



Illinois State Board of Education

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Chairman

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State Superintendent of Education

MEMORANDUM

TO: Directors of Special Education

FROM: Andrew Eulass *AE*
Due Process Coordinator

DATE: September 1, 2010

SUBJECT: Due Process Decisions Issued between April 1, 2010 –
June 30, 2010

Enclosed is a summary of impartial due process hearing decisions issued between April 1, 2010 – June 30, 2010. Each summary identifies the case number, the hearing officer, moving party, the issue(s) in dispute, the student's disability (if known), the hearing officer's finding, and whether the parties were represented by legal counsel.

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, which correspond with the enclosed summary, or any particular decision summarized, please contact me 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.

Should you have any questions, please do not hesitate to contact me at 217/782-5589.

Enclosure: Summary Only

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

Decisions Issued Between April 1, 2010 and June 30, 2010

**Case No. 2010-0238 – W. David Utley, Hearing Officer
Eligibility, Placement, Out-of-State Transfer
Decision and Order Issued May 8, 2010**

The parent initiated a due process hearing seeking a determination of eligibility based upon a prior IEP from an out of state school district. The parent alleged a violation of the student's rights when the district failed to determine eligibility based upon the student's disability, failure to provide appropriate evaluations to determine all of the student's disabilities, failure to determine the student eligible for an IEP and failure to write an IEP for the student with sufficient therapeutic, academic and behavioral supports. In addition, the student, initially a kindergarten and first grade student at the time of the hearing, had been diagnosed with a speech/language disorder from another out of state school district. When he enrolled in the current school district, his IEP was not implemented and no services were provided. Although the student had numerous behavioral issues in kindergarten, no eligibility determination was made. The student was ultimately diagnosed with ADHD. In addition, the student also had cognitive and academic difficulties which were diagnosed by outside providers. The district reviewed these reports and opinions but determined that the student still did not warrant special education services. Ultimately, within two weeks of the due process hearing request, the school district did find the child eligible under other health impairment. The parent sought additional evaluations in speech/language, occupational therapy and assistive technology and sought placement in a private therapeutic day school. The hearing officer found that the student required additional evaluations and that the school district was obligated to convene an IEP meeting to consider these additional evaluations. Placement at a private therapeutic day school was denied.

Both parties were represented by attorneys.

Parent initiated the hearing request.

**Case No. 2010-0112 – Stacey Stutzman, Hearing Officer
Placement, Evaluation, Compensatory Education
Decision and Order Issued May 19, 2010**

A student, aged 19, previously identified as cognitively impaired/disabled was placed in a public high school for cognitively disabled students for four (4) years. After a psychological assessment was completed as part of her triennial evaluation, the eligibility was changed to learning disabled and she was placed at

her neighborhood public high school, which she failed to attend claiming that she could not do the work. She requested a due process hearing on multiple issues related to denial of FAPE for procedural and substantive grounds and was returned to her former placement during the course of these proceedings. A comprehensive independent educational evaluation was completed, which the district declined to fund on the grounds that its evaluation was appropriate. At hearing, the student presented evidence of denial of FAPE, both procedural and substantive, including the reports of the independent educational evaluation and testimony from the independent educational evaluation assessors. She requested placement at a private therapeutic day school at public expense, compensatory education, and payment for all independent educational evaluation assessments.

The hearing officer found that the district's inappropriate eligibility determinations and placements for the prior four years resulted in a denial of FAPE. Accordingly, the district was ordered to fund the private placement and provide supplemental tutoring and therapy as compensatory education. The district was also ordered to develop a new IEP for the student with the participation of the private school providers and to pay the cost of private evaluations obtained by the parent.

Both parties were represented by attorneys.

Parent initiated the hearing request.

**Case No. 2010-0096 – D. Michael Risen, Hearing Officer
Evaluation, IEP Procedures, Related Services
Decision and Order Issued May 19, 2010**

The parent requested due process seeking an individual aide for the student and compensatory education for alleged procedural violations over the previous six years. The parent further claimed that the district did not complete the student's most recent evaluation in a timely manner and failed to consider the student's need for assistive technology. At hearing, the hearing officer found the parent's claims were not supported by the testimony and documentary evidence, which showed that the district completed the student's evaluation in a timely manner, the district did fully consider the student's need for assistive technology, and addressed this need in the IEP. The hearing officer further found that the parent's allegations that IEP meetings were conducted without the parent's knowledge and participation were without support. The hearing officer, therefore, held in favor of the district on all issues.

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

Parent initiated the hearing request.

**Case No. 2010-0265 – W. David Utley, Hearing Officer
Eligibility, Placement, Tuition Reimbursement, Compensatory Education
Decision and Order Issued May 24, 2010**

The parent initiated a due process hearing seeking eligibility for special education services, compensatory education and tuition reimbursement for a private school placement and related costs. The student had never been placed in a public school system and had a long history of failures in various private school placements. At the time of the hearing, the student was a senior at a private facility located outside Illinois, having been placed there by the parent in January, 2008. In November 2009, the parents requested a case study evaluation for eligibility for special education services. The district conducted testing in various domains, reviewed records, and conducted interviews with the student and parents within the time allotted. The student was not found eligible for special education services based upon his current presentation and his academic and emotional success at the current private school. The hearing officer found that the school district had adequately evaluated the student and that its determination was supported in the record.

Both parties were represented by attorneys.

Parent initiated the hearing request.

**Case No. 2010-0287 – D. Michael Risen, Hearing Officer
Placement, Evaluation, Compensatory Education
Decision and Order Issued June 23, 2010**

The parent requested a due process hearing challenging the district's IEP and placement of a high school student with eligibility in the categories of Other Health Impairment (OHI) and Emotional Disability (ED). The parent claimed that the district's IEPs over the previous two years inadequately addressed the student's needs in several areas and that the IEPs were based on inadequate evaluation of the student's needs. The parent claimed that, as a result, the student required placement in a private therapeutic day school. The parent further claimed a right to reimbursement for private evaluations obtained by the parent to determine the student's needs. The hearing officer found that the parent's claims were supported by the evidence and that the district's IEPs inadequately provided for the student. The hearing officer ordered the district to fund the student's placement in a private therapeutic school, pay for costs associated with the evaluations, and to revise the student's IEP with significant adjustments to the student's related services.

Both parties were represented by attorneys.

Parent initiated the hearing request.

**Case No. 2010-0317 – Harry A. Blackburn, Hearing Officer
Placement, Evaluation, Compensatory Education
Decision and Order Issued June 28, 2010**

The parent filed for due process to challenge the district's placement of the student in a general education elementary school classroom. The student, who was eligible for special education under the disability categories of Specific Learning Disability (SLD) and Other Health Impairment (OHI), continued to demonstrate significant academic difficulties. At hearing, the hearing officer found that the district's IEP and placement were based upon inadequate and flawed evaluations. As a result, the IEP and placement did not provide adequate support for the student. The hearing officer ordered the district to place the student in a small, structured special education classroom that could include placement in a private therapeutic facility. The district was also order to pay for an array of independent evaluations and to develop a new IEP based upon the independent evaluations. Finally, the hearing officer ordered the district to provide compensatory education in the form of extensive individual tutoring and social work to address the district's past failure to provide a FAPE.

Both parties were represented by attorneys.

Parent initiated the hearing request.