



Illinois State Board of Education

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State Superintendent of Education

MEMORANDUM

TO: Directors of Special Education

FROM: Andrew Eulass *A.E.*
Due Process Coordinator

DATE: June 14, 2010

SUBJECT: Due Process Decisions Issued between October 1, 2009 –
December 30, 2009

Enclosed is a summary of impartial due process hearing decisions issued between October 1, 2009 – December 30, 2009. 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 October 1, 2009 and December 31, 2009

**Case No. 2008-0499 – Mary Schwartz, Hearing Officer
Evaluation, Reimbursement
Decision and Order Issued October 3, 2009**

The district filed a due process request to challenge the parent's request for an independent evaluation. The family had transferred to the district from out of state in the last few years, after which the district provided an IEP identifying the student with a specific learning disability. Several issues arose in subsequent months which resulted in the parent requesting four independent evaluations from the district at public expense. At hearing, the hearing officer found that the district had evaluated the student's needs appropriately. Accordingly, the hearing officer held that the district had no obligation to fund the independent evaluations.

The district was represented by an attorney.

District initiated the hearing request.

**Case No. 2008-0446 – Mary Schwartz, Hearing Officer
Dismissal, Failure to Prosecute Claim
Order Issued October 5, 2009**

The parent requested a due process hearing to challenge the district's eligibility determination and the related services offered in the IEP. Numerous extensions of time had been requested by the parent, resulting in an eventual motion to dismiss by the district for the parent's failure to pursue the claim against the district. The hearing officer noted numerous missed conference calls as well as the parent's failure to respond to the district's motion to dismiss. The hearing officer granted the district's motion and the matter was dismissed.

The district was represented by an attorney.

Parent initiated the hearing request.

**Case No. 2009-0035 – W. David Utley, Hearing Officer
Evaluation, Related Services, Placement, Compensatory Education
Decision and Order Issued October 5, 2009**

The parent filed a request for due process alleging that the student had been denied a free appropriate public education in high school. Specifically, the parent

indicated that the district failed to provide appropriate evaluations of the student, failed to provide for an independent educational evaluation (“IEE”) at district expense, failed to develop appropriate IEPs in the various curriculum areas and failed to provide related services including assistive technology and social work. The student was considered eligible for special education services under the categories of learning disability. The matter was bifurcated as to the issue of the independent educational evaluation and the school district ultimately agreed to pay for a psychological independent educational evaluation. Based upon this IEE, the district placed the student in a therapeutic day school and the issue with regard to placement was withdrawn. The case went to hearing on the issues of evaluation, compensatory education and related services. Based upon the IEE, the hearing officer found that the student was not appropriately evaluated by the district. Despite the continuing difficulty that the student had in reading and math, the district failed to conduct an adequate assessment until the IEE. The hearing officer found that the student was eligible for compensatory education services for two years.

Both sides were represented by legal counsel.

Parent initiated the hearing request.

**Case No. 2010-0005 – Sheana Hermann, Hearing Officer
Placement
Decision and Order Issued October 19, 2009**

The parents requested a hearing to challenge the district’s placement of their eight-year-old child with autism in a self-contained special education program operated by the district for the 2009-10 school year. Objecting to the alleged lack of meaningful interaction with non-disabled peers offered in the district’s placement, the parents chose to educate their child in a full-time home-based program. At hearing, the hearing officer found that the parent’s concerns regarding integration with non-disabled peers was supported by the evidence. Accordingly, the hearing officer ordered the district to fund the home-based program for the entirety of the 2009-10 school year and to provide at least two hours per week of opportunities for the student to interaction with other peers.

Both parties were represented by attorneys.

Parents initiated the hearing request.

**Case No. 2009-0223 – Mary A. Onken, Hearing Officer
Placement, IEP Implementation
Decision and Order Issued October 21, 2009**

The parent requested a due process hearing raising numerous issues concerning the placement of the student, eligible under the disability category of autism, in an elementary charter school. parent claimed the district had failed to implement appropriate supports for the student and to provide adequate staff training at the charter school to allow the IEP to be successfully implemented. At hearing, the hearing officer found that the parent's claims were supported by the evidence and that the district had failed to provide the student with a FAPE while attending the charter school. The hearing officer ordered the district to provide an appropriately trained one-on-one paraprofessional to the student. The hearing officer further ordered the district to provide an array of supplementary supports to the student, as well as compensatory education to address the failure of the district to provide a FAPE.

Both parties were represented by attorneys.

Parent initiated the hearing request.

**Case No. 2010-0038 – W. David Utley, Hearing Officer
Placement
Decision and Order Issued October 29, 2009**

The parent initiated a due process request to dispute the district's proposed placement. The student was eligible for services under the eligibility categories of specific learning disability and emotional disability. In 2008, the district had placed the student at a day school in the local educational cooperative. For the school year 2009-10, the district had started its own special education program and withdrew from the cooperative. The last IEP written for the student withdrew the student from the educational cooperative program and placement was made in the district's new program. The eligibility and services remained essentially the same. Based upon the student's emotional disability, the parent contested the district's placement and sought to have the student remain at the day school at district expense. The district contended that the proposed placement afforded the student the same services and that the student had greater opportunities to be re-integrated into the whole school community. The hearing officer found that the district's proposed placement was an appropriate placement for the student and was the least restrictive environment for the student. The district was ordered to convene an IEP meeting to address appropriate steps in transitioning the student into the district's program.

The district was represented by an attorney.

District initiated the hearing request.

**Case No. 2010-0091 – Ann Breen-Greco, Hearing Officer
Motion to Dismiss, Sufficiency of Hearing Request
Decision and Order Issued November 3, 2009**

The parent requested a due process hearing alleging an array of issues concerning the district's provision of special education to the student. The district filed a motion to dismiss based on the sufficiency of the hearing request. The hearing officer afforded the parent the opportunity to respond to the hearing request but the parent failed to provide a response. The hearing officer reviewed the range of matters raised in the parent's complaint. The hearing request was dismissed due to matters that were raised beyond the two-year statute of limitations, or matters which were not related to the special education services provided to the student. Accordingly, the hearing officer dismissed the hearing request in its entirety.

The district was represented by an attorney.

Parent initiated the hearing request.

**Case No. 2010-0097 – W. David Utley, Hearing Officer
Transportation
Decision and Order Issued December 4, 2009**

The parents requested a hearing after the school district proposed to change the mode of transportation used to transport the student to a private therapeutic day school. The student was eligible for special education on the bases of a specific learning disability and other health impairment. Prior to the school year 2009 - 2010, the district agreed to let the parents transport the student and the district would reimburse the parents for their expenses. Shortly before the start of the school year, the district advised the parents that it was prepared to transport the student to school and changed the student's transportation. Although the parents claimed that the district's method of transportation would adversely affect the student's right to a FAPE, the hearing officer found that the testimony and evidence was not persuasive without any objective comparative data to support the parents' claims. However, the district failed to provide sufficient and adequate notice of the change in transportation. The hearing officer maintained the current method of transportation and ordered an IEP meeting to review and determine the most appropriate method of transportation.

The district was represented by an attorney.

The Parent initiated the hearing request.

**Case No. 2009-0160 – James Wolter, Hearing Officer
Unilateral Placement, Reimbursement, Compensatory Education
Decision and Order Issued December 14, 2009**

The parents made a unilateral placement and then requested a due process hearing to determine whether the district offered a FAPE over the previous two school years and whether the parents' placement in a private therapeutic day school during the current school year was an appropriate placement. At hearing, the hearing officer found that the district's placement in the student's neighborhood school with access to the general education environment was an appropriate option in the least restrictive environment. In addition, the hearing officer found that the evidence supported the district's IEP proposals throughout the period in question. As a result, the parents were denied retroactive reimbursement for all costs related to their unilateral placement for the 2008-2009 school year and prospective placement as well as compensatory services in the form of one additional year at the private school.

Both parties were represented by attorneys.

Parents initiated the hearing request.