

Due Process Hearing Decision Summaries
March 1, 2001 through June 30, 2001

Following is a summary of impartial due process hearing decisions issued between March 1, 2001 and June 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 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.

Case #001934 (Carolyn Ann Smaron, Hearing Officer)
Dismissed for Failure to Prosecute

The mother requested the hearing because she disagreed with the placement proposed by the district. Both sides advised the hearing officer that a tentative agreement had been reached. The hearing officer dismissed the case for want of prosecution, with prejudice.

Case #001413 (Julia Quinn Dempsey, Hearing Officer)
Private vs. Public School Placement, Residential Placement, Change in Services, Expulsion, Discipline

The mother initially requested the hearing because she wanted their son placed in a less restrictive environment. The student had serious mental health problems that included several psychiatric hospitalizations. The parent at first wanted the student placed back in his neighborhood school. He had previously been served in a private day program and a self-contained public school program. Prior to this case going to hearing, the student attacked the mother and he was hospitalized in a State Mental Health Center. He remained at the Mental Health Center through the summer until a long-term educational placement was located. He was admitted to Salem Children's Home in September 2000. The school district, the parent and the hearing officer were in agreement concerning the educational placement of the student and the need for some reasonable continuity of educational programming and appropriate transition to least restrictive programming. The district was ordered to pay the tuition, room and board, related services and transportation costs on behalf of the student for the 2000 -2001 School Year, the 2001 summer term, and as later required by the IEP with reimbursement from the Illinois State Board of Education as set forth in the School Code of Illinois. Legal counsel represented by parties.

**Case #001973 (Vivian Gordon, Hearing Officer)
Public Day vs. Therapeutic Placement, Least Restrictive Environment,
Discipline, Sufficiency of the IEP**

The parent requested a due process hearing because the school district recommended a more restrictive placement for the student. At the time of the hearing request, the student was 8½ years old and had been determined eligible for special education and related services approximately one month prior. The parents argued that the IEP goals were not being met, the student's teachers were treating him unfairly and cruelly, his behavioral and emotional needs were not being met, and that the newly recommended change of placement to a more restrictive placement was both inappropriate and premature. The school district argued it was premature to expect the goals and objectives to be met after one month of special education, the student was not being treated unfairly or cruelly, the functional analysis and behavioral intervention plan were developed and required time to impact the student's conduct, and the newly recommended placement for the student was appropriate and in the least restrictive environment. The hearing officer determined that it was premature to expect the annual goals and objectives to be accomplished but it was not premature for the school district to consider a more restrictive placement for the student given the extreme behavior exhibited by the student, including two hospitalizations for psychiatric treatment within a two month period and a suicidal attempt at school. It was determined there was insufficient evidence and testimony to conclude the school district was treating the student unfairly or cruelly and the current behavioral intervention plan could address the student's behavioral and emotional needs. The school district's recommendation for a more restrictive therapeutic placement was found to be appropriate placement for the student in the least restrictive environment. The parent appeared Pro Se and legal counsel represented the school district.

**Case #001801 (Gail Friedman, Hearing Officer)
Order of Dismissal**

The hearing officer dismissed the case because the parents failed to contact the hearing officer and failed to pursue their due process request within the time allotted to them by the hearing officer.

**Case #002038 (James A. Wolter, Hearing Officer)
Order of Dismissal**

The student's maternal uncle who at the time had temporary custody requested the hearing. While the hearing was pending, the Department of Children and Family Services assumed custody of the student and petitioned the request for due process be withdrawn and the student's most recent IEP be implemented.

The hearing officer dismissed the case finding that the maternal uncle no longer had standing in the matter.

**Case #001679 (Gail Friedman, Hearing Officer)
Order of Dismissal**

The student's mother decided not to pursue the matter and requested that the hearing be dismissed. The hearing officer dismissed the case.

**Case #001817 (Marie Bracki, Hearing Officer)
Location of Special Education Classroom**

The parent requested the due process hearing on behalf of the student eligible for special education under the categories of learning disabilities, physically disabled, speech and language and other health impaired. The parties agreed that the student had been properly identified and was in need of special education placement and services. The only issue in question was the parent's assertion that the district had violated the federal law by not moving the student's special education classroom to another location within the building. The parent alleged that the district had violated the IEP. The district demonstrated that it attempted to provide for the student's needs in a variety of accommodations made throughout the years. No evidence or testimony was presented indicating an adverse effect on the student. The district was ordered to continue to provide services as prescribed in the student's IEP. Legal counsel represented neither party.

**Case #002114 (Richard Brimer, Hearing Officer)
Expedited Hearing to Move Student to Interim Alternative Setting**

The central issue in this expedited due process hearing was whether the student was a safety risk to the other students, to the school staff or to himself to such an extent that would justify removal and placement in an interim alternative educational setting pending the outcome of the impartial due process hearing. The answer to this question was specified by 105 ILCS 5/14-8.02b and the *Oberti* case. The School Code states that a request for an expedited hearing shall be for the sole purpose of moving a student from his or her current placement to an interim alternative educational setting because the student is substantially likely to injure himself/herself or others. The hearing officer found the student was substantially likely to injure others if he remained in his current placement. The second analysis to this question is found in the *Oberti* case. The court found, in *Oberti*, that if a student is extremely disruptive to the entire class, the school district must proactively respond to the student's behaviors (*Oberti v. Board of Education of the Borough of Clementon School District*, 789 F. Supp.1322 (N.N.J. 1992)). School District personnel continuously proposed and tried different intervention methods and strategies to decrease the student's disruptive and injurious behaviors. Auxiliary personnel and independent consultants

proposed strategies and methods in an attempt to decrease the student's behaviors. The hearing officer found that the school district met the *Oberti* requirement. The final question was the appropriateness of the proposed interim alternative educational setting. The hearing officer concluded that the proposed interim placement was appropriate to meet the needs of the student. Therefore, it was ordered that the student be placed in an alternative educational setting during the pendency of a due process hearing. Legal counsel represented both parties.

**Case #02103 (Carolyn Ann Smaron, Hearing Officer)
Consent for Reevaluation**

The school district requested the hearing to compel consent to conduct a mandatory 3 year reevaluation as required by 23 IAC 226.190. The hearing officer ordered the district to conduct the reevaluation. Legal counsel represented neither party.

**Case #001958 (Stacey Stutzman, Hearing Officer)
Amount of Related Services, Speech Therapy, Occupational Therapy**

The parent requested the hearing on the issue of whether the student required OT services in an unspecified amount and 120 minutes per week of speech/language services, as opposed to 90 minutes per week the district was providing, in order to receive FAPE. The parent did not call any witnesses other than herself. The preponderance of evidence did not support the parent's contention on either issue. The hearing officer held that the student did not require 120 minutes per week of speech language services nor did he require OT services to receive FAPE. Legal counsel represented neither party.

**Case # 001360 (Vivian Gordon, Hearing Officer)
Independent Educational Evaluation, Compensatory Education, Placement, LRE, FAPE**

The student, at the time of the hearing, was in the fifth year of high school and had completed approximately half of the credits necessary to graduate from high school. He was eligible for special education under the classification of EBD. For three years, the school district had recommended that the student be placed in a more restrictive placement to which the parent objected. In an effort to be non-adversarial, the school district had agreed to the placement the parents had requested. According to the evidence presented at the hearing the student was failing most of the courses in a computer driven alternative educational placement requested by the parents.

The parents were seeking reimbursement for an independent evaluation, compensatory education and related services, including payment for post-high school barber school. The school district argued that it had offered the student

an appropriate educational placement at an alternative high school program in the school district but in an effort to be non-adversarial agreed to the parent's requested placements. It was determined that the school district's recommended placement was the appropriate educational placement for the student in the least restrictive environment, given the student's individual needs. It was also found that the student was entitled to reimbursement of the independent evaluation because the report found two learning disabilities unrecognized by the school district. However, the hearing officer did find that the school district's primary disability classification was accurate. It was also found that the student was entitled to some social work services and clarification about the services on the student's IEP. The school district was required to develop a record keeping retrieval system so that students found eligible for special education in the district can be identified subsequent to removal from the public school system and then returned. Legal counsel represented by parties.

**Case #002109 (Gail Friedman, Hearing Officer)
Flexible Start time for School, Reasonable Accommodation**

The parent requested the hearing asserting that the school district inappropriately denied their request for a flexible start time as an accommodation for the student's ADD. The parent's request for a flexible start time was denied. Legal counsel represented the district and the father represented the student.

**Case #001795 (Marie Bracki, Hearing Officer)
Appropriate Placement, LRE, Inclusion, Scope of Evaluation**

A request for hearing was made by the parents objecting to the district's proposed IEP and placement of the student in a TMH class. The parents argued that the district had not provided appropriate supports and services to allow the child to succeed in a regular classroom and had therefore, not provided a free appropriate public education. The district was ordered to conduct a comprehensive and coordinated evaluation of the student, provide an inclusion specialist for the remainder of the school year, develop a behavior plan, and consider the least restrictive placement based on the results of the ordered evaluation. Legal counsel represented both parties.

**Case #001744 (Nancy Hablutzel, Hearing Officer)
Classification, Autism, Private School Placement, LRE**

The parent requested the hearing in order to contest the category of exceptionality, the LRE, and the issue of private school placement. The IEP team found the student to be mentally impaired with secondary speech/language delays. The parent wanted a determination that the child was autistic, but all the team members except the mother and her attorney agreed with the IEP teams classification. Following the IEP meeting, the parent moved the student unilaterally to a private school outside the district. The hearing officer found that

the district had offered the student a free appropriate education in the least restrictive environment and the district was not responsible for the costs associated with the private placement. Legal counsel represented both parties.

**Case #002078 (James Wolter, Hearing Officer)
Non-custodial Parent, Authority to Request a Hearing**

The student's father requested a due process hearing to reverse an IEP. At the pre-hearing conference, the district moved the matter be dismissed because the father, as a non-custodial parent, lacked standing to request a due process hearing. That issue had to be ruled on prior to proceeding with the father's request for a due process hearing. The student's parents were divorced. In the Judgment of Dissolution of Marriage, the mother was granted sole care, custody, control of the education of the student. The IEP team, including the mother, declared the student eligible for special education and the mother consented to the student being placed in special education. The Judgment of Dissolution of Marriage granted the mother sole authority to make decisions with respect to the education of the student. Therefore, the father lacked standing to request a due process hearing. The regulations require a local school district to obtain parental consent prior to implementing a special education placement. The district complied with this requirement when it obtained consent for the initial special education placement from the mother who is the sole custodial parent. There is no requirement in the regulations for the district to obtain the consent of both parents. Therefore, even if the father had standing in this case, the district had the authority to place the student in special education. Further, it would be an untenable stretch for a hearing officer to undo a special education placement made by a duly constituted IEP team with the consent of the parent in favor of objections raised by another parent even if that parent had equal standing. The hearing officer dismissed the case. Legal counsel represented neither party.

**Case #001907 (Vivian Gordon, Hearing Officer)
Placement, Independent Evaluation, Related Services, LRE, Behavior
Intervention Plan**

The parents requested the hearing on behalf of their 15-year son who was eligible for special education and related services under the category of learning disabilities in reading, mathematics, and written expression. The student also had truancy issues and oppositional defiance disorder, in addition to drug dependency, legal issues and home difficulties. He had been refusing to go to school for a significant period of time. The school district used the local truancy officer and Juvenile Court to address the truancy issue. The parents requested direct help from the school district for the student's non-attendance issue and a residential placement, which the district refused. The parents thereafter requested a due process hearing. It was determined the student's current educational placement at an alternative educational center was appropriate, the school district's independent evaluation was appropriate and the teachers'

credentials were appropriate so long as they met the Illinois State Board of Education's teacher certification requirements. The hearing officer also found that the student needed a Behavioral Intervention Plan, in addition to the school's disciplinary plan. Attorneys represented both parties.

**Case #001974 (Robert Ladenson, Hearing Officer)
Expulsion from School, Eligibility at the time of Expulsion, Placement**

The student in this case had been expelled for a period of two years for placing a ¼ stick of dynamite in a toilet in the school, thereby causing an explosion. Six months prior to the expulsion the school district had considered whether to conduct a case study evaluation and decided not to do so. The following questions were critical in this matter: (1) was the student a child with a disability at the time of his expulsion?; (2) If so, then did the conditions, set out in the IDEA, for when a school district is deemed to have known that a student was a child with a disability apply in this matter?; (3) If so, then what is the appropriate remedy?

Based upon a full review of the evidence and testimony presented by the parties, the hearing officer concluded that the answers to questions (1) and (2) above are both "yes." Relative to question (3), the hearing officer directed the school district to convene an IEP meeting, as soon as circumstances reasonably permit, to select, with the agreement of the parents, an appropriate placement for the student that addresses his needs for special services that were established at the hearing. The hearing officer annulled the expulsion of the student. Legal counsel represented both parties.

**Case #001788 (Alan J. Cook, Hearing Officer)
Extended School Year Services, Change in Services, Sufficiency of Services, Occupational Therapy, Physical Therapy, Transportation, FAPE, Content of IEP, Conductive Education**

The parents requested the hearing alleging that the district denied their daughter, diagnosed with cerebral palsy, a free appropriate public education for the 1999 extended school year and the 1999-2000 regular school year. The parents claimed that the district denied FAPE by refusing to include as a related service the cost associated with the student's participation in the conductive education program at the Center for Independence through Conductive Education.

The decision was rendered in favor of the parents and the district was directed to provide OT and PT services through a conductive education program in place of direct OT and PT related services that were specified in the student's IEP. The district was ordered to provide conductive education. The district was ordered to reimburse the parents the cost of conductive education for the 1999-2000 and 2000-2001 school year and the 1999 and 2000 extend school years. The parents were also to be reimbursed transportation costs. School staff was

ordered to consult on a weekly basis with the student's conductive education teachers and the student's one-on-one aide was to be trained in conductive education. The student's IEP was to be amended to include goals pertinent to independent walking and daily life skills. Legal counsel represented both parties.

**Case #001963 (Carolyn Ann Smaron, Hearing Officer)
Appropriate Placement**

The parent filed for an impartial due process hearing upon her son's re-entry into the local public school district alleging that the specific classroom placement was inappropriate. There was no dispute that the student was eligible for special education and related services and no dispute that the proper placement was a cross categorical self-contained classroom. The parent was unable to produce any credible evidence that the specific classroom was inappropriate. Consequently an order was entered denying the relief requested by the mother. Legal counsel represented the district; the parent was pro se.

**Case #001778 (James Wolter, Hearing Officer)
Suspension, Neighborhood School v. Separate Special Education Day School, FAPE**

The parents requested the hearing alleging that the district had violated the student's right to a free appropriate public education by placing the student in a separate special education day school. The student was 17 at the time of the hearing and had been suspended for 10 days during the current school term for three separate offenses (pulling a fire alarm, threatening a teacher while holding a pair of scissors and punching a student in the face causing the student to be taken to the hospital).

The record showed that the student had attended three different separate special education day schools over the past five semesters. The parents wanted the hearing officer to order the district to remove the student from the special education and return him to the regular education program in his home school. The hearing officer found in favor of the district and ordered that the student remain in the separate special education day school placement. Legal counsel represented the district; the parent was not represented.

**Case #001890 (Susan Einspar-Wayne, Hearing Officer)
Implementation of IEP, Change in Placement, Neighborhood School vs. Therapeutic Day School**

The parent requested the hearing because she objected to the district's recommended placement in a therapeutic day school. The parent contended that the student did not deserve to be placed in such a "Jail like" setting. The

mother argued that the student's behavior was a result of the district's failure to provide the services delineated in his IEP. The district contended that its attempts to serve the student in a less restrictive setting had been unsuccessful and that the student required a more restrictive and specialized setting than the local school could provide. Furthermore, the school district argued that it is without authority, as is this hearing officer, to assign the student to another regular education high school that is not his neighborhood school. The hearing officer found that the parent did not present any competent testimony or other evidence that the school district was not providing services and supports as delineated in the IEP. The hearing officer affirmed the district's recommendation placement in a therapeutic day school. Legal counsel represented the district; the parent was not represented.

**Case #001798 (Marie Bracki, Hearing Officer)
Sufficiency of Services, Case Dismissed**

The parent requested a hearing because of concerns about sufficiency of services. It was determined that the child had been hospitalized and those records were to be shared with the school district and another IEP conference was to be scheduled. The district asserted that the child was appropriately placed and receiving services listed in his IEP. The parent failed to participate in a second prehearing conference and was unavailable to the hearing officer or the school district for discussion. The case was dismissed for failure to proceed to hearing. Counsel represented the district; the parent was not represented.

**Case #001852 (Susan Einspar-Wayne, Hearing Officer)
Residency, Reimbursement for Transportation**

The parent, seeking individual transportation for their son due to his asthma, requested the hearing. During the pendency of the due process hearing, the parents and the school district entered into a mediation agreement. The district agreed that the student would sit in the front seat of the van and that the van would be fumigated after each use. The district also agreed to monitor tobacco products and inappropriate language and behavior in the van. The district agreed that the students with alleged smoke residue on their clothing would be placed in the rear passenger seat. Despite the fact that the school district complied with the mediation agreement, the family found the plan unacceptable and requested the hearing to obtain reimbursement for transporting the student to school.

The district contended that they had complied with the mediation agreement and that they had no further obligation as the student no longer resided in the district. According to the findings of the hearing officer, the residency affidavits supplied by the parents were not sufficiently detailed. The hearing officer found that the parents were not entitled to reimbursement for the provision of individual

transportation for the student as they were not residents of the school district. Legal counsel represented the district; the parents were not represented.

**Case #002173 (Frank Nowik, Hearing Officer)
Revoke Consent for Evaluation, Consent for Placement**

Both the parent and the district requested the hearing. The parent requested the hearing because she objected to the district's eligibility determination and she did not want her child labeled as a special education student. The district counter-filed seeking an order to place the student in special education. Based on the evidence submitted, the child was placed in a special education class prior to being staffed in that class. The district's position was that this was done as part of an intervention to deal with the serious behavioral issues the child was presenting. The parent indicated that she was unaware that this was a special education class. The hearing officer found that the placement of the child in that class prior to the staffing and prior to the parent's consent was inappropriate. However, the IEP of April 6, 2001, was appropriately conducted, thus the recommended placement of the child by the district was ordered. Legal counsel represented the district; the parent was not represented.

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

The district requested the hearing seeking an order that would direct the district to proceed with an initial evaluation of the student to determine if the student was eligible for special education and related services. At the time of the hearing, the student was fifteen years old and was referred for a case study evaluation due to disruptive behavior that was interfering with his ability to participate in class discussions and his refusal to complete classroom assignments. The hearing officer ordered that the district proceed with a case study evaluation. Legal counsel represented the district; the parent was not represented.

**Case #001996 (Marie Bracki, Hearing Officer)
Agreed Upon Order, LRE, ESY**

The parents requested the hearing noting the district's failure to provide an appropriate LRE placement with appropriate aids and services, failure to instruct the student in his mode of communication and other concerns. An agreed upon order was entered reimbursing the parents for tuition, fees, and services provided during the academic year and including extended school year services. Counsel represented both parties.

**Case #002198 (Robert Ladenson, Hearing Officer)
Extended School Year Services**

The student in this case was an eleven-year-old boy with autism. For the past two years his special education placement had been in a district program. The parents were seeking an order that would direct the school district to provide the student appropriate access to the regular education curriculum, reasonable opportunity to participate in appropriate after school activities, and an appropriate ESY program. At the pre-hearing the parents agreed that all issues except for ESY could be removed from the hearing.

In this case the school district had recommended an ESY program for the student of five weeks (24 days) with four hours of instruction per day. The parents concurred with the total number of days proposed by the district but insisted that the child should receive six hours of instruction rather than four hours per day.

Based upon the testimony and evidence presented in this case, the hearing officer concluded that the district had developed an appropriate IEP for the student relative to the regular school year and that the student made progress this past year with respect to his IEP goals and objectives.

The hearing officer found that the district's recommended ESY program was appropriate for the student. Legal counsel represented both parties.