

Impartial Due Process Decisions
Issued between July 1, 2001 and November 30, 2001

Following is a summary of impartial due process hearing decisions issued between July 1, 2001 and November 30, 2001. Each summary identifies the case number, moving party, the issue or issues in dispute, the student's disability (if known), the hearing officer's finding, 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 21/782-5589. You are reminded that these decisions are not precedent-setting; they represent how hearing officers have ruled after reviewing specific facts placed before them.

Case # --002298 – Richard W. Brimer, Hearing Officer
Unilateral Placement in a Private School/Facility, Residential Placement, Compensatory Education beyond Age 21, FAPE

The hearing was requested by the parents seeking reimbursement for the student's unilateral placement in a residential facility, compensatory educational services beyond the age of 21 and FAPE. When the student entered the high school district, she received special education and related services as a student with emotional disorders and behavioral disabilities. The IEP developed by the school district was designed to meet her needs. In February 2000, the parents withdrew the student from the school district's high school and enrolled the student in an academy of arts. Since the student presented several problems, on July 13, 2000, the parents placed the student in a private, out-of-state residential facility. Subsequently, the parents requested reimbursement of the educational expenses from the school district. The school district re-evaluated the student and determined that the student's current residential placement was an appropriate placement. While the school district recognized that the current placement was appropriate, it planned to transition the student to an approved in-state residential placement at a time when it would be more appropriate to move the student. It was ordered that the school district fund the student's placement from March 1, 2001 through the end of the 2001-02 school term jointly with the Illinois State Board of Education in the proportion established by Section 5/14-7.02 of the Illinois School Code. A Settlement Agreement and General Release was also entered into the decision.

Legal counsel represented both parties.

Case # 000919 – Vivian Gordon, Hearing Officer
Compensatory Services for 23 Year Old Student

The mother requested the due process hearing for her son who graduated high school during the pendency of the due process hearing and is now 23 years of age. She raised a series of issues related to lack of services, inappropriate IEP development and implementation, lack of transition plan, lack of notice prior to graduation, and failure to provide a FAPE consistent with the IDEA. The mother was seeking compensatory education. In light of the school records, the testimony and evidence presented, it was found that the student had received sufficient services, the IEPs complied with the law, transition plans were incorporated into the IEPs, and the student did receive adequate notice regarding graduation. It was determined that the student received a free appropriate public education.

The mother represented her son, appearing Pro Se, while the school district was represented by legal counsel.

Case # 002274 – Charles Aschenbrenner, Hearing Officer
Placement, Conduct of Case Study Evaluation, Content of IEP

The due process hearing was requested by the parents of an eighteen year old son who is eligible for special education services in the areas of Emotional Disturbance and Learning Disabilities. Having enrolled in the school district just prior to his eighteenth birthday, the parents wanted their son placed in a residential program but the IEP team determined he should be placed in a therapeutic day school. The parents contended that the school district failed to properly conduct the IEP conference, failed to complete required evaluations, and failed to provide an appropriate placement for the student.

The hearing officer found that the school district was in violation and ordered the student to be placed in an approved residential program for one year. Prior to placement, the district was ordered to conduct a proper IEP conference that included the consideration of further evaluations.

Both parties were represented by legal counsel.

Case # 002311 – Richard Brimer, Hearing Officer
Consent for Initial Placement

The school district requested the hearing to compel consent to place the student in a special education program. The student had exhibited numerous behavior episodes and was achieving dramatically below the grade in which he was enrolled. The school district sought permission from the parent to contact an

eligibility determination. The parent initially refused, but later yielded and authorized the school district to evaluate the student. The school district found that the student was eligible to receive special education and related services and developed an individualized education program on behalf of the student. The parent objected to the placement decision and requested the student remain in the general education program. The school district requested a due process hearing to resolve the placement dispute. The court decisions of *Rowley*, *Daniel R.R.*, *Greer*, and *Oberti* were used to determine the appropriate placement for the student. It was determined that the school district had met the standards specified in these cases. It was ordered that the student be placed in the special education program recommended by the school district.

The district was represented by in-house legal counsel. The parent was represented by an advocate.

***Case # 002295 – Vivian Gordon, Hearing Officer
Agreed Order – Placement Evaluation Compensatory Services, Sufficiency of Services***

Prior to the beginning of the due process hearing, the parent submitted a series of pre-hearing motions to which the school district responded. The parties then inquired about other issues related to the procedural aspect of the hearing and then decided to meet in closed session regarding settlement. After two days of deliberations, the parties entered into an agreed upon order. The district agreed to pay the parent \$1,500 as monetary reimbursement in consideration of the parents' waiver of claims for any of the following: recovery or reimbursements for costs paid or incurred for all expenses related to the child's enrollment at Cove during the summer of 2000 and 2001, any and all private evaluations completed prior to the date of the agreement and, any and all attorney fees and costs.

Legal counsel represented both parties.

***Case # 002216 – Gail Friedman, Hearing Officer
Conduct of Initial Evaluation***

The district requested the hearing seeking an order permitting them to proceed with an initial case study evaluation of the student without the parents' consent to determine if the student was eligible for special education and related services. Prior to the hearing the parents withdrew the student from the district. They are not requesting any services from the district. The hearing officer denied the district's request to conduct the case study evaluation without the parent's consent when the parents have no intention of ever returning the student to the district, accepting services from the district, or requesting compensation from the district. Both the district and the parents were represented by counsel.

***Case #001749 – Charles Aschenbrenner, Hearing Officer
Consent of Initial Evaluation, Related Services, Independent Evaluation,
Development of the IEP, Comparable Services***

The parents of an eleven year old son requested the due process hearing. The student was diagnosed as having unilateral moderate hearing loss in the left ear with normal hearing in his right ear. It was the position of the parents that the school district denied their son FAPE because (1) the IEP did not address the needs of the student, (2) the district did not complete authorized testing and ignored two separate mediation agreements, (3) the student was not placed in a safe school environment, and (4) the need for granting an independent evaluation.

In seeking relief, the parents requested an independent evaluation. This prompted the school district to make a request for a due process hearing as well. The requests were joined into the one hearing. The parents also sought to have their child either placed in another public school district or be provided a host of changes in the student's current educational program.

The hearing officer found that the school did not deny the student FAPE on any of the aforementioned issues.

Legal counsel represented the district; the parents were not represented.

***Case # 002292 – Alan J. Cook, Hearing Officer
Appropriateness of Placement, Inadequate Notice to Parent, Draft
Evaluation Reports***

The parent requested the hearing on behalf of her six year old son who was eligible for special education and related services under the category of speech and language impairment. At the time of the hearing, the child was attending an early childhood program and a kindergarten class in his district of residence. The parents claimed that the district had committed procedural violations that denied her the right to be involved in the development of her son's educational plan. Other issues involved the availability of the child's records, and a disagreement regarding the district's recommendation to retain the student in kindergarten.

The hearing officer found that the district was not required to give the parent drafts of reports prepared by evaluators. The final reports were properly given to the parent. The student's placement for the following school year was not predetermined. It was considered and determined through the IEP process. The student's placement in a full-day kindergarten program was upheld and the IEP was found to be reasonably calculated to enable him to receive educational benefits. Neither party was represented by legal counsel.

***Case # 002242 – Frank Nowik, Hearing Officer
Evaluation Timelines Not Met, Independent Evaluation***

The parents requested the hearing alleging that the district failed to conduct a reevaluation of their child in a timely manner and therefore were seeking reimbursement for an independent evaluation. The district asserted that the parents requested the reevaluation of their child, but refused to sign the consent form necessary for the district to proceed with the reevaluation until the district made known to the parent the names of the evaluators and the tests to be done. The hearing officer ruled the district has the right to conduct its own evaluation of the child and the parent did not have the right to approve the district's evaluators prior to giving consent for the reevaluation.

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

***Case # 001793 – Richard Brimer, Hearing Officer
Private vs. Public School Placement, Residential Placement, Free
Appropriate Public Education, Calculation of Educational Benefit***

In August of 1997, the student entered the elementary school district enrolling in the 6th grade. Without holding an IEP meeting, the school district immediately changed his placement. While the student progressed academically, his behavioral problems increased in frequency and severity. To obtain answers which the school district did not provide, the parents obtained a psychiatric and a psychological evaluation which they hoped would form the basis of the IEP. In April of 2000, the elementary school district held an IEP conference. The resultant IEP would serve the student for the remainder of the school year and for the beginning of the next school year in the Township High School District. The Township High School District did not rewrite, revise or write a new IEP; the school district accepted and implemented the IEP for the fall. This IEP did not meet state and federal regulations, and this IEP cannot be reasonably calculated to provide the student with an educational benefit. The school district's program, therefore, cannot provide the student with a FAPE. Furthermore, the Township High School District had not secured a placement for the student at the start of the school year with the student remaining at home for the first two weeks of school. It is unclear how much longer the student would remain out-of-school, but it would be, at least, another week and probably longer. Frustrated, the parents enrolled the Student in a private residential school. The parents are subsequently seeking reimbursement for their expenses and continuing payment to the residential school until the student is discharged from the program.

Referencing the *Board of Education of the Hendrick Hudson Central School District v. Rowley*, the *School Committee of the Town of Burlington v. Department of Education of Massachusetts*, and the *Florence County School*

District Four v. Carter, it was decided that the parents fulfilled the two-prong analysis of *Burlington* and the third point enumerated in *Carter*. It was ordered that the Township High School District reimburse the parents for their expenses and pay for all subsequent expenses associated with educating the student at the residential site.

Both parties were represented by legal counsel.

***Case #002299 – Gail Friedman, Hearing Officer
Order of Dismissal***

Hearing officer dismissed the case for want of prosecution.

***Case #002303 – Carolyn Ann Smaron, Hearing Officer
Early Childhood Placement, Pre-kindergarten***

The parents' requested the hearing seeking placement in the Disney Magnet School pre-kindergarten classroom. The local school district initially placed the student in an early childhood special education classroom at a Magnet School. Admission to the magnet school was apparently controlled by lottery and the magnet school principal refused to allow the student to continue her enrollment because the student was not selected in the magnet school lottery. The hearing viewed with great disfavor what happened to this child all in the name of the magnet school lottery system and the discretion of a building principal. The hearing officer ordered that the student be placed in the magnet school pre-kindergarten classroom.

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

***Case # 001852 – Susan Einspar-Wayne, Hearing Officer
Payment of Services, Related Services, Residency, transportation***

The hearing was requested by the parent on behalf of their son who was eligible for special education and related services under the category of autism and a secondary disability of other health Impaired. The parents requested the hearing alleging that their son suffered from asthma and therefore, placement on a school van with children that had smoke residue on their clothing was unacceptable. The parents contended that second hand smoke on the clothing of the other students posed a health hazard to the student due to his asthma. There were no allegations that the student suffered any asthma attacks while being transported or following transportation. During the pendency of the hearing the parents and the school district entered into a mediation agreement. The district agreed that the student would sit in the front of the van and that the van

would be fumigated after each use. Following the winter break, the parents insisted that the school district pay them to transport their son. The school district filed a Motion to Dismiss the due process as; the district believed the parents no longer resided in the district. The parents requested an opportunity to respond to the motion. The residency affidavits supplied by the parents were not sufficiently detailed. The hearing officer found that the student and parents were no longer residents of the school district and the parents were not entitled to reimbursement for the provision of individual transportation for the student.

Neither party was represented by legal counsel.

***Case # 001847 – Julia Quinn Dempsey, Hearing Officer
Placement, Conduct of Case Study Evaluation, Consent to Implement IEP,
Motion for Summary Judgment***

The district requested the hearing because the parent would not provide written consent for placement of the student in special education. A Motion for Summary Judgment was filed by the Chicago Board of Education attorneys after the parent refused to consent to a special education placement. After the case study conference found the student eligible the mother refused any further cooperation. Many written and telephonic attempts by the district and the hearing officer were to no avail. The district's Motion for Summary Judgment contained proof of compliance with all applicable laws including notice requirements to the mother. The case study evaluation was completed correctly and demonstrated a need for special education and behavioral intervention plan. The district was ordered to reconvene the IEP conference, review the continued eligibility and modify the IEP for 2001-2002 school year and implement the IEP without parental consent.

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

***Case #002264 – Gail Friedman, Hearing Officer
Order of Dismissal***

Hearing officer dismissed the case for want of prosecution. The district was represented by legal counsel. The parent was not represented.

***Case #002011 – Marie Bracki, Hearing Officer
Consent for initial special education placement***

The district requested the due process hearing to override the parent's non-consent for initial placement of the student. A second evaluation was conducted

changing the student's eligibility from "mental impairment" to "learning disability." The parent still refused consent, refused to participate in the hearing, and intended to place the child in a private school. The district filed a Motion for Summary Judgment. The district was ordered to implement its IEP. The district was represented by counsel. The parent did not participate and was not represented.

***Case # 001950 – Julia Quinn Dempsey, Hearing Officer
Consent for Placement***

The district requested the hearing because the parent would not provide written consent for placement of the student in special education. The hearing officer found that the student was entitled to a free appropriate public education and that without special education services he would continue to fall further and further behind and would never achieve an appropriate education. The hearing officer ordered that the district reconvene the IEP meeting to review the case study evaluation and to determine its continued appropriateness and applicability.

The district was represented by legal counsel. The parent did not participate and was not represented.

***Case #002051 – Carolyn Ann Smaron, Hearing Officer
Consent for Initial Evaluation***

The local district filed for an impartial due process hearing after the parent of the student refused to consent to an initial case study evaluation. The local school district, through documents and testimony, established that it had a reasonable belief that the student might be eligible for special education and related services and the hearing officer overrode the parent's refusal and ordered that the district proceed with the evaluation.

Legal counsel represented both parties.

***Case #001999 – Gail Friedman, Hearing Officer
Order of Dismissal***

Hearing officer dismissed the case for want of prosecution.

***Case #001864 – Gail Friedman, Hearing Officer
Order of Dismissal***

Hearing officer dismissed the case for want of prosecution.

***Case # 002231 – Richard Brimer, Hearing Officer
Eligibility Criteria, Consent for Case Study Evaluation***

The district requested the hearing to compel parental consent to conduct a comprehensive case study evaluation. The hearing officer concluded that the student has academic and behavioral problems which interfere with her ability to progress through high school at the typical rate. 34 CFR 300.505(b) and 20 USC 1415 (a) states that if a parent refuses to consent to an evaluation, the agency must initiate a due process hearing in this matter with an impartial hearing officer making the determination. The hearing officer concluded that the school district met its burden of proof and ordered the school district to conduct a comprehensive case study evaluation on behalf of the student.

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

***Case #001898 –Stephen Rubin, Hearing Officer
Order of Dismissal***

Hearing officer dismissed the case for want of prosecution.

***Case # 2178 – Karen Anderson, Hearing Officer
Suspension for Nine (9) Days***

The hearing officer issued this decision in response to a Motion for Summary Judgment, finding that the student had not been suspended for more than ten consecutive school days. No relief was granted to the parents.

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

***Case # 001924 – Julia Quinn Dempsey, Hearing Officer
Independent Educational Evaluation***

The district requested the hearing after denying a parental request for an independent evaluation at public expense. The hearing officer found that the district complied fully and completely with all procedural requirements of the law. The hearing officer ordered that the parent was not entitled to an independent evaluation at public expense. Legal counsel represented both parties.

***Case # 002209 – James Wolter, Hearing Officer
Regular Education vs. Special Education Placement***

The district requested the hearing in order to place the student in a self contained special education program housed in his neighborhood school without parental consent. The parents wanted the student to remain in the regular education placement. At the time of the hearing, the student was 8 years old entering the 3rd grade and receiving speech therapy and counseling. The hearing officer found that the district had conducted an appropriate IEP conference and developed an IEP that was reasonably calculated to provide benefit to the student. The placement recommended by the district was affirmed. The district was represented by legal counsel; the parent was not represented.

***Case #002173 – Frank Nowik, Hearing Officer
Revocation of Consent for Case Study Evaluation, Special Education
Placement without Parental Consent***

The parent requested the due process hearing objecting to the district completing a case study evaluation after she revoked her consent. The parent also objected to the district's placement of the child in a special education program prior to the completion of the evaluation. However, both the parent and the district agreed that the child was doing better in the special education classroom and seemed to have fewer problems. The child's placement in special education prior to being staffed into that class was done as part of an intervention to deal with serious behavioral issues. The hearing officer affirmed the district's recommended placement. The district was represented by legal counsel; the parent was not represented.

***Case # 002181 – Stephen B. Rubin, Hearing Officer
Case Dismissed, Dispute over Placement***

The parent requested the hearing one week after receiving Hearing Officer Einspar-Wayne's decision in which she affirmed the district's recommended placement. The district filed a Motion to Dismiss the parent's request for a due process hearing on the grounds that the parent was using an improper method for pursuing an appeal. The parent did not file a response to the District's motion. The hearing officer found that the request was an attempt to appeal the prior decision and order. The request for a due process hearing was dismissed. The district was represented by legal counsel; the parent was not represented.

***Case #002184 – Ann Breen-Greco, Hearing Officer
Order of Dismissal***

Hearing officer dismissed the case for want of prosecution.

***Case #002207 – Julia Quinn Dempsey, Hearing Officer
Residential Placement vs. Therapeutic Day Placement***

The parent requested the hearing on behalf of his 15 ½ year old daughter who was eligible for special education under the category of Emotional Disturbance (ED). The father asked the hearing officer to fund the student's placement at Brown School to allow her to develop the skills she needs to function as an independent adult. He believed she needed full time intervention and that the least restrictive environment for her was a structured residential therapeutic facility. It was the district's position that residential placement was not necessary to meet the student's educational needs. It was noted that the student had spent long periods of time in residential treatment with no noticeable progress. The hearing officer concluded that there was no reason to believe that another year or two at another distant residential placement would turn out any differently. The hearing officer relied on were *Dale M. v. Bd. Of Ed. Of Bradley-Bourbonnais H.S. D. 307, 237 F. 3rd 813 (7th C. 2001)* and *Blickle v. St. Charles CUSD 303, 1993 U.S. Distr. LEXIS 10396 (N.D.E.D., II 1993)*.

The hearing officer found that the district's proposed placement in a day therapeutic programs was appropriate. Both parties were represented by legal counsel.