

Due Process Hearing Decision Summaries November 1, 2000 through February 28, 2001

Following is a summary of impartial due process hearing decisions issued between November 1, 2000 and February 28, 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 #000627 (Vivian Gordon, Hearing Officer) Eligibility for Special Education, Stay of Placement, Independent Educational Evaluation

The parents filed the request for due process hearing six months after the school district determined the student was no longer eligible for special education. The parents requested a stay put placement that was ordered by the hearing officer. The school district delayed offering the stay put placement for approximately four weeks and thereafter, the parent refused the stay put placement. The parents raised issues regarding the stay put placement, the appropriateness of the school district's ineligibility decision, the manner in which the student was tested and reevaluated, the adequacy and competency of the regular and special education services the student received at the elementary school level, and a disciplinary matter.

The hearing officer found that the school district's finding of ineligibility was appropriate. There was insufficient evidence to conclude that the regular and special education services the student received was inadequate. The hearing officer further found that a review of the disciplinary matter was outside the bounds of consideration for the hearing officer under IDEA. It was determined that the school district's delay in providing a stay put placement in a timely manner justified compensatory education for a similar period. It was also determined that the manner in which a tester tried to help the student answer a math reevaluation test interfered with the accuracy of the results prompting a finding that the student should retake the test by an independent evaluator at public expense.

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

Case #000978 (Marie A. Bracki, Hearing Officer) Case Dismissed

The parent requested the due process hearing because she objected to the treatment that she and her son received from the teacher and others at the school. The hearing officer advised the parent that she did not have jurisdiction over personnel matters. The case was dismissed.

Legal counsel represented neither party.

**Case #001070 (Richard Brimer, Hearing Officer)
Placement, Identification Process and Independent Educational Evaluation at
Public Expense**

This is the second order and decision in this matter. The student exhibited a variety of defiant and aggressive behaviors in the home, in the community and at school. However, the student's current teacher did not observe the student exhibiting any defiant or aggressive behaviors. The teacher's testimony was in conflict with the testimony of the parents. In essence, the documents submitted and the testimony of the witnesses raised more questions about the student than they resolved. At this point, it was unclear as to whether the student had a psychiatric/emotional problem and the possible impact this problem had on the delivery of educational services. Therefore, the hearing officer ordered a psychiatric/emotional evaluation completed on the student. This was the first order and decision.

There were still two unresolved issues, the first issue dealt with the student's eligibility for special education and related services and the second issue involved the appropriate placement of the student. The neuropsychological report indicated the student was behavior disordered, other health impaired, and had a secondary disability of learning disabilities. This report also suggested that the least restrictive environment for the student was a therapeutic day school. The hearing officer ordered that the student fulfill the IDEA eligibility criteria for a student with a primary disability of emotional disturbance, other health impaired, and a secondary disability of learning disability. The hearing officer also ordered the student be placed in a therapeutic day school.

Legal counsel represented both parties.

**Case # 001207 (Marie A. Bracki, Hearing Officer)
Conduct of Case Study Evaluation, Independent Evaluation, Dispute Regarding
Diagnosis, and Reimbursement for Tutoring Services**

The parent requested the hearing in an effort to secure reimbursement for private tutoring services and reimbursement for independent evaluations. The parents alleged that the district failed to provide services to the student in the least restrictive environment and in an amount sufficient to meet the student's needs. The hearing officer found that the district had failed to inform the parents of its decision to not conduct an evaluation and failed to conduct an appropriate evaluation. The diagnosis in the record, made by various professionals, ranged from slow learner to EMH or TMH and then learning disability with speech and language disabilities. The parents secured private tutoring services for the student while pursuing evaluations on her behalf. The hearing officer found that the district had failed to provide the student a free appropriate public education in the least restrictive environment. The district was ordered to reimburse the parents for the independent educational evaluations and tutoring services they secured up to September 1998.

Legal counsel represented the district. The parent was not represented. This case is currently in federal court.

**Case #001283 (Judge Julia Quinn Dempsey, Hearing Officer)
Order to Dismiss**

The hearing officer dismissed the case since the requesting party, the student's grandmother, received all the relief for the student that could be awarded in a due process hearing.

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

**Case #001301 (Nancy Hablutzel, Hearing Officer)
Consent for Case Study Evaluation**

The district requested the hearing in order to obtain permission to perform a case study evaluation. At the time of the hearing, the student was attending the fourth grade in her neighborhood school. Since the beginning the first grade, she had experienced some difficulties with the standard curriculum and from time to time was assigned to a Title I reading program. The parent refused to provide written consent to do a full and individual case study evaluation, as she felt that it would damage the child's self-esteem. The child's father was not opposed to the evaluation. The hearing officer found that the district had properly requested the due process hearing to secure permission to perform the full and individual evaluation and ordered that the evaluation be conducted immediately.

Legal counsel represented neither party.

**Case # 001382 (Karen Anderson, Hearing Officer)
Motion for Summary Judgment**

The hearing officer ordered the district to provide the student with the special education services outlined in the student's IEP. This order came in response to the district's motion for Summary Judgment.

Legal counsel represented the district. The parent did not participate in the process.

**Case # 001506 (Marian F. McElroy, Hearing Officer)
Least Restrictive Environment, Change of Placement**

The district requested the hearing because the parents disagreed with the district's proposed placement in a separate public therapeutic day school. The parents withdrew the student from school and informed the district of their intent to home school the student. The school district subsequently withdrew its request for due process. The following fall, the parent attempted to re-enroll the student in the school district, but did not want the student to be placed in the separate public day school. The school district reinitiated the due process.

School personnel testified at the hearing that the student was physically aggressive and on one occasion brandished a knife at other student. Staff also testified that at times the student would disappear in the school. His attitude was largely negative and he was unmotivated. The hearing office found that based on the student's serious behavior issues and the school district's inability to successfully intervene in the least restrict environment, the district's proposed placement in a separate public therapeutic day school was appropriate.

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

**Case # 001535 (Marie A. Bracki, Hearing Officer)
Case Dismissed for Lack of Intent to Proceed**

Following the parent's request for a due process hearing, the district made an offer of settlement. The parent requested additional time to consider his options. The hearing officer contacted the parties and advised them unless the parent was willing to move

forward the case would be dismissed. After hearing nothing from the parent, the hearing officer dismissed the case for lack of intent to proceed.

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

**Case # 001589 (Gail Friedman, Hearing Officer)
Out-of-District Placement, Dispute Regarding Sufficiency of Services, Inadequate IEP**

The parent requested the hearing asserting that the district inappropriately relied upon evaluations and documentation from a prior school district without further re-evaluation to determine needed services, failed to adequately identify the student's educational disabilities prior to drafting the student's IEP, and failed to provide services and modifications as required by the IEP. In addition, the parent requested that the student be placed outside of the district.

It was concluded that the district had appropriately placed the student and that the IEP needed to be rewritten to individualize the goals and objectives to meet the student's educational needs. It was further concluded that a behavioral motivation plan should be developed and that student should receive social work services.

Legal counsel represented the parent and district.

**Case # 001614 (Richard W. Brimer, Hearing Officer)
Location of Services, Compensatory Services, Best vs. Appropriate Services**

While enrolled in the third and fourth grades, the student began to experience academic difficulties. At the request of the parent, the school district evaluated the student to determine her eligibility for special education and related services. The participants of the eligibility conference determined the student did not meet the eligibility criteria specified in the IDEA but the participants determined the student was eligible for a 504 program. At the annual review, the parent requested a due process hearing since the 504 program was not meeting the student's needs. The request for a hearing was based on three points: (1) a case study evaluation (CSE) to determine if the student met the eligibility criteria for a student with a disability, (2) a placement in an elementary school other than the one the student currently attends, and (3) compensatory educational services. The school district agreed to a CSE. The participants in the eligibility conference following the CSE determined the student met the criteria for a student with learning disabilities. The student was also entitled to the related services of social work and speech/language. The parent agreed with all the components of the newly developed IEP. The district agreed to place the student in a different elementary school. The only issue that was not resolved was the issue of compensatory or support educational services.

The due process hearing went forward. The statutory requirement of a "free appropriate public education" was interpreted through the *Board of Education of the Hendrick Hudson Central School District vs. Rowley*. The district fulfilled the two-step inquiry process to test for a free appropriate public education. Since the two requirements were met, the district complied with the obligation imposed by the IDEA. It was ordered that the student was not entitled to compensatory educational services, but the district will enroll the student in an after-school tutoring program that it currently provides to other students.

Legal counsel represented both parties.

**Case # 001673 (Charles L. Aschenbrenner, Hearing Officer)
Private School Placement, Eligibility Criteria, Dispute Regarding Sufficiency of
Services, Graduation, Termination of Services, Compensatory Services, FAPE,
Related Services**

The parents representing their nineteen-year old son who was a senior in high school and scheduled to graduate at the end of his senior year requested the due process hearing. It was the parents' contention that their son needed to continue his education in a private residential facility at the school district's expense because he was not ready to enter a post-high school program.

The student had received special education from the age of three in the area of speech/language and learning disabilities with a significant discrepancy in the area of mathematics. Speech and language was discontinued at the end of his freshman year, but the student continued to receive special education resource services throughout his high school career.

The parents requested that the school district conduct speech and language and psychological evaluations in order to have current information to consider post-high school programs. The school district agreed and as a result conducted a MDC/IEP conference in May of the student's senior year and found him no longer eligible for special education and recommended graduation.

In preparation for the due process hearing, the parents contracted for an independent speech/language evaluation, central auditory processing evaluation and a psychological evaluation. The results of the independent evaluations found the student still eligible for special education as a learning disabled student who had significant speech and language problems and a central auditory processing disorder.

The parents requested that the school district continue the student in the residential facility, and that they be reimbursed for their unilateral placement plus expenses for the independent evaluations and the evaluators' expenses associated with their testimony at the due process hearing.

The hearing officer found that the student was denied FAPE, and the school district was ordered to provide one year compensatory education for the student at the residential facility. The hearing officer also ordered the district to reimburse the parents for all approved expenses they incurred in making the unilateral placement.

Legal counsel represented both parties.

**Case # 001772 (Francis Nowik, Hearing Officer)
Reimbursement for Private Preschool Placement**

The parents requested a due process hearing seeking tuition and transportation reimbursement for the cost associated with the placement of their child in a private preschool that teaches young people with hearing loss. The parents sought a full day kindergarten with adequate special education support. The district's IEP provided a half-day kindergarten with speech and language services. The district also offered two half-day kindergarten programs and offered to pay for the child's attendance at a local full day kindergarten, both with IEP identified special education services. The hearing officer found that the IEP was reasonable calculated to confer an educational benefit on the child and thus denied the parent's request for reimbursement.

Legal counsel represented neither party.

**Case # 001811 (James A Wolter, Hearing Officer)
Change of Placement to Separate Special Education Day School, Psychiatric
Evaluation**

The parent requested the hearing challenging the district's proposed change of placement to a separate special education day school. The parents were seeking an order to provide the student with a self-contained special education placement in his neighborhood school. The district was seeking an order to compel a psychiatric evaluation over the parent's refusal to consent to that portion of the case study evaluation. At the time of the hearing, the student was 12 years old and receiving homebound instruction by mutual consent of the parties at the time of the due process hearing. He was eligible for special education under the classification of learning disabilities since entering the second grade.

The hearing officer found the district's proposed special education placement in a separate special education day school did not constitute a free appropriate public education in the least restrictive environment. The hearing officer did find that the student's behavior required the district to provide the student with a psychiatric evaluation as part of his case study evaluation. The student was ordered to return to his neighborhood school and the district was ordered to proceed with obtaining a psychiatric evaluation.

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

**Case # 001858 (Charles L. Aschenbrenner, Hearing Officer)
Residency – Order to Dismiss**

The court appointed legal guardian requested the due process hearing for the student under her guardianship. The student is a six-year-old boy who was enrolled in a regular first grade in the school district where he would normally attend school if he were living with his natural mother. The guardian received permission to enroll the student in this district based on an indication that he would be returning to his natural home in the district. After school began a referral was made and a full case study evaluation was conducted. On October 16, 2000, an IEP conference was held and it was determined that the student was eligible for special education in the category of emotional disturbance. It was at this conference that the school district found out that the student would be remaining with the guardian who retained court ordered legal guardianship. The child would not be living with his natural mother who resides in the district. The guardian objected to the special education recommendation for placement, filed for a due process hearing and stated the stay put should be in the district where he was currently enrolled. The district filed a "motion to dismiss" the case based on the belief he was not a legal resident of the district.

The hearing officer found that the student was a resident of the district where the legal guardian resided. The case was dismissed. Legal counsel represented both parties.

**Case # 001865 (Stephen B. Rubin, Hearing Officer)
Motion to Dismiss, Transportation, FAPE**

The parent initiated the request for due process on behalf of her 10-year-old daughter who was diagnosed as having asthma, hyperactivity and seizures. The parent contended that the child could not be left alone and that the school district refused to provide transportation services. The parent attempted to enroll the student in a school using an address that was

neither the student's home address nor within the schools' attendance area. The district offered to place the student in the child's residence school. The parent refused. Due to the parent's refusal to enroll the student, the child received no educational services. According to the district the student lived only a couple of blocks from her neighborhood school and the IEP did not call for transportation services.

The hearing officer dismissed the case without prejudice. Legal counsel represented the district. The parent was not represented.

**Case #001880 (Richard W. Brimmer)
Consent for Initial Evaluation**

While the student's achievement level in the first six grades was unclear, it appeared he progressed through the elementary grades on schedule. In the fall of 1998, the student was promoted to the community's junior high school. During that period, the student exhibited academic, behavioral and health concerns. In the 1998-99 school year, the student was retained and later, dismissed from the summer school remediation program. The following year, the student repeated the seventh grade and earned marks, which resulted in the student being promoted into the eighth grade. In the first term of the eighth grade, the student failed all but one of his core courses. Behaviorally, the student earned detentions, disciplinary notices and disciplinary referrals for inappropriate verbalizations, insubordination, and disruptive, confrontational and disrespectful behavior. The student's social problems were evident with both authority figures and peers. During this period, the student was absent from school between 10% and 38% of all school sessions. He also visited the school health clinic between 23% and 50% of all school sessions.

In the findings of fact section, the hearing officer concluded that the student had academic, behavioral, and health problems that interfered with his ability to progress through the school system at the typical rate. 34 CR 300.505(b) and 20 USC 1415 (a) states that if a parent refuses to consent for an initial evaluation, the agency must initiate a due process hearing in this matter with an impartial hearing officer making the determination. The hearing officer concluded 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.

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

**Case # 001908 (Robert F. Ladenson, Hearing Officer)
Private Therapeutic Day Placement vs. Ombudsman Program, Least Restrictive Environment**

The parent requested the hearing because she objected to the district's proposed placement for the student at a therapeutic day school. The mother was seeking a placement at the Ombudsman, a program described by its director at the due process hearing, as non-therapeutic, and conducted in a business-like, rather than a nurturing manner. The student also indicated at the hearing that he wanted to enroll at Ombudsman.

The hearing officer concluded that the educational placement the district had proposed for the student satisfied the requirements of the IDEA in that it provided the student with an appropriate education. Thus, the hearing officer declined to order placement of the student in the Ombudsman program.

**Case # 001959 (Richard W. Brimer, Hearing Officer)
Consent for Evaluation**

While enrolled in the 5th grade, the student was referred for a case study evaluation. The multidisciplinary conference on behalf of the student concluded that he fulfilled the eligibility criteria specified in 34 CFR 300.7(c)(10) as a child with a learning disability. He continued to fulfill the eligibility criteria through the middle school and into high school. In high school, the student's academic problems increased with the student failing all of the courses in the first term of the current school year (the only marking period at the time of the hearing). Also, the student's behavior problems increased in its frequency and severity. At the time of the hearing, he was a sophomore and had received 16 student adjustment problem slips, 8 discipline slips, and 4 visits by the truant officer, and several in-school and out-of-school suspensions. The student's social problems were evident with both authority figures and classmates at the school.

The parents requested immediate placement in the general education program. They felt that if he were placed in that program, his problems would go away. The district countered that prior to a change of placement, the district must complete a case study evaluation. The parents refused to sign the permit form to authorize the school district to conduct its case study evaluation. The hearing officer concluded the school district met its burden of proof and ordered the district to conduct a comprehensive case study evaluation on behalf of the student.

Legal counsel represented the district. The family was not represented.

**Case # 001973 (Vivian Gordon, Hearing Officer)
Least Restrictive Environment**

The parent of an eight-year-old child requested the due process hearing, objecting to the school district's recommendation that the child be placed in a more restrictive setting after only one month of services. The request for due process was initiated one month after the student was found eligible for special education. 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 setting 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 district testified that it was not treating the student unfairly or cruelly and that the behavioral intervention plan developed required time to impact the student's conduct. The district further testified that the newly recommended placement for the student was appropriate.

The hearing officer agreed 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 that there was insufficient evidence and testimony to conclude that the school district was treating the student unfairly or cruelly and that the current behavioral intervention plan could reasonably address the student's behavioral and emotional needs. The school district's recommendation for a more restrictive therapeutic placement was found to be the appropriate. The parent appeared pro-se and counsel represented the school district.

**Case # 001978 (Gail Friedman, Hearing Officer)
Least Restrictive Environment, Private Therapeutic Day Placement, Free
Appropriate Public Education**

The parents requested the hearing asserting that the district's decision to place the student in a private therapeutic day school was a denial of the student's right to a free appropriate public education in the least restrictive environment. The parents requested that the student be placed in his home high school with support services.

It was concluded that the district's proposed offer of placement in a therapeutic day school did not provide the student with a free appropriate public education in the least restrictive environment consistent with the requirements of both IDEA and Illinois law and regulations.

Legal counsel represented the district. The father, who is a practicing attorney, represented the parents.