

## **Due Process Hearing Decision Summaries**

December 1, 2001 through February 28, 2002

Following is a summary of impartial due process hearing decisions issued between December 1, 2001 through March 29, 2002. Each summary identifies the case number, moving party, the issue or issues in dispute, the student's disability (if known), the hearing officer's findings, and whether legal counsel represented the parties. This summary is provided so that you are aware of the issues currently being brought before hearing officers. If you would like to receive a copy of the non-personalized due process hearing decisions summarized, please contact Bobbie Reguly at 217/782-5589. You are reminded that these decisions are not precedent setting; they represent how hearing officers have ruled after reviewing specific facts placed before them.

### **002189 – Charles Aschenbrenner, Hearing Officer Compensatory Education, Tutoring Services**

The 20-year-old former high school student and his parents requested a due process hearing approximately 10 months after he graduated. The student with above average intelligence has severe learning disabilities and received special education services prior to and during his four years in high school. The student and his parents maintained that the school district failed to provide FAPE, violated their procedural rights, inappropriately graduated him from high school, and failed to have an appropriate transition plan. As a result, the student and his parents were seeking compensatory education tutoring services for one year, counseling, further psycho-educational and vocational evaluations, vocational training, and reimbursement for costs of post-high school tutoring services. The hearing officer found that the school district did deny the student FAPE and that receipt of a regular high school diploma did not negate the student's rights to compensatory education. The school district was ordered to provide compensatory education for the equivalent of one (1) school year post high school's tutoring services, and provide transition assistance.

Both parties were represented by legal counsel.

### **002191 – Carolyn Ann Smaron, Hearing Officer Disagreement with IEP – Motion to Dismiss**

The hearing officer issued an order in response to a motion to dismiss filed by the local school district. The parties agreed to a settlement of all issues, but the parents refused to withdraw the request for due process.

Both parties were represented by legal counsel.

**002503 – Stephen Rubin, Hearing Officer  
Consent for Case Study Evaluation**

The hearing officer issued a decision and order in response to a motion filed by the district asking for an order to compelling a case student evaluation of the student. Due to the parents' refusal to cooperate with the case study evaluation and their removal of the student from services and their refusal to participate in the due process proceedings, the district was relieved of its obligation to conduct a reevaluation.

The district was represented by legal counsel; the parent was not represented.

**002427 – Charles Aschenbrenner, Hearing Officer  
Order to Dismiss**

The parents requested the due process hearing on behalf of their son who is deaf and who had two cochlear implants. Because of the lack of parental participation, the case was dismissed.

Neither party was represented by legal counsel.

**002414 – Frank Nowik, Hearing Officer  
Compensatory Services during the School Year, Change in Location of Services**

The parent requested a due process hearing seeking an order returning her son's special education class to its previous location in another school. She claimed that the program at the new location would not meet the IEP of her son. The hearing officer ruled that the program in the new location with his previous teacher and aide was able to meet the educational needs of the student as described in his IEP. The hearing officer ordered two weeks of compensatory education because of the two week delay in getting the classroom properly equipped for the student.

The district was represented by counsel and the parent by advocates.

**001877 -- Vivian Gordon, Hearing Officer  
Case Study Evaluation, Compensatory Education**

The 16-year-old high school student suffered a sexual assault as a freshman at a private school. After displaying physical and emotional symptoms, the student transferred to the public high school. There, the student attended sporadically and the high school entered into a series of agreements with the parents whereby the student would receive homebound instruction. The homebound

services continued for over 1 ½ years until the student's psychiatrist and other medical professionals indicated the student could be reintegrated into the school program. The parents continued to request homebound services. The school district requested a case study evaluation of the student to determine whether she was eligible for special education, to which the parents objected. The school district filed for a due process hearing requesting to do the evaluation. The parents counterclaimed, arguing the school district's request should be denied and the student should receive compensatory education for the educational services either delayed or not provided by the school district. In the course of the pending due process hearing, the parents requested a stay put placement to stay the student within the college bound track of courses and to stay the student in higher level courses pending the outcome of the due process hearing. Based upon the weight of the testimony and evidence, it was determined the school district's request to carry out a case study evaluation was warranted and the student was to receive four weeks of compensatory tutoring because of a one month delay by the school district in providing agreed upon homebound instruction. It was also found that the student did not have the right to continue homebound instruction under the IDEA absent a finding that the student was eligible for special education and related services under the IDEA and a further finding that homebound service placement provided the student with FAPE in the least restrictive environment.

Both parties were represented by attorneys.

**002373 – Richard Brimer, Hearing Officer  
Private vs. Public School Placement**

The student is a 4-year-old male with Down Syndrome who is currently enrolled in a preschool program primarily composed of students without disabilities. He uses a total communication approach for both receptive and expressive communication. In the 2000-2001 school year, the parents requested a due process hearing. An agreed order resolved the dispute; it directed the school district to reimburse the parents for the placement and related services. The agreed order also directed the parties to hold an IEP conference to discuss placement and services for the 2001-2002 school year. The school district held the IEP meeting on July 23, 2001; immediately following the meeting, the parents requested a due process hearing. The Board of Education of the Hendrick Hudson Central School District v. Rowley established a basic floor of opportunity which consists of two steps: the school district's compliance with the procedural safeguards identified in the IDEA and if the IEP can be reasonably calculated to provide the student with an educational benefit. It was concluded that the school district met its requirement and ordered the student to be placed in a public school program.

Both parties were represented by attorneys.

**002063 – Carolyn Ann Smaron, Hearing Officer  
Placement, Dispute Over Sufficiency of Services, Compensatory Services,  
Content of the IEP**

The mother of the student removed the student from an out-of-state residential facility without the knowledge of the local school district, placed the student in a regular education summer program without advising staff at that setting that the student had a then existing IEP for EBD students, and then complained that the local school district did not secure a new residential placement for the student quickly enough so that the student could start school in August 2000. The student was subsequently terminated from the residential placement and the then 18-year-old student and the mother insisted on a regular education placement at the student's last regular education placement. The mother objected to the IEP developed upon the student's return to the local school district and filed for due process. The student successfully completed his senior year in high school and graduated without contest in June 2001, rendering many of the mother's requests for relief moot. With regard to compensatory educational services, the hearing officer essentially found that the mother caused the placement problems and the local school district worked as quickly as it could once it understood that the mother never intended that the student return to the out-of-state placement.

The district was represented by legal counsel; the parent was not represented.

**002428 – Frank Nowik, Hearing Officer  
Placement, Sufficiency of Services, Development of IEP, Inclusion**

After two half days into the hearing the parties negotiated a settlement agreement that was read into the record and made part of a consent order.

The district was represented by an attorney; the parents by an advocate.

**0002380 – Frank Nowik, Hearing Officer  
Reimbursement for Conductive Education**

The facts are not in dispute, the parents withdrew their request for a due process hearing after there were three days of hearing at which they presented a part of their case. During the conference telephone call on November 28, 2001, the parents stated that their attorney's fees were at \$16,000.00 and they could not afford to continue. The district claimed to have incurred substantial expense preparing to defend themselves from the claim of the parents. The district sought to have the withdrawal allowed but with prejudice or if the due process hearing is voluntarily dismissed or closed without prejudice as a result of the parent's request, that an order be entered, that should the parents file a subsequent due

process hearing based upon or including the same claims against the district, that the parents pay for the district's costs incurred related to the defense of the due process hearing that they voluntarily dismissed. The hearing officer ruled that the parents withdrew their request for a due process hearing because of lack of funds to continue the hearing, the withdrawal will be allowed without prejudice.

Both parties were represented by legal counsel.

**002100 – Gail Friedman, Hearing Officer  
Conduct of Evaluation, Prior Written Notice, Independent Evaluation,  
Compensatory Services**

The district requested the due process hearing after denying the parents' request for an independent educational evaluation (IEE) at public expense. In a counter-complaint the parents asserted that the district denied the student a free appropriate public education by failing to conduct an IEE at public expense, failing to respond to a previous request for an outside evaluation, violating child find procedures, failing to give prior written notices of the determination that the student was ineligible for special education and related services and denial of the previous request for an evaluation, by failing to provide an educational program reasonably calculated to enable the student to obtain meaningful benefits for her education, by failing to provide compensatory education and extended school year services.

The hearing officer found that the previous evaluations were appropriately comprehensive and met the standards contained in the IDEA and Illinois law, that the district acted appropriately in denying the parents' request for a case study evaluation and an IEE at public expense, that the district provided adequate prior notice, and that the district did not violate its Child Find responsibility.

The parents and the district were represented by legal counsel.

**002352 – Julia Quinn Dempsey, Hearing Officer  
Private vs. Public Placement, Content of IEP**

The student was unilaterally placed at Cove School by his parents in August 1999 for his 5<sup>th</sup> grade year. In June 1999, prior to the student's placement at Cove, the mother requested a due process hearing which was subsequently conducted and a decision reached in favor of the district. The mother did not return the student to the district but maintained him at Cove School for this fifth and sixth grade years. In May 2001 the mother was notified of a conference scheduled to review the student's educational status, develop an IEP and review an independent evaluation. The IEP meeting resulted in a recommendation that the student be placed into a regular program for most of the school day. The

student was diagnosed as multi-physically disabled, dyslexic, ADHD, emotionally fragile and socially delayed. The mother, by letter from her attorney, requested a due process hearing to again challenge the district's recommended placement decision. The parent's expert evaluator testified that the IEP proposed by the district would not address the student's needs. The fact that the student himself was never met by five of the eight District participants in the development of the IEP raised questions in the hearing officer's opinion. The hearing officer found that the District's proposed IEP was not calculated in a manner that would allow the student to derive educational benefit. The hearing officer ordered that the child's placement at Cove for the 2001-2002 school year was appropriate. The district was ordered to reimburse the parent for the tuition at Cove School beginning June 2001, and for the cost of the evaluations and testing done by the independent evaluator.

Both parties were represented by legal counsel.

**002543 – Richard W. Bremer, Hearing Officer  
Residential Placement**

In December 2000 the student was unilaterally placed in an out-of-state residential center. At the advice of the residential center's staff, the student was placed in a different out-of-state residential facility. The residential facility provided a structured and consistent environment; in that setting the student progressed and improved. In August 2001 the school district and the parents entered into a settlement agreement. In part, this agreement stated that the student's placement was appropriate for the 2000-2001 and 2001-2002 school years and the summer of 2001. The agreement also indicated that the residential services will be provided at public expense. Subsequently, the school district submitted the settlement agreement to ISBE seeking reimbursement at the proportion established by Section 5/14-7.02 of the Illinois School Code. In September and November of 2001, the ISBE denied the school district the residential reimbursement. At that point, the parents requested a due process hearing. The hearing officer ordered that the ISBE reimburse the school district at the rate established and approved by the Governors Purchased Care Review Board of the 2000-20001 and 2001-20002 school years and the summer of 2001.

Both parties were represented by attorneys.

**002449 – Carolyn Ann Smaron, Hearing Officer  
Change in Location, Compensatory Services, Occupational Therapy, FAPE**

The parents requested the hearing on behalf of their child who is eligible for special education and related services due to a severe and profound cognitive impairment. The parents alleged that the child had regressed while being served

by the district and the classroom assignment was medically hazardous. The parents introduced no testimony or documents but instead relied upon cross-examination of the local school district's witnesses. All of the witnesses and the documents submitted by the local school district supported a conclusion that the local school district had provided a free appropriate public education in the least restrictive environment. Further, the witnesses and documents supported a conclusion that the student had made progress while being served by the local school district and that the progress was consistent with that of a student as profoundly impaired as this student. There was not credible evidence offered in support of the parent's allegation that the classroom assignment was medically hazardous.

The hearing officer entered a finding in favor of the local school district and ordered the district to implement the last IEP should the student return to the assigned classroom.

The district was represented by legal counsel; the parent was not represented.

**001693 – Ann Breen-Greco, Hearing Officer  
Free Appropriate Public Education, Compensatory Education, Related Services**

The parents initially requested the hearing because the district had not changed the student's diagnosis to autism. The parties attempted resolution, including mediation, for almost a year. After the mediation and subsequent IEP meetings, the district contacted an international expert in autism, who had also been contacted by the parents to conduct an evaluation. The district paid for the evaluation. The expert found the child to be autistic and mildly mentally retarded and also diagnosed him as medically complex. The district placed the student in a program recommended by the expert. Prior to that placement, the student had been removed from the previous placement at the direction of his doctor, who sought to stabilize him on medication. The district provided a qualified tutor during that period but the tutoring was not successful and the parents terminated the tutor's services. While not in placement, the student was taught by an educator identified by the parent. At the time of the hearing, the parents were satisfied with the label and placement but wanted a finding of FAPE based on the time between the district's first notice of autism and the time the district changed the label; additional services; related services; reimbursement for the educator and their doctor's evaluation. A comparison of the student's previous placement and new placement demonstrated a number of the same techniques used and a teacher skilled in working with autistic children; there were also other autistic children in the previous program. Based on Rowley (the law does not require a guarantee that the IEP will be successful, only that the IEP when written was reasonably calculated to provide educational benefit), the hearing officer determined there was no denial of FAPE. The hearing officer denied the request

for reimbursement of the parent's doctor's evaluation. The Hearing Officer ordered reconvening the IEP to include parent training and counseling. The district was ordered to demonstrate appropriate prior notice; pay for the educator unilaterally obtained by the parents, and to pay for some limited additional services from this educator. The district was also ordered to assist the parents in identifying community resources, based on the recommendation of the expert. However, the district has no responsibility to pay for such services.

Both parties were represented by legal counsel.

**002500 – Alan J. Cook, Hearing Officer  
Placement, Inadequate Notice, Free Appropriate Public Education**

The district requested the hearing seeking an order to confirm the district's recommended placement in a therapeutic day school and to obtain consent to obtain a psychological evaluation. The recommendation to change the student's placement from a self-contained special education classroom to a therapeutic day school resulted in part from several violent episodes that occurred on and off the school bus. The district conducted an IEP meeting to discuss the behavior, however, before the meeting could be concluded, the parents left. Later the parents claimed they did not receive adequate prior written notice of the meeting and that they did not understand the purpose of the meeting. This claim was rejected by the hearing officer.

The hearing officer upheld the district's proposed change in placement as being appropriate for the student due to his acts of anger and rage.

The district was represented by legal counsel; the parent was not represented.

**002548 – Stacey Stutzman, Hearing Officer  
Consent for Initial Evaluation**

The district requested the hearing in order to receive order allowing an initial evaluation of a 10-year-old, 4<sup>th</sup> grade student suspected by district personnel to have eligible disabilities. The parent's refused to consent to the evaluation. The parents did not participate in the hearing process. Upon receipt of the district's Motion for Summary Judgment, an order was entered allowing the district to evaluate the student.

The district was represented by legal counsel; the parent did not participate in the hearing process.

**002509 – James Wolter, Hearing Officer  
Consent for Initial Evaluation**

The district requested the hearing to compel parental consent for an initial case study evaluation. The student was 9-years-old and in the 3<sup>rd</sup> grade and experienced academic and behavioral problems in school. The hearing officer ordered the district to conduct an initial case study evaluation and analysis of functional behavior of the student without parental consent.

Neither party was represented by legal counsel.

**002496 – Vivian Gordon, Hearing Officer  
Special Education Transportation and Change in Location of Services**

The parents requested the due process hearing requesting that the district provide special education transportation, a psychiatric evaluation and transfer the student to a different middle school within the district. The parents asserted that the student's attendance and school performance had been affected by threats and attacks from neighborhood gang members. The hearing officer concluded that there was sufficient testimony and evidence to conclude that the student be provided transportation to and from school. The mother testified during the hearing that she had moved into the district where the school the student requested was located. The school district did not appear to have the new address and agreed to transfer the student to his requested middle school. The district was ordered to convene an IEP meeting to consider the parent's request for additional testing. No further action regarding the placement was ordered.

The parent was represented by an advocate; the district was represented by legal counsel.

**002479 – James A. Wolter, Hearing Officer  
Independent Educational Evaluation, Compensatory Education, Tutoring,  
Private Special Education Day Placement**

The parents requested the hearing seeking independent educational evaluations and placement at public expense in a private special day school. The parents were also requesting compensatory tutoring services for missed school time. At the time of the hearing the student was in the 7<sup>th</sup> grade and eligible for special education and related services under the classification of learning disabilities. The underlying issue of this hearing was the student's deficiency in reading. The student had a history of excessive school absences. In the 6<sup>th</sup> grade he missed 58 days while attending school for 114 days of which he was tardy 10 days. He was suspended for 21 of those days and there was no indication as to why the student was absent for the other 37 days. Suspensions during the current school

year have not exceeded seven days. While not an issue of the hearing, it was found that the student had failed vision screenings on two occasions but does not have corrective glasses.

The hearing officer found that the district had fulfilled its responsibility to conduct an appropriate evaluation, the IEP was appropriate and no compensatory tutoring warranted, and the student was receiving a free appropriate public education.

The district was represented by legal counsel; the parent was not represented.

**002482 – Marie Bracki, Hearing Officer  
Residential Placement, Free Appropriate Public Education**

The matter to be decided was whether a residential placement was the appropriate one for the student. It was found that she derived educational benefit from her therapeutic day school instructional program with related services. A residential placement was ordered based on non-educational reasons, specifically significant concerns about the student's mental health and risky behaviors she exhibited in the community. It was requested that DHS and ISBE be joined as parties in the matter. They were not because both agencies indicated that an agreement to provide a residential placement, if necessary, is in effect. The district was ordered to facilitate a residential placement for the student by informing the Illinois State Board of Education of its responsibilities under IDEA; and requiring that the interagency agreement with DHS be acted upon to provide such placement. The hearing officer stated in the order that the district was not required to fund the placement but should be a significant entity in its development.

Both parties were represented by legal counsel.

**002461 – Robert Ladenson, Hearing Officer  
Expedited Hearing, Discipline**

The 12-year-old male student was suspended on both 9/7/01 and 10/2/01 in connection with incidents that caused the school district staff grave concern in light of their judgments concerning the rapid onset and intensity of the student's anger, as well as the extreme loss of control and level of violence he displayed. The school district thus requested an expedited due process hearing at which it contended that: (a) maintaining the current placement of the student is substantially likely to result in injury to the student and others; (b) the student's current educational placement is appropriate; (c) the school district has made reasonable efforts to minimize the risk of harm in the student's current placement, including the use of supplementary aids and services; (d) the interim

alternative educational setting the school district proposed would permit full implementation of the student's IEP and include services and modifications designed to prevent the undesirable behavior of the student from recurring.

Based upon a full review of the evidence and testimony presented by both parties at the expedited due process hearing, the hearing officer upheld the position of the school district.

The district was represented by legal counsel; the parent was not represented.

**002139 – Robert Ladenson, Hearing Officer  
Summary Judgment, Independent Educational Evaluation**

On a motion for Summary Judgment the hearing officer ruled that the parents were not entitled to reimbursement for the independent educational evaluation they obtained.

The district was represented by legal counsel; the parent was not represented.