. However, if an ADM bed were to become available at UBC, then ADM would fund the placement. ADM would not fund any beds at Carlton Palms. Around the time the IEP was completed in February 1999, a bed became available for the student at UBC. The district advised the mother of the availability of the bed, but she failed to take advantage of the opening. At the time of the hearing, there were no openings for the student at UBC or at Carlton Palms.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties to and the subject matter of this proceeding. The purpose of the IDEA is access, not a substantive level of education. A public school system's responsibility is to provide a floor of basic opportunity. Maximizing a student's potential is not required. Initially, the district met its obligation under the IDEA when it provided services to the student in the H/H program. However, upon the student's return to the H/H program after his short commitment, his uncontrollable behavior and fragile mental health prevented the district from providing him with FAPE.

ORDER: The student's placement in the H/H program was determined inappropriate and the district was ordered to take whatever steps necessary to place him in either UBC or Amistad, whichever offered the earlier possible placement.

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Duval County School Board
Case No. 98-5278E
Initiated by Parent
Hearing Officer: Stephen F. Dean
Date of Final Order: April 27, 1999

ISSUE: Whether the district provided the student a free appropriate public education (FAPE). Specifically, the parent demanded a private school placement at public expense because she contended that the district had failed to provide her son with an appropriate education. She also requested unspecified psychological services and tutoring for her son at public expense, as these services were not available at the private school of choice.

FINDINGS OF FACT: The student was 17 years old and repeating the ninth grade at the time of the hearing. He was enrolled in a program for students with specific learning disabilities (SLD) in a Duval County public high school. He also had repeated the eighth grade. The student's psychological evaluation performed by district staff in March 1989, when he was initially placed in an exceptional student education (ESE) program, showed a full-scale intelligence quotient (IQ) of 93. An evaluation performed in September 1997 found his IQ to be 88, with a language skills score of 98. Both evaluators found that the student would need considerable guidance and support at school and home to develop academically and emotionally.

The mother was employed by the district as a school psychologist and participated both in her son's initial ESE placement and subsequent meetings to develop individual educational plans (IEPs) for him. She frequently moved her son from school to school and intervened on his behalf to request changes in teacher assignments. The student attended nine different schools before

entering high school, including two schools located out of Duval County. Two of the moves to other schools were due to the mother's fear for her son's safety; she contended that he was constantly harassed and humiliated by students and teachers. Teachers and staff at the schools testified to the contrary, saying that the student was socially popular and had never exhibited any sign of fear for his personal safety.

The mother had never objected to a program offered by the district, nor had the district ever denied any request by her for ESE placement, accommodation, or service. When the student was in the eighth grade, his principal and other staff recommended that he continue taking ESE classes in high school and pursue a special diploma. At the mother's request, the student was placed in regular education and vocational classes in the ninth grade and was seeking a regular diploma. At the time of the hearing, he was not making satisfactory progress, due in part to the inability of regular education teachers to adequately supervise him in large classes. Because of his poor grade point average (GPA), the student was ineligible to participate in extracurricular activities such as band and basketball.

The student's SLD teacher and classroom teachers offered assistance to the student before, during, and after school, which he rejected. His mother also hired a private tutor, which he stopped seeing after a few visits. A wide spectrum of special and regular education classes, teachers, and services were available at the student's high school and other district schools. However, classrooms with fewer students and more individualized instruction were not available at his school. The mother contended that her son's poor academic performance could be traced to an incident in the fourth grade, when the child was 11 years, in which his two front teeth were knocked out when he was pulled from under a desk by a substitute teacher. A psychologist hypothesized in September 1997 that the child suffered from post traumatic stress disorder (PTSD) as a result of the incident. The hearing office did not find this report credible, but asserted that any service or accommodation appropriate to address PTSD in an educational context could be made available in the district. No such services or accommodations had been requested or suggested by the mother or any other member of the IEP team.

At the mother's requested private school, there is one teacher on staff who consults one-on-one with ESE students to help them function in their regular education classes. She also meets with other teachers to offer assistance. The mother was informed by the private school that her son would be accepted into the school if there were any openings available.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and the matter in this case. The mother alleged that the district denied her son FAPE. The legal standard to determine whether FAPE has been approved is (1) whether the district has complied with the procedures set forth in IDEA and (2) whether the IEP developed for the child is reasonably calculated to enable the child to receive educational benefits. The student was appropriately placed in an SLD program.

The parent's education, experience, and employment in the school district made her uniquely qualified to affect her child's educational setting. The student did not suffer from PTSD and had demonstrated that he could achieve success in some public school settings with some public school teachers. The evidence did not show that the proposed private school could provide the services the student needs. The regular education teachers at the student's high school did not adequately modify their instruction to address his individual needs because of class size. The district also failed to provide the student with the option of working toward a standard diploma in a small class setting. The district denied the student FAPE by failing to develop and implement an IEP with sufficient services and measurable annual goals and objectives.

ORDER: The mother's demand for a private school placement was denied. The district was ordered to prepare and implement an IEP that would provide the student with an individualized program that would allow him to work toward a regular diploma. The district also was ordered to provide the student with two years of compensatory education.

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Duval County School Board
Case No. 99-0003E
Initiated by Parent
Hearing Officer: Ella Jane P. Davis
Date of Final Order: April 21, 1999

ISSUE:
Whether the district provided the student a free appropriate public education (FAPE) and, if not, whether the district is required to reimburse the parent for two years of private school tuition.

FINDINGS OF FACT: At the time of the hearing the student was 18 years old and had attended Duval County public schools intermittently since the third grade, at which time he was placed in an exceptional student education (ESE) program for students with specific learning disabilities (SLD). In the fourth grade, his mother requested the standard curriculum, and he was placed in regular education classes, with accommodations. The student successfully completed the fourth and fifth grades and continued to receive the same ESE services during that time. An individual educational plan (IEP) was developed when the student entered sixth grade, placing him in an SLD class part of the day. The mother withdrew the student from public school at the end of the first grading period of sixth grade, after being unhappy with his progress. She enrolled him in a private school, where he remained for the remainder of the 1992-93 school year and the entire 1993-94 school year. The mother reported that the student received no ESE services at the private school but she was pleased with the school.

In eighth grade the mother returned the student to public school so he could play football. He was placed in regular education classes and successfully completed the eighth grade. When the student was in ninth and tenth grades, the mother made no request for ESE services; in fact, she wrote a letter to the district requesting her son be kept out of SLD classes and in a standard curriculum. During this time, the mother requested a 504 Plan concerning discipline and asked that her son not be disciplined or terminated from any school function without her or her fiance being present. At the end of the tenth grade, the student was withdrawn from public school and enrolled in a private Christian school by his mother, who felt her son was being treated unfairly The student was still enrolled in this school at the time of the hearing. The student was receiving no ESE classes at the private school, but the mother stated that he did have accommodations by classroom teachers. The curriculum at the private school was similar to the one in public school, with the addition of a Bible study course.

CONCLUSIONS OF LAW: The Division of Administrative Hearings has jurisdiction over the parties and subject matter of IDEA and FAPE. The parent claims that she is entitled to payment by the district for two years of private high school education after the child was unilaterally withdrawn from public school and placed in a private school. Now, after the fact, the parent is requesting reimbursement, upon the theory that even if a custodial parent has refused ESE benefits, and the student is making reasonable progress within the normal curriculum, a public school system is required to actively offer an evaluation and volunteer some special services no one has requested or contemplated.

Since the student's placement was changed at the request of the mother, proper notice is not a procedural issue in this case. The district's failure to evaluate the student upon his re-enrollment in the public school system in 1994 does not constitute a procedural violation. The student was never denied placement, services, or resources, and the student did not demonstrate any specific need or service that the district should have volunteered without being asked. Furthermore, the student was not denied FAPE.

ORDER: The request for reimbursement was not supported by facts and the law and was denied. The petition was dismissed.

* * *

Hendry County School Board
Case No. 99-0353E
Initiated by Parent
Hearing Officer: William R. Cave
Date of Final Order: June 8, 1999

ISSUES: Whether the district failed to develop an appropriate individual educational plan (IEP) for the student; whether the district provided the student with a free appropriate public education (FAPE); and whether the student's residential placement should be continued and, if so, whether the district should be required to pay the costs already incurred and any further costs for such placement.

FINDINGS OF FACT: At the time of the hearing, the student was 12 years old and was being served in a program for students with severe emotional disturbance (SED). Beginning in kindergarten and continuing through elementary school, she was noted to have behavioral problems. These behavior problems continued to escalate until a staffing was held when she was in the third grade. The staffing committee determined that the student was eligible for services in a program for students diagnosed as Emotionally Handicapped (EH).

When the IEP was updated the following year, her teachers indicated that she could be extremely aggressive and used profanity excessively. The IEP team recommended Professional Crisis Management (PCM) techniques be used when she engaged in self-injurious, aggressive behavior. The parent was not present at this meeting. In February of her fourth grade year, the student was suspended for aggressive behavior. The IEP team recommended additional support programs, including family counseling and a new behavior management system.

In August 1997, when the parent filled out a registration form to register the student to attend school in Hendry County at the beginning of the fifth grade, she failed to mention that the child had been enrolled in an exceptional student education (ESE) program in Broward County. Consequently, the child was placed in regular education classes. Shortly after beginning the fifth grade, a 504-accommodation plan was developed for the student; no behavioral modifications were made at that time.

After the child received four referrals to the office for aggressive behavior during the first month of school, the district requested the mother's consent for formal evaluations. The mother consented to some of the listed evaluations, but not all. School staff reported that they had received records by that time that indicated that the child had been in a previous ESE placement. The student continued displaying verbal and physical aggression toward staff and other students, resulting in three separate out-of-school suspensions. No manifestation determination hearings were held. In March 1998, while the student was still in the fifth grade, the parent consented to the child being

placed in the school's EH program. That same month, a psychiatric evaluation was conducted on the child; the evaluator noted she had an impulse control disorder, oppositional defiant disorder, and dysthymic disorder. Bipolar disorder was ruled out. Risperdal and Paxil were prescribed.

An IEP developed in April 1998 noted that the student may need to be physically restrained when she displayed explosive and aggressive behavior. She was noted to use inappropriate language and she tried to provoke her peers by aggression. A Behavior Modification Discipline Plan developed with the IEP outlined procedures to use with the child. The parent did not attend this meeting. A notation on the IEP indicated that the mother provided the child with private counseling and that she did not want the school to provide counseling. The mother later denied that she did not want the school to provide this service. One teacher at the meeting noted that she had been using different accommodations in her classroom than those stated on the IEP; these accommodations were not authorized by the IEP team.

In April and May 1998, the student was referred to the office twice for aggressive behavior. During the second incident, she refused to go to the office and left campus. She was picked up by a deputy sheriff, who stated that he would look into the possibility of using the Baker Act. Around this time, the child was seen twice by another doctor, who stated that his impression was bipolar disorder, of a mixed type. He added Depakote to her medications.

In early August 1998, prior to her daughter beginning sixth grade, the parent consented to reevaluation for her child. The child began displaying aggressive behavior at the beginning of the new school year, which escalated to the point of attacking the guidance counselor. The student was arrested and handcuffed by the school resource officer (SRO); she was suspended for ten days for aggravated assault. In late August and early September 1998, a child study team met to discuss the appropriate placement of the child. The team noted that the child had a rare skin disease that caused blisters on her feet. After reviewing several placement options, the team unanimously agreed that the child would best be served in a residential treatment facility. The recommended facility, the David Lawrence Center (Center) had no openings at that time, so the mother kept the child home to home-school.

In October 1998, the mother requested that all of her child's records be sent to her within ten days. Some records were sent by certified mail and received nine days later. By mid-November, the mother had retained counsel and had, through her attorneys, requested copies of all of the records and demanded a due process hearing. The same request for records and demand for due process were made again in December 1998. On December 28, 1998, a mandamus action was filed against the district for failing to produce the student's files, failing to schedule and hold a due process hearing, failing to hold a manifestation hearing, and failing to provide notice of the child's and parent's rights. Another demand was made for the child's cumulative file.

On January 5, 1999, the child was admitted to the Center, in a space made available by the Department of Children and Family Services, Division of Alcohol, Drug, and Mental Health (ADM). The parent unilaterally placed the child at the Center, without advising the district or getting district approval. The following day the child was withdrawn from public school. After a series of correspondence between attorneys from both sides, the parent received what was purported to be the child's cumulative file.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and the subject matter of this proceeding. As set forth in previous legal opinions, the purpose of the Individuals with Disabilities Education Act (IDEA) is access, not a substantive level of education. A public school system's responsibility is to provide a floor of basic opportunity, which is defined as access to specialized instruction and related services that are individually

designed to provide educational benefit. Maximizing a student's potential is not required. The student received some educational benefits while attending fifth grade in a public school. However, by the time she began the sixth grade, her mental condition had deteriorated and as a result she was exhibiting behavior that school staff either were not willing to tolerate or were unable to handle. As a result, the child was constantly suspended or arrested and was not receiving meaningful educational benefit.

The parent's decision to place the child at the Center was not to maximize her education but only to allow her to receive some meaningful educational benefits without the interference of suspensions or arrests that were a result of her disability. In requesting residential treatment, the burden was on the parent to prove that the district's placement conferred no meaningful education benefit and was therefore inappropriate. The parent met her burden in this regard.

ORDER:
The district was ordered to continue the child's residential placement at the Center until it was determined that she can function educationally in a regular school setting. The district was further ordered to pay the costs of such placement and to reimburse the parent for any costs she had incurred when she placed her child at the Center.

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Hillsborough County School Board
Case No. 99-0352E
Initiated by Parent
Hearing Officer: William F. Quattlebaum
Date of Final Order: February 26, 1999

ISSUES: Whether the student was properly identified and served in the appropriate school programs and whether the district provided the student with a free appropriate public education (FAPE).

FINDINGS OF FACT: At the time of the hearing, the student was 18 years old and enrolled in regular ninth grade classes at a district high school. He was not being served in any exceptional student education (ESE) programs. He was first enrolled in a district school in kindergarten, after two years in a Headstart program. The child's first grade teacher reported the student failed to complete some assignments and he refused to comply with instructions and class rules. There is no evidence that the parent was aware of this behavior. In the second grade, the student had trouble remaining on task and began to act out and talk back to the teacher. He was constantly disruptive in class. During this time, school staff made numerous phone calls to the mother at work to discuss the behavior. The mother apparently resented the calls and testified that the calls were disruptive to her work environment. She further testified that the child's behavior at home did not reflect the reports of misconduct at school. She concluded that the problem was not the child's behavior, but the teacher's inability to control the classroom.

In February 1989, when the child was eight years old and in the second grade, the mother consented to have the child evaluated by district personnel to determine eligibility for ESE services. In March 1989, the mother acknowledged that the child was exhibiting some behavioral problems at home. According to interview records, the mother opined that the behavior was due to the absence of his natural father. The mother had remarried and the child was living with his mother and stepfather. At the hearing, the mother asserted that the information related to the boy's feelings regarding his natural stepfather was expressed by the boy's maternal grandmother, not by

the mother. In May 1989, a school psychologist conducted an evaluation of the child and indicated that he was inattentive and seldom on task in class. The child's teacher at the time reported that the child was sullen, hostile, and irritable, and frequently had temper tantrums.

According to records, the psychologist recommended that the child be considered for placement in the school's ESE program for children with emotional handicaps (EH). A staffing was held on June 6, 1989, and the child was determined to be eligible for the EH program. The mother refused to consent to the placement.

The mother placed the student in a private school for the 1989-90 school year, when he was in the third grade. The child reportedly performed well in this setting and behavior problems apparently were minimal. The mother reported that she decided not to keep the child in the private school a second year because of the high tuition and because the child did not like the school. The child returned to public school in the fourth grade. Grade reports from that school year show a gradual decline in academic and conduct scores over the course of the year. Behavior problems continued through the fourth grade. In April 1991, the mother took the child to a private counseling center for evaluation. According to records, the child was exhibiting behavioral problems at school and at home. The counselors at the center recommended individual and family counseling. The mother followed through on the recommendations for a short period.

In the fifth grade, the mother consented to the child's participation in the LIFT program, an alternative education program. According to the LIFT teacher, the child exhibited frustration, short attention span, temper outbursts, and inattentiveness. He failed to complete assignments and interfered with other students. The mother transferred the child to another district school later in the fifth grade, where he continued in the LIFT program. His behavioral problems also continued. In March 1992 the school principal requested a child study team (CST) convene to address the student's behavior. The CST recommended that a multi-disciplinary team evaluation of the child be conducted. According to reports of this evaluation, the student continued to exhibit considerable behavior problems and his emotional difficulties were significant and reaching handicapping levels. Evaluators recommended that the CST consider eligibility for full-time alternative placement in the EH program. The mother continued to refuse placement of her child in the EH program.

With the mother's consent, the child started sixth grade in the Personalized Education Program (PEP), an alternative program for unsuccessful and disinterested students. According to the PEP teacher, the unacceptable behavior continued. The student exhibited inappropriate and disruptive behavior in the classroom and in other areas of the school. In the seventh grade, the student attended two different schools. Records indicated that the inappropriate behavior continued through that school year. In March 1994, while in the seventh grade, the student again was determined eligible for the EH program. A meeting was held to discuss placement, and an IEP was developed that provided for placement in a modified resource EH classroom for 20-25 hours per week. The mother signed a completed "Informed Notice of Eligibility and Consent for Educational Placement" form. The mother testified that she signed the consent form only after being told that the child was in danger of expulsion and there were no other options for placement. She was unable to produce evidence to support her contention that district staff made the statement.

According to the teacher in the EH class, the student was disruptive, loud, and obnoxious. He would bark like a dog and attempt to bite other people in the classroom. The teacher called the mother at work several times to discuss the behavior. When the mother complained about the calls at work, the teacher stopped calling her. The student finished out the seventh grade in the EH class.

The student started eighth grade at a different middle school. In September 1994 the mother was provided a Notice of Three-Year Re-Evaluation form, with the purpose of determining whether the child remained eligible for ESE services. A psychological report conducted in October 1994 suggested that the child needed a self-contained, small classroom setting. A second evaluation conducted in November 1994 suggested the child should be placed in a highly structured self-contained classroom. The evaluator reported that the mother was unhappy with her son's placement and wanted to rescind her prior consent. The mother was invited, by proper notice, to participate in a meeting in December 1994 to review results of the re-evaluation and to discuss revision of the IEP. At the meeting, which the mother attended, the child was determined to be eligible for the district program for students with severe emotional disturbance (SED). The mother asserted that no one informed her at the time that she had the right to challenge the placement in an administrative hearing. An IEP meeting was held and the team determined the child would be placed in the SED class at a district high school, beginning immediately. The mother and the child advocate who accompanied her to the meeting both signed the IEP.

The student completed the eighth grade in the SED class and attended ninth grade in the same program. A behavior management plan was developed to address problems in tardiness and attendance. Inappropriate behavior continued throughout the school year. The mother was invited to participate in an IEP revision meeting in April 1996. At this time, the student was on the verge of expulsion due to an incident involving the student possessing a gun on a school campus. The mother and the child advocate attended the meeting. The team decided the student should remain in the SED program at the same high school for the next year. The student made no academic progress in the ninth grade and failed his courses.

He repeated the ninth grade the following year and continued to exhibit extremely disruptive and abusive behavior toward students and teachers. He was suspended for his behavior in October 1996. Following the suspension, a conference was held to discuss placement options. The mother attended the meeting. The participants recommended the IEP team consider another placement for the student. Approximately one week later, an IEP meeting was held at Hillsborough Exceptional Center (HEC), an alternative day school operated by the district. The mother attended the meeting, although she later asserted that she refused to consent to the placement at HEC. There was no record that she refused consent. The IEP was amended to provide for the change of placement, and the student began attending HEC.

In December 1996 the student was suspended for inciting a riot and for threatening to bring a gun to school to harm unspecified individuals. He was disciplined in March 1997 for disruptive behavior. The student was incarcerated part of the 1996-97 school year at a juvenile detention center for unspecified reasons. He apparently spent the majority of the 1997-98 school year in Florida Department of Juvenile Justice (DJJ) facilities, including a detention center and a boot camp. He also spent four months at the Tampa Marine Institute (TMI).

When the student enrolled at a district high school in August 1998, he was placed in an SED class. The mother was invited to attend the meeting and she declined to attend. The IEP team met in September 1998 and determined the student should remain in the SED class pending re-evaluation. In November 1998 a psychological evaluation was conducted with the student. The evaluator noted that the student was not exhibiting severe behavior problems, that his academic skills were appropriate to his intellectual abilities, and that he had made progress in his emotional health. The evaluator's report recommended that the IEP team consider removing him from the SED program. A report from a social work re-evaluation conducted in December 1998 made the same recommendation.

An IEP team met in January 1999 and determined that the student did not meet criteria for continued SED services. The student was dismissed from ESE and had returned to regular classes in high school. The parent did not challenge dismissal from the SED program, but rather asserted that the student should never have been placed in an ESE program. The parent further testified that the behaviors exhibited at school were not displayed at home, and contended that the school behavior was the result of poor class management skills on the part of his teachers.

The evidence established that the student's classroom behavior was inappropriate and disruptive to the learning environment, and that at the time of the placements, he met the applicable criteria for ESE placement. There was no credible evidence to support the parent's assertions that the inappropriate behavior was the result of his placement in the ESE program. The evidence further established that the district complied with state rules governing eligibility and placement of students in EH and SED programs. There was no evidence that the mother was denied the opportunity to participate in discussions of placement. Further, the parent was advised of her right to challenge the placements proposed for her child.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties to and the subject matter of this proceeding. The issue in this case was whether the student was properly identified and appropriately served in public school programs. The parent asserted that the district mistakenly classified the child and that the placement in ESE programs resulted in harm to the child, specifically through delayed academic achievement. The district attempted to address a deteriorating situation for several years and was unable to provide specialized programs due to lack of parental consent. The evidence established that the student met eligibility requirements and was in need of ESE services at the time of placement in these programs. Further, the evidence did not establish that the student's lack of academic progress was the result of inappropriate educational recommendations and placements by the district.

The parent's assertion that the district violated state and federal laws related to notification of parental rights to hearing was not found to be true. The district complied with statutory procedures and the parent was properly noticed of scheduled meetings and proposed placements. The parent further asserted that the district violated state and federal laws governing access to school records when the child advocate requested records. There was no evidence that the district willfully failed to provide information to the advocate after the district was assured that the advocate had the mother's consent to receive the records. Finally, the parent alleged that the district had denied the parent's right to representation by a "qualified lay representative," in regard to the participation of a child advocate in discussions about the child. State statutes cited by the parent are not relevant to a case such as this.

ORDER:
The Petition for Hearing by the parent was dismissed.

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Hillsborough County School Board
Case No. 99-1453E
Initiated by Parent
Hearing Officer: J. Lawrence Johnston
Date of Final Order: April 20, 1999

ISSUE:
Initially, the issue in this case was presumed to be the appropriateness of the district's evaluation and placement of the student under the Individuals with Disabilities Education Act (IDEA), and whether compensatory education was required. At final hearing, it was determined that the only issue was jurisdiction and ripeness of the actual claims.

FINDINGS OF FACT: The mother enrolled the student in kindergarten in September 1998 and requested her son be evaluated by the school district for purposes of educational planning. Evaluations took place in the fall of 1998 and the child was found eligible to receive services in a program for trainable mentally handicapped (TMH) students. A placement staffing took place in January 1999 and the child was placed in exceptional student education (ESE) at that time. After only one day in school, the mother removed the child from school. Another IEP meeting was held in March 1999 to consider her request for home-based delivery of TMH services for her son in order to prepare the child for transition to a school setting.

On or about the same day the IEP meeting took place in March 1999, the mother filed a Request for Due Process Hearing with the school district. Although what the mother specifically wanted from due process was difficult to ascertain, she apparently was displeased that the district did not initiate ESE services in a timely manner. She was concerned that her child would be retained in kindergarten as a result.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over these proceedings and the parties thereto. Although the parent filed a request for a due process hearing, she appeared to be satisfied with the IEP, educational placement, and ESE services that were current at the time. The mother did not seek compensatory educational services, but sought a "civil lawsuit" for damages for alleged delays in the initiation of educational services for her child. There is no jurisdiction in an IDEA due process hearing for award of money damages. At the time of the hearing, the district had not initiated any change in the child's IEP, educational placement, or ESE services. For that reason, the district had not properly raised the question whether school-based delivery of TMH services was more appropriate than home-based delivery. The question was not ripe for resolution in this proceeding.

ORDER:
The Request for Due Process Hearing was dismissed.

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Indian River County School Board
Case No. 98-4137E
Initiated by District
Hearing Officer: Susan B. Kirkland
Date of Final Order: February 9, 1999

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

FINDINGS OF FACT: At one time, the student was eligible to receive services for students who are gifted as well as for students with specific learning disabilities (SLD). A staffing was held on March 11, 1998, and the student, then in the sixth grade, was found ineligible for SLD services. He remained eligible for gifted services and an educational plan (EP) was written for him at the staffing. The EP recommended that the student be placed in a separate gifted class but did not specify which classes would be gifted or the number of hours of gifted education each week.

The seventh grade gifted program consisted of three classes. One teacher taught language arts and reading while another taught science. The mother expressed concern when she learned that the former teacher was to teach her child, as the two had had a conflict seven years earlier, and there were "ill feelings" between the two. The mother left two messages on the teacher's home answering machine to discuss whether or not their previous misunderstandings would affect her child's learning; she called other times and hung up when the answering picked up. The teacher felt the mother was harassing her and did not return her calls.

The mother discussed her concerns about the teacher with the principal, who came up several alternative schedules for the student. The schedules did not include separate gifted classes in language arts and reading, and the parents rejected them all. The principal then suggested a transfer to another middle school; the parents also rejected this suggestion. In August 1998 the parents met with district staff and agreed that their son would attend the teacher's class, with certain conditions. On August 23, 1998, the teacher in question filed a Petition for Injunction for Protection Against Repeated Violence against the mother, requesting the court to issue a restraining order against the mother; specifically, she did not want the mother to call her or come near her. That day, a temporary injunction was issued, prohibiting the mother from contacting the teacher.

The father called the district superintendent and told him his son would not be attending classes at the middle school. By letter dated September 2, 1998, the father contacted the district and informed them that he had withdrawn his son from public school and enrolled him in a private school. On September 10, 1998, counsel for the family wrote to the superintendent to request that the district bear the cost of the private school, alleging that the district failed to provide the student with FAPE. On September 21, 1998, the district director of exceptional student education (ESE) informed the parents that the district refused to pay for the private school and requested a due process hearing on the issue.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties to and the subject matter of this proceeding. The district offered the student FAPE when the decision was made to place the student in gifted classes. The principal tried to accommodate the parent's objection to this placement by assigning the student to other classes.

ORDER: The district provided the student with an opportunity for FAPE at two separate middle schools, and the district was not liable for the student's tuition at a private school.

* * *

Indian River County School Board
Case No. 99-0850E
Initiated by Parent
Hearing Officer: Errol H. Powell
Date of Final Order: April 19, 1999

ISSUE: Whether the student was denied a free appropriate public education (FAPE). Specifically, whether the proposed placement for the student was appropriate.

FINDINGS OF FACT: A final order involving the same parties, Division of Administrative Hearings (DOAH) Case No. 98-0379E, was issued on November 3, 1998. The parties were ordered to develop an individual educational plan (IEP) consistent with the final order which, among other things, determined that the two previous IEPs developed for the student were inappropriate. The district was ordered to bear the cost, during the interim, for related services, which were ordered to be continued.

A new IEP was developed on February 5, 1999. Goals and objectives were developed in four domains. The IEP team determined that the most appropriate placement for the student was a class for students with autism in a district center school for exceptional students. While the need for a one-on-one aide was not stated in the IEP, the district reported that it was implied by the term "assistance as needed" in curriculum and learning. The IEP stated the student would receive speech/language therapy twice a week for 30 minutes in the area of communication. The related services covered in the IEP included occupational therapy (OT) once a week for 30 minutes, physical therapy (PT) once a week for 30 minutes, and curb-to-curb transportation. No specific objection to the OT and PT goals and objectives was made by anyone at the meeting, although the November 3, 1998, order specified that both services should be twice a week for 30 minutes each time.

On February 23, 1999, the mother, by and through counsel, requested a due process hearing, alleging that the proposed IEP was not consistent with the final order regarding the appropriate placement of the student and regarding the provision of speech/language therapy and the related services of OT and PT, including a one-on-one aide. The mother did not dispute the IEP's goals and objectives, but did not agree with the setting of the placement for the implementation of the IEP. She wanted him placed in a district middle school. On February 24, 1999, the matter was referred to the DOAH.

At the time of the hearing, the student was 14 years old and was classified as trainable mentally handicapped (TMH). He was enrolled in a varying exceptionalities (VE) class at the district center school. The VE teacher was experienced in teaching ESE students of various ability levels, including TMH students. A primary focus for students in the VE class was the teaching of life care skills, including adult living skills. The teacher had been trained in and used regularly a special communication system to help her students learn effective communication skills.

The mother wanted the child to be transferred to an ESE class in another district middle school, a class taught by a teacher who had worked with her son in the past. The students in the middle school class were closer in age to her son than the ones in the center school setting. This teacher taught some adult living skills, but not to the extent of the center school teacher. She also did not employ the communication system used by the center school teacher.

As for transportation, the mother felt the swimming pool at the center school was inadequate for meeting the needs of her child, so she transported him to another pool; the travel was eight miles roundtrip. She also transported the child to and from a private rehabilitation hospital where he

received speech/language therapy, OT, and PT; that travel was seven miles roundtrip. She requested reimbursement by the district at the rate of $.29 per mile for both of these trips.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over these proceedings and the parties thereto. A state is not required to maximize the potential of a child with disabilities commensurate with the opportunity provided a non-disabled child. Rather, the IEP developed for a child with disabilities must be reasonably calculated to enable the child to receive educational benefits, which need only be measurable and adequate gains in the classroom, but more than a de minimus benefit. The unique educational needs of a particular child must be met by the IEP. The child's educational program must be provided in the least restrictive environment (LRE) available, and the implementation of the IEP must be as soon as possible following the meeting.

ORDER: The IEP of February 5, 1999, provided the student with FAPE and was appropriate, placement at the district exceptional center was appropriate, and placement in the student's assigned classroom was appropriate. Further, the district was ordered to reimburse the mother for transportation costs to and from the rehabilitation hospital from May 13, 1998, to February 5, 1999, at the rate of $.29 per mile or $2.03 per trip.

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Indian River County School Board
Case No. 99-1900E
Initiated by Parent
Hearing Officer: Susan B. Kirkland
Date of Final Order: June 24, 1999

ISSUE: Whether the district provided the student with a free appropriate public education (FAPE) during the 1998-99 school year.

FINDINGS OF FACT: At the time of the hearing, the student was 15 years old and in the seventh grade. He had a diagnosis of developmentally delayed with autism and was functioning in the range of a three to seven-year-old. A meeting was held in August 1998 to develop an individual educational plan (IEP) for the student. The student's parents were accompanied by an attorney and an advocate at the meeting. Attorneys for the school district were also present. The IEP developed at this meeting included a goal to increase the student's leisure skills, including preparing snacks, generalizing money skills, and engaging in board or card games with peers. Notes taken at the meeting indicated that an extended school day, beyond the regular school day, was discussed, but the initiation date, duration, location, and amount of time each week were not included in the IEP.

The August 1998 IEP team determined that extended day services would continue to be provided by Ms. Wood, a trained teacher assistant who had been providing services in the district the previous spring and summer. The team agreed to have Ms. Wood use the Murdock curriculum. The student's mother was provided with a copy of the curriculum, which contained such activities as dressing, bathing, brushing teeth, washing hair, making a sandwich, going through a cafeteria line, and exercising in a group. The IEP team decided which skills would be addressed in what setting during the school day and after school. The team also discussed the addition of music class to the student's schedule, as music was considered a great motivator for him. The parents made a list of daily living and personal care skills they felt the student should practice. Some of these skills were listed on the IEP form.

The student had received extended day services four days a week during the spring semester of the previous school year. During summer school that year, he received extended school year services five days per week. When the IEP was developed in August 1998, the team agreed on the services for four days per week, as Wednesday was an early release day for the school. While the team agreed to this arrangement, it was not written on the IEP. Staff from Nova Southeastern University who attended the IEP meeting developed a sample schedule for the student's activities for the extended school day. Some of these services were provided at another district school in the afternoons. The activities also included swimming lessons, workouts at a local gym, and trips to the mall.

The district also provided a home economics laboratory to assist Ms. Wood in teaching daily living skills that were not included in the IEP. The provision of the laboratory was an accommodation to the parents, not a requirement of the IEP. The district was not asked to provide funds for snacks and other after-school activities by either Ms. Wood or the parents.

The need for a transition plan for the student was also discussed at the August 1998 IEP meeting. A meeting was held in January 1999 to develop a transition IEP. No representatives from outside agencies attended. The district ESE director contended that because the student was not yet 16 years old, outside agencies did not have to attend the meeting. At this meeting, the parents stated that they needed to begin planning the student's summer school early so they could make plans for summer camp if the district was not going to provide summer school. By letter dated January 30, 1999, the parents complained to district staff that no determination had been made concerning the student's placement in regard to summer school. In March 1999, the parents asked the district ESE director to convene an IEP meeting to determine placement during the summer. The director advised the parents that an IEP meeting would convene on May 11, 1999. The parents were unable to attend on that date, so the meeting was rescheduled for May 24, 1999.

The student made progress during the 1998-99 school year, mastering a majority of the stated goals on his IEP.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties to and the subject matter of this proceeding. The requirement for FAPE in the Individuals with Disabilities Education Act (IDEA) has been interpreted to be satisfied when the school system provides the student with a floor of basic opportunity, defined as access to specialized instruction and related services which are individually designed to provide educational benefit. The IEP developed in August 1998 did not meet the requirements of federal law as it relates to the extended school day. The IEP did not state the projected date for the beginning of the extended school day, the number of days per week, and the amount of time each day that the extended school day would be provided, the location in which it would be provided, or the duration of the extended school day. Procedurally it was defective.

In order to show that a procedural violation has denied the student of FAPE, there must be a demonstration that the procedural violation resulted in harm to the student. It was concluded that the procedural defect in the IEP relating to ESY did not deprive the student of FAPE. However, the IEP should have been amended to include the beginning date of extended day services as well as the frequency, location, and duration of these services.

The parents argued that the district did not provide adequate facilities in which to carry out the activities they requested, such as doing laundry, washing dishes, and other household chores. The IEP team did not include these skills in the IEP. The district did attempt to address some of these skills although they were not obligated to do so.

The parents further argued that Ms. Wood was not qualified to teach the skills provided in the extended school day. She was trained by district professional staff and by staff from Nova. The provision of extended school day services by Ms. Wood did not deprive the student of FAPE.

The parents requested reimbursement for all expenses they had incurred in the after-school program. The parents felt the district should pay for the services covered in the IEP, such as money used by the student in making purchases for himself for snacks and activities such as playing video games. Since there was no evidence as to the amount expended, the district could not be ordered to reimburse the parents. However, any costs incurred for these activities after the date of this order were to be borne by the district.

The parents further complained that the student did not participate in the IEP meeting. There was no objection at the time of the meeting, and the student was not required to attend. It was not appropriate for him to attend the IEP meeting. The August 1998 IEP stated that ESY services would be discussed in January 1999. The district did not meet this responsibility. However, the parents did not demonstrate how holding the IEP meeting in May 1999 resulted in the student's not being provided FAPE.

ORDER:
It was ordered that the IEP dated August 28, 1998, was to be amended to include the initiation date, frequency, location, and duration of ESY. Further, the school district was ordered to bear any future expenses for ESY services provided as set forth in the IEP. The parents' claim for damages based on the failure of the district to provide FAPE during the 1998-99 school year was denied.

* * *

Indian River County School Board
Case No. 97-2577E
Initiated by Parent
Hearing Officer: Claude B. Arrington
Date of Final Order: April 15, 1999

ISSUES: Whether the district provided the student with a free appropriate public education (FAPE) from the 1993-94 school year through the 1997-98 school year; whether the services on the student's individual educational plan (IEP) were being provided at the time of the hearing; whether the district violated the procedural due process rights of the student; whether the student was a prevailing party entitled to the recovery of attorney's fees and costs under the Individuals with Disabilities Education Act (IDEA); and whether the parents were entitled to reimbursement for various expenditures.

FINDINGS OF FACT: At the time of the hearing, the student was 15 years old and receiving exceptional student education (ESE) services. He was diagnosed as being developmentally delayed and presented behaviors typical of autism. When his family first moved to Indian River County in November 1992, an IEP meeting was held and the child was determined to function within the trainable mentally handicapped (TMH) range. Although inclusion was a new concept in the district for students who functioned in this range, district staff acceded to the parents' request that the student be placed in a regular second grade classroom.

An IEP was developed for the 1993-94 school year in May 1993. The parents appeared pleased with the IEP and the mother commented she especially liked the IEP's stated goals. In the summer of 1993, the child became ill from an E-coli infection as the result of food poisoning and likely suffered

brain damage, lost approximately 30 pounds, and became physically debilitated. The IEP developed in May 1993 was still appropriate when he returned to school in September of that year.

School year 1994-95
In February 1994 the parents complained in writing to district staff that the student was receiving inconsistent physical therapy (PT) and occupational therapy (OT) because of personnel turnovers. They stated they felt he was regressing in speech clarity and expressive language. The record did not establish that the number of sessions missed was excessive, nor that the student was denied the benefits of PT and OT.

The IEP for the 1994-95 school year was developed in November 1994. The greater weight of the credible evidence presented in this case established that all components of this IEP were implemented and the IEP goals were followed. In November 1994 the student began exhibiting self-injurious behavior in the form of banging his head. Because of this behavior, his parents had him evaluated by a child psychiatrist and a behavior specialist. The parents sought reimbursement for these services in this hearing. The documentary evidence reflected that the parents did not pay any costs for any of these services within the time frame stipulated by the parties at issue. The parents unilaterally obtained these services because of behaviors the child was exhibiting at home, and they did not request the services be stated on the child's IEP as related services. The evidence did not establish that the behavior at home was related to his IEP, as implemented.

The student's IEP for the 1994-95 school year stated he would attend summer school in 1995. When all summer school in the district was cancelled the week prior to the beginning of the summer session, the parents enrolled the child at a summer camp program sponsored by the parents' health club. While the program proved to be beneficial for the student, it did not provide him educational services. The evidence did not establish that the failure to provide the student with summer school services deprived him of FAPE.

The parents had a neuro-psychological evaluation performed on the child in Chicago in August 1995. The evaluator recommended against continued placement in an inclusive setting and suggested the student be placed in a highly structured classroom with an intensive behavioral management program. No documentary evidence was submitted by the parents to support their claim to reimbursement for these expenses.

School year 1995-96
No new behavioral management program was developed for the student at the IEP meeting held in October 1995. Contrary to the Chicago evaluator's recommendations, the parents insisted the child continue to be placed in an inclusion classroom. The greater weight of credible evidence established that all components of the 1995-96 IEP were implemented and the IEP goals were followed, as were related services listed on the IEP.

School year 1996-97
An IEP meeting was held in August 1996 and the IEP was finalized in a meeting in October of that year. The team members, including the parents, agreed the child needed a more structured classroom for at least part of the school day. The child was assigned to a regular classroom for half the day and to an ESE class for the remainder of the day. He continued receiving speech and language therapies as well as PT and OT services.

In December 1996, after attending a conference in Dallas, the parents wrote a letter to the district ESE director requesting information on the types and locations of all educational records that were collected, maintained, and used for their son. Through a series of correspondence and meetings with district personnel, the parents were provided with copies of certain records. In January 1997

the parents wrote to the superintendent renewing their request to see all of the records and asked for the name of the district's Section 504 compliance coordinator. They received no response.

In February 1997 the parents requested an independent educational evaluation (IEE) for the student. In April 1997 they advised the district that they would obtain an IEE and seek reimbursement for the evaluation.. Approximately one week later, the district ESE director supplied a list of eight local people who could conduct the IEE.

Also during the spring of 1997, a district behavioral technician made regular visits to the student's home to instruct the parents how to conduct in-home behavior trials for dressing. He showed the parents a "wrap mat" but did not leave the mat at the home because the parents had not been trained to use it. In May 1997 district staff met with the parents at their home to review with them what they would need to do to comply with the training regimen. After this meeting, counsel for the parents wrote a letter to the district ESE director, notifying him that the failure of the school district to consult with the parents constituted a disregard for the IDEA. After receiving this letter, district staff informed the parents that the behavior technician's upcoming home visit was canceled and that the district would not be offering further services outside of the IEP process because the parents were not cooperating.

On May 16, 1997, counsel for the parents filed a demand for a due process hearing, citing a unilateral change in the student's education program orally conveyed by district staff. A request for mediation was filed by the parents in June 1997. The date of the due process hearing was continued to permit the parties to complete a re-evaluation of the student and to complete their efforts to mediate their dispute.

In July 1997, after the parents had been informed by the district that an IEE would be performed at Nova Southeastern University, the parents had an IEE done at Northwestern University in Illinois. The parents then sought reimbursement for the costs of the evaluation. The student was then evaluated by staff at Southeastern University.

School year 1997-98
A series of IEP meetings for the 1997-98 school year were held between September 1997 and January 1998. The parents attended all four of these meetings with the exception of the meeting of November 13, 1997, which the parents and their attorneys refused to attend. It was agreed at these meetings that the student's placement would be changed to a class of children with autism at a district middle school. The IEP for 1997 contained appropriate goals and objectives, which were properly implemented.

The parents requested reimbursement for 17 items, including autism conferences they attended, various consultations with therapists, peer tutoring and after-school aides, hospitalizations, summer camps, and other incurred expenses.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the subject matter of and the parties to this proceeding. The student was entitled under federal and state law to FAPE. Neither the IDEA nor state statute specified which party in a due process hearing had the burden of proof. After reviewing pertinent precedents, the hearing officer concluded that the petitioner bore the burden of proving his allegations that the district violated IDEA and that he was entitled to reimbursement of specified expenses and to compensatory education.

The compensatory relief sought by the parent had been described as being a form of equitable relief designed to ensure that the student was appropriately educated within the spirit of IDEA. The notion that compensatory education should be likened to a remedy for a breach of contract had been rejected. The proof that the student had missed therapy sessions and one summer school

did not establish his entitlement to compensatory education, as neither instance was excessive and did not rise to the level of denying the student the benefit of the related services provided for by his respective IEPs.

While the parent established the district violated the procedural requirements of IDEA in canceling summer school for the summer of 1995 and in the manner the parents' records request was handled, neither violation was significant.

ORDER: The petitioner's claims were denied.

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Leon County School Board
Case No. 99-1917E
Initiated by Parent
Hearing Officer: Suzanne F. Hood
Date of Final Order: June 3, 1999

ISSUES: Whether the district should dismiss the student from the exceptional student education (ESE) program and whether the district was providing the student with a free appropriate public education (FAPE).

FINDINGS OF FACT: The student was eight years old and in the second grade at the time of the hearing. He had a speech impairment as a result of an articulation disorder and had been receiving ESE services for students with speech or language impairments (S/L) since August 1994.

During the 1997-98 school year, the student was assigned to a first grade inclusion class, in which several students received speech services. Toward the end of the school year, the student's mother expressed concern that her son was in an inclusion class, apparently believing the class necessarily had more ESE students than non-ESE. She did not want him in a class with other ESE students with behavior problems.

On April 29, 1998, an individual educational plan (IEP) was developed for the 1998-99 school year; the IEP team determined that the student should continue enrollment in an inclusion class as well as continue receiving S/L services outside the regular class setting. The IEP indicated that the student was working on grade level in most subject areas and should have been able to participate and make progress in the general curriculum.

On or about May 29, 1998, the mother informed district staff by telephone that she wanted her son removed from the ESE program, and requested another speech evaluation. Although the student was not due for another speech re-evaluation until March 2000, an evaluation was done immediately. The re-evaluation indicated that the student had made progress during the 1997-98 school year but needed to continue in the S/L program.

An IEP meeting was held on June 1, 1998. During the meeting, the mother again requested that her child not be served in an inclusion class. Her request was noted on the IEP form. However, the mother did not dispute that the student needed to continue his speech therapy. At this meeting, the mother signed a form entitled Educational Relevance of the Communication Disorder, which indicated that the child demonstrated embarrassment and/or frustration regarding his communication problem. The only difference between the April 29 IEP and the June 1 IEP were statements that the student's re-evaluation date would be May 29, 2001 and that the mother did not want him in an inclusion classroom.

During the 1998-99 school year, the mother expressed concern that her son was missing brief periods of academic instruction twice a week for speech therapy, and stated she would prefer he receive speech therapy during his "free time." She stated that she did not want him taken out of class more than once a week for 30 minutes. The speech therapist told the mother that it was in the student's best interest to continue with speech therapy twice a week, but agreed to pull him out of class only once per week for 30 minutes, as this was within the range of time indicated on the IEP.

A meeting was held on April 19, 1999, to develop an IEP for the 1999-2000 school year. In the meeting, the speech teacher expressed her concerns about the impact of the child's speech on his academic and social development. The mother stated that she wanted the child dismissed from the ESE program and indicated that she would provide him with speech therapy in the private sector through her medical insurance. Due to the concerns of the mother, the IEP team decided to schedule another meeting on May 3, 1999. Following the April 19 meeting, the child's speech teacher documented reasons the child should continue receiving speech services, stating that his articulation disorder adversely impacted his education, affected his ability to read and spell, and affected him socially when his speech or work was corrected.

Sometime between April 19, 1999, and April 28, 1999, the mother contacted the district ESE director to discuss her request to dismiss her son from ESE. The director informed her that the district could not dismiss the student from the program unless the mother consented to another evaluation to determine the student's need for further S/L services. The mother refused her consent for another evaluation. On April 28, 1999, the mother filed a request for a due process hearing.

On May 7, 1999, the mother went to the child's school and demanded that her child immediately be pulled from the ESE program. She spoke with the district ESE director on the telephone while at the school and stated that she wanted the district to conduct another speech evaluation. The director told her that the mother would need to sign consent for the evaluation, and stated that he could not guarantee that it would take place before the hearing, as the parties involved in the hearing had to exchange exhibits at least five days prior to the hearing. The mother then requested mediation with the district. The director would not agree to the mediation unless the mother signed consent for the re-evaluation. The mother, on her own initiative, made an appointment with a private speech pathologist for June 7, 1999. As of the time of the hearing, the mother had not requested an independent educational evaluation at public expense.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and the subject matter of this proceeding. The parent had the burden of proving that the district should dismiss the student from the ESE program and/or that the district did not provide him with FAPE. This burden was not met. The mother did not dispute that the child needed speech/language therapy, but felt the need was not enough to warrant the district providing the services. She preferred that her child be dismissed from the ESE program and served in a regular classroom. There was no competent evidence that providing the child with private speech/language therapy would eliminate his need for continued placement and participation in an ESE program.

The greater weight of the evidence indicated that the child's disability continued to adversely impact his ability to read, write, and spell. The district could not dismiss him from ESE without an evaluation determining that he was no longer in need of ESE services.

ORDER:
The parent was ordered to continue participating in the district's ESE program for children with speech/language impairments.

* * *

Orange County School Board
Case No. 99-1976E
Initiated by Parents
Hearing Officer: Mary Clark
Date of Final Order: June 14, 1999

ISSUE:
Whether the district must provide formal instruction for the student during the period between the end of summer school and the beginning of the new school year.

FINDINGS OF FACT: When the child was two years old, he became nonverbal and began having unexplained temper tantrums. After a series of tests, he was diagnosed as autistic. This diagnosis and the child's need for special education services were not contested by the district.
The parents enrolled the child in the district's early intervention program (EIP), where he attended a varying exceptionalities (VE) class. At the same time, the parents enrolled the child in a private EIP. The district reevaluated the child and the individual educational plan (IEP) team decided that the child would be better served in a separate day school in the Orange County public school system for children diagnosed with autism or with severe emotional disabilities (SED).

At the time of the hearing, the child was attending both the district day school and the private program. The parent reported that the child was progressing well. In addition to the regular school year, the child was enrolled in an extended school year (ESY) program at the public school. Staff at the school prepared a parent packet with activities for a variety of activities to be used at home during the period between the end of summer school and the beginning of the next school year. The packet was designed for the parents to teach or refresh skills during the school break.

The parents contended that the parent packet was not a suitable substitute for a structured teacher-directed program. While district staff agreed the child would regress somewhat in certain areas during the break, they stated that these skills could be quickly recaptured in a short period of time upon returning to school in the fall. They based this assertion on detailed progress charts they had maintained on the child over a two-year period. While the child would continue to progress in skills if a structured program were offered by the district during summer break, he could benefit from a break from school. A change of pace and a change of routine could help him apply the skills he learned in the school environment and would give him an opportunity to take advantage of camp and travel that would not be available during the school year.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction in this proceeding. Under state and federal law, a child with disabilities is entitled to a free appropriate public education (FAPE), with an individualized plan to meet the unique needs of the student. There is no requirement that the district maximize each child's potential.

ORDER: The district was not required to provide formal instruction during the period in question, during the month of July and early August.

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Palm Beach County School Board
Case No. 99-0935E
Initiated by Parent
Hearing Officer: Stuart M. Lerner
June 17, 1999

ISSUE:
Whether the district's proposed placement of the student in a self-contained classroom setting would afford him a free appropriate public education (FAPE).

FINDINGS OF FACT: At the time of the hearing, the student was a 13-year-old eighth-grader receiving exceptional student education (ESE) services in the areas of emotionally handicapped (EH), specific learning disabilities (SLD), and speech/language impairment (SLI). He was enrolled in his home school, or the district middle school for which his family was zoned. In the fall semester of the 1998-99 school year, the student was assigned to an EH class. That class had approximately 11 students. He was not successful in this class, and in January 1999, he was transferred to a varying exceptionalities (VE) class, which averaged 20 students. He not only was the only EH student in that class, but also the only "self-contained" student, meaning he was to remain in that classroom the entire school day.

The student's individual educational plan (IEP) was reviewed and a new IEP was developed in February 1999. According to the new IEP, the least restrictive environment (LRE) was determined to be "a special class on a regular campus" inasmuch as any less restrictive setting might have resulted in "self esteem" problems and "poor social relationships." The student continued attending the VE class daily, where he received one-on-one instruction in math and social studies and where a behavior intervention associate worked with him on a regular basis. In this class, the student was failing all his academic subjects, did not follow all school and classroom rules, and did not remain in his assigned classroom throughout the school day. The movement of other students in and out of the classroom was reported to be a major distraction for the student.

District staff believed another area middle school was better prepared than any other area middle school to meet the student's special needs and proposed the student transfer to the other school. This school had a true self-contained classroom in which he could receive the supervision and attention he required. At the time of the hearing there were only three or four students in the class.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties to and the subject matter of this proceeding. The parents did not dispute the adequacy of the goals and objectives in the student's IEP, nor did they question whether the district's provision of the ESE and related services in the IEP would enable the student to accomplish the goals and objectives. Their disagreement was with the physical location where the services would be provided. The district, however, was not required by either state or federal law to accommodate the parents' preference. So long as the district provided the student with services calculated to enable him to benefit educationally, the district had met its obligation under the law.

ORDER: Because the student would be afforded FAPE at the new school, the parents' challenge to the district's decision to reassign him to that school was dismissed.

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Palm Beach County School Board
Case No. 98-5280E
Initiated by Parent
Hearing Officer: Stuart M. Lerner
Date of Final Order: May 24, 1999

ISSUE:
Whether the district was liable for the student's tuition at a private school for the 1998-99 school year.

FINDINGS OF FACT: At the time of the hearing, the student was a ninth grade student attending a private school in Palm Beach County. He had physical impairments as a result of cerebral palsy and asthma. He was unable to walk, and could not sit up without assistance. He moved about in a wheelchair. Due to a knee injury, he was unable to transfer from the wheelchair. His physical ability to write without assistance was also impaired.

In July 1998 the school district entered into an agreement with the student and his mother to settle another dispute. The agreement reflected the desire of the student and his mother for him to attend a computer technology magnet program at a district high school. After acceptance into the program, evaluations were conducted on the student by a district psychologist, a district physical therapist, and an occupational therapist under contract with the school district.

Once this testing was done, the district commenced making a number of structural changes to the school site to accommodate the student's disabilities. These changes included adding hand rails and special commodes to three bathrooms on campus and pouring concrete in some areas of campus to accommodate the student's wheelchair. In addition to these physical improvements, the district arranged for a lift bus to transport the student when necessary, arranged his class schedule to make sure most of his classes were on the ground level, and arranged for an aide to assist the student while at school.

When the 1998-99 school year commenced, the student missed the first 11 days of class due to the fact that some of the campus modifications were not completed. The district offered the mother homebound services until the changes were completed, but the mother refused. An IEP review was conducted on September 23, 1998. At that meeting, arrangements were made for certain male teachers be available to assist the student and his aide with toileting, when needed. It was reported that although not all of the campus modifications were complete, the student was not missing any class time due to accessibility problems.

An IEP meeting was held on November 6, 1998, to discuss various subjects, including the performance of the student's aide, the student's poor school attendance, the student's responsibility to obtain and make up missed assignments, the possibility of the student using the district lift bus more often so he would arrive at school on time, the continuing need to have two males assist the student when toileting, the status of the campus modifications, and the timetable for completion of an assistive technology evaluation of the student for which his mother had consented in October 1998.

At this meeting, the mother was reminded that the student could attend the regular school program at the high school, which was less demanding than the magnet program. The mother said she would consider this option. At no time during this meeting did the mother indicate that she was considering withdrawing the student from the high school or placing him in a private school.

Within a few days of the November 6 meeting, the mother withdrew the student from the district high school and enrolled him in a private school where he had attended classes the previous summer. She took this action without providing any advance notice to the district. She also had not informed the district that she was dissatisfied with the student's IEP.

The private school employed no certified exceptional student education (ESE) teachers, and the student's mother served as his one-on-one during the school day.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties to and the subject matter of this proceeding. To determine whether the mother was entitled to reimbursement of private school tuition, the question of whether or not the district provided the student with FAPE was examined. From a review of the record evidence in this case, it appears the student's IEP was developed with the input and participation of the student and his mother and its development was otherwise in substantial compliance with federal and state law.

The district, by all appearances, made a good faith effort to provide the student with the educational and other services described in his IEP. While the physical setting in which the services were delivered was not ideal, the school was an adequate location for the student. Because the district afforded the student with FAPE, the mother was not entitled to be reimbursed for any costs she incurred as a result of her decision to withdraw her son from the public school and enroll him in a private school.

ORDER:
The request that the school district provide reimbursement to the parent was denied.

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Pasco County School Board
Case No. 98-2807E
Initiated by Parents
Hearing Officer: Carolyn S. Holifield
Date of Final Order: April 15, 1999

ISSUES: Whether the school district complied with the Individuals with Disabilities Education Act (IDEA) by creating an individual educational plan (IEP) for the 1998-99 school year that was reasonably calculated to provide the student with a free appropriate public education (FAPE) and whether the parents were entitled to reimbursement for private tutoring services provided to the student in a non-public educational setting.

FINDINGS OF FACT: The student was 13 years old and in the seventh grade in a district middle school at the time of the hearing. He was eligible for exceptional student education (ESE) services as a student with a speech or language impairment (SLI) and a specific learning disability (SLD). He also was diagnosed with severe attention deficits and a central auditory processing disorder. His intelligence quotient (IQ) scores were consistently in the below average range.

A meeting was convened in May 1998 to develop an IEP for the student's seventh grade year. The only people present when the mother arrived were the student's sixth grade inclusion teacher and the school's principal. The principal excused himself before the meeting began and stated he would be available in his office if he were needed. The speech teacher arrived later in the meeting and was later replaced by the language teacher.

During the course of this meeting, several options were discussed for the student, including self-contained, mainstreamed, and inclusion classes for various subjects. The mother asked to see data that was to have been collected and maintained to be used to measure the student's progress in the sixth grade. The only data presented at the meeting were the student's results on the Standard Achievement Test (SAT), which he took in both the fifth and sixth grades. The mother expressed concern that scores in language arts and math were lower in the sixth grade than in fifth grade. She believed that the decline in these scores indicated that the student had regressed in those areas. SAT scores, however, as a sole criterion, did not reflect the student's regression or lack of progress.

After the mother consulted with the principal and other school personnel were called into the meeting to answer questions, the IEP meeting was adjourned without the IEP being developed in regard to placement for the student in the seventh grade. The parents, concerned that their son was regressing, then looked into the possibility of sending the student to Learning to Achieve, a private school. When they concluded that they could not afford to place the student at the private school full-time, they sent a letter to the district ESE director, dated May 28, 1998, requesting the district pay for the placement.

Approximately one week later the supervisor of ESE for the district called the mother to schedule a time to meet with the parents to discuss their concerns. The mother refused to meet with her and requested a response to the letter requesting private school funding. By letter dated June 3, 1998, the principal of the middle school informed the parents that a non-public school setting was not appropriate at that time and stated that the student's educational needs could be met through a combination of co-teach inclusion classes and self-contained ESE classes.

In subsequent letters to the district superintendent in June 1998, the parents asserted that the district had denied their son with FAPE and they requested a due process hearing. They further stated that they rejected the IEP recommendations made at the May 1998 IEP meeting and they intended to enroll the student in a private school placement and that they intended to seek public school funding for the placement. As a result of the parents' formal request for a due process hearing, the "stay put" provisions of IDEA were automatically invoked.

When the district ESE director learned that an IEP had not been developed at the May 1997 meeting, district staff scheduled another meeting. The parents were formally invited to meet on July 29, 1998, to develop an IEP. The parents informed district staff on July 27 that they were unable to attend the July 29 meeting and asked the meeting be rescheduled for August 19, 20, or 21.

On July 28, 1998, the school district, by letter to the parents, proposed a private evaluation of the student in order to assess his current levels of functioning and educational needs. During August, the parents informed district staff that they intended to enroll their child in a private program in the afternoons and that he would attend the district middle school for morning classes only. The principal agreed to change the child's class schedule to accommodate this. He noted on the schedule change form that the schedule was subject to change at the August 20 IEP meeting.

At the August 20 IEP meeting, the mother was given a copy of her child's speech log. She wondered why the log had not been shown to her at the May 1998 IEP meeting, and was told the speech therapist was not present at the meeting. After discussion, the mother informed the IEP team members that she intended to enroll her child in a private school for afternoon session and wanted certain academic classes offered to him in the mornings at the public school. The ESE director explained that a dual enrollment schedule like that would have to be approved by the school board.

The mother appeared before the district school board on September 15, 1998, and requested the dual enrollment arrangement. The request was denied. When the 1998-99 school year began, the district school continued to implement the previous year's IEP, as the stay-put provisions of IDEA had been invoked. For the entire first semester the child received instruction in four classes at the middle school, but did not attend the science class to which he was assigned because the mother picked him up every day at 11:30 a.m. to take him to the private school.

The private evaluation proposed by the school district was performed by a neuropsychologist at the University of Florida on October eighth and ninth, 1998. After the evaluation was completed, an IEP meeting was convened on December 16, 1998. The team worked for several hours to develop an IEP that addressed the student's education needs, and finally reached a consensus that the student's needs could be met in self-contained ESE classes for his core subjects. The parents rejected the math and language arts classes and noted on the IEP form their intention to continue their son's enrollment in the private school program in the afternoons.

In addition to their request that the district pay for the child's private placement, the parents asked the district also pay for his private speech therapy. The district rejected both requests.

CONCLUSIONS OF LAW: The Division of Administrative Hearings (DOAH) had jurisdiction over the parties to and the subject matter of this proceeding. In this proceeding, the parents contended that the district failed to comply with the procedural and substantive requirements of the IDEA and thereby failed to provided the student with FAPE. Specifically, they alleged that (1) the district convened an IEP meeting on May 19, 1999, without the attendance of all persons required by law; (2) the district failed to collect, maintain, and present information by which the parents could determine whether objective criteria listed in the student's 1997-98 IEP had been attained; (3) the IEP developed in May 1998 failed to include required components of an IEP; and (4) the district violated IDEA and state law by failing to develop an IEP prior to the beginning of the 1998-99 school year.

With regard to the first assertion, it was established that the district violated the procedural requirements of IDEA and state law by failing to have the required participants in attendance. The district did not dispute that the local educational agency (LEA) representative was absent from the May 1998 IEP meeting. In this case, the absence of one member of the IEP team was inconsequential in that no IEP was developed, revised, or finalized at the meeting.

The second assertion by the parents was that the district failed to provide "baseline data" and written progress reports as required by the student's 1997-98 IEP. The evidence established that the student's speech teacher did not provide monthly written progress reports. Although the data from the speech therapist was not provided to the mother when she first requested it, the data was given to the parents at the August 1998 IEP conference. The parents failed to show that the delay in receiving this data resulted in any harm to the student or precluded them from participating in the IEP process.

The parents' third assertion, that the IEP developed at the May 1998 meeting failed to the prescribed components of an IEP, the evidence established that various educational options for the student's seventh grade year were discussed, but no decisions were made and no IEP was developed. Therefore, it was unnecessary to address the assertions that the "proposed IEP" neither contained the essential elements required of an IEP nor that it was not reasonably calculated to provide the student with FAPE.

Finally, in regard to the parents' last assertion, the evidence clearly established that an IEP was not developed at the beginning of the 1998-99 school year. However, this procedural violation did not result in actual harm to the student nor did it preclude the parents' participation in the IEP process. Rather, it was their participation that delayed the development of the IEP.

ORDER: The district was ordered to provide ESE and related services to the student pursuant to the IEP dated December 16, 1998. Further, the district was ordered to reimburse the parents $450.00 for the cost of the evaluation for which they paid. The requests of the parents for reimbursement for private tutoring, for costs associated with transporting the student to his private tutoring, and for private speech therapy were denied.

* * *

Pinellas County School Board
Case No. 98-3804E
Initiated by Parent
Hearing Officer: William F. Quattlebaum
Date of Final Order: March 17, 1999

ISSUES: Whether the student was properly identified and served in the appropriate school programs, whether the district provided the student with a free appropriate public education (FAPE), whether the district failed to safeguard the due process rights of the student, and whether the district's eligibility criteria for exceptional student education (ESE) programs operated to prevent the student from participating in programs for which he would otherwise be eligible.

FINDINGS OF FACT: The student was 13 years old and enrolled in the district's program for students who are hospitalized or homebound (H/H) at the time of the hearing. In 1993, the student was determined eligible for placement in an emotionally handicapped (EH) program in another district, but his parents refused services under that designation. He was later found eligible for services for students who are gifted as well as students with specific learning disabilities (SLD). In January 1996, when he was in the sixth grade, the student was first enrolled in the Pinellas County school system. He remained eligible for gifted and SLD services.

In the spring of 1997, after the student met with no success in an accelerated math program, district staff suggested that he might not meet the eligibility criteria for the SLD program and his behavioral and emotional problems would be better addressed in a program for students classified as emotionally handicapped (EH). The student was reevaluated, and in December 1997 a staffing was held. The staffing committee decided to seek the opinion of a pediatric neurologist, who completed her evaluation in March 1998.

An IEP team met in June 1998 to consider dismissal of the student from the SLD program, to consider continued eligibility for the gifted program, and to consider eligibility for services in the district's EH and Other Health Impaired (OHI) programs. The team found the child eligible for the EH program. The father objected to this classification and presented a letter from the child's doctor that addressed concerns about the child's safety on the school campus. Based on the doctor's letter, the team decided to provide services in the H/H program. In August 1998, the father requested a due process hearing to challenge the eligibility determination made at the June IEP meeting.

Although the student was not diagnosed as having Asperger's Syndrome or autism, his behavior was acknowledged to resemble behavior exhibited by autistic children and by children with Asperger's, a relatively rare type of high-functioning autism. His teachers tried a variety of modifications and accommodations with class and homework assignments. Evidence established that despite these

efforts, the students did little of his work. The father asserted the lack of progress on the assignments was a result of the student's disability and that the modifications and accommodations were not uniformly implemented, thus ensuring their failure.

Despite the numerous modifications and accommodations, the student's academic achievement was minimal and he experienced social and emotional difficulty at school. The student reported to school personnel that grades were important at home and that the failure to attain good grades would have a negative impact. He sometimes wrote down details of treatment by teachers he felt was unfair and stated that he or his father would bring legal action against them. He had numerous incidents of inappropriate behavior at school, including destruction of school property and fighting with other students.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties to and the subject matter of this proceeding. The evidence established that the student was entitled to the protections of, and to the educational opportunities provided through, the Individuals with Disabilities Education Act (IDEA). Evidence established that the student was properly identified and served in the appropriate school programs. There was no credible evidence that the failure of the child to achieve academic and personal success in school resulted from the efforts of teachers or other school personnel. Further, there was no credible evidence to support any of the assertions in the parent's petition.

ORDER: The petition for hearing filed by the parent was dismissed.

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Seminole County School Board
Case Nos. 99-0230E and 99-0231E
Initiated by District and Parents
Hearing Officer: Mary Clark
Date of Final Order: March 19, 1999

ISSUES: Whether the student should have been fully included in a regular classroom setting immediately or transitioned into the class gradually.

FINDINGS OF FACT: The student was six years old at the time of the hearing. He had received speech therapy for a brief period the previous year, until his behavior made it difficult to continue. In the fall of 1996, when the child was four years old, his parents enrolled him in a pre-kindergarten (Pre-K) varying exceptionalities (VE) class in the Seminole County school system. In early 1997, the mother became concerned about reports of the student's behavior problems at school. In particular, he was having trouble with compliance and transitioning, although school staff assured her that it was not a serious problem.

At some point the mother understood that school staff were going to recommend that the child be placed in a self-contained classroom for students with autism. She visited one such program and felt it would not be an appropriate placement for her son. At a staffing meeting with the mother, the school staff agreed that the child should remain in the Pre-K VE class.

In May 1997, the child was evaluated by a developmental and behavioral pediatrician, whose report reflected a diagnosis of pervasive developmental delay (PDD) with autism spectrum. The mother, still concerned about the child's difficulties with following directions at home and at school, returned to the doctor in October 1997. Behavioral modification and the possibility of medications were discussed. By April 1998, school staff reported that the child had improved in

academics and with his behavior. Around this time the student was considered for transition from Pre-K to kindergarten. The school psychologist tested the child and concluded that he fell into the educable mentally handicapped (EMH) range.

The father, accompanied by two special education advocates, attended a staffing in May 1998. District staff recommended placement in an EMH program. The parents requested that the child be placed in a regular kindergarten program with support services. Seeking an independent education evaluation (IEE), the parents took the child to Shands Hospital in Gainesville, Florida, on July 9, 1998. The doctor there also concluded that he had PDD with some autistic features. She recommended a classroom with a high degree of structure.

A team convened on July 29, 1998, to develop a temporary individual educational plan (IEP). The parents again requested the child be placed in a regular education classroom; they also requested another IEE and a functional behavioral assessment (FBA) to address the child's behavior concerns. Because of the continued disagreement between the parents and the district staff regarding the most appropriate placement, the parties agreed to a "stay-put" placement in the Pre-K VE classroom. After mediation on the matter, the district agreed to pay for an IEE at the Mailman Center at the University of Miami in Miami, Florida. The evaluator at the Mailman Center agreed with the diagnosis of PDD, Not Otherwise Specified (PDD-NOS) and suggested that "the best placement alternatives seem to be a class for high functioning children with autism or a class for children with communication disorders."

On October 29, 1998, an IEP team met to develop an IEP. District staff recommended placement in an autistic classroom; the parents requested placement in a regular kindergarten class with support services. The parties' continued dispute over placement resulted in requests for due process hearings by both the parents and the district. Both parties agreed that the "stay-put" placement was not appropriate nor did the child belong in a program for mentally handicapped children.

While the student had made substantial progress through the use of a behavior plan while enrolled in the Pre-K program, the student was not ready for a regular kindergarten classroom with all its attendant distractions. He needed to be in a small, structured program of 10-15 students with good social and communication skills that he could model. Further, he would require an aide in a regular classroom, one who would be trained and transitioned with him over time. Another transition strategy suggested by the hearing officer was placing the student in one regular academic class during the day.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction in this proceeding. While both parties agreed that the child should be educated in a regular classroom setting, full-time placement in a regular kindergarten class was not appropriate at that time. The school district had met its burden of proving that the child did require further preparation before being fully included in a regular classroom. With proper support, the child should have been ready for that placement by the beginning of the 1999-2000 school year. The parents were not entitled to reimbursement for tutoring expenses incurred. Further, the record fails to support a conclusion that any procedural violations of the Individuals with Disabilities Education Act (IDEA) occurred.

ORDER: The request by the school district for the child's placement in a program for autistic children was denied and the parents' request of immediate inclusion of the child in a regular kindergarten classroom with compensatory relief was denied. The school study team was ordered to convene as soon as possible to develop an IEP and designate an appropriate placement for the student.

* * *

Seminole County School Board
Case Nos. 99-1975E and 99-2280E
Initiated by Parent (99-1975E) and by District (99-2280E)
Hearing Officer: Daniel M. Kilbride
Date of Final Order: June 25, 1999

ISSUES: Whether the student's individual educational plan (IEP) was out of compliance with state and federal law, denying the student of a free appropriate public education (FAPE); and whether the placement of the student in the educable mentally handicapped (EMH) program and in the program for students with speech or language impairments provided the student with the least restrictive environment (LRE).

FINDINGS OF FACT: The student, who was diagnosed with Down syndrome and speech/language impairment (SLI), was seven years old and in the first grade at the time of the hearing. She was enrolled in a primary EMH class in the district elementary school for which she was zoned.

In November 1996, a school psychologist administered a variety of evaluations and made behavioral observations of the student. In her psychological evaluation report, the psychologist reported that the student had a full-scale IQ score of 59, placing her in the mentally disabled category and at the 0.1 percentile relative to other students her age.

A staffing/educational conference was held in the spring of 1998. The staffing committee determined the child met the state's eligibility criteria for the EMH program. District staff felt that placing the child in a first grade inclusion class was not appropriate because of her low level of academic functioning and her behavior. Despite these concerns, an administrative decision was made to try the student in a full inclusion placement, at the mother's request.

The child was placed in an inclusion class for the 1998-99 school year, and a full-time instructional assistant was assigned to the student to assist her throughout the day. The child displayed disruptive behavior throughout the school year, resulting in 52 discipline referrals to the principal. Her outbursts would bring the educational process in the classroom to a halt until she could be brought under control.

During the early part of the 1998-99 school year, the student received individual speech/language services in a room adjacent to her classroom. In December, she began receiving these services in a group setting because of concerns about the original venue expressed by the mother, who also desired an increase in services. In March 1999 the therapist went back to one-on-one therapy because of the student's disruptive behavior and inability to remain on task when the therapist was not working directly with her. Her progress in speech/language was inconsistent due to her behavior.

Despite the development and implementation of two behavior plans during the school year, the disruptive behaviors continued, having a negative impact on the learning of the student in question as well as other students. Completion of the 1998-99 school year demonstrated that the student was not able to handle a regular classroom setting and receive an educational benefit, even with the assistance of a full-time instructional assistant.

CONCLUSIONS OF LAW: The Division of Administrative Hearings (DOAH) had jurisdiction over the subject matter of this proceeding and the assigned Administrative Law Judge (ALJ) had final order authority. The psychoeducational evaluation and the professional opinion of the school

psychologist, supported by the testimony of other witnesses, established that the student met the standards for eligibility for EMH services.

The parent, on behalf of the student, alleged that the district denied the student FAPE. The parent had the burden to show by a preponderance of evidence that this was true. At the hearing, the parent elected to present no evidence to prove her case. Therefore, the parent failed to meet her burden of proof.

The educational services provided for the student during the 1998-99 school year met the requirement of the law, and her progress was minimal. Educators who knew the child consistently stated that the child's placement in a regular classroom was inappropriate and that she would have greater and more beneficial educational benefits in an ESE class. Placement of the child in an ESE class for EMH students would provide instruction by a teacher who was certified to teach these children.

The school district was not required to provide the child with one-on-one instruction by a certified teacher in addition to or as an alternative to the instructional aide provided in the regular classroom. Such a requirement would be an unreasonable financial burden on the district. The greater weight of the evidence clearly established that the student qualified for placement in an EMH class.

ORDER:
The petition of the parent in DOAH Case No. 99-1975E, alleging the district denied the student FAPE, was dismissed. The placement proposed by the district provided FAPE and LRE within the requirements of federal, state, and local statutes and regulations. As for DOAH Case No. 99-2280E, in which the district requested a transfer of the student from a full inclusion class to a more restrictive placement in an EMH class, the district was ordered to place the student in the EMH program for the 1999-2000 school year.

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St. Lucie County School Board
Case No. 98-4963E
Initiated by Parent
Hearing Officer: Claude A. Arrington
Date of Final Order: March 25, 1999

ISSUES: Whether the district (a) failed to provide the student any program, aid, or services identified in the student's individual educational plan (IEP), as that IEP was to be implemented in accordance with a mediation agreement entered between the parties on December 9, 1999, and (b) failed to allow the student to advocate for herself on matters related to accommodations and assistance, and if so, whether such failure constituted a failure to provide the student with a free appropriate public education.

FINDINGS OF FACT: Prior to the commencement of the hearing, the parent and the district agreed to a stipulated final order resolving the issues presented by the petition for a due process hearing.

ORDER:
The district was ordered to continue providing after-school tutoring for the student, to implement the IEP in the manner set forth in the mediation agreement, to provide copies of the final order to all instructional and support staff who are involved in the delivery of educational services to the

student, and to schedule a meeting with the parent and staff to review the content of the final order and provisions of law regarding prohibitions against retaliation and confidentiality of student records. Further, the district was ordered to allow the student to advocate responsibility for herself, to inform and advise all instructional and support staff involved with the student regarding responsible self-advocacy, and to arrange for the collection of weekly progress reports from the student's teachers so the student could take the reports home on Fridays, and to provide that appropriate staff would verify and initial each of the student's assignments after the student had written the assignments in the course notebook.

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