

Summaries of Due Process Hearings

Resulting from Inquiries Conducted by the Bureau of
Exceptional Education and Student Services



**July–December
2003**

These summaries are available through the Bureau of Exceptional Education and Student 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; E-mail: cicbiscs@fldoe.org]. This publication is also available on the internet at the following address:
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Summaries of Due Process Hearings

The following are summaries of due process hearings conducted by the Division of Administrative Hearings (DOAH), Florida Department of Administration, from July through December 2003. Final orders were issued after the hearings and copies provided to the Bureau of Exceptional Education and Student Services.

These summaries are for informational purposes and are not intended to provide legal advice or assistance. Please refer questions to Patricia Howell, Dispute Resolution Program Director, Bureau of Exceptional Education and Student Services, 614 Turlington Building, Tallahassee, Florida 32399-0400; (850) 245-0476; Suncom 205-0476; or via electronic mail at Patricia.Howell@fldoe.org.

The heading of each summary list 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.

Broward County School Board

Case No. 03-1936E

Initiated by Parent

Hearing Officer: John G. Van Laningham

Date of Final Order: July 3, 2003

ISSUES: Whether thirty minutes of physical therapy (PT) per week would allow the student to benefit from special education; whether the student should receive PT in a public school; and, whether the student should receive PT during the extended school year (ESY).

FINDINGS OF FACT: The student had cerebral palsy and was attending a private school. The student's only public school services were occupational therapy (OT) and physical therapy. The district, for unknown reasons, discontinued provision of PT. The student received PT privately. As a result of a due process hearing, the district was ordered to reevaluate the student to determine the student's physical therapy needs and eligibility status. Based on that evaluation, an IEP team convened and proposed the provision of thirty minutes of PT per week in a school setting, not to include ESY services.

The student's educationally relevant PT needs were determined to be minimal. The focus of the weekly PT sessions were to be to hold the student accountable for home stretching exercises, of which the student was independently capable. These exercises would assist the student with mobility needed to arrive at classes on time. The student was not eligible for ESY services at the time. Provision of the PT in a school setting was very appropriate as it was the least restrictive environment and educationally relevant.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the

parties and subject matter in this case. Related services such as PT are secondary to FAPE, rather than central to its provision. Being eligible for special education does not automatically imply the need for related services. The student's doctors recommended the need for more physical therapy and the parents provided PT when the school discontinued services. All parties agreed that the student did not need PT to make it through the school day. The dispute arose between medically necessary and educationally necessary PT services. The two were difficult to separate. No expert testimony was presented to show that the district's proposed services were inadequate. There was no evidence that the student would regress substantially over the summer without PT provided by the district.

ORDER: The parent's challenge of the proposed IEP was denied.

Broward County School Board
Case No. 03-1863
Initiated by Parent
Hearing Officer: Robert E. Meale
Date of Final Order: July 17, 2003

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

FINDINGS OF FACT: The student was a student with autism entering the third grade and displayed many behaviors considered typical of a student with autism. In the previous school year the student's progress improved such that the student was moved into a higher functioning classroom for autistic students within the school. The student made progress and experienced success. The subsequent individual education plan (IEP) included more demanding goals and objectives, academic and behavioral, than the student's earlier IEPs. The only issue challenged in the hearing was the change from one-on-one speech therapy to a setting of one therapist for two students. The student had mastered most of the speech objectives on the earlier IEP. The student's parent believed the presence of another student would be a distraction and prevent the student from making progress. It was determined that the presence of the other student was beneficial and had a positive effect. Speech and language instruction was embedded throughout the student's school day. The student continued to make substantial progress.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The district developed and implemented an IEP reasonably calculated to provide educational benefit to the student.

ORDER: The parent's request for a due process hearing was dismissed.

Broward County School Board
Case No. 03-0756E
Initiated by Parent
Hearing Officer: Florence Snyder Rivas
Date of Final Order: September 5, 2003

ISSUE: Whether the district failed to provide the student a free appropriate public education (FAPE) in the least restrictive environment and, if not, whether the parent was entitled for reimbursement for out-of-state private school tuition.

FINDINGS OF FACT: At the time of the hearing the student was a fifteen year-old middle school student who was eligible for exceptional student education services as other health impaired (OHI) because of attention deficit hyperactivity disorder (ADHD). The student's academic achievement was impacted by behavioral problems; however, the student made progress and the individual education plan (IEP), which included a behavior intervention plan (BIP) was deemed appropriate. The parent contended that the student's behavior problems were a result of the school's requiring the student to follow the code of student conduct as well as certain aspects of the BIP. The parent did not allow the student to attend IEP team meetings or the hearing, believing the student was not "adequately prepared" to participate. There was no evidence that the student's personal inappropriate choices were a result of an inappropriate IEP or BIP, or the school's failure to implement them. The parents placed the student in a very restrictive private residential program, without providing the required ten day notice to the school of the impending withdrawal. The exception would be in a crisis situation, which was not evident in the student's case. The district did not have the opportunity to convene an IEP team to discuss more restrictive placements within the district or the state. The problems the student had were more with home life than school life. There was no evidence that the student's residential placement was providing the student a FAPE in the least restrictive environment.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The student's IEP and BIP were reasonably calculated to convey educational benefit. There was no evidence of procedural deficiencies on the part of the district. The student was capable of accessing and progressing in the educational placement, but generally refused to do so.

ORDER: The parent's request for past, present or future reimbursement for residential placement for the student was denied.

Broward County School Board
Case No. 03-1251E
Initiated by Parent
Hearing Officer: Florence Snyder Rivas
Date of Final Order: December 29, 2003

ISSUE: Whether the parent was entitled to reimbursement for past or future costs of out-of-state private school tuition.

FINDINGS OF FACT: The parents did not comply with the requirement of informing the district of their intent to place the student in residential placement and seek reimbursement. The student suffered from oxygen deprivation at birth and was severely disabled. The student developed autistic behaviors and a severe seizure disorder. As the student reached physical maturity, the parents were no longer able to physically care for the student. The student was enrolled in a district special school for students with severe disabilities. The student's IEPs were reasonably calculated to confer educational benefit. When the student's self injurious behaviors did not improve, the parents became concerned that the student was not being appropriately educated. They did not, however, inform school or district staff. The parents enrolled the student in the out-of-state residential program to "maximize the student's potential" and did not inform the district that they expected financial reimbursement until more than a year after they withdrew the student. While in the district school, the parents were very active with the student's education, involved with the teachers, and engaged in the IEP process. They did not express dissatisfaction with the student's IEPs or the student's education and any problems that arose were dealt with openly and appropriately. As an example, the student had a long and difficult commute to school and was accommodated by being allowed to rest upon arrival. The IEP was implemented when the student was calm enough to attend to educational issues. The fact that half of the students in the class had autism did not deny the student of a FAPE. The teachers had not given up on the student, and the student was making adequate progress toward attaining the IEP goals which were tailored to the student's unique needs. Evidence indicated that the parents were the ones in need of the student's residential placement rather than the student himself.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The parents' desire was admittedly to maximize the student's potential. However, a FAPE is when the student's IEP can be reasonably calculated to confer educational benefit. The student's IEP and its implementation did that. The student's more rapid progress in the residential setting did not infer that the district's program did not provide FAPE. The parents failed to inform the district that they were considering private residential placement prior to removing the student from the district school.

ORDER: The parent's claims for reimbursement of incurred or future expenses were denied.

Clay County School Board
Case No. 03-0435E
Initiated by Parent
Hearing Officer: Diane Cleavinger
Date of Final Order: July 17, 2003

ISSUES: Whether the district must provide special transportation to the student's elementary school and whether the district owed the parent compensatory education for time missed in order

to receive transportation.

FINDINGS OF FACT: The student was nine years old and was orthopedically impaired, had a cortical visual impairment, periventricular leukomalacia, hydrocephalus and cerebral palsy with spastic quadriplegia. The student used a power wheelchair for mobility. The student was placed in a class for orthopedically impaired students and did not make progress. Further evaluation determined that the student was functioning in the trainable mentally handicapped (TMH) level. District policy allowed parents to choose a school when services were available at more than one school. The parents were encouraged at the time to send the student to a school outside the student's home zoned school, though the reasons were not clear. Special transportation with a bus aide and a full school day were included on the individual education plan (IEP). The student's file included a letter from the student's pediatrician stating that the student was not able to ride on a bus without air conditioning or to remain on the bus for more than fifty minutes. Because the length of time on the bus would exceed fifty minutes, the parent transported the student to school. The student would have had to leave twenty minutes early each day, missing unstructured recess time, to ride a bus with a shorter route. Although the student was successful, the same services were available at a closer school. Therefore, the closer school would be the appropriate placement.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The parents desired to have the student remain at the farther school. The district was not required to keep the student at that school simply to accommodate the wishes of the parents and transportation by the district would need to be individual. The district would be allowed to transfer the student to the closer school, which would not result in a change of FAPE or reduction of services, but would result in a shorter bus ride. The parents requested compensatory education in the areas of vision services and reading instruction to compensate for the twenty minutes lost daily for transportation accommodations. However, since the student only missed recess, the request was denied.

ORDER: The claim for compensatory education was denied and the request for special transportation to the farther school was denied.

Duval County School Board
Case No. 03-2128E
Initiated by Parent
Hearing Officer: P. Michael Ruff
Date of Final Order: October 15, 2003

ISSUES: Whether the district properly identified the student's disability; whether the individual education plan (IEP) provided appropriate educational services; and, whether the parents should be directed to consent to reevaluation testing.

FINDINGS OF FACT: The student was identified as a student with a disability through the

Child Find program. Initial evaluations were a psychological evaluation and a speech and language evaluation, both by qualified and experienced evaluators. The evaluations determined that the student was eligible for programs for students who are trainable mentally handicapped (TMH) and visually impaired (VI). Some of the student's behaviors could have been attributed to these disabilities or to autism. Autism was not mentioned to the parents during this initial evaluation. The parents began to suspect autism and informed the district that they would have the student privately evaluated and share the results. The district's repeated requests for the evaluation results were unmet except for a three-line letter from a psychologist. District staff determined that this was insufficient information to change the student's eligibility determination. The district continued to request consent for reevaluation, which the parents continued to deny. Further testing was necessary to determine the disability and educational needs of the student. Strategies for students with autism must be especially individualized, necessitating frequent reevaluations. The district has a variety of individualized services available to students with autism. Refusal of testing was not in the best interest of the student. The district followed appropriate procedures in requesting consent for reevaluation. The student was making educational progress under the IEP and the student's father praised the student's classroom teacher.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The student was receiving educational benefit so therefore was receiving a free appropriate public education (FAPE). The IEP was appropriate at the time it was created. The district was authorized to seek consent and a hearing to reevaluate the student.

ORDER: The parent's claims were denied and they were directed to give consent for testing. The parent's Respondents' Motion or Alternative Counter Petition was granted. The parents were given thirty days to provide the district with consents and medical releases. If the parents failed to provide consent, the district was authorized to conduct the evaluations without consent immediately following the thirty day timeline.

Flagler County School Board
Case No. 03-2862E
Initiated by Parent
Hearing Officer: Stephen F. Dean
Date of Final Order: September 24, 2003

ISSUES: Whether a specific individual education plan (IEP) provided the student with a free appropriate public education (FAPE); whether a change in school constituted a change in placement; and, whether the student was educated in the least restrictive environment.

FINDINGS OF FACT: An IEP meeting was convened prior to the student's ninth grade year. The parents were in attendance; however, they had to leave early and the IEP was not completed. When the team reconvened the parents refused to allow the student to attend the high school but wanted the student retained for another year in the student's then current placement. They would not participate and an IEP was not developed. The student's teachers testified that the student

had made substantial progress and should be promoted to high school, where the student could continue to receive appropriate education and related services. The high school placement would also afford the student broader extracurricular opportunities. The high school would be the most appropriate placement for the student and the IEP implemented there would be the least restrictive environment.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The student's IEP would convey educational benefit and there were no procedural deficiencies. The student would be better served at the high school even though the student's disabilities were severe. The parents and district were encouraged to meet and develop another high school IEP and the district was given the authority to proceed if the parents refused to participate.

ORDER: The relief sought by the parents was denied.

Hernando County School Board
Case No. 03-2289E
Initiated by District
Hearing Officer: Suzanne F. Hood
Date of Final Order: August 11, 2003

ISSUE: Whether the district was entitled to evaluate the student using evaluators of its own choosing.

FINDINGS OF FACT: At an individual education plan (IEP) meeting, the district requested consent to reevaluate the student. The parent denied consent and a due process hearing was held and it was determined that the student needed to be evaluated in multiple areas. Parties agreed upon evaluations, evaluators, and the time and location of the evaluations. The district agreed to reimburse the parent for travel expenses to the evaluations.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The district had the obligation to reevaluate the student and the right to choose evaluators.

ORDER: The district was entitled to conduct multidisciplinary evaluations using the evaluators of their own choosing.

Highlands County School Board
Case No. 03-1421E and 03-2972E
Initiated by Parent
Hearing Officer: T. Kent Wetherell, II
Date of Final Order: October 6, 2003

ISSUES: Whether the district failed to provide the student a free appropriate public education (FAPE) by delaying evaluation; and, whether the district correctly determined the student ineligible for exceptional student education (ESE) services.

FINDINGS OF FACT: The student consistently excelled academically both in the district and in the student's sending state. The student was involved in extracurricular activities and held a part time job. The student exhibited no behavioral difficulties. The parent felt the student should have scored higher on the advanced placement (AP) exams than the student did, even though passing both of them. The student's handwriting was difficult to read but it was testified that evaluators were trained not to take handwriting into account when grading essay questions. The student had been offered assistance with note taking and the option of typing school work; however, the student refused accommodations because of not wanting to be singled out. The student had friends and participated appropriately in classes.

Consent was obtained and the student was "reevaluated" for gifted eligibility. It was denoted as a reevaluation as stated on the consent form because, although the student had not been evaluated in the district before, the student's education plan (EP) had been adopted from the sending state. The student was transferred to a different district high school, where a guidance counselor suggested the student had "dysgraphia" because of the student's illegible handwriting and initiated consent for evaluation for ESE services. A comprehensive evaluation was conducted and the student was administered an academic achievement test, on which the student excelled except for the handwriting subtest. A social history, completed by the parent, indicated clinically significant scores in several areas. The psychologist who reviewed the data already had a professional relationship with the student. An intelligence test showed a discrepancy between performance and verbal scores which was described by the evaluator as "significant, but not meaningful." The psychologist did not find that the student's handwriting constituted a disability, nor did he note educationally relevant behavioral difficulties. Upon completion of the evaluation, the parent rescinded consent for evaluation and demanded independent evaluations at public expense. A private neuropsychological evaluation was consistent with earlier evaluations; however, the evaluator stated that the student had a non-verbal learning disorder, social anxiety, major depression, an obsessive-compulsive personality and avoidant personality traits. An independent occupational therapy (OT) evaluation indicated no need for remediation even though handwriting was poor. The district agreed to pay for the independent evaluations.

At the ensuing staffing committee meeting, eligibility for ESE services was considered under the specific learning disabilities (SLD), emotionally handicapped (EH) and other health impaired (OHI) designations. The majority of participants agreed that, even if a disability existed, there was no interference with the student's ability to progress in the general curriculum. The only dissenting opinions came from the parent and the advocate. A "504 Plan" was being considered for

the student at the time of the hearing, which would entitle the student to accommodations such as typing written assignments.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. To be eligible for special education services a student must meet eligibility criteria and demonstrate a need for services in order to access education. Since the student was obviously excelling in advanced placement and other high level classes, the student did not meet the criterion of need for services. There was no evidence to support unreasonable delays in the evaluation of the student. The eligibility staffing committee was properly constituted. The administrative law judge lacked jurisdiction over the parent's request for copies of student records as well as the parent's assertion that a 504 Plan should have been developed immediately upon the determination of ineligibility.

ORDER: The parent's claims were dismissed except for the reimbursement of independent evaluations already mutually agreed upon by both parties.

Highlands County School Board
Case Nos. 03-1340E and 03-2501E
Initiated by Parent
Hearing Officer: Carolyn S. Holifield
Date of Final Order: December 3, 2003

ISSUES: Whether the district provided the student with a free appropriate public education (FAPE); whether the student met eligibility criteria to be classified as having autism; whether the district was required to pay for independent evaluations; whether the district violated the Individuals with Disabilities Education Act (IDEA) by failing to convene an individual educational plan (IEP) meeting during the hearing; and, whether the district must reimburse the parents for a summer camp program unilaterally determined by the parents.

FINDINGS OF FACT: The student transferred from another state as eligible for exceptional education services for students with other health impairments (OHI) because the student had attention deficit hyperactivity disorder (ADHD). The district adopted the sending state's IEP, and then developed subsequent IEPs for the student with the same designation as well as speech therapy. The student excelled academically, got along well with staff and began to make friends. The parent expressed concerns about the student's social skills. A complete reevaluation was conducted with the consent of the parents. At the IEP meeting the parent suggested that the student may have Asperger's syndrome. There had never been such a diagnosis of the student. Additional evaluations were performed and the psychologist determined that the student did have Asperger's syndrome and a depressive disorder. This was the only time this was ever mentioned as a diagnosis for the student. At the subsequent IEP meeting, the parent requested that the student's classification be changed from OHI to autism. However, Asperger's syndrome is not synonymous with autism, and is not itself a category under the Individuals with Disabilities Education Act (IDEA). The other members of the IEP team determined that the student did not

meet local, state or federal criteria for autism. The student had never exhibited any of the deficits required for a determination and was functioning very well and independently in school.

Consent was obtained for further evaluations; then, three days later, the parent rescinded the consent, believing that the student should have already been determined to be autistic. Prior to such a determination, the district was required to follow specific procedures for pre-referral and referral activities. Based on the testimony of the psychologist and the pediatrician who did the medical examination, it should have been clear that the student had Asperger's syndrome. However, the experts testified that Asperger's and autism were not synonymous. Several IEP meetings were held and the IEP reflected that the student did well in school, excelled on standardized tests, and exhibited difficulty with communication and social skills. The IEP addressed the student's social communication needs and made provision for the student to see a counselor at the school. Modifications and accommodations included areas recommended in the psychologist's report. Transition services were included even though the student would be turning fourteen during the duration of the IEP. The IEP was adequate to meet the student's unique needs.

The parent requested extended school year (ESY) services. The district declined, as there was no evidence that the student would regress during the summer. The parents unilaterally sent the student to an instructional camp out of state and did not inform the district. The parent had further evaluations of the student conducted and informed the district that reimbursement would be expected. The parent provided a thirty page document which she referred to as the "alternative IEP" in which, among many other things, she indicated that certain independent evaluations would be conducted. Occupational therapy (OT) and physical therapy (PT) evaluations were conducted and goals and objectives were developed; however, the reports were not presented to the district until the hearing. The parent also alleged procedural violations.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The parents failed to prove that the IEP did not provide educational benefit; therefore, the IEP did provide the student with FAPE. The student was not eligible to receive OT or PT because the student's needs in these areas were not educationally relevant. Transition services included in the IEP were appropriate and comply with the requirements of the IDEA. The student did not meet eligibility criteria to be classified as a student with autism. The parents were not eligible for reimbursement for evaluations obtained unilaterally because they were not of the same type as those conducted by the district, largely because the parent withdrew consent prior to the district's evaluations. There was no evidence that the student needed ESY services. The parents were not eligible to receive reimbursement for the summer camp because the district did not fail to provide FAPE to the student during the summer; the student did not require ESY services. There were no harmful procedural violations and the district was within its rights not to convene an IEP meeting during the hearing. Finally, evaluations were conducted within a reasonable time.

ORDER: Requests for all reimbursement were denied.

Hillsborough County School Board

Case No. 03-0828E

Initiated by District

Hearing Officer: Daniel Manry

Date of Final Order: July 25, 2003

ISSUES: Whether the district provided proper notice of an individual education plan (IEP) meeting to discuss reevaluation and, if so, whether the parent rejected the district's request to reevaluate the student. Legally, the issue was whether the district was entitled to reevaluate the student who they allege was not entitled to a free appropriate public education (FAPE) because the student was being educated at home.

FINDINGS OF FACT: The student was a child with autism who was educated in district schools until the parents enrolled the student in a home education program. Parents complied with rules related to providing home education for the student. The district and the parents shared the cost of speech therapy conducted by a private provider. The district provided compensatory speech therapy to the student. The district stopped providing occupational therapy services when the student withdrew to the home education program. District policy does allow for home schooled students to enroll in the district to receive such related services. The district provided adequate notice to the parent requesting reevaluation of the student, to determine needed services. The district made multiple attempts over many months to conduct IEP meetings, in which the parents consistently refused to participate, even when the student's IEP expired. The parents refused to participate on the grounds that the student had not mastered any goals or objectives from the prior IEP and stated that they did not trust district personnel. A comprehensive reevaluation of the student was warranted to determine how to best educate the student and whether a FAPE was being provided. The parties disagreed on whether occupational therapy was needed and where speech services should be provided.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The child find requirements in state and federal laws do not limit districts to those enrolled in public schools but includes all children. Home education is neither a public nor a private school; however, whether or not the student was entitled to a FAPE as a home education student does not preclude child find activities including reevaluation. The student was entitled to a three year reevaluation because the student was receiving services through the district. The student's parents received adequate notice of the proposed IEP and reevaluation meetings. The parents refused.

ORDER: The parents were to submit to reevaluation of the student conducted by the expert named by the district in the hearing, no later than a specified date unless mutually agreed upon.

Hillsborough County School Board

Case No. 03-1265E

Initiated by Parent

Hearing Officer: Daniel Manry

Date of Final Order: July 29, 2003

ISSUE: Whether the Division of Administrative Hearings (DOAH) had jurisdiction to require the district to provide inclusion services to a student who was enrolled in a full time home education program and part time as an exceptional student receiving speech and language services under a service plan.

FINDINGS OF FACT: The student was a student with autism who was enrolled in a district school for two years. The parents removed the student to a home education program and followed all requirements in doing so. Parents and the district shared the cost of provision of speech and language therapy to the student. The district had provided compensatory speech and language therapy and continued to provide speech and language therapy at the time of the hearing. The district provided more hours of speech therapy than were previously omitted. The district also provided occupational therapy for some months following the student's withdrawal from the public education system. Home schooled students may enroll in district at the discretion of the district to supplement their home schooling program.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The student was not entitled to inclusion services under the Individuals with Disabilities Education Act (IDEA) and DOAH did not have the authority to order such. A home schooled student was not entitled to a FAPE. The student had no legal obligation to attend a district school and the district had no legal obligation to provide services.

ORDER: The student was not entitled to inclusion services under the IDEA and the DOAH did not have the authority to order the district to provide them.

Hillsborough County School Board

Case No. 03-1271E

Initiated by Parent

Hearing Officer: Daniel Manry

Date of Final Order: July 29, 2003

ISSUE: Whether the Division of Administrative Hearings (DOAH) had jurisdiction to require the district to provide guidance as to the student's status and rights while the student was enrolled in a full time home education program and part time as an exceptional student receiving speech and language services under a service plan

FINDINGS OF FACT: The student was a student with autism who was enrolled in a district school for two years. The parents removed the student to a home education program and fol-

lowed all requirements in doing so. Parents and the district shared the cost of provision of speech and language therapy to the student. The district had provided compensatory speech and language therapy and continued to provide speech and language therapy at the time of the hearing. The district provided more hours of speech therapy than were previously omitted. The district also provided occupational therapy for some months following the student's withdrawal from the public education system. Home schooled students may enroll in district at the discretion of the district to supplement their home schooling program.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The student was not entitled to special education services under the Individuals with Disabilities Education Act (IDEA) and DOAH did not have the authority to order such. A home schooled student was not entitled to a FAPE. The student had no legal obligation to attend a district school and the district had no legal obligation to provide services.

ORDER: The parents were not entitled under the IDEA to receive special education services, the DOAH was not authorized to order the services, and the case was dismissed for lack of jurisdiction.

Hillsborough County School Board
Case No. 03-3200E
Initiated by Parent
Hearing Officer: Daniel Manry
Date of Final Order: September 29, 2003

ISSUE: Whether the Division of Administrative Hearings (DOAH) had jurisdiction to require the district to provide speech therapy while the student was enrolled in a full time home education program.

FINDINGS OF FACT: The student, who had autism, was educated in a district school prior to the student's withdrawal to a home education program. The home education program complied with all state requirements. The district provided regular and compensatory speech therapy to the student. The district provided more hours of speech therapy than required.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The district had the responsibility to provide special education and related services to students in public or private schools. Home education is neither a public nor a private school by Florida law. The district had no legal responsibility to provide services to the student.

ORDER: The student was not entitled to speech and language services under the Individuals with Disabilities Education Act (IDEA) in a home setting. The hearing was dismissed because DOAH lacked jurisdiction over the case.

Hillsborough County School Board
Case No. 03-2540E
Initiated by Parent
Hearing Officer: Daniel Manry
Date of Final Order: July 29, 2003

ISSUE: Whether the Division of Administrative Hearings (DOAH) had jurisdiction to require the district to provide transportation services and speech and language services in the student's home while the student was enrolled in home education.

FINDINGS OF FACT: The student, who had autism, was educated in a district school prior to the student's withdrawal to a home education program. The home education program complied with all state requirements. The district provided regular and compensatory speech therapy to the student. The district provided more hours of speech therapy than required.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The district had the responsibility to provide special education and related services to student in public or private schools. Home education is neither a public nor a private school by Florida law. The district had no legal responsibility to provide services to the student.

ORDER: The student was not entitled to speech and language services under the Individuals with Disabilities Education Act (IDEA) in a home setting; nor was the student entitled to transportation services. The hearing was dismissed because DOAH lacked jurisdiction over the case.

Hillsborough County School Board
Case No. 03-1272E
Initiated by Parent
Hearing Officer: Daniel Manry
Date of Final Order: July 29, 2003

ISSUE: Whether the Division of Administrative Hearings (DOAH) had jurisdiction to require the district to provide a change in placement, a free appropriate public education (FAPE) and the right to a due process hearing while the student was enrolled in a full time home education program and part time as an exceptional student receiving speech and language services under a service plan

FINDINGS OF FACT: The student was a student with autism who was enrolled in a district school for two years. The parents removed the student to a home education program and followed all requirements in doing so. Parents and the district shared the cost of provision of speech and language therapy to the student. The district had provided compensatory speech

and language therapy and continued to provide speech and language therapy at the time of the hearing. The district provided more hours of speech therapy than were previously omitted. The district also provided occupational therapy for some months following the student's withdrawal from the public education system. Home schooled students may enroll in district at the discretion of the district to supplement their home schooling program.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The student was not entitled to special education services under the Individuals with Disabilities Education Act (IDEA) and DOAH did not have the authority to order such. A home schooled student was not entitled to a FAPE. The student had no legal obligation to attend a district school and the district had no legal obligation to provide services.

ORDER: The parents were not entitled under the IDEA to receive special education services, a formal change in placement, or a due process hearing; and the DOAH was not authorized to order the services. The case was dismissed for lack of jurisdiction.

Hillsborough County School Board
Case No. 03-4294
Initiated by Parent
Hearing Officer: Daniel Manry
Date of Final Order: December 16, 2003

ISSUE: Whether the proposed individual education plan (IEP) provided the student with a free appropriate public education (FAPE).

FINDINGS OF FACT: The student received exceptional student education (ESE) services for students with emotional handicaps (EH) and speech and language therapies. During the student's tenth grade year, the student expressed suicidal and homicidal ideation to the teachers and counselors. The student expressed anger, refused to eat or relate to peers and became obsessed with death. Psychological and psychiatric evaluations were conducted and the student was diagnosed with depressive disorder, psychotic disorder and possibly a thought disorder with paranoia. The student refused to take prescribed medication and the parents concurred with the student's decision. A supplementary report stated that the student's refusal to comply with medication indicated a need for a more structured environment. The student was placed in a separate school with intensive psychological services available but reported being very unhappy there. The student was a "good kid" and never actually harmed anyone, unlike many of the students at the separate school. The student's parent denied that the student had a psychiatric illness.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The proposed IEP would place the student at the separate school. The parent's denials did not constitute a preponderance of evidence that the student did not need the special school placement. The student had been at the special school for a short

time at the time of the hearing and had not had a chance to demonstrate achievement.

ORDER: The parents' objection to the proposed IEP was denied and the student would be placed at the special school.

Indian River County School Board
Case No. 02-4532E
Initiated by Parent
Hearing Officer: Errol H. Powell
Date of Final Order: August 29, 2003

ISSUE: Whether the student met criteria for services as a gifted student.

FINDINGS OF FACT: At the time of the hearing the student was a ten year old fourth grader. In second grade the student's teacher completed a gifted checklist but did not recommend him for the gifted program. At the end of that school year the student was screened for the gifted program and his score was not high enough to meet entry criteria. The district offered further testing which the parents declined. The student's third grade teacher completed a gifted checklist and recommended him for the gifted program. The student was privately evaluated and the psychologist recommended that the student be placed in the gifted program, and stated that the student had attention deficit hyperactivity disorder (ADHD). A district psychologist evaluated the student and made allowable accommodations for the student's purported ADHD. The psychologist observed no evidence of behavior typical of ADHD. In an effort to reassure the student's parents, the psychologist may have created the impression that the student was eligible for the gifted program. At a staffing committee meeting, the testing data were reviewed and the student did not meet the criteria for the gifted program. The parents were in attendance and appropriate documentation was completed. However, a check mark was erroneously made by school staff in the "approved" box. The district offered further testing, including an independent educational evaluation, but the parent declined. The student's fourth grade teachers would not recommend evaluation for or placement in the gifted program because the student was being appropriately challenged in the regular classroom setting.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. In order to be placed in a gifted program, a student must meet specific eligibility criteria. The student did not meet these criteria.

ORDER: The student did not meet eligibility criteria for a gifted program.

Leon County School Board
Case No. 03-3837E
Initiated by Parent
Hearing Officer: Suzanne F. Hood
Date of Final Order: November 26, 2003

ISSUE: Whether the district properly implemented the student's individual education plan (IEP) during specified dates.

FINDINGS OF FACT: At the time of the hearing the student was eighteen years old and incarcerated in the county jail and was eligible for exceptional student education (ESE) services as a student with an emotional handicap (EH). The student sought a regular high school diploma and had an active IEP with goals and objectives to work toward that goal. There were no supplementary aids and services nor was an extended school year (ESY) recommended. The IEP included accommodations and modifications, strategies, a transition component, and a statement that the student's disability had a mild impact on the student's participation in the general curriculum. When the student became incarcerated, a new IEP was developed for implementation at the juvenile detention center, with essentially the same services. There was confusion about where the student was to attend upon release from detention, the student was again incarcerated, and another due process hearing was held. The result was that the parent's allegations of denial of FAPE were unfounded. Following the hearing, the student spent additional time incarcerated in the above district and another district. Upon the student's release the parents and the district attempted to meet and determine where the "stay put" placement would be. The student returned to the zoned high school but was unmotivated to attend or succeed. There was no agreement about using the existing "stay put" IEP or what services the student would receive.

The student attained eighteen years of age and was no longer legally required to attend school. When the student did attend, the student received direct specialized instruction in multiple areas from a trained and qualified ESE teacher who took a great deal of time and effort with the student, in addition to the general education classes. The student stopped attending before it could be concluded that the student had made any educational progress. The student was again incarcerated in the county jail, this time as an adult, at which time the student was not enrolled in a public school. As a legal adult the student had the right to make the student's own educational decisions. The student elected to pursue a GED rather than a regular high school diploma; then, on the advice of the parent, changed the student's mind and requested ESE services and a standard diploma. This was the first time the district had been faced with such a scenario. The district provided a teacher to work with the student in a self-paced curriculum at the jail. Another teacher worked with the student in general education classes. Both teachers had access to the student's IEP. The student made progress in this one-on-one setting.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The student received "stay put" services while enrolled at the high school. The student's decision not to attend classes was entirely on the student's own, not as a result of denial of FAPE. The student could not be placed in a second chance school, or have a new IEP, because the parents had appealed the earlier hearing order to a federal court.

While incarcerated, the district was required to provide services based on the estimated length of incarceration. There was no unlawful delay in provision of services. The female teacher's use of the attorney booth for instruction did not violate the student's educational rights. The district was making a good faith effort to assist the student in meeting the educational goals.

ORDER: The district did not violate the IDEA by failing to implement the student's IEP in jail, and the district was not required to provide compensatory education, reimbursement, or other relief.

Miami-Dade County School Board
Case No. 03-1522E
Initiated by Parent
Hearing Officer: Robert E. Meale
Date of Final Order: August 25, 2003

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

FINDINGS OF FACT: The student was diagnosed as having attention deficit hyperactivity disorder (ADHD) and was served as a student with an emotional handicap (EH). The student was in a special school for EH students in middle school where the student succeeded and was placed briefly in a zoned middle school, where the student did not do well, and was returned to the special school where the student continued to have severe behavior problems. There were many disciplinary actions and mediation, all to no effect. The student went to a regular high school in a varying exceptionalities (VE) model where the student continued to fight with students, defy authority and make little academic progress. A functional behavioral assessment (FBA) was conducted and a behavioral intervention plan (BIP) developed. An IEP team convened to determine if the student's behavior was a manifestation of the student's disability. The team determined that a change of placement was needed but was unclear as to the meaning they assigned to the phrase.

The district proposed moving the student to a smaller alternative school which was much more restrictive, although the VE delivery model would still be in effect. The individual educational plan (IEP) team concluded that the student's behavior was a manifestation of the student's disability but still proposed the move. The student's parent refused to sign the manifestation determination document. Another IEP meeting convened and wrote an IEP for the alternative school, which the parent refused to sign. After winter break the student did not report to school or request a due process hearing. An IEP meeting changed the student's placement to a self contained EH class and required a psychological evaluation. The parent consented to the evaluation but the student refused and, after numerous attempts, the psychologist closed the case. As a result of a due process hearing the student was assigned to the general education school pending resolution of the case. Only part of the testing was completed given parent's failure to cooperate. The IEP team continued to recommend placement at the alternative school as the least restrictive environ-

ment in which the student could be successful behaviorally and academically.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The IEP which placed the student at a large school in a VE classroom did not provide the student with a FAPE. The alternative placement sought was a disciplinary school; however, the IEP to be in place there would provide a FAPE. The student's reevaluation was not conducted within the required three years. The parent had signed a waiver of reevaluation a year earlier, not in the parent's native language. The district had purged an earlier BIP from the student's file, losing information which could have helped the student succeed. Failure to conduct a reevaluation prior to the student's leaving a structured special middle school for a less structured high school was a breach of its obligation.

ORDER: The last IEP written did provide a FAPE in the least restrictive environment; however the district failed to provide a FAPE when it failed to conduct a timely reevaluation.

Miami-Dade County School Board
Case No. 03-3335E
Initiated by Parent
Hearing Officer: Florence Snyder Rivas
Date of Final Order: October 24, 2003

ISSUE: Whether the district's evaluation of the student was appropriate.

FINDINGS OF FACT: The student was educated pursuant to an individual educational plan (IEP) except for times when the student's parent removed the student from school. The student was evaluated prior to transitioning from pre-K to kindergarten and the evaluation determined the student to be eligible for a trainable mentally handicapped (TMH) program. The student was assigned to a class with similar students. The parent objected stating that the student met eligibility requirements for autism and should be on a track to receive a regular diploma. The parent withdrew the student to a private school. When the parent later re-enrolled the student in a district school, the student did not have a current IEP, so the earlier IEP was to be implemented until a new one could be prepared. Despite the parent's desire for the student to be placed in his zoned school in the general education curriculum with supports and services, the parent allowed the student to attend the district's recommended placement in a program for TMH students. The student functioned well in the class and was considered in the middle range of abilities within the small group. The parent agreed to a reevaluation and attempted to name the only psychologist the parent would accept; however, the district declined to meet the demand and used the psychologist assigned to the student's school.

An IEP meeting was convened but the parent left because the district would neither place the student in general education nor acquiesce to the parent's demands about a particular psychologist. The meeting continued without the parent and an IEP was developed. The team relied on the earlier psychological evaluation which was appropriate and conducted by a licensed and

credentialed evaluator. The team maintained the student's placement and sought reevaluations in all areas as soon as possible. The parent consistently refused to cooperate and again removed the student from school. Although the parent stated that the student would home schooled, but there was no documentation of such.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The parent may not unreasonably withhold consent for evaluation by an appropriate evaluator. There was no cause to delay the final order.

ORDER: The district proved the sufficiency of its evaluation.

Miami-Dade County School Board
Case No. 03-1154E
Initiated by Parent
Hearing Officer: Daniel Manry
Date of Final Order: October 28, 2003

ISSUE: Whether the student's individual educational plan (IEP) provided a free appropriate public education (FAPE).

FINDINGS OF FACT: The student was educable mentally handicapped (EMH) and had attention deficit disorder (ADD) for which the student was on medication. The existing IEP was developed in conjunction with the student's parent, who signed the document. In accordance with the behavior contract which was part of the IEP the student was excluded from a field trip. This exclusion upset the student's parent and triggered the due process hearing. The student's parents did not attend the hearing and presented no evidence. The existing IEP provided the student with a FAPE.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The parent failed to satisfy the burden of proof by not attending and failing to provide any evidence. The district provided evidence that the student was making some educational progress.

ORDER: The parent failed to show that the existing IEP did not provide the student with a FAPE.

Miami-Dade County School Board
Case No. 03-0978E
Initiated by Parent
Hearing Officer: Stuart M. Lerner
Date of Final Order: November 20, 2003

ISSUES: Whether the district failed to provide the student with a free appropriate public education (FAPE) and if so whether the student was entitled to tutoring as compensatory education; and, whether the student's parents should be reimbursed for an individual educational evaluation (IEE) and private tutoring.

FINDINGS OF FACT: The student was eligible for special programs for students with specific learning disabilities, speech impairment, language impairment. The district made good faith efforts to educate the student in a number of educational placements; however the student did not make significant academic progress. Reevaluations were conducted and individual educational plans (IEPs) developed as required. A private evaluator stated the student had severe deficits with little evidence of academic progress and an IEP was written to reflect the private reading evaluation. The parent requested placement in a special private school and a computer for home use at district expense. The IEP team concurred and several IEPs were subsequently developed and implemented at the private school. The district paid for this as well as further private evaluation by a reading specialist, who was not a psychologist. The parents unilaterally transferred the student to a second private school; the district was notified by the parents' attorney.

A District Placement Review Committee met and recommended that the district develop an appropriate program at a district high school and until its completion the student would remain at the original private school. A mediation agreement outlined the program agreed upon by the district, parents, and the parents' attorney. The student attended the program for a year and a half and declined summer school services. The student received services pursuant to the mediation as well as other services reflected in his IEP. The student made some academic progress. An assistive technology assessment report outlined the recommended assistive devices and programs the student would need. The parent, dissatisfied with the progress, again had the reading specialist evaluate the student. The evaluation failed to reveal any new or different information than that of the district's reevaluation. At the parents' request, the student transferred to his home zoned high school. The first teacher was a permanent substitute who was not a certified teacher and did not function as such. The subsequent teacher, who was certified, requested and used materials provided by the private therapist. Throughout the student's years in the district, the district made a good faith effort to meet the student's unique needs.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. Reevaluations were conducted appropriately. They did not need to address all areas of the student's disability. An administrative law judge (ALJ) only has authority to require a district to reimburse parents for unilateral placement and services if the district did not make a FAPE available to the student in a timely manner and the student's private instruction was appropriate. Any other requests for reimbursement were not within the purview of the due process system. Evidence showed that the district's efforts made with involvement of

the student and the student's parents to provide services were reasonably calculated to provide educational benefit. The district met its obligations under the law. The fact that the student did not attain goals and objectives in the IEP did not constitute denial of a FAPE. Delay in provision of a specific software program did not deny FAPE as the parents did not have the right to unilaterally dictate what program the student would use. Using a noncertified substitute teacher for two months, then a relatively inexperienced certified teacher for the remainder of the school year in the media center rather than a classroom did not constitute denial of FAPE. The transition services provided to the student were individualized to his needs and did not constitute denial of FAPE. The ALJ did not have the authority to order future reimbursement. The private evaluation conducted by the reading teacher did not constitute a reimbursable IEE because it was not done in response to the parents' objection to a specific district evaluation as inappropriate. Nor was the evaluator licensed to perform psychoeducational evaluations.

ORDER: All of the parents' claims were denied.

Okaloosa County School Board
Case No. 03-3553E
Initiated by Parent
Hearing Officer: Suzanne F. Hood
Date of Final Order: December 9, 2003

ISSUES: Whether the Division of Administrative Hearings had jurisdiction over the subject matter and, if so, whether the student was eligible to receive services in an exceptional student education (ESE) program.

FINDINGS OF FACT: The student was in the eighth grade and attending a full time home education program. Earlier, the student had been evaluated and determined eligible for speech therapy. At the time the student was enrolled in a private school within the district. An IEP was developed and implemented. A subsequent IEP team concluded that the student had met goals and objectives and noted that the student had severe orthodontic problems. The student was dismissed from speech with the understanding that the district would reevaluate the student at some future time. Informed notice was sent to the parent. The district provided services to home school students because it chose to, rather than by law, and did so by one of three means. The student participated in a blended school program which provided services via a virtual school. The student also participated in a physical education class at a district middle school, which was a negative experience. Standardized testing showed the student to be making significant educational progress in his home school program. The parent requested a speech evaluation and was directed to the nurse at the middle school for screenings. The district lost the screenings, and then changed its screening procedures for home schooled students, delaying the speech evaluation. The evaluation was conducted and a staffing convened. The team determined that the student was not eligible for speech services because his impairment was not at the level of severity that indicated a significant delay, nor was it affecting his educational progress. Appropriate notice was provided. The parent initiated an independent speech evaluation for which the district

agreed to pay. The private evaluation also found the student's articulation errors to be slight.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The Individuals with Disabilities Education Act (IDEA) did not refer to home schooled students. The district provided services to such students voluntarily but had no legal requirement to do so under state or federal legislation.

ORDER: The parents' request for a due process hearing was dismissed for lack of jurisdiction.

Orange County School Board

Case No. 02-3651E

Initiated by Parent

Hearing Officer: Daniel Manry

Date of Final Order: September 3, 2003

ISSUES: Whether a special education advocate or guardian ad litem was a parent authorized to request a due process hearing; whether the Division of Administrative Hearings (DOAH) had jurisdiction to conduct a hearing after a surrogate parent resolved the matter.

FINDINGS OF FACT: The student was a ward of the state and an exceptional education student. The student was assigned a guardian ad litem and a special education advocate was appointed. It was this advocate who initiated the due process hearing. The advocate requested that a surrogate parent be appointed for the student and this was done by the district. The surrogate parent entered into an agreement with the district in which the district agreed to provide compensatory education, computer instruction, and counseling. The advocate objected to the terms of the settlement and stated that the surrogate parent was not acquainted with the student.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. No party in the case had the standing to request a due process hearing. The law states that a parent may initiate a hearing and neither party fit that role by legal definition. The guardian ad litem had judicial authority but a due process hearing is not a judicial proceeding. The student's legal guardian was the Department of Children and Families, which the law precludes from functioning as a parent in this instance. The surrogate parent did have the right to represent the student. This individual worked with the district to resolve the issues in dispute and dismissed the hearing.

ORDER: The action was dismissed.

Palm Beach County School Board
Case No. 03-1513
Initiated by District
Hearing Officer: Florence Snyder Rivas
Date of Final Order: July 21, 2003

ISSUE: Whether the student was entitled to functional behavior assessment (FBA) and independent educational evaluations (IEEs) in the areas of psychoeducation, speech and language, assistive technology, and occupational therapy.

FINDINGS OF FACT: The student was thirteen years old at the time of the hearing and was eligible for services for student with autism, speech and language impairments, and needing occupational therapy. The student had been enrolled in district exceptional student education (ESE) programs since pre-kindergarten. In seventh grade an individual educational plan (IEP) team met and determined that the student would move to ESE classes for science and social studies. The parents disagreed and “stay put” retained the student in regular education classes for these subject areas. The result of the hearing was that the student would be evaluated by someone with no prior knowledge of the family. Pursuant to an earlier hearing order the district conducted psychoeducational, speech and language, occupational therapy, and assistive technology, all by properly credentialed professionals. All of the evaluations were performed as agreed except the speech and language evaluation, which may not have been necessary but was a part of the order. Before the results of the evaluations were known, the parents requested IEEs in all areas.

The psychological evaluation showed a lower score than one done earlier. However, the evaluator was able to provide possible explanations which were accepted in the hearing. The language evaluation was appropriate and without malice or preconception. The functional behavior assessment met legal requirements. The assistive technology assessment was properly performed and included all required components. The occupational therapy evaluation concluded that the student did not meet eligibility requirements. The parents stated that the student was supposed to have taken medication during the testing but provided no evidence that this was the case. The parents requested to leave the case open until the IEEs were completed but the request was denied.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The district had to provide evidence that the evaluations were conducted appropriately by qualified evaluators. They did so. The parents disagreed with each of the evaluations, methods and conclusions. This was not sufficient reason to request an IEE. The speech portion of the speech and language evaluation was incomplete and was required to be completed at public expense by the district. The final order was to be given in forty-five days to prevent drawn-out litigation. Despite protests, the parent had a full and fair opportunity to present his case, even though he did not have an attorney.

ORDER: The student’s FBA and IEEs in all areas were sufficient except speech, which was the only area to which the student was entitled to an evaluation at public expense.

Palm Beach County School Board
Case No. 03-2389E
Initiated by Parent
Hearing Officer: Florence Snyder Rivas
Date of Final Order: August 15, 2003

ISSUES: Whether the district provided the student with a free appropriate public education (FAPE) in the least restrictive environment based on proposed individual educational plans (IEPs); and, whether the district had the right to reevaluate the student over the objections of the parent.

FINDINGS OF FACT: The student transferred from another state with an IEP that the district school was willing and able to follow, including extended school year (ESY) services. The school year was near the end and school staff did their best to implement the sending state's IEP. The student had a hearing impairment and the student's parent made specific demands about the kinds of students the student could be educated with. Although the parent was very distrustful of school and district staff, none of the staff let this affect their legal obligations toward the student. The district expended time and money in preparing an ESY program for the student; however, the parent did not have the student attend because the program did not meet the parent's exact specifications. The parent insisted that the student's one-on-one instructor be a certified teacher rather than a paraprofessional. The parent also objected to the teacher's administration of an achievement test, used to determine the student's level rather than for reevaluation purposes.

The district proposed a complete reevaluation of the student to determine the student's educational skills and needs. The parent refused unless given the right to dictate the evaluations given. The existing evaluation data was out of date. The parent alleged many procedural violations, which proved to be unsubstantiated and, even if true would not have denied FAPE to the student. The district provided FAPE to the student to the best of its ability.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The student's IEP was reasonably calculated to confer genuine educational benefit. There was no evidence of procedural violations which impacted the student's right or ability to access special education services. Since the sending state's IEP was being followed, it was essentially the stay-put placement. The district legally had six months to develop its own IEP for the student. There was no legal basis on which the district could be compelled to educate the student according to the exact dictates of the parent.

ORDER: The parent's claim was denied, the student was being provided with a FAPE, and the district was authorized to conduct its evaluations.

Palm Beach County School Board
Case No. 03-0999E
Initiated by Parent
Hearing Officer: Patricia Hart Malono
Date of Final Order: September 4, 2003

ISSUES: Whether the district provided the student with a free appropriate public education (FAPE) and if not whether the district should reimburse for costs of a residential psychiatric treatment facility and therapeutic school.

FINDINGS OF FACT: The student was a seventeen year-old student with an emotional handicap (EH) who was in eleventh grade in a district high school. While in middle school, the parents unilaterally placed the student a residential psychiatric treatment program with an education component, then a therapeutic residential school. The student had exhibited significant problems early in life and began receiving exceptional student education (ESE) services prior to kindergarten for speech and language therapy. The student received private psychological counseling from several providers and was hospitalized multiple times for rage behaviors which happened at home. The student's parents were very involved in trying to get help and maintain contact with the school. The student received therapy and was on multiple medications in an attempt to control the behavioral problems. The student's psychiatrist provided recommendations to the school and requested a Section 504 plan to accommodate the student's behavior problems. The plan was developed and school staff determined that the student should receive the same consequences for behavior as the general population because the behaviors were not due to the student's disability. When the reports from the student's counselor, psychiatrist and other professionals were finally made available to the school, it was the first the school learned of the student's extensive psychiatric history. The student was diagnosed as having Asperger's syndrome.

The parents informed the school of the diagnosis of Asperger's syndrome and were told that this was not an automatic eligibility for ESE services. After the student was caught on campus with prescription medication apparently intended to sell or distribute, the student was suspended. Placement in an alternative school was recommended but rejected by the parents. A child study team met to discuss testing and eligibility for ESE based on the Asperger's diagnosis. The ESE contact at the school was new but her inexperience did not result in procedural violations and the pre-referral process was initiated. The student was withdrawn and sent to the private placement before the pre-referral packet was complete.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. There was nothing in the student's school behavior which indicated the student could be a student with a disability. Once informed, the district began the pre-referral process within a reasonable time. There were no procedural violations which resulted in the denial of FAPE. Because the district did not violate the Individuals with Disabilities Education Act (IDEA) the parents were not entitled to any reimbursement.

ORDER: The parents' request for reimbursement was denied.

Santa Rosa County School Board
Case No. 03-2836E
Initiated by Parent
Hearing Officer: Stephen F. Dean
Date of Final Order: November 26, 2003

ISSUES: Whether the district failed to meet the educational needs of the student; whether the student's individual education plans (IEPs) failed to provide the student with a free appropriate public education (FAPE); whether the district evaluated the student in a timely manner; whether the district failed to provide required written notices; whether the district violated the Individuals with Disabilities Education Act (IDEA) by refusing to provide ESY services; and, whether the district failed to provide positive behavior supports.

FINDINGS OF FACT: The ten year old student began receiving exceptional student education (ESE) services as a preschooler. The parents were always involved in developing the student's IEPs. Upon evaluation the student was determined to have a specific learning disability in reading in the second grade. The student received speech and language therapy and daily reading intervention and was evaluated for attention deficit hyperactivity disorder (ADHD) but medical intervention did not help. The parents had the student privately evaluated by a pediatric neuropsychologist who confirmed the reading difficulties and recommended occupational therapy (OT) and family counseling for oppositional behavior happening at home. The parents were noticed, participated in, and signed each of the student's IEPs. At no time did the parents challenge an IEP while it was in effect. The parents had multiple private evaluations of the student's language, processing and reading problems. Some of the recommendations were incorporated into the student's IEPs and some were not. The district obtained consent and conducted a comprehensive reevaluation of the student. The results confirmed the private evaluations. The student was dismissed from speech therapy. The student received regular ESE services as well as tutoring by her ESE teacher. The student's test scores were low but she did make progress. By fifth grade, ESE mathematics was added to the student's services.

The parent's frequent inquiries about the student's progress became intrusive and the parent needed to understand that the student was making progress even though not at the same pace as her nondisabled peers. Family counseling was needed but not included in the student's IEPs. At the last IEP meeting the parent requested further testing of the student but the staff felt that the student had undergone sufficient evaluations and that further evaluations would be detrimental. Finally, additional processing evaluations were conducted. The student was placed on and benefited from medication for ADHD. The parent decided to place the student in a private school and demand reimbursement. The parent requested further evaluations and had additional private testing performed. The parents home schooled the student, enrolled the student in a private reading program, and billed the district. The district sought to meet all of the student's educational needs and all IEPs were in compliance.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The student's IEPs were reasonably calculated to convey educational benefit and contained all required components. The student's records showed

significant educational progress had been made, even if the student did not catch up to the grade level peers. Counseling and behavioral interventions were never included in the student's IEPs because they were not educationally relevant. None of the possible procedural violations harmed the student. Parents were not eligible for reimbursement for private placement in part because they failed to provide ten business days written notice of the student's removal from public school but, more important, because the district provided the student with a FAPE. Because the student did progress, the student was not entitled to compensatory education. Denial of ESY services was not a denial of FAPE.

ORDER: The parent's petitions were dismissed.

Seminole County School Board
Case No. 03-4015E
Initiated by Parent
Hearing Officer: Susan B. Kirkland
Date of Final Order: December 10, 2003

ISSUE: Whether a specified class and teacher provided the student with a free appropriate public education (FAPE).

FINDINGS OF FACT: The student took pre-algebra in the seventh grade through a gifted program with a teacher certified to teach gifted students. In eighth grade, the student algebra with a teacher who had one remaining course for gifted certification. It was an algebra one accelerated class, which the teacher was qualified to teach. The standards in the student's educational plan (EP) were being met. The student was succeeding in the class and upon completion would earn a high school credit and be prepared to take geometry and algebra two. The student's placement and EP provided the student a FAPE.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. The student's class met the requirements of the Sunshine State Standards and the district's provisions for services to gifted students. The student was appropriately placed.

ORDER: The request for due process was dismissed.

Seminole County School Board
Case No. 03-3483E
Initiated by Parent
Hearing Officer: Daniel Manry
Date of Final Order: December 12, 2003

ISSUE: Whether specified individual educational plans (IEPs) provided the student with a free appropriate public education (FAPE).

FINDINGS OF FACT: After a hearing, the student was reevaluated and an IEP was developed. The parent did not sign the IEP because it did not include tutoring. The district revised the IEP to include tutoring. The parent had remaining concerns about the IEP but agreed that it was designed to provide a FAPE to the student. The parent alleged that the tutor did not have appropriate training and the district sought a new tutor. Parties agreed that the current tutor would continue until a replacement was obtained. The parent complained about the class size and requested specialized placement to maximize the student's performance, which the district was within its rights to decline.

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

ORDER: The case was dismissed.

Seminole County School Board
Case No. 03-3988E
Initiated by Guardian
Case No. 03-4058E
Initiated by District
Hearing Officer: Jeff B. Clark
Date of Final Order: December 23, 2003

ISSUE: Whether the district denied or threatened to deny a free appropriate public education (FAPE) to the student by assigning the student to an alternative education setting.

FINDINGS OF FACT: The student was enrolled in a district high school and experienced increasingly aggressive and maladaptive behaviors. The district provided proper notice of individual educational plan (IEP) meetings to the student's guardian for all of the IEP meetings in question. The IEP could be adequately implemented at the alternative school, which would be a more restrictive setting. The student had demonstrated a need for a more restrictive setting. The guardian toured and refused placement at the alternative setting. The student remained at the high school during the hearing.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the

parties and subject matter in this case. The student was not thriving at the regular high school and it was determined that student needed the additional structure at the alternative school in order to obtain educational benefit from his appropriate IEP.

ORDER: The guardian's challenge of the proposed placement failed and the district was authorized to place the student in its proposed placement.

Volusia County School Board
Case No. 03-2263E
Initiated by Parent
Hearing Officer: Don W. Davis
Date of Final Order: August 8, 2003

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

FINDINGS OF FACT: The student's parents were divorced but both remained active in his education. The student was recommended to repeat fifth grade, primarily due to poor performance on the Florida Comprehensive Achievement Test (FCAT). The student's mother enrolled the student in private summer school classes in an effort to have the student promoted; the parent did not support this effort. Before the end of the school year the student transferred to a different school, was evaluated, and determined to have a learning disability. Both parents attended the individual educational plan (IEP) meeting. Because of the learning disability, the supports available, and the student's commitment to work on reading, the student was promoted to the sixth grade. One of the student's parents agreed with the IEP; the student's other parent strongly opposed it. One of the parents requested another IEP meeting which was convened two weeks after the first, at which the earlier IEP was ratified. The IEP was reasonably calculated to confer educational benefit and the student made progress. Both parents attended IEP and other meetings during the school year. The parent did not receive the notice of the IEP meeting held at the end of the year. The parent attended and participated. The student was to continue in all regular education classes except for a special reading class. The parent requested another IEP meeting, which was held and upheld the earlier IEP. The student passed all his classes and was entitled to be promoted to the seventh grade.

CONCLUSIONS OF LAW: The Division of Administrative Hearings had jurisdiction over the parties and subject matter in this case. There were no procedural violations. When the district learned that the parent had not received notice of the IEP meeting, staff promptly convened another meeting to accommodate the parent. The IEP was reasonably constituted to convey educational benefit and the student did progress.

ORDER: The parent's claims were denied and the student was to be educated in the seventh grade according to the student's IEP.

