

**Illinois State Board of Education
Due Process Summaries**

Decisions Issued Between October 1, 2004 and December 31, 2004

**Case No. 004107 – Gail Tuler Friedman, Hearing Officer
Failure to Prosecute Claim, Order of Dismissal
Order Issued October 1, 2004**

The parent requested a due process hearing challenging the district's placement proposal. After the parent informed the hearing officer in late August 2004 that the parent would withdraw the hearing request, several attempts were made to secure the parent's written withdrawal by the hearing officer. The hearing officer then dismissed the case when the parent did not produce a written withdrawal.

The district was represented by an attorney.

Parent initiated the request.

**Case No. 003644 – Marie A. Bracki, Hearing Officer
Failure to Prosecute Claim, Order of Dismissal
Order Issued October 4, 2004**

The parent requested a due process hearing in September 2003 to challenge the district's placement. After extensive discussions with the district, the parent indicated satisfaction with a new placement proposed by the district and stated willingness to withdraw the hearing request. After numerous attempts by district counsel and the hearing officer to obtain the written withdrawal, the district filed a motion to dismiss in August 2004. Unable to obtain the parent's withdrawal despite the parent's continued agreement with the new placement, the hearing officer granted the motion to dismiss.

The district was represented by an attorney.

Parent initiated the request.

**Case No. 003795 – James A. Wolter, Hearing Officer
Placement, Identification
Decision and Order Issued October 5, 2004**

The parent requested due process to challenge (a) the identification of the student, who was diagnosed with Rett's Syndrome, under the disability category of Autism, and (b) the student's placement in a general education building. The

district's placement occurred at an IEP meeting in September 2003 in which the parent refused to participate. Following the filing of the hearing request, the parent informed the hearing officer that the parent refused to be in the same room with district representatives. The hearing officer ordered the hearing to proceed after making several additional attempts to secure the parent's participation in the proceedings. The hearing officer found the student was making progress on the IEP and that the placement was appropriate. The hearing officer further found that the diagnosis of Rett's Syndrome merited the district's decision to place the student under the category of Autism.

The district was represented by an attorney.

Parent initiated the request.

**Case No. 004108 – Alan J. Cook, Hearing Officer
Initial Placement, Order of Dismissal
Order Issued October 15, 2004**

The district requested due process after the parent refused to provide written consent for the student's initial placement in a program for students with the disability category of Mentally Retarded. Following several attempts to secure parent participation in the proceedings, one of the parents participated in a status at which the prehearing conference was scheduled. Subsequently, the parents would not participate in further proceedings. The hearing officer dismissed the district's hearing request, indicating that he did not have jurisdiction to further consider the matter.

Both parties were unrepresented.

District initiated the request.

**Case No. 004040 – Marie A. Bracki, Hearing Officer
Placement, Compensatory Education
Decision and Order Issued October 19, 2004**

The parents requested due process to dispute the district's proposed IEP placement in a general education high school, also seeking to maintain the student's current placement in a private therapeutic setting. The parents also claimed compensatory education services from the district in the form of Extended School Year support. Following an initial motion in which the hearing officer determined that the therapeutic setting was the "stay-put" placement, the hearing officer determined that the district's IEP in the general education setting was appropriate. Accordingly the hearing officer ordered the student placed in

the general education setting. As a result, the parents' further claim for compensatory ESY services was denied.

Both parties were represented by counsel.

Parents initiated the request.

**Case No. 004150 – Carolyn Ann Smaron, Hearing Officer
Residential Placement
Decision and Order Issued October 21, 2004**

The parent requested due process, alleging that the placement determination at a therapeutic day school made at the IEP meetings in January and February 2004 was inappropriate. The parent, represented by an advocate from the Juvenile Court, believed that the residential placement ordered by the Court was the more appropriate placement. Testimony and documents produced at hearing indicated that the residential placement was for non-educational reasons. The hearing officer therefore held that the district should not held liable for the costs associated with the residential placement in question.

The district was represented by an attorney. The parent was represented by an advocate.

Parent initiated the request.

**Case No. 004234 – Carolyn Ann Smaron, Hearing Officer
Statute of Limitations, Motion to Dismiss
Decision and Order Issued November 11, 2004**

Parents requested due process in early October 2004 claiming that the district had violated its obligation to conduct "Child Find" with regard to the student during the 2000-01 and 2001-02 school years. In June of 2002, the parents withdrew the student from the district and placed the student in an out-of-state facility. In response to the due process request, the district filed a motion to dismiss, arguing that the parents' claim was time-barred due to the statute of limitations on IDEA claims under Illinois law. The hearing officer found that relevant Federal district court holdings imposed a two-year statute of limitations and therefore granted the school district's motion to dismiss.

District was represented by an attorney.

Parents initiated the request.

**Case No. 003944 – Gail Tuler Friedman, Hearing Officer
Least Restrictive Environment, Early Childhood
Decision and Order Issued November 15, 2004**

The parents requested due process challenging the district's decision to place the student in an Early Childhood program operated by the district. The parents believed the student, who was aged 6 and diagnosed with autism, would be better served in a therapeutic day placement. The hearing officer found that the student received some educational benefit in the Early Childhood program, and could find no evidence to support the claim that the student's progress would accelerate in the therapeutic day setting preferred by the parents. The hearing officer therefore upheld the district's offered placement.

Both parties were represented by attorneys.

Parent initiated the request.

**Case No. 004072 – Kathleen Dillon Narko, Hearing Officer
Placement, Least Restrictive Environment, Compensatory Education
Decision and Order Issued November 20, 2004**

Parents requested due process to challenge the district's IEP, which prescribed placement for the student in a self-contained, public elementary school program operated by the special education cooperative. The parents presented an array of expert testimony indicating that the student could benefit from a more inclusive program with supplemental services and supports. The hearing officer found that the district had not considered certain accommodations and supplemental supports before deciding upon the self-contained placement. As a result, the hearing officer determined that the inclusive placement preferred by the parents was the appropriate choice. In addition, the hearing officer ordered the district to provide compensatory education in the form of training and development of an assistive technology plan and supplemental academic tutoring.

Both parties were represented by attorneys.

Parents initiated the request.

**Case No. 004161 – Robert F. Ladenson, Hearing Officer
Related Services
Decision and Order Issued November 20, 2004**

The parent requested due process seeking to augment services provided to the student by means of a full-time aide. Utilizing the Rowley test, the hearing officer found that the district's IEP, which prescribed special education in the areas of

language arts and math, was reasonably calculated to confer education benefit on the student. Accordingly, the hearing officer concluded that the district had no obligation to provide the student with a full-time aide.

Both parties were unrepresented.

Parent initiated the request.

**Case No. 003334 – Gail Tuler Friedman, Hearing Officer
Standing**

Decision and Order Issued November 29, 2004

The parent requested due process to challenge the district's IEP, which determined that the student should graduate high school at the end of the school year. The district filed a motion for summary judgment, producing evidence that the student was 18 years old at the time of the due process request and that the student was under no order of guardianship. On this basis, the hearing officer granted the district's motion, thereby dismissing the parent's hearing request.

The district was represented by an attorney.

Parent initiated the request.

**Case No. 003579 – Robert F. Ladenson, Hearing Officer
Assistive Technology, Compensatory Education, Independent Evaluation
Decision and Order Issued December 10, 2004**

Parents filed for due process to challenge the district's on-going refusal to provide the student with an augmentative and alternative communication device (AAC). At hearing, a number of witnesses testified that the student, who had limited communication due to cerebral palsy, would significantly benefit from the AAC device, which the district provided to the student only after the filing of the parents' hearing request. Based on the evidence, the hearing officer ordered the district to complete a private assistive technology (AT) evaluation, to convene an IEP to develop a new AT plan, and to reimburse the parents' their costs of an independent AT evaluation the parents obtained prior to the hearing request.

Both parties were represented by attorneys.

Parents initiated the request.

**Case No. 004302 – James A. Wolter, Hearing Officer
Standing, Residency, Motion to Dismiss
Order Issued December 15, 2004**

The parent requested due process to challenge the district's refusal to enroll the student. At the time of the request, the student temporarily resided in the district in a group home, while the parent resided in another district. Because the student was found not to be a resident of the district referenced in the hearing request, the hearing officer determined there was no authority for the hearing officer to act. The hearing officer thus granted the district's motion to dismiss.

Both parties were represented by attorneys.

Parent initiated the request.

**Case No. 004232 – James A. Wolter, Hearing Officer
Placement, Evaluation, Compensatory Education
Decision and Order Issued December 18, 2004**

The parent requested due process to challenge the district's decision to maintain the student in a placement in a general education high school setting. The student, who was identified with disability categories of ED and LD, had a history of behavioral incident in the current setting. At hearing, the hearing officer found that the district did not provide services of sufficient intensity, given the student's history. He further found that although the district appeared to have developed a functional behavioral analysis (FBA) for the student, the FBA had not been implemented. Finally, the hearing officer determined that the district did conduct an evaluation of appropriate scope at the time of the student's last tri-annual evaluation. Given the findings, the hearing officer determined that the student should be provided compensatory support in the form of a more structured, private therapeutic setting.

Both parties were represented by attorneys.

Parent initiated the request.