

**Illinois State Board of Education
Due Process Summaries
Issued Between July 1, 2002 and October 1, 2002**

**Case #002535 – Gail Friedman, Hearing Officer
Placement, LRE, Discipline, Related Services**

The parent requested the hearing asserting that the school district failed to appropriately train staff in behavioral support, management, and interventions; failed to account for the student's lack of reasonable progress and to account for this regression emotionally, behaviorally and academically; failed to provide appropriate related services to address the student's sensory, academic, emotional and behavioral needs; created a hostile environment for the student where school staff ridiculed, humiliated, degraded, breached his right to confidentiality and physically abused the student, failed to provide a sufficient IEP; and, failed to provide procedural safeguards to parents.

It was concluded that the district denied the student a free appropriate public education in the least restrictive environment; compensatory services were awarded to the student. Both the parent and district were represented by counsel.

**Case #002829 – Stephen B. Rubin, Hearing Officer
Child Find, Unilateral Placement in Private School**

The hearing was requested by the parent seeking reimbursement for tutoring and testing in the amount of \$3,085 and tutoring services provided in a parochial school rather than a district school. Since the child was unilaterally placed in a private school for non-educational reasons, the issues pertaining to the delivery of services on the IEP were not subject to a due process hearing. The only issue the hearing officer considered was whether the District violated its child find obligations with respect to this child.

The hearing officer found that the District did not violate its child find obligations with respect to this student. The parents' request for relief was denied.

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

**Case #002558 – Richard W. Brimer, Hearing Officer
Private vs. Public School Placement, Unilateral Placement in Private
Facility, FAPE**

The student is a three-year-old boy who was diagnosed with a profound hearing loss at the age of six months. A little over the age of one, the student received a cochlear implant from a university hospital. Somehow, the electrodes to this implant became detached and the student received a second cochlear implant approximately 18 months after the first implant. The student greatly benefited from this second implant. At the recommendation of their otolaryngologist and their clinical audiologist, the parents enrolled the student in a private day school which focused on an “oral-aural” program. Since enrolling in this program, the student made significant progress in receptive language, expressive language, behavior, and socialization skills. The school district held an IEP meeting in September of 2001. At that time, the school district recommended a cooperative total communication program for the student.

The two-prong test of *Rowley* was used to determine whether the student was provided with a FAPE. The school district committed substantial procedural errors rendering the school district’s proposed program inappropriate under *Rowley*. In addition, the school district’s IEP did not address the substantive requirements of *Rowley*. In contrast, the private day school provided an appropriate program that met the student’s needs.

Both parties were represented by legal counsel.

**Case #002322 – Julia Quinn Dempsey, Hearing Officer
Compensatory Services, Residential Placement, FAPE, Services beyond
Age 21**

The hearing was requested by the parents through their attorney. At the time of the hearing, the student was 20 years old and was institutionalized at Chester Mental Health Center where he had been committed since August 2000. The student had a history of behavioral problems, beginning in first grade and worsening in recent years. While initially eligible for special education and related services under the category of LD, he was later labeled as EMH/BD. In 1996 his diagnoses was changed to Asperger’s Disorder. No evidentiary hearing was held.

The school district, the parent and the hearing officer all agreed that the student should be placed in an out-of-state residential facility for the 2002-2003 and the 2003-2004 school years, including ESY services at district expense.

Both parties were represented by legal counsel.

**Case #002923 – James A. Wolter, Hearing Officer
Change of Location, Promotion from 7th to 9th Grade**

The parent requested the hearing because of the district's refusal to promote the student per their request from the 7th grade to the 9th grade. The hearing officer explained to the parents that the authority of a hearing officer was limited to special education matters and grade placement was not within the realm of authority of a hearing officer. Other issues included whether the IEP was reasonably calculated to benefit the student, the appropriateness of regular classroom accommodations, and the monitoring and reporting of the student's progress to the parents.

The hearing officer found that the IEP developed by the district was appropriate. As such, the district demonstrated that the student's IEP was reasonably calculated to provide educational benefit.

Legal counsel represented the district; the parent was not represented.

**Case #002953 – James A. Wolter, Hearing Officer
Least Restrictive Environment, Initial Consent for Placement**

The district requested the hearing to compel placement of the student in a full-day special education kindergarten placement. At the prehearing conference call the parent informed the hearing officer that there would be no need to proceed with the due process hearing because she had given the district written authorization to place the student in a special education kindergarten program and to review the student's progress every three months. The district agreed with the parent and made a motion for a directed summary judgment.

The motion was granted. The district was ordered to provide the student with a half-day regular education program and half-day special education kindergarten program commencing the 2002-03 school year.

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

**Case #002855 – Stacey Stutzman, Hearing Officer
Related Services, Transportation**

The parents' requested a due process hearing on issues related to the provision, qualifications, and training of bus aides for the student. The parent sought an order requiring the district to provide *First Responder* and emergency training to the bus aides. The parent also wanted the district to provide the student with a qualified bus aide per the child's needs and to provide a substitute bus aide when the regular bus aide was absent. The hearing officer found that the district

violated FAPE by its failure to provide a bus aide and for its failure to provide a substitute aide in the regular aide's absence. Since the district had offered first aid and emergency training to the bus aides, no violation of FAPE was found on that issue.

The district was ordered to assign bus aide(s) to the student for the 2002-03 school year that meet the desirable minimum qualifications, per the *Guidelines for Principals of the Chicago Public Schools Served by Children's Welfare Attendants and/or School Bus Aides*. The bus aides must attend all mandatory in-service sessions provided to bus aides by the district. The school principal must directly supervise the bus aides assigned to the student and secure a substitute bus aide as needed.

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

**Case #002632 – Judge Julia Quinn Dempsey, Hearing Officer
Appropriate Placement, Home Bound Instruction, Sufficiency of Services,
Unilateral Placement, Content of IEP, FAPE, Methodology**

The parents of a 10 ½ year-old boy diagnosed with Autism requested the hearing because they were dissatisfied with the educational program being provided by the school district. The parents argued that the district's program was not challenging enough and didn't use ABA/DTT. The parents removed the child after an incident where a teacher sprayed him in the face with a cleaning substance. Neither party prevailed on all issues.

The hearing officer found that the parents were justified in their decision to remove the child following the "spraying" incident. The district was faulted in not offering the parent another placement and for not appropriately addressing the child's needs for ESY. It was also found that the IEP goals and objectives were appropriate but in need of much more detail on the academics.

The parents were awarded reimbursement for the home program from the time the child was removed from school through the summer. However, the district's program and IEP were found mostly appropriate with no procedural violations. The District was ordered to provide autism training to staff and to provide ABA/DTT type instruction at school for the child. Additional help in integrating the child into the classroom was also ordered.

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

**Case #002137 – Charles Aschenbrenner, Hearing Officer
FAPE, One-on-One Aide, Compensatory Damages**

The parents of an 11 year-old daughter who has been diagnosed as having significant cognitive deficits associated with autism requested the due process hearing. The issue was whether the special education program and services for the student were appropriate and provided her a FAPE. The parents wanted the following relief: (1) 100% one-on-one aide, (2) year round schooling with no more than two weeks off, (3) the student's staff to be trained in ABA discreet trail and behavior techniques, (4) speech and language for 90 mpw to 225 mpw, and (5) compensatory damages.

The hearing officer found the school district provided the student with a FAPE.

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

**Case #002463 – Carolyn Ann Smaron, Hearing Officer
Appropriate Placement, Private v. Public School Placement, Residential Placement**

The parents unilaterally placed the student in an out-of-state facility and requested a hearing to determine whether or not they should be reimbursed for said placement. The parents also alleged that the local school district failed to identify the student in a timely manner. The hearing officer found that the local school had demonstrated that it identified and evaluated the nature and severity of the student's suspected or identified disability on a timely basis and that it offered a FAPE in the LRE to this student.

The hearing officer found that the parents had not met the requirements for unilateral placement and as a consequence, the hearing officer would not order reimbursement.

The district was represented by legal counsel; the parent was pro se.

**Case #002692 – Robert Ladenson, Hearing Officer
Unilateral Placement, Excluded Medical Services, Compensatory Services, FAPE**

In this case the parents requested reimbursement for their unilateral placement of the student, a 10-year old autistic child, in a residential program. The parents also requested compensatory education for the student, contending that the student's program during the 2000-2001 school year was inappropriate in virtue of not having in place an adequate functional behavior analysis and behavior

management plan to address the student's severe behavior problems. The parents also requested reimbursement for diverse expenses incurred in connection with educating the student.

The hearing officer ruled in favor of the parents on all major issues in this case.

Both parties were represented by legal counsel.

**Case #002542 – Judge Quinn Dempsey, Hearing Officer
Appropriate Placement, Termination of Services, Revocation of Consent**

The parent requested the hearing because they wanted the student returned to general education. Pursuant to 23 IAC 226.540(a)(3) and (i) a parent who desires to revoke consent must request a due process hearing; the mother did so in this instance. During the 2001-02 school year, the student was enrolled in a language arts/reading pull-out program for students with learning disabilities. It was the hearing officer's finding that the psychological evaluation, which consisted of two pages, was inadequate to support placement in special education.

The hearing officer ordered the student be removed from all special education services and placed in a standard 7th grade curriculum.

The both parties were represented by legal counsel.

**Case #002700 – Ann Breen-Greco, Hearing Officer
FAPE, Cued Speech vs. Total Communication**

The hearing was requested by the parents of a four-year old student diagnosed with sensorineural hearing loss. The district offered placement in an early childhood program (600 mpw); phonology class (240 mpw); individual speech/language services (60 mpw); individual hearing itinerant services (300 mpw); and monthly monitoring of hearing and transportation. The parents rejected the district's program and filed for due process seeking reimbursement for a cued speech program.

The hearing officer found that the district met its burden and concluded that the district had offered the student a FAPE in the least restrictive environment. However, the hearing officer ordered the IEP reconvened to include related services to the student to assist him in moving from the cued speech setting to the early childhood setting and appropriate related services to the parents for training and counseling.

Both parties were represented by legal counsel.

**Case #002798 – Carolyn Ann Smaron, Hearing Officer
Conduct of Evaluation, Dispute over Sufficiency of Services, Content of IEP**

The parent requested a due process hearing alleging that the three-year evaluation of her son was incomplete and the IEP developed thereafter was insufficient. Subsequently, the parent alleged that the annual review was incomplete and the IEP developed thereafter was insufficient.

The hearing officer found that the local school district met its burden and established that it identified and evaluated the nature and severity of the student's suspected and identified disability and that it was providing the student a FAPE in the LRE, consistent with procedural safeguards and in accordance with the IEP.

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

**Case #002819 – James A. Wolter, Hearing Officer
Independent Education Evaluation, Motion for Summary Judgment**

The hearing was requested by the District in response to the mother's request for an independent evaluation at public expense. The mother requested the independent evaluation because she believed that the District's evaluation was not appropriate because it did not identify the specific special education program needs for the child. The mother argued that by not using all current evaluation instruments the evaluation was not helpful in developing an appropriate program for the child. The record showed that the student had had four evaluations in the past two years.

The hearing officer found that the student's current evaluation was appropriate in nature and degree to provide the IEP team with an understanding of the student's special education needs and to formulate an IEP to address those needs. The record indicated that the mother and her attorney participated in the last IEP meeting. The hearing officer found that there was no need to hold another IEP meeting. The district's Motion for Summary Judgment and Dismissal was granted in full.

Both parties were represented by legal counsel.

**Case #002757 – Marian McElroy, Hearing Officer
Dismissal Order, Initial Case Study Evaluation**

The hearing was requested by the parent seeking an initial case study evaluation. The district had no objection to the parent's request and attempted on several occasions to set the matter for mediation. Each time the matter was

set for mediation the parent was unavailable. The hearing officer unsuccessfully attempted to contact the parent regarding the hearing.

Due to the lack of cooperation on the parent's part, the School District's Motion to Dismiss was granted.

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

**Case #002837 – Charles Aschenbrenner, Hearing Officer
Conduct of Case Study Evaluation, Eligibility Criteria**

The parents requested the due process hearing on behalf of their 13 year-old son whom they suspected had a disability. Consequently, the student was referred for a case study evaluation which was completed by the school district in the spring of the school year. Prior to scheduling the eligibility determination conference, the student was involved in an incident which warranted an expulsion action by the school board. It was determined by the IEP team that the student did not have a disability and was not eligible for special education services. Subsequently, the school board took official action that expelled the student for the remainder of the school year. Immediately following the school board action, the parents requested the due process hearing maintaining that the district failed to provide an adequate evaluation and failed to determine the student's educational needs. As a result, the district did not properly identify the student as being eligible for special education. The parents sought a finding from the hearing officer that the student be eligible for special education, receive compensatory services, and have the expulsion expunged from the school records.

The hearing officer found that the student was eligible for special education services and awarded compensatory relief. The hearing officer did not order that the expulsion be removed from the educational record.

The district was represented by the Director of Special Education; the parents were represented by an advocate.

**Case #002648 – Gail Friedman, Hearing Officer
Consent for Triennial Evaluation**

The district requested the hearing when the parent failed to consent to a triennial evaluation which the district was required to conduct pursuant to 23 IAC 226.578 (c). The District filed a Motion for Summary Judgment which was granted by the hearing officer.

The hearing officer authorized the district to proceed with the reevaluation of the student.

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

**Case #002541 – James A. Wolter, Hearing Officer
Sufficiency of IEP, Notice of Dismissal**

The hearing was requested by the parents because they disagreed with the wording on the student's IEP for the 2002-2003 school year. The student had been promoted from the K-8 district named in this due process hearing.

Since the dispute was with the High School District, the hearing officer dismissed the case against the elementary district, finding that the K-8 School District was not the appropriate party to the action.

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

**Case #002550 – Gail Friedman, Hearing Officer
Residential Placement, Order of Dismissal**

The hearing was requested by the mother objecting to the district's recommended placement of the student in a residential placement. While the hearing was pending, the student appeared in juvenile court and pleaded guilty to charges of theft and residential burglary. The student was allowed to withdraw his guilty plea and was found unfit to stand trial. He was remanded to the custody of the Department of Human Services. The district requested that the due process hearing be dismissed. The parent did not respond to the district's motion.

The court ordered the mother and the minor to comply with all recommendations of the school district regarding the residential placement of the minor. The case was dismissed in its entirety.

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

**Case #000989 – Richard W. Brimer, Hearing Officer
FAPE, Placement, Student Incarcerated**

On June 30, 1997, the attorney for the parent filed a request for due process objecting to the student's placement. Under a separate proceeding, a due process hearing officer issued an agreed upon order in which he stated that he would retain jurisdiction for one year. The agreement did not resolve the dispute,

and a second hearing was conducted in 1998 but a decision was not issued. In May 1999, another hearing officer was appointed to the case and an interim order was issued. In 2001, the student was sentenced to three years in an adult penitentiary.

The hearing officer dismissed this case finding that the student once incarcerated was no longer a resident of the school district. The hearing officer further found that the responsibility for educating this student now rests with the Board of Education of the Department of Corrections.

The parent and the district were represented by legal counsel.

**Case #002799 – Stephen Rubin, Hearing Officer
Agreed Upon Order, Manifestation Determination, Behavior Management
Plan, Alternative Educational Setting**

The parents initiated the hearing alleging several violations dealing with a manifestation determination and the results, including a behavior management plan without parental consent and placement in an alternative school without an IEP. The parties submitted to the hearing officer a settlement agreement and asked that the hearing officer enter an order based upon the agreement.

In accordance with the stipulated agreement, the hearing officer ordered that the district provide the student with 50 hours of tutoring to be delivered by the tutor selected by the parents and specified the criteria for grade promotion.

Both parties were represented by legal counsel.

**Case #002841 – Robert Ladenson, Hearing Officer
Consent for Reevaluation**

The District requested the hearing to compel parental consent for a special education reevaluation. At the time of the hearing the student was an eight year-old boy in the second grade. He was last evaluated shortly after entering kindergarten at the parent's request. At that time the District concluded that the student was not eligible for special education and related services. By the end of the 1st grade, the student was able to read only three or four word sentences. The mother objected to the reevaluation because she had arranged for the student to receive reading instruction three times a week after school. The mother further argued that she believed that the school district staff wanted the child removed from his regular education placement because of his behavior.

Based upon the testimony and evidence presented at the hearing, the hearing officer concluded that the district had valid reason for wanting to reevaluate the student.

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

**Case #002448 – Stephen B. Rubin, Hearing Officer
Unilateral Placement in Private Day School**

The hearing was requested by the family through their attorney. The parents were seeking reimbursement for three years tuition and expenses at Hyde Park Day School and reimbursement for additional services secured by the parents to compensate for services allegedly not rendered or rendered inappropriately by the District. At the time of the hearing, the student was eligible for special education and related services under the category of speech and language impaired and learning disabilities.

In July 2000, counsel for the parents wrote to counsel for the district rejecting the district's IEP calling for placement in the public school fifth grade classroom and giving notice of their intent to enroll the student at Hyde Park Day School at public expense.

The hearing officer found that the June 2000 IEP failed to provide a free appropriate public education and the parent was entitled to reimbursement for the amounts expended for tuition and related services at Hyde Park Day School from September 2000 to the date of the hearing. The district was ordered to convene an IEP meeting for the purpose of transitioning the student to a less restrictive environment taking into account the recommendations of the outside evaluators. The parents were ordered to cooperate fully in the formulation and effectuation of the program adopted by the district and to not criticize the program or its implementers for at least one semester after the program has been put into effect.

Both parties were represented by legal counsel.

**Case #002904 – Nancy Hablutzel, Hearing Officer
8th Grade Graduation, Promotion to High School**

The parents requested the hearing in order to dispute the decision of the district to promote the student to high school. Specifically, the objection was to making the decision based on age (number of years in the program) as opposed to achievement of IEP goals. The parents argued that 105 ILCS 5/10-20.9a(b) applies to students with disabilities and that the student should not be promoted to a higher grade based solely on age or any other social reason. The district did

not disagree, but pointed out that 105 ILCS 5/14-6.01 states that no student shall be denied promotion, graduation, or a general diplomabased on the student's disabling condition (paraphrased), and also on the provision therein that the high school district accepts financial responsibility for students on their fifteenth birthday.

The hearing officer ordered the student enroll for the 2002-03 school year at the Junior High School, in the class he attended in the 2001-02 year. The district was also ordered to conduct an augmentative communication evaluation and provide a one-on-one aide. The district was also ordered to facilitate a smooth and gradual transition to high school.

The district was not represented by legal counsel; the child was represented by his father.

**Case #002866 – James Wolter, Hearing Officer
Grade Promotion**

The parents requested the hearing because they disagreed with the district's decision to promote the child from the 1st grade to the 2nd grade. The parents were seeking an order promoting the student from the 1st grade to the 3rd grade. The parents contended that the district retained the student in the 1st grade without giving the parents proper notice. The district argued that notice was not provided because they wanted to measure the child's progress over the summer before making a decision regarding retention. The district stated that the student's achievement test scores at the beginning of the 2nd grade would make it very difficult for the student to participate in the 3rd grade.

The hearing officer found in favor of the district on the grounds that the due process hearing officer has not legal authority with respect to retention/promotion. The student's grade placement is a matter that is at the discretion of the district.

The district was represented by legal counsel; the parents were not represented.