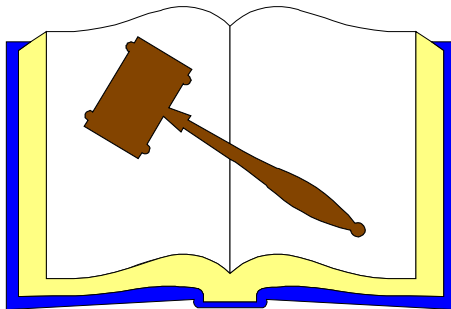


# Summaries of Due Process Hearings

in Exceptional Student Education



July - December  
1998

## Summaries of Due Process Hearings

Following are summaries of due process hearings conducted by the Division of Administrative Hearings (DOAH), Department of Administration, between July 1998 and December 1998. Final Orders were issued after the hearings and copies provided to the Bureau of Instructional Support and Community Services. Complete copies of the Orders are available from the Bureau.

These summaries are for informational purposes and are not intended to provide legal advice or assistance. Please refer questions to Iris Anderson, Program Specialist, Procedural Safeguards, Bureau of Instructional Support and Community Services, 614 Turlington Building, Tallahassee, Florida 32399-0400; (850)245-0475; Suncom 205-0475; or via electronic mail at eileen.amy@fldoe.org.

The heading for each summary provides the school board or agency involved in the hearing, the case number, the party who initiated the hearing, the administrative law judge, and the date of

### **Duval County School Board**

**Case No. 98-2367E**

**Initiated by Parent**

**Administrative Law Judge: Stephen F. Dean**

**Date of Final Order: August 17, 1998**

**ISSUES:** Whether the district provided a free appropriate public education (FAPE); whether the district was required to reimburse the parent for private school tuition, and if so, for what period.

**FINDINGS OF FACT:** The student was eighteen years old at the time of the hearing and had attended Duval County Public Schools. She had been served in the special program for students who are educable mentally handicapped (EMH), for which all parties agreed the student was eligible. The student's parents had been satisfied with her education through middle school.

Prior to beginning high school, the student underwent a three-year reevaluation and was determined ineligible for the EMH program. The student was enrolled in her neighborhood school in a dropout prevention program. At that time, the parent neither requested a due process hearing nor requested the stay-put provision to be put in place. The parent did ask about another evaluation and was told she must wait one year before being retested.

The student's new teachers and guidance counselors were helpful; however, the student did not do well in her new placement. Her parents enrolled her in a private school for special education students. The district stated that the private school was an appropriate placement, and the parents reported that the student "flourished."

One year after the three-year reevaluation, the district informed the parent that the previous evaluation had been incorrectly scored and the student was, in fact, still eligible for EMH placement. Summer school, retesting, and exceptional student education (ESE) placement were offered to the parents. However, the parents had already paid for tuition for the upcoming school year, and the tuition was nonrefundable. An individual education plan (IEP) was written which the district stated could be implemented in any high school within the district. Prior to the beginning of the school year, the parents determined that in order not to cause her undue emotional stress, the student would never again attend public school within the district. The student had a history of smooth transitions when placements were appropriate. Experts' testimonies regarding trauma in returning to the public school system were inconclusive.

The district agreed to reimburse the parents for private school tuition for the year the student was waiting for retesting, as well as the subsequent year, for which the parents had already paid nonrefundable tuition.

**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 did not receive FAPE following the incorrect scoring of the three-year psychological evaluation. The law states that parents must initiate due process prior to removing a child from a placement as a prerequisite for establishing their right for tuition reimbursement.

**ORDER:** The district was ordered to pay for the student's placement for two years only, the year during which the student waited for retesting and the subsequent year for which the parents had already paid. The district was required to evaluate and appropriately place the student if she ever re-enrolled in the district school system.

**Duval County School Board**

**Case No. 98-3595E**

**Initiated by Parent**

**Administrative Law Judge: Stephen F. Dean**

**Date of Final Order: November 24, 1998**

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

**FINDINGS OF FACT:** The student was seventeen years old at the time of the hearing. He was a high school senior enrolled in the Hospital Homebound program. The student had been served by the district since second grade when he was determined eligible for special programs for students with specific learning disabilities. In eighth grade, the student threatened suicide if he had to go back to school, and his parents withdrew him. At his parents' request, the student received all of his high school education in the Hospital Homebound program.

The student was subsequently determined to have Asperger's Syndrome. He received no treatment for the suicide issue; however, he did see a counselor. The counselor recommended an "intimate school setting" to address the student's "social phobia, attention deficit disorder, anxiety, and dread." The student attended a private school following this recommendation. The student was observed and evaluated by a district psychologist in the private school setting. The district offered accommodations and services to the parents which would meet the student's needs and developed an individual educational plan (IEP) for the student, which the parent signed. However, the student was never enrolled in the district high school. Instead, the district received another physician form requesting Hospital Homebound placement.

The student was successful throughout his Hospital Homebound placement and had enough credits to graduate on completion of his senior year. He had passed all standardized tests required for graduation.

An expert from a local children's clinic testified that the district was able to provide modifications necessary for the student to return to a school setting, including social skills training as requested by the parent. An expert on Asperger's Syndrome concurred.

**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 district committed no procedural violations, offered a program to meet the student's needs, and developed timely IEPs and transition plans.

**ORDER:** The district offered a free appropriate public education to the student and violated no laws. If the student elected to return to the public school for placement, he would be afforded all applicable rights.

**Escambia County School Board**

**Case No. 98-2484E**

**Initiated by Parent**

**Administrative Law Judge: Diane Cleavinger**

**Date of Final Order: September 30, 1998**

**ISSUES:** Whether the district provided an appropriate placement consistent with requirements of the Individuals with Disabilities Education Act (IDEA); whether the district delayed development and implementation of a behavior plan, and if so, what remedy was available; whether the student's arrest deprived the student of his rights; and whether the district failed to provide adequate parent notice for a meeting which resulted in a placement determination.

**FINDINGS OF FACT:** The student was fourteen years old at the time of the hearing. He had been determined eligible for special programs for students who are autistic and for students who are speech and language impaired. He was also determined eligible for special

programs for exceptional students who require occupational therapy, physical therapy, and speech/language therapy. The district recommended placement at a separate day school for students with disabilities which served students in kindergarten through twelfth grade. The student's mother disagreed with the recommended placement, preferring that the student be served at a regular high school, which would have been age appropriate, or to remain in the then-current middle school placement.

The student was determined to be functioning at a three-year-old to seven-year-old level in preacademic areas, with language skills at a significantly lower level. The student made loud vocalizations, became easily frustrated, and was aggressive. He was said to be easily distracted and demonstrated limited functional motor skills. The student had no understanding of requirements in the district's Student's Rights and Responsibilities Handbook. Stability in his daily activities were determined to be highly important for the student's success. Changes resulted in undesirable behaviors.

The student was large for his age and considered by the district to be too large and too old for his middle school placement to continue. He had been at the middle school for three years in a self-contained special class placement. All parties agreed that a self-contained class was the only appropriate placement for the student. The student was served in a varying exceptionalities (VE) setting with his own teacher aide. The teacher reported that while the student had made some progress, he functioned well below the next lowest functioning student in the class. The student's aide took neither breaks nor lunch because the student could not be left alone.

The teacher and aide maintained close contact with the student's mother through a notebook exchange. The notebooks revealed aggressive behavior, including hitting of self and others, head-butting, and hair-pulling at home as well as at school. These behaviors increased significantly several months before the hearing was requested. Because the student's aggression had not been severe to that point, there had been no individual behavioral plan in place.

Two months after the aggression escalated, the mother informed the aide that the student's behavior needed to be addressed. The next day, the mother requested a meeting with the appropriate district program specialist and requested an Antecedent Behavior Consequence (ABC) study be conducted. The program specialist was in training for a week and unavailable. The training was for autistic students and had been something the mother requested for professionals working with her son. The district had already determined that program would be offered at the separate school.

A few days later and prior to any meetings, the student became upset and very aggressive because of several unavoidable changes to his routine. The student engaged in a sustained and prolonged attack against his aide, gained physical control over her, and injured her neck and shoulder. The aide reported the incident to the school administrator who filed a report with the school resource office and a sheriff's deputy. The student was arrested three days later on charges of battery, which were later dismissed. There was no evidence that the school

initiated the sheriff's department's decision to pursue arrest. This action was not subject to the rules governing a due process hearing and was not included in the deliberations.

The student was suspended for five days, which did not constitute a change in placement. Because of this incident, the district hired a full-time behavioral technician to work at the student's school, obtained a behavioral assessment (rather than the ABC assessment requested earlier by the mother), and implemented an individual educational plan (IEP) review. All parties agreed that immediate help for the student was more important than a prolonged ABC evaluation. The district intended to perform the ABC evaluation on the student during the following school year at the separate school placement. The incident occurred in early February, and the behavioral specialist began work with the student in early March and continued through the school year. The behavioral specialist worked with the student in decreasing aggressive behavior through the use of a visual picture schedule, which had been successfully used with similar students. He also created daily progress reports which the student's mother refused to release to the district because she felt they gave a negative impression of her son. The reports were reviewed at the hearing and showed continued aggression despite individual attention.

A certified behavior analyst performed an initial assessment of the student to determine whether the middle school placement was appropriate. The behavior analyst determined that the middle school was not appropriate because of the student's level of functioning and lack of social and academic skills. The report did not include an ABC assessment.

An IEP was developed for the student over a period of three separate meetings. The IEP was lengthy and included a temporary behavior management plan. The IEP was to be implemented at a "high school to be determined." A meeting was held at a later time, for which parent notice was given, to determine where the IEP would be implemented. At that meeting, the district selected the special school placement. The parent participated in the meeting, did not ask for further meetings, and went on record specifically that she was not "opposed" to the placement, but rather that she had "concerns." The mother requested, and was given, time to discuss the placement with her husband. She was to respond by a specified date, but she did not respond.

**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 demonstrated increasingly aggressive behavior despite individualized attention. The district had available at the special school all the services the student would need including behavioral interventions, community instruction, safety practices, and appropriate teaching methodologies.

**ORDER:** The district was ordered to provide an ABC assessment of the student, develop a detailed behavior management plan, place the student at the special school, and provide transportation to the school.

**Indian River County School Board**  
**Case No. 98-0171E**  
**Initiated by District**  
**Administrative Law Judge: J.D. Parrish**  
**Date of Final Order: July 28, 1998**

**ISSUE:** Whether the student required placement in an exceptional student education program to receive an appropriate education.

**FINDINGS OF FACT:** The student was completing second grade in a district school at the time of the hearing. He had attended the same elementary school since kindergarten, at which time concerns regarding academic progress were noted. The student repeated first grade and continued to make limited progress. A psychological evaluation was conducted, and the student was determined to be eligible for and required a special program to succeed in school.

In first and second grades, the student's teachers offered individual attention, additional assistance, and tutoring. None of the interventions produced success. The district proposed to serve the student in both regular and exceptional education classes. The parents objected because the student would be labeled as educable mentally handicapped (EMH).

**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 required exceptional education placement in order to benefit from education.

**ORDER:** The student was found eligible for an EMH program which was to be implemented at the student's school in a resource room placement, without the parents' consent if necessary.

**Indian River County School Board**  
**Case No. 98-0379E**  
**Initiated by District**  
**Administrative Law Judge: Errol H. Powell**  
**Date of Final Order: November 3, 1998**

**ISSUES:** Whether the individual educational plan (IEP) and placement proposed for the student were appropriate and whether the student's rights had been violated under the Individuals with Disabilities Education Act (IDEA).

**FINDINGS OF FACT:** At the time of the hearing, the student was thirteen years old and functioned on approximately a three-year-old level. The student sustained trauma at or near birth. The student used a picture exchange communication system for limited communication. The student left the district for a year then returned and enrolled in the district school system. However, he did not attend a district school.

An IEP meeting was held, which the student's mother did not attend. The student's maternal grandmother did attend and provided information from the sending state. The student's primary exceptionality had been language impairment. The IEP provided for homebound instruction, extensive creation of special materials, and a behavior management plan. The homebound teacher was to provide two hours of instruction per week. The IEP was implemented, and the homebound teacher was the only instructional professional having contact with the student. The homebound teacher had not reviewed the student's IEP and did not implement any of the goals and objectives it contained. The IEP also provided for a functional behavior assessment from a certified behavioral analyst. The assessment was not conducted, nor was a behavior plan developed.

Approximately three months later, another IEP was developed. The mother was notified but did not attend the IEP meeting. The district proposed placement at a special school in a class for students who had been determined eligible for special programs for students who are autistic. The mother disagreed, refusing to allow him to attend. The student was kept at home.

The student's mother verbally requested a due process hearing from the superintendent's office and did not receive the required papers. She then made the request via mail, then by a hand-delivered letter. Subsequently, both parties agreed to mediation and to the development of a new IEP. District personnel attended the IEP meeting, as did a teacher from the special school and from the regular school where the mother wanted the student placed. No speech/language therapist, occupational therapist, or physical therapist was present, and input was not solicited from such staff.

The behavior analyst assessed the student, and the student's mother and the homebound teacher participated. No input from therapists was obtained. The district continued to recommend special school placement. The IEP focused on communication and included the teaching of sign language to the student. The mother reported that the school in the sending state had tried to teach the student sign language, which resulted in frustration and aggressive behavior. There was no evidence to indicate that the student would benefit from sign language instruction; therefore, it would be inappropriate.

The proposed IEP also addressed daily living skills, self-care skills, socialization, and communication. The student was receiving occupational therapy (OT), physical therapy (PT), and speech/language therapy (S/LT) obtained privately by the mother. The private speech/language pathologist attempted to train the student in sign language and observed the frustration and resulting negative behaviors. There was no communication between district personnel and the private speech/language pathologist. The student's mother did not invite the therapist to the IEP meeting.

The student's private occupational therapist worked on daily living skills, visual perception, fine motor tasks, and some behavioral skills to assist with socialization. There was no communication between district personnel and the private occupational therapist. The student's mother did not invite the therapist to the IEP meeting.



The private physical therapist coordinated with the occupational therapist but not with the school district. She too was not informed of the IEP meeting by the student's mother.

The student also received treatment from a psychiatrist, who also consulted with a neurologist. The student was diagnosed as having brain trauma resulting in a trainable mentally handicap, profound developmental communication delay, and autistic-like behaviors. The doctor made specific recommendations in terms of the student's needs, services, and type of placement, including the recommendation of a one-to-one aide. He was invited to the IEP meeting but was unable to attend. He submitted written recommendations for some of the student's IEP meetings.

The proposed class at the special day school would include some of the needed services but was not recommended by the administrative law judge. There was, however, a different class at the school which the administrative law judge believed would better meet the student's needs. The student had been temporarily placed in a class for students who are profoundly mentally handicapped on a regular middle school campus. That class was determined inappropriate by the administrative law judge.

No evidence was presented regarding expenses associated with private therapies.

**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 IEP developed for the student when he returned to the district was not developed in a timely manner and that a free appropriate public education (FAPE) was not provided during that time. The IEP failed to include therapies needed by the student. When a subsequent IEP included related services, they were not provided. The student needed placement in a small class of TMH students without behavior problems. He also needed therapies, a one-on-one aide, and assistance with daily living skills activities. The mother was entitled to reimbursement for the provision of therapies on a private basis because the school district failed to provide them. Sign language would not be appropriate for communication. The student's IEPs were not reasonably calculated to provide educational benefit.

**ORDER:** The student's then-current IEP did not provide FAPE and was inappropriate. The district was required to develop a new IEP with the mother to include speech therapy, occupational therapy, and physical therapy. Until the IEP was developed and implemented, the district was determined financially responsible for all therapy services being provided privately to the student.

**Indian River County School Board**  
**Case No. 98-0748E**  
**Initiated by Parent**  
**Administrative Law Judge: Mary Clark**  
**Date of Final Order: August 13, 1998**

**ISSUES:** Whether the student's due process rights were violated and the student was, therefore, entitled to compensatory tutoring, monetary compensation, and attorney's fees and costs.

**FINDINGS OF FACT:** The student had been evaluated and determined eligible for a special program for students who are emotionally handicapped (EH). The student was then completing fourth grade, having repeated kindergarten. At the time of initial placement, the parents signed a statement which stated that they understood their child's procedural safeguards.

The student attended summer school without incident and began school in a class for severely emotionally disturbed (SED) students. Within a week, the student began experiencing difficulty and exhibiting problematic behavior. The parents were called for a conference. An individual educational plan (IEP) meeting was held approximately two weeks later, which both parents attended, as did district specialists. Placement in an SED center was recommended, which would require that the student be promoted to sixth grade, his age-appropriate grade. The parents did not consent to the placement and felt that the student needed to be mainstreamed in a different regular school setting. They believed the student was being promoted without learning associated academic skills. The student's mother objected to the use of manual restraint with the student.

The parents stated that they would consider the proposed placement and would call the next day. They did not call, nor did they send the student back to school. When the mother chanced to meet school personnel in town, she stated that she was considering home schooling the student. The parents brought the student back to school in October.

After the student returned to school, his disruptive behavior continued. Behaviors included running, vandalism, violent cursing, and sexual and violent threats against staff and students. The student would use the classroom telephone to call his parents to ask them to pick him up. The teacher often recommended that they not do so because it would reinforce his behavior. The teacher tried to keep the student on task but felt he needed a more restrictive placement. She did feel she and the student had developed a measure of mutual respect; however, other staff at the school were less tolerant. The student was suspended for 22 days between October 13, 1997, and January 10, 1998. Reasons included fighting, defiance, throwing furniture, profanity, aggression, extreme rudeness, and threatening teachers and students.

After the due process hearing had been filed and the "stay put" provision enacted, the student's mother was given the opportunity to visit other appropriate alternative placements available to the student. The parent chose an EH class in an elementary school the student

had attended previously. Believing the issues resolved, the administrative law judge canceled the scheduled hearing. However, the parents did not sign the settlement agreement. When they learned that the teacher at the new school had left and the temporary teacher would be the student's previous teacher, they refused to send the child to school at all. The district offered home instruction, which the parents declined. The district offered an interim tutor; the parents declined. By March, the district's attendance officer contacted the parents; they did not respond. From January to April, the district attempted to convene an IEP meeting, and one was finally held at the end of April. The goals, objectives, and behavior plan developed were essentially the same as the previous IEP without the use of physical restraint. The student began attending the new elementary school in May. At the time of the hearing, both parties were satisfied with the placement and had planned to meet in June to develop an IEP for middle school. The district agreed to provide tutoring if the student needed it.

**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 excessive truancy was not the fault of the district. The student's extreme behaviors were evidence of the need for a change in placement, which the district attempted to accomplish. The district did not violate the student's due process rights and voluntarily offered to provide tutoring if the student so required. The parents could not be considered the prevailing party.

**ORDER:** The parents' request for compensation was denied.

**Indian River County School Board**

**Case No. 98-4639E**

**Initiated by Parent**

**Administrative Law Judge: Patricia Hart Malono**

**Date of Final Order: December 17, 1998**

**ISSUES:** Whether the district provided a free and appropriate public education (FAPE) to the student, discriminated against her because of her learning disability, and retaliated against her because of complaints of discrimination.

**FINDINGS OF FACT:** The student was an eighth-grade student at a district middle school at the time of the hearing. During her fourth-grade year in another school district, the student was referred to the school's child study team for academic difficulties. The district conducted an evaluation and determined that the student had a "high average" IQ, had difficulty with auditory sequencing and short term memory, could benefit from counseling activities, and should be considered for a class with a smaller teacher-pupil ratio. A staffing for exceptional student education (ESE) services was recommended.

The result of the subsequent staffing was that the student was determined eligible for a special program for students with specific learning disabilities (SLD). An individual educational plan (IEP) was developed which included goals dealing with reading skills. The

mother was present at the staffing and the separate IEP meeting. The parent declined to sign, instead including a statement that she was not sure this was in the best interest of the student.

The following school year, the student was enrolled in the current district with no disclosure of previous ESE evaluation or placement. In February of her fifth-grade year, a meeting was held between the principal and two of the student's teachers to discuss a class change for the student. Information from the sending district revealing the student's learning disability was discussed. The class change and assistance plan worked well for the student, and the teachers worked with the student to help her succeed.

The following year the student was promoted and went to middle school. Staff were advised of the nature of the student's learning disability as well as successful accommodations. The student's mother requested that the same plan be followed at the middle school. Some teachers did follow the plan, but others refused. The mother perceived a lack of cooperation from the school staff.

In the spring of the student's sixth-grade year, the parent filed a complaint with the superintendent listing numerous allegations against one of the student's teachers. Included in the allegations was the assertion that the student had received a grade of C in retaliation for the mother's request that the plan developed for her daughter in elementary school be followed in this teacher's class. The student's mother later complained about a grade the student received, and the student was subsequently allowed to make up missed assignments in that class. The action resulted in the student's grade in that class being raised from a C to a B.

The student was promoted to seventh grade. Her new teachers were provided with her earlier evaluation and a copy of the plan developed in elementary school. An informal plan was developed, and each of the student's teachers agreed to follow the plan and inform the mother if the student was having difficulty completing assignments. The parent complained about the student's first semester grades. It was determined that one of the student's grades had been computed incorrectly and it was raised. The mother was informed in writing that this was the only grade that would be changed. The letter was returned to the district staff person with a note from the mother saying she did not accept the solution because she had not had the hearing she requested. The mother continued to protest the student's grades and allege retaliation. The student had received A's, B's and C's.

The student was promoted to eighth grade and again her teachers were informed of the earlier evaluation as well as the plan to assist the student in completing assignments. The student succeeded during the first marking period, receiving seven A's and one B.

During the summer before the student's eighth-grade year, the student's mother had met with the ESE director to show him the earlier evaluation, IEP, and assistance plan developed at the elementary school three years earlier. Although the district admitted that the evaluation indicated that the student had a learning disability, the district did not refer the student for evaluation. Nor did district or school staff recognize a need for a formal Section 504 plan at

that time. At the time of the hearing, the district agreed to conduct a formal evaluation to determine if the student qualified for and needed ESE services and to provide them if warranted.

The school board attempted to resolve the several pending complaints the student's mother had made against school board personnel. A settlement agreement was reached, but the mother refused to sign it because it required that she release all claims against the school board. The parent believed that although the student was successful at the middle school, she had had to fight for teachers to give her daughter what she felt she needed, including multiple changed grades which she believes were a result of retaliation. All of the grades except one were changed at the mother's request. Although she wants appropriate accommodations and rights afforded under Section 504 or IDEA, the mother wanted only an informal plan whereby teachers would agree to work closely with her on any assignments her daughter had missed. The district agreed to have the teachers do so. The district agreed to provide the student's current teachers with a copy of the sending district's psychological evaluation and to advise teachers about working with the mother to ensure the student's success. The district agreed not to place semester evaluations for the grades still in dispute in the student's cumulative file. The district agreed to place a letter of reprimand in the teacher's personnel file, require him to attend training about confidentiality issues, and issue him a copy of the Florida Education Equity Act. The district agreed there would be no retaliation against the student because of the agreement reached at the hearing. The district agreed to inform administrators and teachers of the importance of communication with parents. The district agreed to provide the parent with advance notification of major exams and contact the parent if the student was in danger of receiving a C or lower because of a missed assignment. The district further agreed to offer tutoring if the student was found to need it. All parties agreed that an informal plan for the student would be followed to ensure her success.

**CONCLUSIONS OF LAW:** The Division of Administrative Hearings had jurisdiction over the parties to and the subject matter of this proceeding. Because the parties reached a mutually agreeable resolution, conclusions of law were not required.

**ORDER:** The parties reached an informal agreement at the hearing, which was approved.

**Osceola County School Board**

**Case No. 98-3802E**

**Initiated by Parent**

**Administrative Law Judge: Daniel M. Kilbride**

**Date of Final Order: October 13, 1998**

**ISSUE:** Whether the transfer of an exceptional education student to an alternative school provided a free and appropriate public education (FAPE) in the least restrictive environment.

**FINDINGS OF FACT:** At the time of the hearing, the student was a fifteen-year-old ninth grader in a district high school. The student had been determined eligible for the special

programs for students who are mentally handicapped. At the beginning of the school year, she was involved in a fight with a fellow student. She physically assaulted the other student as well as the staff member who tried to intervene. She was subdued and removed from the cafeteria where the incident took place.

A manifestation determination meeting was scheduled. During a phone call reminding him about the meeting, the student's father stated that he did not want his daughter placed at the alternative school because of the composition of the student body. The student's father attended the meeting but left almost immediately. Another meeting was convened the following week which the student's parents attended. The committee, including the student's parents, determined that the behavior was not a manifestation of the student's disability.

The committee considered the student's individual educational plan (IEP) as well as the fact that she had had very few prior disciplinary referrals. Committee members agreed that no change in placement or services were needed. However, the district recommended that the student temporarily attend the alternative center to work on controlling her anger. A functional behavioral assessment was recommended.

The alternative school was on a smaller campus and had an extensive behavior management system in place, based on a point system. The population of the school was not constant because students left once they achieved a required number of points. The staff included a behavior specialist, social worker, and other professionals and offered classes in employability skills.

**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 alternative school was an appropriate placement for the student to receive FAPE in the least restrictive environment.

**ORDER:** The student was to be placed at the alternative school until such time as she could demonstrate control of her behavior and improvement in social skills.

**Osceola County School Board**  
**Case No. 98-4971E**  
**Initiated by Parent**  
**Administrative Law Judge: Daniel Manry**  
**Date of Final Order: August 3, 1998**

**ISSUE:** Whether a student's existing and proposed placement would provide a free and appropriate public education (FAPE).

**FINDINGS OF FACT:** At the time of the hearing, the student was a twelfth grader in the district's alternative school. He had been determined eligible for special programs for students with specific learning disabilities and the special programs for students who are

emotionally handicapped. The student was served in the public school system until he was placed in the hospital homebound program after placement in a juvenile detention center. From there, he was placed in the district's alternative school.

The student had increasing incidents of behavioral problems. In the ninth and tenth grades, the student received numerous disciplinary referrals, suspensions, and other disciplinary measures. Reasons for referral included disobedience, fighting, insubordination, assaults, and profanity. The student's individual educational plan (IEP) was reviewed and revised in April of his ninth-grade year. He was served in a self-contained exceptional student education (ESE) setting. In October of his tenth-grade year, he was arrested for assaulting another student on the bus with a box cutter. The district conducted a manifestation meeting and determined that the incident was not a manifestation of the student's disability. The student's placement was changed to the hospital homebound program on release from the juvenile detention facility, then placed in the alternative school.

The alternative school provided a more restrictive setting than the student's previous high school placement. The student population was approximately 50% ESE students and 50% dropout prevention students. The school provided a small teacher-student ratio, self-paced instruction, remedial skills training, counseling, a behavior modification program, work experience training, and multiple assessment procedures. Their staff included a behavior analyst, psychologist, social worker, and substance abuse counselor. The behavior management program used by the entire school was based on a point system, whereby the student must earn sufficient points to progress through a series of privileges and rewards.

The student attended the alternative center until he was adjudicated to a residential program in connection with the assault. There the student made behavioral and academic progress. While there, the student received no referrals or suspensions. At the end of the student's sentence, he returned to the alternative school where he was enrolled at the time of the hearing. The student was succeeding and working toward a special diploma in the alternative school setting.

An IEP was developed for the student's twelfth-grade year. The student's mother agreed with all but two items on the IEP. She wanted the student to return to the regular high school and to work toward a regular diploma. There was no evidence presented that the student could reasonably be expected to succeed on a regular high school campus or earn a special diploma.

**CONCLUSIONS OF LAW:** The Division of Administrative Hearings had jurisdiction over the parties to and the subject matter of this proceeding. The evidence of this case showed that the alternative school placement was the least restrictive environment in which the student could be expected to continue to make academic and behavioral progress.

**ORDER:** The student was to remain at the alternative school.

**Palm Beach County School Board**  
**Case No. 97-5749E**  
**Initiated by Parent**  
**Administrative Law Judge: Susan B. Kirkland**  
**Date of Final Order: November 13, 1998**

**ISSUE:** Whether the student was receiving a free appropriate public education (FAPE).

**FINDINGS OF FACT:** When the student was in the third grade, he was determined eligible for the special programs for students who are emotionally handicapped (EH). Two years later the student's family left the state. While out of state, the student did not receive EH services. Three years later the student returned to the district and enrolled in regular courses at a district high school. In September, an exceptional student education (ESE) resource teacher discovered that the student had previously been enrolled in an ESE program. The student did not have a current individual educational plan (IEP).

The teacher sent progress reports to the student's teachers to determine if the student had any special needs. It appeared he did not. The teacher then invited the student's parent to participate in an IEP meeting. The student's mother responded that the IEP meeting should proceed without her. The IEP was written and included the services of monthly consultation and 15 minutes weekly with a crisis intervention teacher to discuss any problems the student may have had. A requirement written into the IEP was that the student attend classes regularly.

Following the development of the IEP, the student began missing school and being disruptive. In December, the student was given a regular three-year reevaluation. Results indicated that the student was capable of performing on grade level. The report was explained to the student's mother at a child study team meeting. School staff recommended that the student be placed in some EH classes to monitor his attendance and behavior. The mother did not want the student in any EH classes, and the student remained in the mainstream.

The student had been diagnosed as having Attention Deficit Disorder (ADD), for which he took Ritalin. It was the student's responsibility to go to the crisis intervention teacher to obtain his medication, but he frequently did not do so. Continued attendance problems led to an attendance agreement which was signed by the student and his parents. The consequence of continued nonattendance would be failure of the class. The parents did not attend an IEP meeting held in April of that year. Because of many unexcused absences, the student failed many of his classes that school year.

In October of the following school year, the IEP was amended to reflect a change in ESE services. The parent was notified and declined to attend. Later, the student was admitted to a hospital for psychiatric services. While there, the student received academic services and did well. On the student's return to the high school, the parents did not want the student served in any EH classes. The parents were invited to attend the IEP meeting and declined. The IEP was developed, which included direct services as well as consultation. Nonattendance



continued to be a problem, and the student was failing. The parents were notified of a meeting to develop an IEP for the following school year, and they declined to attend. It was determined that the student would attend at least one EH class.

The student began the school year and was placed in a dropout prevention class. The student's parents withdrew the student and enrolled him in a private residential school. The student's stay there was brief due to thefts and alcohol use. The student expressed interest in joining the military; however, he was then 17 and had only five credits toward a diploma. Options were discussed with the family. The family was not told that the student would not be allowed to attend his high school placement. The parents were to discuss the options and advise the school as to their decision. They did not do so.

The parents had the student evaluated at a mental health facility, then unilaterally placed him in a private residential psychiatric facility. The student's grandfather informed the school of the placement and requested reimbursement. The length of the student's stay at this school was not determined at the hearing.

During the summer, the parents had the student evaluated by a psychiatrist who determined that the student's problems were the result of his home environment. The psychiatrist recommended that the student return to public school. The student's family informed the administrative law judge that they would leave the state immediately following the hearing.

**CONCLUSIONS OF LAW:** The Division of Administrative Hearings had jurisdiction over the parties to and the subject matter of this proceeding. The evidence of this case showed that the student had the ability to perform well in school, but his absences and disruptive behavior precluded success. The district had attempted to offer appropriate services, which were declined by the parents.

**ORDER:** The district offered the student a free appropriate public education, and the parents were not entitled to reimbursement for the private school placement.

**Pinellas County School Board**

**Case No. 98-1592E**

**Initiated by Parent**

**Administrative Law Judge: Arnold H. Pollock**

**Date of Final Order: July 17, 1998**

**ISSUES:** Whether the student should be dismissed from the program for students with specific learning disabilities (SLD), whether the student was eligible for an SLD program, whether the district should hold an individual educational plan (IEP) meeting to determine SLD services, and whether the district should develop a behavior modification program for the student.

**FINDINGS OF FACT:** In 1997, the parents of the student requested a due process hearing regarding the appropriateness of the student's IEP. The administrative law judge determined that the IEP had been appropriate, and the student received services in the SLD program at his school.

Following that hearing, an IEP meeting was held to develop an IEP for the upcoming school year. The parent attended the meeting, then wrote a letter to a school board representative in which she said she was frustrated and disappointed with the final order. She alleged that school board employees lied under oath and sought permission to present evidence of this during a mediation. The letter was reviewed by an attorney who had represented the school board during the hearing. The attorney advised the school board attorney that she disagreed with the allegations and suggested that the parent formally appeal the final order to state or federal court. A district staff member advised the school board attorney that the district had done everything it reasonably could to satisfy the student's parent and would continue to do so. However, she concluded, it would be inappropriate to increase SLD services to the student because there was no evidence to show that this was needed. A request for mediation was filed.

A conference was held at the school. The student's SLD teacher did not attend; however, a speech/language pathologist did attend. No action was taken because the teacher was not there. The parent alleged that she had been told the student was no longer eligible for SLD services; there was no evidence to indicate this. On the same day as the meeting, the parent again wrote to the school board representative stating that she would no longer work with the district staff member who had been at the meeting. The parent indicated she believed there was wrong-doing by the staff member.

The school board attorney wrote to the parent stating that his inquiry had found no dishonesty on the part of school staff during the hearing. He also stated that because mediation had been requested, board members would not become involved. The student's mother developed a contract which identified what she saw as problem areas to be addressed. The contract included positive actions to be taken on behalf of the student, as well as consequences if the terms of the contract were not followed. It was signed by the student's teacher and the school's acting assistant principal.

Mediation was held, and an agreement was reached which included the district's agreement to allow the parent to select and distribute information about learning disabilities to the student's teachers. The district also agreed to allow the parent access to the staffing folder and distribute materials as she desired. The agreement also stated that the parent was to conduct a private evaluation at her own expense and share those results with the district. The school psychologist was to review the information and make recommendations for any further testing if needed. Assistance and tutoring were provided for, and the student was to visit an alternative school in the district. Following the mediation, the school's principal contacted the alternative school in an attempt to mitigate possible concerns about the student's behavior. When the parent learned of this, she refused to allow the student to attend the alternative school.

Following the mediation, the school psychologist recommended neuropsychological and behavioral evaluations. Notice of reevaluation was sent to the parent. The behavioral component was not completed because the psychologist believed time would be better spent implementing interventions than gathering data. The tests included formal assessments and observations of the student. The evaluations revealed that the student's sensory abilities were normal, visual attention was average or above average with some noted deficiencies, auditory performance was average, but the student's ability to limit impulsive responses was somewhat compromised. The psychologist noted significant differences between how the parent and the teachers perceived the student in terms of emotionality and ability to function. The student appeared to have a good self-image and got along well with peers. The psychologist stated that the student was encouraged to present and argue his case at home and that this was seen as confrontational at school. The psychologist concluded that any deficits the student demonstrated were minimal and did not warrant special education services but could be addressed through a Section 504 plan.

The student was also evaluated by a psychiatrist, who noted obsessive compulsive traits, central nervous system processing deficits, auditory sequencing deficits, and problems with visual motor functioning and body image. He stated that there was no structural defects in the student's central nervous system. The psychiatrist concluded that the student had a specific learning disability which resulted in frustration and a resistance to learning, and he recommended special class placement.

The school psychologist objected to some of the instruments used by the psychiatrist as more appropriate for screening than diagnosis. Some instruments were outdated or inappropriate for the student's age, and there were discrepancies noted within the doctor's report of the student's strengths and weaknesses. The administrative law judge determined that the psychologist's exceptions to the psychiatrist's report were well taken.

The options on completion of the two evaluations were to conduct an IEP meeting and provide SLD services, dismiss the student from SLD but find him eligible under other health impaired (OHI), or dismiss the student from SLD and provide services under a Section 504 plan. The board decided on the third of these options and contacted the parent to attend a meeting. The meeting was canceled because the district staff member was unable to attend. This staff member wrote to the student's mother regarding the proposal to dismiss the student from SLD based on the evaluations and input from school staff. The letter also included a new date for the meeting. The meeting was held and a Section 504 plan developed. The parent refused to sign as a participant and added a written addendum expressing her dissent. The mother then wrote the superintendent and others expressing her dissatisfaction with the dismissal. The parent requested that the student's teachers decide whether the psychologist's recommendations were appropriate.

The parent continued to disagree with the student's dismissal from the SLD program. She took issue with the determination by the committee that the student did not exhibit a need for services, which is one criterion whereby a student can be dismissed. The district decided to keep the student's IEP in effect during the due process procedures, which kept its provisions in effect through the end of the school year.

The district maintained that the student was properly evaluated and dismissed and that the student did not need the services of an SLD program. The district's responsibility was to the student's needs rather than the parent's wishes. Teacher input indicated that the student had the ability to succeed using the same interventions and strategies as those used for regular education students. The student demonstrated the ability to stay on task when he chose to do so. The assistant principal of the school reported that positive reinforcement was used routinely with all students and that this student received extra leeway in behavior because of his exceptional student education (ESE) classification. The student admitted that he did not study for tests and often declined assistance offered to him by his teachers. The student's SLD teacher stated that the student knew what to do to succeed and had the ability to do so. She did not feel that he needed special services. The school principal stated that the student did not appear to have a disability, and she did not treat him as such. She felt that placement in a program with a reduced teacher-student ratio would benefit the student. Such a program was offered to the parent, who declined.

The student's success was negatively impacted by frequent absences. The student received a large number of behavior referrals; however, none of the offenses were considered serious. They were described as "nuisance" behaviors. The parent's reaction to the referrals tended to relieve the student of personal responsibility for his actions.

The student's mother had independent achievement tests administered. At the time of testing, the student's motivation was high, and the student did quite well, though he took longer to complete the tasks. The independent evaluator concluded that this could be indicative of a learning disability. There was no other evidence to support this conclusion.

**CONCLUSIONS OF LAW:** The Division of Administrative Hearings had jurisdiction over the parties to and the subject matter of this proceeding. The evidence of this case showed that the district followed state and federal requirements and took all evaluation information into consideration when determining to dismiss the student from the SLD program.

**ORDER:** The administrative law judge agreed that the student was ineligible for the SLD program and should be dismissed. The provisions of the district's proposed Section 504 plan should be implemented. The administrative law judge found no indication that any district staff member had in any way attempted to interfere with the parent's efforts to resolve the issues.

