

**Illinois State Board of Education  
Due Process Summaries**

**Issued Between April 1, 2004 and June 30, 2004**

**Case 002642 - Richard Brimer, Hearing Officer  
Placement, Promotion, Evaluation  
Decision and Order Issued April 4, 2004**

The parent challenged the adequacy of the school district's IEP, which placed the student in a fourth grade general education classroom under the category of Other Health Impaired (OHI) following the completion of an independent evaluation that identified a range of learning disabilities. Prior to the placement in the fourth grade classroom as an OHI student, the student had a Section 504 plan to address attendance issues and unsatisfactory school progress. In addition the student had received IEP services as an SLD student between kindergarten and third grade. Following implementation of the fourth grade IEP, the school district opted to retain the student due to a high number of school absences and poor academic performance.

The hearing officer found that the school district's IEP failed to confer FAPE because the IEP services provided only minimal support for the student's identified learning issues. Upon finding the IEP to be inappropriate, the hearing officer ordered the student to be placed in the fifth grade immediately, as well as ordering prospective promotion of the student to the sixth grade at the completion of the current school year. In addition, the hearing officer ordered the district to complete a comprehensive re-evaluation of the student's needs and to develop a new IEP in accordance with the needs identified in the evaluation.

Both parties were represented by legal counsel.

Parent initiated request.

**Case 003804 – Stacey Stutzman, Hearing Officer  
IEE  
Decision and Order Issued April 7, 2004**

The district requested a due process hearing after declining to pay for an independent evaluation conducted by an evaluator not initially offered or agreed to by the district. The district agreed to a neuropsychological evaluation at the district's expense and gave the parents the name of three evaluators, none of which appeared on ISBE's list of evaluators. The parents independently were able to obtain the curriculum vitae on one of the three evaluators recommended by the district after the district was unable to provide further information on the

three evaluators. While searching the ISBE list of independent evaluators, the parents identified another evaluator that was not among the three recommended by the district. The district would not agree to the parents choice nor provide reasons for the rejection of the parents choice.

The hearing officer found that because the parent could not secure information from the district concerning the evaluators on the district's list, the parent's choice was appropriate per the requirements of 23 IAC 226.120. The district was ordered to pay for an evaluation by the parent's chosen evaluator.

The district was represented by legal counsel.

District initiated request.

**Case 003867 - Carolyn Ann Smaron, Hearing Officer  
Consent for Evaluation, Summary Judgment  
Decision and Order Issued April 9, 2004**

The due process request was initiated by the district to obtain authorization to evaluate a five-year-old student who was struggling academically. At the request of the District, the hearing officer decided the case on a motion for summary judgment supported by affidavits submitted by the district. The parent contended that the student's behavior at home did not conform to the student's alleged behavior in the school, but the parent could not dispute statements in the affidavits relating to the student's performance and behavior in school. On this basis, the hearing officer granted summary judgment in favor of the district and ordered the evaluation to proceed.

District was represented by legal counsel and the parents were represented by an advocate.

District initiated request.

**Case 002082 - Richard Brimer, Hearing Officer  
Statute of Limitations, FAPE, IEE, Retaliation  
Decision and Order Issued April 12, 2004**

The parent requested due process to challenge the student's placement and also alleging improper, retaliatory conduct on the part of the school district. The district itself requested due process in connection with its refusal to provide an independent educational evaluation at school district expense. The district, however, appears to have withdrawn its request before a determination could be reached about the issue of the independent evaluation. The parent's request sought remedies for alleged violations by the district going back to the student's

kindergarten year. The student experienced a wide range of learning and behavioral issues since entering school in his kindergarten year. As a result, the student had been placed in a variety of settings ranging from the general classroom to self-contained placements outside the student's home school.

The hearing officer initially held that any claims the parent raised that were more than two-years old at the time of the due process request were time-barred. It was determined the school district did not provide the student with a free and appropriate public education. The hearing officer ordered the student be placed in a non-public day school to obtain appropriate services with the school district to pay for all appropriate expenses for the balance of the 2003-04 school year as well as the entirety of the 2004-05 school year. In addition, if the student was unable to attend the non-public school identified by the parent at hearing, the parent was permitted to place the student in a school of the parent's choosing. The hearing officer also found that the school district had harassed the parent and retaliated against the parent for inappropriate and threatening comments made by the school district's representative.

Both parties were represented by legal counsel.

Joint request by the school district and the parents.

**003935 – Ann Breen-Greco, Hearing Officer  
Expedited Hearing, Interim Alternate Educational Placement  
Decision and Order Issued April 16, 2004**

The parent requested an expedited hearing to determine the appropriate dates for the duration of a 45-day suspension. The parent asserted that the 45-day placement provision also included vacation days, while the district contended that the 45-day placement only began at the end the district's spring break, which coincided with the student's placement in an Interim Alternate Educational Placement (IAES). The student was suspended for ten days for a weapons violation that began on March 12 and ended on March 24, 2004, during which time the student was expelled for the weapons violation. The IEP team met during the district's spring break and formally placed the student in a 45-day IAES. The parents agreed to the 45-day placement but disagreed with the date. The Hearing Officer determined the 45-day placement is not based on the number of calendar days, but rather on days on which the student will receive services. Accordingly, the hearing officer held that the district's position regarding dates was accurate and appropriate.

District was represented by legal counsel and the parents were represented by an advocate.

Parent initiated request.

**003924 – Carolyn Ann Smaron, Hearing Officer  
Eligibility, Motion to Dismiss  
Decision and Order Issued April 18, 2004**

The parent filed a request for due process. In response, the district filed a motion to dismiss, contending that the student was not currently eligible to receive special education and related services. The parent did not dispute the district's assertion about the student's eligibility. As a consequence, the hearing officer granted the motion to dismiss.

The district was represented by legal counsel.

Parent initiated request.

**Case 003890 - Carolyn Ann Smaron, Hearing Officer  
Consent for Evaluation, Summary Judgment  
Decision and Order Issued April 19, 2004**

The district initiated a due process request in order to conduct a three-year re-evaluation as required by statute. Three years to the date of the student's last multidisciplinary conference, the school district conducted a review of the student's domains. Subsequent efforts to obtain parental consent by the district to evaluate the student were unsuccessful. The parent contended that the evaluation was unnecessary since the student had not attended school for three consecutive years prior to the evaluation. Pursuant to a motion for summary judgment by the district, the hearing officer authorized the district to conduct the re-evaluation.

District was represented by legal counsel and the parent was represented by an advocate.

District initiated request.

**Case 003868 – Alan J. Cook, Hearing Officer  
Initial Case Study Evaluation, Summary Judgment  
Decision and Order Issued May 24, 2004**

The district requested due process to proceed with an initial case study evaluation. The district unsuccessfully had utilized pre-referral strategies with the student to address disruptive behaviors the student had displayed in the classroom. Prior to filing for due process, the district had a number of

conversations with the parent, and convened a screening team meeting to discuss going forward with an evaluation. After the parent refused an offer of mediation and failed to respond to the district's notice of its intent to file for due process, the district initiated the present request.

The hearing officer granted the district leave to file a Motion of Summary Judgment. The hearing officer then granted the motion, permitting the school district to evaluate the child without the parent's consent for evaluation.

District was represented by counsel.

District initiated request.

**003963 – Carolyn Smaron, Hearing Officer  
Transportation, Compensatory Education  
Decision and Order Issued May 27, 2004**

The parent filed for due process, claiming that the student was entitled to compensatory education because of the routinely late arrival of the morning bus to school. The parent claimed that the late arrival routinely caused the student to miss receiving hot breakfast and the beginning of the teacher's oral language lesson.

The district presented evidence that the school bus only arrived late on a few occasions. Further evidence indicated that although the student had on occasion missed some instructional time, the student was still making satisfactory educational progress and meeting IEP benchmarks. The hearing officer denied the relief requested by the parent.

The district was represented by legal counsel.

Parent initiated request.

**003907 – Alan J. Cook, Hearing Officer  
Residential Placement, FAPE, LRE  
Decision and Order Issued June 4, 2004**

The parent requested due process, seeking residential placement for the student. The fourteen-year-old student was eligible for special education services from age three based on the eligibility of autism and mild mental impairment with a secondary eligibility of speech-language impairment. In 1998 he was placed by the district in a separate public facility. The parent presented evidence that the student was prone to violent outbursts at home and at school. In response the district presented evidence to show that the student's behavior was being

managed at school, although some violent outbursts did occur. Although the parent presented further evidence to show that the district did not conduct a timely annual review, the hearing officer concluded that the procedural violation did not amount to a denial of FAPE. Moreover, the hearing officer found that the services provided by the district in the separate facility provided the student with a FAPE in the least restrictive environment.

Based on the foregoing, the hearing officer held that the parent's request for a residential placement should be denied.

The district was represented by legal counsel.

Parent initiated request.

**Case 003777 – Nancy Hablutzel, Hearing Officer  
FAPE, Placement, Manifestation Determination Review  
Decision and Order Issued June 4, 2004**

The parent filed for due process to challenge the student's placement in an alternative school following a disciplinary incident. The student attempted to intervene between law enforcement and another student on school grounds, after which the student was arrested for battery. Upon arrest, the police found the student possessed two knives.

A Manifestation Determination review was held and it was determined the incident was not related to the student's diagnosis of depression. The parent attempted to provide a new diagnosis of Oppositional Defiant Disorder (ODD) in order to show that the incident was related to his disability.

The student was not expelled but was given the opportunity to attend Safe School where he could work independently. The parents subsequently withdrew the student for the 2003-2004 school year and indicated the student would be home schooled. Later, the parents filed a due process request indicating their desire to have the student placed in a residential setting for the balance of the school year. After reviewing the testimony and documentation, the hearing officer ruled the school district had at all times attempted to provide a free appropriate education and instructed the school district to convene another IEP meeting prior to the 2004-2005 school year.

The district was represented by legal counsel.

Parent initiated request.

**004061 – Kathleen Dillon Narko, Hearing Officer  
Expedited Hearing, Interim Alternate Educational Setting  
Decision and Order Issued June 7, 2004**

The parent requested an expedited hearing because of disagreement with the Indian Springs School District 109's decision to move the student to an Interim Alternate Educational Setting (IAES) following a weapons incident. The incident in question concerned a violent outburst in which the student broke a pointer and waived a broken piece of the pointer at others in a threatening manner. Following the incident, the district suspended the student for 10 days and placed the student in a therapeutic day school on a 45-day IAES.

The hearing officer found that the student presented a likelihood of injury to self and others, that the student's current placement in a general education building was inappropriate, that the district minimized the risk of harm to the student by providing the student with resource services, and that the IEP could be fully implemented in the therapeutic day placement chosen by the district. Accordingly, the hearing officer held that the school district's removal of the student to an IAES was appropriate.

The district was represented by legal counsel.

Parent initiated request.

**Case 003774 – Ann Breen-Greco, Hearing Officer  
Residential Placement, Reimbursement, FAPE  
Decision and Order Issued June 9, 2004**

The parents requested due process, seeking retroactive reimbursement and prospective placement of the student at an out-of-state, non-public, residential facility. The student, who had been diagnosed with Tourette's Syndrome, ADHD and depression, had been placed by the district in a separate public day facility to address the student's behavioral concerns. Prior to filing for due process, the parents participated in an IEP meeting for the student in which the parents did not object to the student's continued placement at the day facility. Two weeks after the IEP meeting, the parents unilaterally placed the student in an out-of-state residential program. The parents did not notify the district of their intent to place the student residentially, claiming that the escalation of the student's behavior at home necessitated an emergency placement without notice to the district.

The hearing officer found that, despite the escalation of the student's behavior, there were no circumstances present to excuse the parents from providing notice

to the district of their intent to place the student in a residential facility. In addition, the hearing officer found that the school district provided the student with an IEP reasonably calculated to confer education benefit to the student. Therefore, the hearing officer held that the district had no obligation to place the student residentially, or to reimburse the parents for their costs associated with the residential placement.

Both parties were represented by legal counsel.

Parent initiated request.

**Case 003829 – Marian McElroy, Hearing Officer  
FAPE, Methodology  
Decision and Order Issued June 10, 2004**

The parents requested due process to challenge the district's recommended placement for the student, who was three years old and identified with mild to moderate autism. Prior to entering the school, the student began participating in a home-based, applied behavioral assistance (ABA) program 30 hours per week. Following a case study evaluation and a review of several early childhood programs operated by the district, the school district met with the parents in an IEP meeting which recommended placement in an early childhood (EC) program for 750 minutes per week, which utilized the Heartland teaching method and included speech-language and occupational therapy. The parents declined placement in the EC but briefly accepted the related services offered in the IEP before withdrawing completely from the district's program. In addition to challenging the district's program, the parents sought reimbursement for costs associated with the home-based program.

The hearing officer found that the district had offered an appropriate placement in the EC program with related services. At the same time, the hearing officer found that the student was also benefiting from the home-based ABA program. The hearing officer therefore ordered an IEP meeting be held to devise a program that included a transition plan to integrate the student's ABA program into the classroom, as well as nine weeks of extended school year support. The parents' request for reimbursement was denied.

Both parties were represented by legal counsel.

Parent initiated request.



**Case No. 004012 – Julia Quinn Dempsey, Hearing Officer  
Manifestation Determination Review, Expedited Hearing  
Decision and Order Issued June 15, 2004**

The parent requested due process to challenge the district's finding that the student's conduct was unrelated to his disability and the finding that the student was substantially likely to cause harm to others. Just prior to the incident in question, evidence indicated that the student's educational performance was poor due to missing assignments and poor participation in class. The student, previously identified with a specific learning disability, had been arrested for an incident involving a weapon that occurred off school grounds and after school hours. Based on the incident, the district chose to conduct a Manifestation Determination Review (MDR) to determine whether an expulsion hearing could proceed.

The hearing officer found that the incident, occurring as it did off school ground and after school hours, was not a basis for the district to remove the student unilaterally to a 45-day Interim Alternate Educational Setting. Moreover, the evidence further indicated that the school district had no basis for removing the student due to a substantial likelihood of harm to others. The hearing officer found that the district had failed to implement an appropriate IEP for the student and had failed to identify an appropriate alternate setting that could support the student.

Because both parties wanted to find a new program for the student and based on the foregoing, the hearing officer order the district to identify new candidate programs appropriate for SLD students within 10 school days of the decision. The hearing officer further ordered the district to place the student in an appropriate SLD program for the 2004-05 school year.

The district was represented by legal counsel.

Parent initiated the request.

**Case No. 003901 – James A. Wolter, Hearing Officer  
Termination of Services, Summary Judgment  
Decision and Order Issued June 17, 2004**

The parent requested due process to challenge the district's decision to drop the 16-year-old student from enrollment at the neighborhood high school. The parent motioned for a directed summary judgment. The hearing officer found that there was no dispute between the parties that the district had dropped the student from enrollment at the high school without conducting an IEP meeting.

On this basis, the hearing officer ordered the district to reinstate the student and to convene an IEP team meeting for the purpose of providing an extended school year program for the student to compensate for the special education and related services lost by the student due to being dropped from enrollment.

Both parties were represented by legal counsel.

Parent initiated the request.

**Case No. 003844 – Alan J. Cook, Hearing Officer  
Placement, LRE  
Decision and Order Issued June 18, 2004**

The parent requested due process to challenge the district's recommendation on the student's most recent IEP to place the child in a self-contained classroom in a general education building. The student, who was diagnosed with Asperger's Syndrome, had been in several educational settings prior to entering the school district in third grade. He was placed initially in the general education classroom for third and part of fourth grade. In fourth grade, the student had an on-going problem with making spontaneous noises and threats in the classroom. Even after the implementation of a Behavior Intervention Plan (BIP), the student's behavior remained inconsistent. Therefore, the district recommended placement in a smaller, self-contained setting.

Despite the parent's contention that the school district did not exhaust all attempts to modify the student's behavior, the hearing officer found that the district was not obligated to exhaust every possible intervention before moving the student to the more restrictive placement. The hearing officer agreed with the district's position that the environment offered in the general education classroom was not conducive to the student's educational progress, given his condition.

The hearing officer therefore ordered the district to proceed with the placement in the more restrictive setting.

Both parties were represented by legal counsel.

Parent initiated the request.

**Case No. 004068 – Ann Breen-Greco, Hearing Officer  
Hearing Request, Motion to Dismiss  
Decision and Order Issued June 29, 2004**

The parent requested due process seeking an order to have the student retained in fourth grade. The school district in response filed a motion to dismiss the parent's request, arguing that the parent's due process raised no issue related to special education. The hearing officer granted the district's motion, finding that parent's request did not fall within the definition of a permissible request under 23 IAC Sec. 226.605.

Neither party was represented by legal counsel.

Parent initiated request.