MEMORANDUM

TO: Directors of Special Education

FROM: Andrew Eulass
Due Process Coordinator

DATE: May 24, 2010

SUBJECT: Due Process Decisions Issued between July 1, 2009 – September 30, 2009

Enclosed is a summary of impartial due process hearing decisions issued between July 1, 2009 – September 30, 2009. Each summary identifies the case number, the hearing officer, moving party, the issue(s) in dispute, the student’s disability (if known), the hearing officer’s finding, and whether the parties were represented by legal counsel.

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, which correspond with the enclosed summary, or any particular decision summarized, please contact me 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.

Should you have any questions, please do not hesitate to contact me at 217/782-5589.

Enclosure: Summary Only
Illinois State Board of Education
Due Process Summaries

Decisions Issued Between July 1, 2009 and September 30, 2009

Case No. 2009-0539 – D. Michael Risen, Hearing Officer
Motion to Dismiss, Issues
Order Issued July 1, 2009

The parents requested a due process hearing seeking an order to require the district to make certain placements available to the student due to the fact that the student’s local school had not made adequate yearly progress (“AYP”) in the last several years. The district filed a motion to dismiss arguing that the hearing officer had no jurisdiction over the dispute when there were no issues concerning the district’s provision of FAPE to the student. The hearing officer agreed, finding that there was no issue raised concerning the student’s right to a FAPE or the special education services provided to the student. Accordingly, the hearing officer dismissed the parent’s hearing request.

The school district was represented by an attorney.

Parents initiated the hearing request.

Case No. 2009-0369 – Harry A. Blackburn, Hearing Officer
Procedural Safeguards, Compensatory Education
Decision and Order Issued July 27, 2009

The parent requested a hearing to challenge the district’s evaluation and placement of the student based on past evaluations of the student’s needs, the adequacy of the district’s IEPs and the district’s alleged failure to provide the parents with opportunities for meaningful input in the educational process. The hearing officer found a significant range of failures by the district with regard to its evaluations and its development of IEPs for the student. In addition, the district failed to provide the parents with adequate access to the educational process by failing to account for the parents’ limited English-speaking abilities. The hearing officer order the district to convene an IEP meeting to develop a new IEP that would consider several outside evaluations, provide compensatory education in the form of supplemental tutoring, additional related services and assistive technology support. The district was also required to ensure that prior written notice concerning IEP implementation be provided to the parents in their native language.

Both parties were represented by attorneys.

Parent initiated the hearing request.
Case No. 2009-0368 – James Wolter, Hearing Officer
Evaluation, Placement
Decision and Order Issued August 4, 2009

The parent filed for due process, contending that the district failed to provide the student with an appropriate case study evaluation within prescribed time lines and determine that the student did not qualify for special education services. Despite the district eventually finding that the student was eligible for special education beginning in the 2009-10 school year, the hearing officer found that the district had complied with IDEA procedures and that the student's IEP was reasonably calculated to provide her educational benefit. Accordingly, the hearing officer held that the student did not require a special education placement in a therapeutic day school to obtain a free appropriate public education in the least restrictive environment.

Both parties were represented by attorneys.

Parent initiated the hearing request.

Case No. 2009-0318 – Ann Breen-Greco, Hearing Officer
Placement, Compensatory Education
Decision and Order Issued August 7, 2009

The parent requested a due process hearing in February 2009, alleging that the district violated its child find responsibility in failing to evaluate the student timely and appropriately, thus denying the Student an appropriate education. The parent also alleged that the district failed to offer ESY, compensatory services, and assistive technology. The hearing officer found that the district did not evaluate the Student in a timely manner, that the evaluation done was inadequate and failed to meet required legal standards, and that their failure was a violation of the district's child find responsibility and a denial of FAPE to the Student. The hearing officer found, based on the parent's independent evaluation reports and recommendations that the Student was eligible for services. The district was ordered to convene an IEP meeting, to include appropriate staff and the evaluators, to determine that the Student was eligible, and to develop an appropriate IEP, based on the evaluators' recommendations. Further, the district was ordered to place the Student in a private, therapeutic day facility as the parent had requested. The hearing officer also granted all of the parent's relief, based on the recommendations of the evaluators, including after school services, transportation, and assistive technology.

Both parties were represented by attorneys.

Parent initiated the hearing request.
Case No. 2009-0215 – Mary Schwartz, Hearing Officer
Placement, IEP, Compensatory Education
Decision and Order Issued August 8, 2009

The parent filed a request for due process seeking placement in a private therapeutic day school program. The parent alleged that the district did not implement the student's IEP upon entry into high school and failed to evaluate the student for apparent issues affecting auditory processing and assistive technology needs. The hearing officer found that the parent's allegation were supported by the evidence and that the district had fundamentally failed to offer an appropriate program at any time after the student had transitioned to high school. Accordingly, the hearing officer ordered the district to place the student in a private therapeutic setting supplemented by extensive compensatory educational support. The district was also order to fund several independent evaluations of the student.

Both parties were represented by attorneys.

Parent initiated the hearing request.

Case No. 2009-0320 – Joseph P. Selbka, Hearing Officer
Eligibility, Independent Evaluation
Decision and Order Issued August 13, 2009

The district filed for due process following a parent demand for an independent evaluation, claiming their evaluation was appropriate. The district denied Student with ADHD eligibility because Student did not demonstrate a severe discrepancy between academic achievement and cognitive ability. The parent filed a cross complaint requesting a finding of eligibility and reimbursement. The hearing officer found for the parent on eligibility and found the evaluation was not appropriate.

Both parties were represented by attorneys.

District initiated the hearing request.

Case No. 2009-0302 – Joseph P. Selbka, Hearing Officer
IEP Implementation, Student Records
Decision and Order Issued August 18, 2009

The parents filed for due process, claiming that the district failed to properly implement the student's IEP. Additionally, the parents claimed that the district committed several procedural violations related to failure to turn over records, failure to provide progress reports, and failure to complete a transition IEP. At
hearing, the hearing officer found that the district presented adequate evidence to demonstrate that the IEP had in fact been implemented. Other procedural violations were dismissed by the hearing officer as either without evidentiary foundation or found to be harmless.

The district was represented by an attorney.

Parents initiated the hearing request.

Case No. 2008-0366 – W. David Utley, Hearing Officer
Procedural Safeguards, Evaluation, Related Services
Decision and Order Issued August 27, 2009

The parent filed a request for due process alleging that the student had been denied a free appropriate public education in high school, that the district failed to fully fund appropriate Independent Educational Evaluations and committed a procedural violation by failing to fully fund these Evaluations, failed to consider the Independent Educational Evaluations, failed to develop an appropriate IEP and that the placement decisions were inappropriate and not sufficiently intense enough to address the students needs. Student was considered eligible for Special Education services under the categories of Emotional Disturbance and Mild Cognitive Deficit. The student was placed in a therapeutic day school to address his needs. His academic performance was generally at the low grade school level especially in reading and math. Student had a history of incarceration in a juvenile facility which provided school services on site, had a history of truancy when not confined and lacked motivation and effort. Despite the evidence of low academic performance, the district failed to appropriately identify the student's needs and failed to provide services to address his needs. The hearing officer found that the student was not eligible for residential placement but that the district should convene an IEP to address and implement the various Independent Educational Evaluations and also fund the Independent Educational Evaluations and should provide Compensatory Education services for at least two (2) years.

Both sides were represented by legal counsel.

Parent initiated the hearing request.

Case No. 2008-0362 – Ann Breen-Greco, Hearing Officer
IEP, Related Services, Placement
Decision and Order Issued September 14, 2009

The parents requested a due process hearing in February 2008, alleging that the district failed to provide: (1) sufficient related services (2) appropriate assistive
technology; (3) appropriate transition plan; (4) progress reports; (5) inadequately addressed the student's behavioral needs; (6) failed to have a regular education teacher attend the student's IEP meetings; (7) attempted to change the IEP to remove the student's individual aide; (8) failed to provide an appropriate IEP; (9) failed to provide an appropriate placement; (10) failed to provide a FAPE. The parents sought a home-based ABA program. The hearing officer found that the district failed to develop an appropriate IEP, failed to provide an appropriate placement and related services, and failed to provide a FAPE. The district was ordered to convene an IEP meeting which would include the parents' consultant, to do a three-year re-evaluation and assistive technology evaluation, to develop an appropriate IEP with individualized and measurable goals/objectives and accurate present levels of performance based on the Student's eligibility and identified educational needs; identify all direct and related services including, but not limited to speech/language, PT, OT, autism, and appropriate assistive technology; and to maximize all opportunities for socialization and other peer interaction for the Student. Further, the district was ordered, based on the parents' consultant's observation and recommendations, to provide the appropriate placement for the Student in a recommended home-based ABA program for a period of two years.

Both parties were represented by legal counsel.

Parents initiated the hearing request.

Case No. 2009-0484 – Ann Breen-Greco, Hearing Officer Jurisdiction, Student Records, Motion to Dismiss Decision and Order Issued September 14, 2009

The parent filed for due process seeking an order requiring the district to conduct an evaluation of the student and to expunge certain information contained in the student’s file. Prior to consideration by the hearing officer, the district agreed to conduct the evaluation. The district filed a motion to dismiss on the remaining issue, arguing that the hearing officer lacked jurisdiction to address the student record issue. The hearing officer agreed, finding that the sole issue of expunging the records was not within the jurisdiction of the hearing officer to decide. Accordingly, the district’s motion to dismiss was granted.

The district was represented by an attorney.

Parent initiated the hearing request.
Case No. 2009-0475 – Sheana Hermann, Hearing Officer
Sufficiency of IEP, Compensatory Education
Decision and Order Issued September 21, 2009

The parent requested a due process hearing based on the district's failure to provide a student with FAPE from the time period of the summer of 2007 to the present time. The parent contended that the district failed to conduct adequate assessments and failed to develop a proper IEP, behavioral interventions, or provide proper training to staff. Though the hearing officer generally found that the district had used appropriate procedures in developing IEPs for the student, the hearing officer did find that the district did not consider important information on the student’s functioning or the parent’s input into the process. Accordingly, the hearing officer ordered the district to provide compensatory support to the student in the form of supplementary tutoring and related services. The district was also ordered to conduct further evaluation of the student and to conduct an IEP meeting to consider the evaluation results.

Both parties were represented by attorneys.

Parent initiated the hearing request.

Case No. 2009-0296 – Harry A. Blackburn, Hearing Officer
Placement
Decision and Order Issued September 21, 2009

The parents initiated the due process hearing request to challenge the district’s placement of the student in a specialized program operated by the district. The student, who was of elementary school age and eligible for services under the disability category of autism, had failed to demonstrate meaningful progress while attending the district’s program. The hearing officer found that, although the district appeared to consider and recognize the student’s lack of progress, the district did not make sufficient adjustments to the IEP to address the student’s needs. Because of the ongoing lack of progress, the hearing officer ordered the district to place the student in the parents’ requested placement in a private therapeutic day-school for a three-year period to compensate the student for the ongoing failure of the district to identify appropriate supports for the student.

Both parties were represented by attorneys.

Parent initiated the hearing request.