

Due Process Hearing Decision Summaries July 1997 and October 31, 2000

Impartial Due Process Decisions Issued between July 1, 1997 and March 15, 1998

Following is a summary of impartial due process hearing decisions issued under the one-tier system which went into effect on July 1, 1997. Each summary identifies the case number, moving party, the issue or issues 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 decision 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.

00015 (Jill Quinones, Hearing Officer) Change in Placement

The hearing was requested by the parents of a child with Down's Syndrome because they objected to the district's proposal to change the child's placement from a regular education program to self-contained classroom for over 50% of the school day.

The hearing officer found that the school district violated the child's right to FAPE because it failed to provide appropriate behavioral intervention/discipline as part of the child's IEP and failed to offer a program in the least restrictive environment. Peripheral issues included failure to provide appropriate speech/language services, inappropriate discipline, failure to consider independent evaluations, inadequate training of staff and supervisors, denial of procedural safeguards and reimbursement for a behavioral consultant. The parents' request for an independent speech/language evaluation was denied.

Both parties were represented by legal counsel.

00033 (Charles L. Aschenbrenner, Hearing Officer) Unilateral Placement in Private School

The hearing was requested by the parents through their attorney because they disagreed with the district's proposed placement in a self-contained program for LD and BD children. The parents rejected the placement because of the all-boy enrollment.

The school district was found not to be responsible for the student's unilateral placement in a private day school. It was determined, however, that the district did not provide FAPE because it neglected to offer an extended school year program for the student in the area of math. The district was ordered to pay for tutorial math services from the previous summer and for the current school year. The district was also ordered to provide an extended school year plan for the 1997-98 school year. In addition, the district was ordered to provide the student a complete year of course work in the area of science and social studies with appropriate modifications and adaptations.

Both parties were represented by legal counsel.

**00034 (Robert Ladenson, Hearing Officer)
Participation in Regular Physical Education**

The district initiated the hearing because the parent disagreed with the district's recommendation that the student be removed from regular physical education. In the district's opinion the student's participation in regular physical education would put the student at grave risk of permanently losing his eyesight and/or suffering severe cardiac damage. The district contended that the student has Marfan Syndrome, however, according to the hearing officer no evidence was presented affirming the diagnosis by qualified medical personnel.

The hearing officer found that the student had a history of severe problems related to vision that would put him at risk if placed in a regular physical education class without modifications or adaptations. The Hearing Officer also concluded, however, that the school district had not considered whether modifications and adaptations could reduce such risks. The hearing officer concluded that, while some evidence in the case record suggested that the student may have Marfan Syndrome, there was no evidence that this had ever been determined through a full evaluation by medically qualified personnel. The hearing officer ordered an independent evaluation to determine whether the student has Marfan Syndrome, and if so, the extent to which his condition puts him at severe risk if placed in a regular physical education class. The hearing officer also ordered the district to convene an MDC/IEP meeting to discuss adaptations and modifications to enable the student to participate in a regular physical education class safely, given his visual deficits, and the dangers, if any, indicated by his evaluation with regard to Marfan Syndrome.

The district was represented by legal counsel; the parent was not represented.

**00047 (Charles L. Aschenbrenner, Hearing Officer)
Reimbursement for Tuition Cost to Residential School**

The parents through their attorney requested the hearing seeking tuition reimbursement to a private residential school for a period of time that the school was not approved by the Illinois State Board of Education. The Illinois State Board of Education had approved retroactive payment for room and board and related services including transportation, but not tuition. The hearing officer found that the district was responsible for the payment during the time in question and that the parents were entitled to a free appropriate education for their son. Furthermore, the hearing officer ruled that the Illinois State Board of Education was responsible for reimbursing the school district for the tuition costs for the time in question.

Both parties were represented by legal counsel.

**00059 (J. Michael Havey, Hearing Officer)
Residential Placement v. Public School Placement**

The hearing was requested by the parents who were seeking continued placement of the student in a residential facility. The hearing officer found that a residential placement was necessary and ordered that the district continue to fund the current placement for the remainder of the 1997-98 school year. Because the residential component (facility) is not state approved, the hearing officer ordered that different arrangements be made for the 1998-99 school year.

Both parties were represented by legal counsel.

**00061 (Francis Nowik, Hearing Officer)
Unilateral Placement in Private School**

The foster parents requested the hearing because they disagreed with the placement offered by the district. The parents took the position that the child should be placed in an all day kindergarten program with supplementary aids and services. The district recommended placement in a half day cross-categorical special education program and half day in a regular kindergarten program.

The foster parents unilaterally placed the child in an all day private kindergarten and requested a hearing for tuition reimbursement. The hearing officer found that the evidence in the case supported the conclusion that the IEP developed by the district did meet the identified special needs of the child and was reasonably calculated to confer an educational benefit on the child.

Both parties were represented by legal counsel.

**00065 (Karen Anderson, Hearing Officer)
Reimbursement for Tutorial Services--Appropriateness of IEP**

The parents requested the hearing to determine whether the School District failed to provide FAPE to the student during her grammar school years, particularly in the area of math, and whether the School District inappropriately implemented the student's 1997-98 IEP without parental consent. The parents objected to the district's decision to remove the student from one-half year of science and social studies in order to provide her with resource assistance in the area of math.

The hearing officer found that the district failed to present an IEP that was designed to meet the student's unique needs in the area of math, and that there was a clear violation of the "stay-put provision" of the IDEA and the Illinois rules and regulations. The district was ordered to immediately stop removing the student from science and social studies, to contract with the student's current tutor (or another qualified professional if the tutor is unavailable) to provide math assistance, reimburse the parents for the cost of the tutor from December 1996.

Both parties were represented by legal counsel.

**000082 (Charles L. Aschenbrenner, Hearing Officer)
Least Restrictive Environment -- Location of Services**

The parents requested the hearing on behalf of their seven-year old son who was born with a genetic condition identified as "Jacobsen's Syndrome." The parents disagreed with the district's proposal to place the student in a more restrictive environment. The district was proposing that the child be placed in a segregated special education program located in another district. The parents felt that the child should be placed in his home district with the implementation of an appropriate behavior management plan to meet his particular needs. The parents also requested an independent evaluation which was denied by the hearing officer.

The hearing officer ruled that the student had not been educated in the least restrictive environment and that he was to remain in his present placement for the remainder of the 1996-97 school year.

Both parties were represented by legal counsel.

**00086 (Francis Nowik, Hearing Officer)
Classification of the Student's Primary Disability**

The parents requested the hearing on behalf of their son because they disagreed with the district's classification of the student as primary behavior disorder, secondary learning disabled. The parents contended that the student's primary disability is learning disabled with a secondary disability being behavior disorder.

At the time of the hearing, the student was ten years old, and was being home schooled. For the 1997-98 school year, the MDC recommended a placement in a behavior disorder self-contained program.

The hearing officer found that the child has a learning disability and a behavior disorder. Based on the child's performance in his recent LD class, the hearing officer concluded that the child's primary disability is behavior disorder.

Neither party was represented by legal counsel.

**00091 (Charles L. Aschenbrenner, Hearing Officer)
Change in Placement Away from Neighborhood School**

The parent requested the hearing because he disagreed with the school district's decision to place his daughter in a special education program for more than 50% of the time in a school building away from her neighborhood school. Based on a hearing officer's order for the school year 1996-97, the student had been placed in a regular first-grade classroom with supplementary aids and services.

This hearing officer found the student had achieved satisfactorily in the previous year's placement and the least restrictive environment (LRE) would continue to be in a regular classroom. Consequently, orders were issued to insure proper planning and training of school district staff and to place the student in a regular 2nd grade classroom in her neighborhood school with provisions for appropriate supplementary aids and services.

Both parties were represented by legal counsel.

**000108 (J. Michael Havey, Hearing Officer)
Independent Educational Evaluation -- Sufficiency of Services**

The hearing was requested by the parents who contended that the district's IEP was not appropriate. The parents requested a private, full-time LD placement with modifications as listed in a report provided by an independent evaluator. Other allegations raised by the parents included services on the IEP not provided, extended school year services not provided and failure of the district to pay the parents for an independent evaluation.

The hearing officer found in favor of the district. The district was ordered to continue to implement the IEP. Both parties were represented by legal counsel.

This decision was appealed on or about February 4, 1998.

**000149 (Francis Nowik, Hearing Officer)
Consent for Initial Placement**

The district requested the hearing to place the student in a special education program. The parent refused to give her consent to the initial placement recommended by the IEP. The parent did not respond to any of the communications sent to her by certified mail. She did not attend the hearing.

The hearing officer found that the district properly conducted the MDC and IEP. He found the student was in need of special education services and that the placement recommended by the IEP was appropriate.

The district was represented by legal counsel; the parent did not participate in the hearing.

**000150 (James A. Wolter, Hearing Officer)
Consent for Reevaluation**

The district requested the hearing to obtain parental consent for a three-year reevaluation. The student was last evaluated in May of 1994. Illinois Administrative Code 226.578c requires school districts to conduct a case study reevaluation for each student receiving special education services at least every three years. The hearing officer ordered the district to initiate a case study evaluation within 10 days of receipt of the decision.

The district was represented by legal counsel; the parent was not represented.

**000166 (Vivian Gordon, Hearing Officer)
Sufficiency of Services**

The hearing was requested by the parents for the purpose of resolving differences with regard to academic expectations, grade status, sufficiency of the IEP and transition planning. At the time of the hearing, the student was 18 years old and receiving special education and related services in an alternative special education program in a self-contained classroom.

Consistent with agreements reached by the parents and the district during the hearing, the hearing officer placed in the decision an order requiring the district to issue bimonthly reports to the parent, create a detailed IEP consistent with the MDC team recommendations, create a detailed transition plan for the student and develop a procedure to insure ongoing and meaningful communication between the parent/student and district.

Neither party was represented by legal counsel.

**000168 (Michael Havey, Hearing Officer)
Private School Placement and Reimbursement for Psychological Services**

The parents requested the hearing alleging that the district failed to identify in a timely manner the student as a child with a disability, and failed to provide the student with a free appropriate public education. As relief the parents were seeking a private school placement, transportation, and reimbursement for psychological services.

The student was first evaluated by the district in 1996 and found eligible for special education and related services under the category of behavior disorder/emotional disorder and specific learning disability. An IEP was developed and the student was placed in a self-contained classroom for students with behavior disorders. During 1997 the parents had the student privately evaluated.

The parents did not dispute the district's procedural adherence in developing the IEP, nor did they deny their meaningful participation in the IEP development. Although the parents did dispute the amount of educational benefit the student had received, testimony and evidence did demonstrate that he had received educational benefit from his program. The hearing officer found that free appropriate public education had been provided to the student.

The hearing officer ordered the district to continue to implement the IEP written for the 1997-98 school year.

The district was represented by legal counsel; the parent was not represented.

**000239 (Julius Menacker, Hearing Officer)
Change in Placement**

The hearing was requested by the district due to the parent's disagreement with the IEP team's decision to place the student in a therapeutic day school. The district contended that the therapeutic day school placement was necessary because of the student's frequent alcohol and drug abuse and high absenteeism. The parents agreed that the student should be transferred from the high school, but disagreed with the district's recommendation to transfer the student to a therapeutic day school. The student, who was 15 years of age at the time of the hearing, and the parents, objected to the therapeutic day school because of their perception of the intellectual level of the students enrolled in the therapeutic day school. The student wanted to remain at his current high school and his parents wanted him transferred to an alternative school. The district's attorney indicated that a review of potential alternative schools revealed that the student's age (15) and drug/alcohol abuse precluded his enrollment at an alternative school which did not serve students with disabilities.

The hearing officer ordered the student be immediately placed in a therapeutic day school until the student reaches age 16 (approximately 2 months). When the student reaches age 16, or immediately thereafter, the district was ordered to contact the student and his mother for the purpose of assisting the student in locating an appropriate alternative school, should the student and his parents desire such a placement.

The district was represented by legal counsel; the parent was not represented.

**00016 (Karen Anderson, Hearing Officer)
Location of Services, Severity of Disability and Degree of Modifications**

The parents requested the hearing because they disagreed with the district's decision to change the location of their daughter's educational program. The parents also disagreed with the district regarding the severity of the student's disability and the degree of modifications and supports required. Although the parents acknowledged that the student has a cognitive disability, they disagreed with the proposed IEP, the educational label of EMH, and the degree of modifications and supports that needed in order for the student to be educated in the school desired by the parents. The parents did not believe the school district adequately considered least restrictive options.

It was the decision of the hearing officer that the student showed such a broad range of scatter in her scores that she did not fall neatly into either the EMH or the LD categories. The hearing officer ruled that the student should be labeled as a student with multiple disabilities and should be educated in her current high school placement which was the placement desired by the parents.

Both parties were represented by legal counsel.

**000192 (Jill Quinones, Hearing Officer)
Interim Alternative Educational Placement -- Expedited Hearing**

The hearing officer declined to order an interim alternative educational placement requested by the school district on an expedited basis. While finding that the child did present a substantial threat of harm to himself or others, the hearing officer did not find that the current placement was inappropriate or that the school district had acted reasonably to minimize the risk of harm in the child's current placement.

The district was represented by legal counsel; the parent was not represented.

**000119 (Marie A. Bracki, Hearing Officer)
Sufficiency of Services, Violation of IEP Procedures**

The parents requested the hearing to resolve issues related to services provided for their daughter, violations in IEP procedures, failure to include transportation in the IEP, and the use of a hearing aid as a goal. The district asserted that it provided appropriate services and transportation was provided. The parties were in agreement relative to the student's diagnosis of hearing impairment and her need for services. At the time of the hearing the student was dually enrolled in a private school for children with hearing impairments and a public school where he is transported to receive speech and language services.

The decision ordered that the IEP reflect the transportation services being provided by the district, specify who was providing services for what portion of the IEP, increase the student's therapy time from 40 minutes to 45 minutes. Other points included an audit of previously contracted services. The hearing officer also stated in the order that the district was free to enter an agreement with the parents to provide a proportional amount of money in lieu of services provided through the school district to purchase speech/language services through a private party under Part B of IDEA.

The district was represented by legal counsel; the parents were not represented.

**00051 (Michael Havey, Hearing Officer)
Change in Placement**

The parents requested the hearing because they disagreed with the district's proposal to change the student's placement from a resource program to a more restrictive, self-contained program in a high school outside the student's home district. The parents also contended that the district had not provided services, particularly counseling and psychological services, called for on the IEP. Both parties agreed that the student was eligible for special education under the category of behavior disorder/emotional disorder and that the student's current placement, a resource program, was not providing educational benefit. Prior to the hearing the district finalized plans for opening a self-contained program in the student's home school and offered this placement to the parents. The placement was rejected.

The hearing officer found that the IEP developed by the district was reasonably calculated to offer educational benefits to the student. The district was ordered to implement the student's IEP in his current high school.

Both parties were represented by legal counsel.

**000189 (Robert Ladenson, Hearing Officer)
Eligibility, Components of Case Study Not Addressed**

In this case the parents contended that the school district had mis-applied its criteria for determining the presence of specific learning disabilities in denying the student special education services. The key issue in this regard concerned the definition of "severe discrepancy" under the school district's criteria. The parents also objected to the school district's criteria as excessively rigid and narrow. In addition, the parents contended that the school district violated the Section 504 rights of the student in the respect that the school district denied services to the student in retaliation against the parents for vigorously asserting the student's rights.

The hearing officer ruled in favor of the school district on all of the preceding issues. Both parties were represented by legal counsel.

**00089 (Karen Anderson, Hearing Officer)
Separate Day School v. Regular Classroom with Supportive Services**

The hearing was requested by the district because they believed that the student needed a more structured setting (therapeutic day school) in order to control and modify his behavior. The parents contended that the district had violated the student's rights with regard to the student's classification from autistic, to autistic-like to autistic-like/EDB. The parents believed that the proposed therapeutic day school was too restrictive and that he should be placed as close to home as possible. The parents also contended that the district had violated the student's rights with respect to a 4 day suspension that occurred the first day of school.

The hearing officer found that the district's proposed placement in a therapeutic day school was appropriate, found no violations with regard to the suspension and found no violation with regard to the student's classification.

Both parties were represented by legal counsel.

**000212 (J. Michael Havey, Hearing Officer)
Failure to Employ Sufficient Numbers of Personnel**

The parents requested the hearing alleging that the district failed to provide FAPE because it failed to employ sufficient numbers of personnel with appropriate qualifications. The parents contended that because the student's IEP stated that 30% of his time would be spent in special education and he was not receiving direct instruction from a teacher certified in special education, the district was not providing the services required by the student and promised in the IEP.

The hearing officer found that a free appropriate public education had been provided to the student.

The district was represented by legal counsel; the parent was not represented.

**Due Process Decisions Issued between
March 16, 1998, and July 15, 1998**

000010 (Vivian Gordon, Hearing Officer)

Sufficiency of Services--IEP Accommodations (Tutoring Services, Note-taker, Shortened Work Product), Failure to Provide a Behavior Management Plan, Appropriateness of Placement, Psychological Counseling Removal from School

The hearing was requested by the parents who alleged that the district had violated the student's rights in numerous areas. At the time of the hearing, the student was 15 years of age. While he had been receiving counseling services since the 4th grade, he had not been determined eligible for special education and related services.

Prior to enrolling in the district, the student attended a residential school in California for two years. He was then placed by his parents in a private school. After enrolling in the district, a case study evaluation was completed and the student was found eligible for special education and related services. The parents alleged that the student had been harmed because of the district's failure to provide a transition plan immediately upon enrollment, and because the district failed to provide a behavior management plan during summer school. The allegations made by the parents were not affirmed and no relief was granted.

It is unclear from the decision if the parties were represented by legal counsel.

000053 (Francis J. Nowik, Hearing Officer)

Motion to Dismiss

Parents requested the hearing because they disagreed with the district's decision that their son was not eligible for special education. In September, the parties reached an agreement in an attempt to resolve this matter. The district agreed to fund an additional independent psychiatric evaluation and a parent signed the consent for such an evaluation. Three months later, the hearing officer received a note from one of the parents confirming that she was postponing the hearing until the results of the evaluation were obtained. From the

date of the September 1997 agreement to March 1998, the parent did not contact the psychiatrist to arrange for the evaluation. On March 31, 1998, the district filed a motion to dismiss this matter on the grounds of lack of prosecution.

000077 (Jill Quinones, Hearing Officer)

Appropriate Placement, Least Restrictive Environment

The parents requested the hearing because they disagreed with the district's proposed placement recommendation. The district and the parents disagreed as to whether the child's special education services should be provided in a resource room (typically for students with mild-to-moderate disabilities) or a life-skills classroom (typically for students with more severe disabilities).

The hearing officer found in favor of the school district and ordered special education resource services to be provided in the life-skills classroom. Since both parties agreed the child needed services outside of the regular education class, the hearing officer did not view the issue as one of LRE. The dispute centered on which classroom was appropriate to meet the student's needs.

Both parties were represented by legal counsel.

000087 (James Wolter, Hearing Officer)

Reimbursement for Unilateral Placement in Private Day School and Independent Evaluation at Public Expense

The hearing was requested by the parents, who sought reimbursement for a unilateral private placement, an independent evaluation, an individual aide they had hired to assist their child at school and the costs of transporting their child to and from school on a daily basis.

The hearing officer found that the district never had an opportunity to provide a program to this child, who had a history of emotional problems. The district maintained that it had a full continuum of program options available and even if the student had to be privately placed, the district would not have used the private school that the parents had chosen because it did not offer an appropriate program to meet the student's needs.

The hearing officer denied the parents' request for reimbursement of tuition costs and the costs of the associated independent evaluation. Additionally, the hearing officer also found that the district had never completed a case study evaluation of the child nor had they attempted to get parental permission to perform such an evaluation. The district accepted the diagnostic findings of the parents' independent evaluation, but rejected the placement recommendation contained therein. Since the district never conducted a case study evaluation and never provided the student an appropriate special education program, the district was ordered to reimburse the parents for the costs associated with the individual aide and the costs associated with transporting the student to school.

Both parties were represented by counsel.

000097 (Jill Quinones, Hearing Officer)

Appropriate Placement, Independent Evaluation, Unilateral Placement in Private School

The hearing was requested by the parents, who alleged that the district failed to consider the recommendations of the independent evaluators, failed to properly identify a placement for the child for the 1997/98 school year, and failed to provide FAPE in the least restrictive environment. Because of these alleged violations the parents were seeking reimbursement for tuition paid in connection with their unilateral placement of the child in a private day school.

The hearing officer found that the school district properly considered recommendations of the child's parents and independent evaluators, the school district properly identified a placement for the child for the 1997/98 school year, the school district offered to provide the child with a FAPE in the least restrictive environment, and the district did not have to reimburse the parents for their unilateral placement of the child in a nonpublic school for the 1997/98 school year.

The parents were initially represented by legal council (council withdrew prior the hearing); the district was represented.

000119 (Marie A. Bracki, Hearing Officer)

Sufficiency of Services, Transportation, Content of IEP

The parents requested the hearing to resolve issues related to services provided for their daughter, violations in IEP procedures, failure to include transportation in the IEP, and the use of a hearing aid as a goal. The district asserted that it provided appropriate services and transportation was provided.

The district was ordered to continue to implement its IEP with modifications including transportation, identification of the service provider and an increase of speech and language services to 45 minutes. Other points included an audit of previously contracted services and the possibility of the parents contracting for private services.

Neither party was represented by legal counsel.

000122 (Karen Anderson, Hearing Officer)

Free Appropriate Public Education Failure to Develop IEP

The hearing was requested by the parents of a child with Down's syndrome who believed the school district failed to adequately assess their child. The parents also alleged that the district failed to provide their daughter with a substantive educational program and committed procedural errors in the development of her IEP for the 1996/97 and 1997/98 school years.

The hearing officer found that the school district violated the child's right to FAPE because it failed to develop an IEP in a timely fashion, failed to fully develop the IEP, and failed to document the progress made on the goals and objectives. The school district was ordered to reconvene the IEP and fully develop the IEP, taking into consideration all the assessments completed on the child. One year compensatory education was ordered.

Both parties were represented by council. This case is currently in federal court.

000142 (Jill Quinones, Hearing Officer)

Out of district Placement, Independent Evaluation and Classification

The hearing was filed by the district. Multiple issues were in dispute. The parents objected to the finding of eligibility for special education and related services under the category of BD/ED. The parents also objected to the district's proposed placement in a public day school.

The hearing officer found that the student was eligible for special education with a BD/ED disability. The hearing officer also found that the proposed out of district placement violated LRE and ordered that the student be placed in a self-contained classroom for over 50% of the school day with social work and a 1:1 aide for the inclusion portion of the day.

The school district requested that the student undertake a psychiatric evaluation. The hearing officer denied this request as the student had been hospitalized in a psychiatric ward of a local hospital in January 1998, and the school district should pursue obtaining access to those records from a court of competent jurisdiction before additional psychiatric testing should be ordered. The district also requested authority to test the child for LD in the area of written language. This request was granted.

The decision also included the development a new IEP with a behavior management plan and inservice for all teachers and staff assigned to work with the student.

000165 (Julius Menacker, Hearing Officer)

Change in Placement

The hearing was requested by the parents, who disagreed with the district's proposal for placement in a residential facility. At the time of the hearing, the student was 18 years of age and diagnosed with Fragile X syndrome and autism. He was also diagnosed as severe cognitive impairment and speech and language disorder. The parents claimed that the district violated its responsibility to provide FADE by not providing appropriate services and IEPs for the student. The parents also alleged that the district provided insufficient staffing and training to staff serving the student. The district asserted that due to the student's aggressive behavior and levels of dependence, the provision of FAPE could best be accomplished by placing the student in a residential facility.

The hearing officer affirmed the district's proposed residential placement. Both parties were represented by legal council.

000181 (Francis Nowik, Hearing Officer)

Residential Placement

The hearing was requested by the parents, who were seeking a residential placement with an on-site educational component. The district offered to place the child in a residential placement with the educational component at a local district's alternative school. The hearing officer ruled that the educational needs of the child could only be met at a residential facility with an on-site educational component.

Both parties were represented by legal counsel.

000182 (James A Wolter, Hearing Officer)

Appropriateness of Placement, Reevaluation, Expressive Art Therapy

The hearing was requested by the parents, who alleged that the placement of the student in a separate public day school did not provide the student with a free appropriate public education in the least restrictive environment. The parent was also requesting that expressive art therapy be added to the student's IEP. The parent also alleged a number of procedural violations and related issues including transportation, notice, parent hostility, etc. The district cross-filed, seeking an order to compel parental consent for a reevaluation.

At the time of the hearing, the student was 9 years of age attending a third grade classroom in a therapeutic day school located at a separate school site. The hearing officer found that the district followed appropriate procedural safeguards in placing the student in the therapeutic day school. Expressive art therapy was not ordered. The district was ordered to conduct a comprehensive case study reevaluation.

The district was represented by legal counsel; the parent was not represented.

000235 (Paul Vega, Hearing Officer)

Eligibility, Placement and Discipline

The district initiated the hearing to compel consent to conduct a case study evaluation on behalf of a 13-year-old student who had recently transferred into the district. The district was informed by the mother that the student had previously been found eligible for special education under the category of behavior disordered/emotionally disturbed. However, the mother objected to the previous district's eligibility determination and classification.

The hearing officer documented many attempts to contact the parent in setting up a time and date for this hearing. Failing in this effort to have an interchange with this parent, the hearing officer set a date and time for the hearing. The hearing was therefore uncontested.

The hearing officer granted the district's request for a case study evaluation. It is not clear from this decision whether the district was represented by counsel.

000249 (Robert Ladenson, Hearing Officer)

Private v. Public School Placement, Free Appropriate Public Education

In this case the parents contended that the student's program had provided no educational benefit from 1994 through 1997. The parents also contended that the school district failed to provide appropriate assistive technology by discontinuing the student's program in facilitated communication from 1994 to 1997. Furthermore, the parents alleged that during the fall of 1997, the student's teacher ridiculed the student because of his weight and physically abused the student. The hearing officer found that the evidence and testimony presented at the hearing failed to support the above contentions and allegations of the parents.

The relief being sought by the parents included placement in an appropriate educational program not operated by the school district, as well as extended school year in such placement. The district requested that the hearing officer require a medical evaluation of the student by a physician selected by the school district, at the expense of the school district.

The hearing officer declined to order any of the relief to the parent or district.

000254 (Julius Menacker, Hearing Officer)

Reimbursement for Unilateral Placement in Private Facility

The parents requested reimbursement for the unilateral placement of their ADHD/LD child in a private educational facility. The parents claimed that this was proper in that the district had not provided FADE.

It was found that the district was providing FADE, as the student passed the majority of courses, and greater progress might have been possible for the student if the parents would have allowed for programmatic changes to continue along the continuum of services, from least restrictive to more restrictive.

The hearing officer found that the district was not required to reimburse the parents for expenses related to the enrollment of the student at the private facility.

The hearing officer dismissed the case without prejudice. The district was represented by legal counsel; the parent was not represented.

000270 (Ralph Goren, Hearing Officer)

Transportation Reimbursement and Aide for Student Attending Illinois School for the Deaf

The parents requested the hearing seeking weekly transportation and requesting that an aide be provided at public expense. The hearing officer ordered that the Illinois School for the Deaf provide the aide for the student and that the local school district of residence reimburse the parents for weekly transportation.

Both the district and the Illinois School for the Deaf were represented by legal counsel. The parents were not represented.

000286 (James A. Wolter, Hearing Officer)

Eligibility

The primary issue in this hearing was whether the student was eligible for special education and related services under the category of mental impairment. The hearing was requested on behalf of the student by his case worker from the Illinois Department of Children and Family Services. The hearing officer found that the district had complied with the statutes and regulations and affirmed the MDC team's determination that the student was not eligible for special education and related services under the category of mental impairment.

Neither party was represented by legal council.

000289 (Ralph Goren, Hearing Officer)

Consent for Case Study Evaluation

The district requested the hearing seeking consent to conduct a case study evaluation. According to the testimony provided, the student had a history of academic failure. Previous attempts as evidenced by the student's educational record reveal that the guardian refused to consent to a full case study evaluation.

The hearing officer ordered that the district conduct the case study evaluation. Although proper notice was provided, the guardian chose not participate in the hearing. The district was represented by legal counsel.

000296 (J. Michael Havey, Hearing Officer)

FAPE, Tutoring Services

The issues in dispute were whether the district provided the student with a free appropriate public education and whether the district should pay attorney fees and special education expenses. Reimbursement for tutoring services was also sought.

The hearing officer found that the placement recommended by the district was appropriate. Reimbursement for tutoring was denied. The hearing officer does not have jurisdiction over matters involving attorney fees.

Both parties were represented by legal counsel.

000300 (Karen Anderson, Hearing Officer)

Dispute over Classification

The issue as refined and stipulated to on the day of the hearing was whether the student was correctly identified and evaluated as EMH/cognitively delayed. The school district believed the evaluation and identification of the student as EMH/cognitively delayed was correct; the mother believed the student was dyslexic. The decision on this case was in favor of the school district in that they had followed all procedures outlined in the Illinois Administrative Code and IDEA Amendments of 1997 in determining that the student was EMH/cognitively delayed.

The hearing officer found that the district had correctly identified and evaluated the student and that there was no need for further outside evaluations.

The district was represented by legal counsel; the parent was not represented.

000308 (James A. Wolter, Hearing Officer)

Consent for Evaluation

The district requested the hearing because the parent refused to consent to a case study evaluation. At the time of the hearing, the student was 15 years of age and in the ninth grade. His scores on state and district standardized tests were above average, yet he was failing 5 of 6 subjects. The student was experiencing both academic and behavioral problems.

The hearing officer ordered that the district conduct the case study evaluation. The district was also ordered to reimburse the parent for the full cost of independent psychiatric evaluation.

It is unclear from the decision as to whether or not the parties were represented by legal counsel.

000311 (Charles Aschenbrenner, Hearing Officer)

Suspensions, Manifestation Determination, Insufficient Services

The parents of an eighth grade student diagnosed as behavior disordered filed for a due process hearing because (1) they felt their son's rights were violated by excessive suspensions without further action to determine manifestation of behavior; (2) failure to conduct appropriate MDC/IEP conferences; (3) failure to implement the 1997-98 IEP; and (4) failure to provide or consider appropriate supplemental aids and services when preparing the 1997-98 IEP.

The hearing officer found that the district did not violate the student's rights with regard to the issue of excessive suspensions. The hearing officer ruled in favor of the parents with regard to the violations pertaining to the appropriateness of the MDC/IEP conferences and the provisions of the IEPs.

Both parties were represented by legal counsel.

000329 (Charles Aschenbrenner, Hearing Officer)

Placement in BD Program

The school district requested the hearing after recommending a full-time BD/ED special education placement for a 7-year-old first grader. The parent objected to the proposed placement. The district presented evidence that the student's behavior was interfering with his opportunity to learn and that he was a danger to others in the classroom, including the teacher.

It was the finding of the hearing officer that the district's recommended placement was appropriate; that district staff had properly identified, evaluated and followed procedures for determining the proper placement. The district was ordered to proceed with the placement. The district was also ordered to develop, cooperatively with the parents, a plan to address the student's behavior at school and at home.

The district was represented by counsel, the parent was not represented.

000330 (Francois Nowik, Hearing Officer)

Suspension, Grading and Sufficiency of Services

The parents requested the hearing alleging that their child's three-day suspension was not consistent with the IEP and the Behavioral Implement Plan (BIP), that there was bias in the grading of the special education student and that the IEP did not provide an appropriate education for the child.

The hearing officer found that the suspension was consistent with the BIP and appropriate under the circumstances. He found no evidence of bias on the part of the teacher. He found that the IEP developed for this student was designed to provide an educational benefit; however, given the occurrences of the past year and since the goals and objectives of the IEP were not met, he ordered a continuation of those goals for the following year with an increase in counseling services.

The district was represented by legal counsel; the parents were not represented.

000331a (James A. Wolter, Hearing Officer)

Placement and Eligibility

The parents requested the hearing seeking compensatory services. The district counterfiled seeking an order to place the student in a special education residential school. Before the first hearing was held, the parent's requested a second hearing requesting that the student be placed in a communication disordered program located in a separate public day school. The attorneys were unable to combine the requests into one hearing.

The first hearing (case number 000331 a) focused on the following issues as identified at the pre-hearing conference: (1) whether the student required a more restrictive special education placement with a residential component to provide her with FADE; (2) whether the student had a communication disorder and if so what was the adverse effect; and (3) whether the district failed to conduct a functional behavioral assessment and include in the IEP a behavior management plan.

The hearing officer ordered the parent to immediately return the student to the separate public special education day school, which was the mutually agreed upon stay-put placement, until arrangements could be made to return the student to a residential school placement. The parent was ordered to cooperate with the district in returning the student to the residential school. The hearing officer found that the student was eligible for special education and related services under the primary category of emotional disorder/behavior disorder with mental impairment and speech as secondary disabilities. At the time of this hearing, the parents' filed a second request through their legal representative seeking compensatory educational services beyond the students 21st birthday and extended day services. This matter was heard at a later date and a separate decision issued.

Both parties were represented by legal counsel.

000331b (James A. Wolter)

Compensatory Education

This is the second part of a two-part due process hearing. The parent requested the hearing seeking compensatory education in the form of an extended school day during the 1997-98 school year for the days of school the student missed. Both parties were represented by legal counsel. However, the attorney for the parent withdrew from the case two days before the hearing was scheduled. The parent requested and was granted a continuance. The hearing was rescheduled. The parent failed to show up for the rescheduled hearing. After waiting 30 minutes and not being able to reach the parent, the hearing proceeded.

The record showed that except for nine days, all of the days the student missed were a direct result of the parents not allowing the student to attend school. The district had previously provided the student with compensatory education for those nine days through a prior settlement; agreement. The hearing officer found the district was not obligated to provide the student with compensatory education.

000335 (Julius Menacker, Hearing Officer)

Interim Alternative Educational Placement--Expedited Hearing

The sole issue presented for determination by the hearing officer was whether or not the student's continued presence in the school presented a danger to himself or others, thus

justifying an interim alternative educational setting outside the high school for not more than 45 days. The incident precipitating the expedited hearing involved a fight with two or possibly three others in the school in which the subject student admitted taking the first step in physical aggression. There was evidence of gang-relatedness in this altercation due to the epithets shouted among those involved in the fight.

The hearing officer concluded that the district had proven by a preponderance of evidence that continuing the student in the school placement would present a risk of injury to himself or others, and that the school had taken reasonable measures to minimize the risk of harm in the school setting. The hearing officer also concluded that the disciplinary infractions committed by the student were not related to his disability, and that the student has been educated in the least restrictive environment.

Both parties were represented by legal council.

000338 (Francis Nowik, Hearing Officer)

Consent for Case Study Evaluation and Interim Placement Pending MDC

This hearing was requested by the district. The district requested the hearing to compel consent for a case study evaluation and to place the student in an interim alternative educational placement for up to 45 days. The request for the interim placement was based upon the student's inappropriate behavior which has included violent and sexual behaviors.

The parent was notified of both the hearing and prehearing but did not participate in the process.

The hearing officer held for the district, granting their request to conduct a case study evaluation. Further, the hearing officer granted the district's request for an interim placement in a private day school.

The district was represented by counsel; the parents did not respond.

000339 (James Wolter, Hearing Officer)

Determination of Eligibility, IDEA Protections to Previously Unidentified Student

The parents requested the due process hearing because they disagreed with the MD C teams determination that the student was not eligible for special education. The parents were seeking an order that the student be found eligible for special education and that his current expulsion from school be retracted. The student was 17 years old and suspended from school for violating the school district's zero tolerance policy pertaining to controlled substances. The MDC/IEP team found the student was not eligible for special education because he had earned enough credits and was on track to graduate with his class at the time of his expulsion. He did not exhibit signs of ADD in the classroom nor did he exhibit depression to a significant degree over an extended period of time and to a marked degree which adversely affected his educational performance.

The hearing officer found that the student was not entitled to the procedural safeguards afforded students with disabilities.

Both parties were represented by legal counsel.

000353 (Jill Quinones, Hearing Officer)

Consent for Reevaluation

The district requested the hearing to compel consent for a reevaluation. The parents declined to participate in the prehearing conference or the hearing. At the time of the hearing, the child was attending a sixth grade regular classroom. He was initially found eligible for special education and related services in the third grade.

The hearing officer found that there was nothing in the record to suggest that a reevaluation would be inappropriate. The child continued to display the same academic and related weakness as he did when he first qualified for special education. The district was ordered to conduct a reevaluation. The district was represented by legal counsel; the parent did not participate in the hearing.

000340 (Karen Anderson, Hearing Officer)

Consent for Case Study Evaluation

The issue in this case was whether the school district could perform a three-year evaluation of the student. In accordance with 23 Illinois Administrative Code 226 and the IDEA Amendments of 1997, it was determined that this evaluation must occur and that the school district should be able to conduct this evaluation in order to determine whether the student continues to be eligible for special education and related services. The hearing officer ordered that the district conduct the reevaluation.

The district was represented by legal counsel; the parent did not participate in the hearing.

000368 (Vivian Gordon, Hearing Officer)

Private Therapeutic Day School Placement

The hearing was requested by the district. There was no disagreement regarding the student's eligibility or the district's adherence to special education policies and procedures. The only issue to be determined by the hearing officer was whether the placement developed by the district was reasonably calculated to enabled the child to receive educational benefit.

The mother refused her child's placement in a private facility and did not participate in the hearing. Sufficient notices were given to all parties to meet the due process rights consistent with federal and state law.

The hearing officer found that the district's recommendation for placement in a private therapeutic school appropriate for the student.

The district was represented by legal counsel; the parent did not participate in the hearing.

000368 (Charles L. Aschenbrenner, Hearing Officer)

Placement, Disciplinary Considerations, Independent Evaluation, LRE

The school district requested the hearing because the parents disagreed with the district's recommended change of placement to a therapeutic day school outside the district. At the time of the hearing, the student was 7 years old and in the second grade. There was no issue regarding eligibility as stipulated at the prehearing conference. The student was

diagnosed as behavior disordered and eligible for special education and related services. Initially, the district proposed placement in a therapeutic day school, but later agreed to a self-contained program for children with behavioral/emotional disorders in another school within the district. The hearing officer ordered the district to place the student in the district's self-contained program for children with behavior disorders.

The district was represented by legal counsel; the parents were not represented.

000370 (James A. Wolter, Hearing Officer)

Interim Alternative educational Placement --Expedited Hearing

This expedited hearing was requested by the district to determine the proper placement for a behavior disordered student on whose behalf the district had previously requested an expedited hearing. In the previous case, that hearing officer had ruled against the district's request to move the student to an interim alternative educational placement for up to 45 days. The first hearing officer found that the district had not utilized all the resources available to it prior to requesting the interim alternative educational placement. That hearing officer ordered the district to return the student to his original placement, develop a behavior management plan and assign an individual aide to the student.

The district returned to the expedited hearing process one month later stating that, although they had instituted all of the changes contained in the previous expedited hearing, the student still posed a danger to himself and others and had in fact inflicted injury upon a teacher's aide. The parents countered that this hearing officer should consider this request as another example of the district's harassment of the student and his parents.

This hearing officer found for the district, ordered the child placed in private program for severely emotionally disturbed students, and further ordered that should no placement be available in such a facility the student was to be served in an interim "tutoring" program for two hours a day at some location where additional adult supervision would be available to the teacher.

The district was represented by counsel; the parents were not represented. A question as to the appropriateness of the district's second request for an expedited hearing prior to the expiration of the first hearing officer's order (45 days) has been raised. Further guidance on this matter will be forthcoming from the Illinois State Board of Education.

000383 (Marie Bracki, Hearing Officer)

Denial of FAPE

The parents requested the hearing stating that the school district failed to provide a FAPE for the student. The school district failed to conduct a case study evaluation as requested by the parents. The parents sought an independent evaluation and two and a half years later placed the student in a private specialized school.

The hearing officer ordered the district to reimburse the parents for the evaluations undertaken on the student's behalf. The district was further ordered to conduct a comprehensive case study evaluation and determine eligibility for services and programs. Reimbursement for tuition and transportation was denied. Both parties were represented by legal counsel.

000391 (Vivian Gordon, Hearing Officer)

Case Dismissed-Authority of Non-Custodial Parent

The non-custodial parent living outside of Illinois requested a due process hearing. The district brought a motion to dismiss because: (1) the school district no longer retained any educational responsibility for the student because he was no longer enrolled in the district; (2) the Illinois State Board of Education no longer retained jurisdiction of the student's education because his residence was moved to another state; and (3) the father lacked physical custody of the student during the time when alleged past issues arose, and therefore lacked educational decision making authority to bring this request for due process.

The school district's motion to dismiss was granted. The hearing officer found that the father, lacking physical custody of the student, did not have the authority to bring a request for due process on behalf of the student for issues that arose during the period he lacked this physical custody.

The district was represented by legal counsel; the father was not represented.

000397 (Stacey Stutzman, Hearing Officer)

Interim Alternative Placement--Expedited Hearing

The district requested the hearing seeking an interim alternative educational setting at Hillside Academy pending the outcome of the parent's request for a due process hearing. The hearing officer denied the district's request. According to the hearing officer, the evidence did not support the district's position that the student was substantially likely to injure himself or others if kept in the current middle school BD resource placement with social work and a behavior management plan.

In the opinion of the hearing officer, the district did not prove by greater than a preponderance of the evidence that the student was substantially likely to injure himself or anyone else in the current placement at this time. This student had been out of school due to suspensions for a total of over eight weeks during this school year. In addition, the student was not given a behavior management plan until late January, and according to the hearing officer it was not clear whether the two regular education teachers followed the plan. It was also found that the student was not receiving sufficient counseling as required by the IEP.

The district was represented by legal council; the parent was not represented.

000409 (James A. Wolter, Hearing Officer)

Interim Alternative Placement--Expedited Hearing

The district requested the hearing for the purpose of moving the student to an interim alternative educational setting for not more than 45 days. Specifically, the hearing officer considered whether maintaining the student in the current placement was substantially likely to result in injury to the student; whether the student's current placement was appropriate; whether the district had made reasonable efforts to minimize the risk of harm in the student's current placement, including the use of supplementary aids and services; and whether the proposed interim alternative educational setting enabled the student to continue to participate in the general curriculum; provided for the services, modifications

and goals in the current IEP; and included services and modifications designed to address behavior that was substantially likely to result in injury to the student.

The hearing officer found that although the student had made suicidal gestures during non-school hours prior to her hospitalization and prior to a change in her psychotropic medication, the district did not demonstrate by substantial evidence that maintaining the student in her current placement would result in an injury to the student. The district failed to demonstrate that the proposed interim alternative educational setting, without a component to address the student's behavior during non-school hours, was sufficient.

The hearing officer ordered that; the district not change the student's placement to the proposed interim alternative educational setting.

Both parties were represented by legal counsel.

000434 (James A. Wolter, Hearing Officer)

Change in Placement--Least Restrictive Environment -- Private v. Public School Placement

The district requested the hearing to obtain an order to change student's placement from a self-contained public high school program to a private special education day school. The parents objected to this change in placement. The student was 15 years old and was diagnosed as having a primary disability of behavior disorder/emotional disorder and a secondary disorder of health impaired.

An overwhelming amount of evidence indicated the student had difficulty coping with the most basic behavioral and academic requirements even though he attended school for 42% of the school day, Further, he received only 27% of the credit he should have earned for the school year even though the credit he was awarded was for a minimal amount of school work.

The hearing officer found that the student was not receiving a free appropriate education in his public school special education placement because he was not learning and progressing at a rate commensurate with his ability. The district was ordered to place the student in a private special education day school.

The district as represented by legal counsel. The parent was not represented by legal counsel.

000493 (Charles L. Aschenbrenner, Hearing Officer)

Suspension

The request for the due process hearing was made by the father on behalf of his 14-year-old son who was in a special education program for learning disabilities at the high school level. The student was suspended for one day during the 1997-98 school year, and the father objected to the way the district administered the suspension.

The hearing officer ruled that the student's free and appropriate public education was not disrupted, and the due process hearing request was dismissed. The parent was represented by legal counsel; the district was not represented.

**Due Process Decisions Issued between
July 15, 1998 and December 1, 1998**

000497 (Robert Ladenson, Hearing Officer)

Payment of Services, Related Services Obtained by Parent

In this case, the student requested reimbursement for an independent evaluation, private tutoring services, and tuition for an algebra course taken outside of the school district. The hearing officer denied all three requests. In regard to the independent evaluation, the hearing officer found that the student had not notified the school district in writing of his disagreement with the school district's evaluation, as required by state regulations. With respect to the private tutoring services and algebra course, the hearing officer denied reimbursement in virtue of concluding that the school district had provided an educationally appropriate program for the student.

Both parties were represented by legal counsel.

000568 (Stacey Stutzman, Hearing Officer)

Residential Placement in Non-approved Facility, Graduation, Failure of Private School to Provide Coursework Needed for Illinois Diploma, Graduation Criteria

This hearing was requested by the parent, on behalf of a 20 year old student eligible for special education and related services under the classification of behavior disorder/emotional disorder. The student, who was represented by her parent, was seeking a hearing decision that would allow her to remain in an unapproved private residential school at public expense until her 22nd birthday. The additional time in the placement was needed in order to complete the private school's non-academic "emotional" requirements for graduation. According to the district, the student only needed driver's education (classroom only), consumer education, and passage of the constitution test to receive an Illinois public school diploma. Course work in these areas was not being provided by the private school even though the IEP required it.

The hearing officer found that the district was not responsible for the private school costs beyond 12/17/98 which was the termination date order by another hearing officer in an earlier proceeding.

The district was represented by legal counsel; the student was represented by her parent a non-attorney.

000504 (Francis J. Nowik, Hearing Officer)

Reevaluation, Placement, Reimbursement for Tuition to Private School

The hearing officer at the request of both parties issued a "Consent Order" stipulating the agreement reached by the parents and the district during a prehearing conference. The agreement included placement of the student in a public school program with resource services, credit for the course work completed at a private school and tuition reimbursement

to the private school for two months. The parties also agreed to have the student re-evaluated by the district personnel.

The district was represented by legal counsel; the parent was not represented.

000432 (J. Michael Havey, Hearing Officer)
Appropriateness of Placement

The parents requested the hearing on behalf of their 14 year old son who was eligible for special education and related services under the category "autism." Both parties were represented by legal counsel.

The issue in this dispute was whether the district was responsible for the student's full tuition at a private residential facility. The student had been placed at the private, residential school since 1996. In the fall of 1997, the private school increased its fees, higher than the limits set by the State of Illinois. Attempts were made to secure another facility and additional funding from other state agencies.

The parents entered a request for a prehearing motion joining the Illinois State Board of Education and the Illinois Department of Human Services as parties to this dispute. This motion was denied. Both parties agreed that the current placement was appropriate. The parents, sought a ruling that the current placement be funded in its entirety based on the student's needs. The district sought a ruling that would relieve them of responsibility for paying fees beyond the state-approved rate in order that the present placement be maintained. The hearing officer ruled that the current placement was appropriate and should, therefore, be maintained by the district.

000602 (Stacey Stutzman, Hearing Officer)
Placement Closest to Home, Private v. Public School Placement, Less Restrictive, Amount of Related Services

The parents requested the hearing to contest the district's recommendation to change the student's placement from a private school located 50 miles from the student's home requiring a 3-4 hour per day commute, to a self-contained adaptive instructional classroom operated by the district in the student's home school. At the time of the hearing, the student was 14 years old and eligible for special education and related services under the category of autism.

The hearing officer found that the district's recommended change in placement was appropriate because the IEP could be implemented in the classroom in the home school. The hearing officer ordered the district to convene an IEP meeting upon receipt of the decision for the purpose of transitioning the student from his current placement to the home school and to insure that the IEP reflects needed speech/language, counseling and occupational therapy services.

Both parties were represented by legal counsel.

000508 (Jill Quinones, Hearing Officer)

Appropriate Placement, Extended School Year Services, Private v. Public School Placement, Placement Closest to Home, Change in Location, Change in Placement, Unilateral Placement in Private School, Content of IEP, Development of IEP, FAPE, Best v. Appropriate

This hearing was requested by the parents on behalf of their 13 year old child who was eligible for special education and related services under the primary classification of learning disabilities. The primary issue in this dispute was whether the child should remain at her current private school placement or whether the May 26, 1998, IEP proposed by the school district provided the child a FAPE at her neighborhood school. Additional issues included alleged procedural violations in connection with the May 26, 1998, IEP failure to provide ESY services during the summer of 1998, whether the relationship between the parent and the school district had become so hostile that an out of district placement was warranted and whether the school district failed to properly evaluate the child pursuant to 34 CFR 104.35.

The parents were seeking reimbursement for the child's unilateral placement in a private school for the 1998-99 school year, and reimbursement for expenses incurred in sending the child to a summer session at the private school during the summer of 1998.

While finding no procedural violations of substance, the hearing officer did find that the proposed IEP of May 26, 1998 was not reasonably calculated to provide the child with meaningful academic benefit. Reimbursement was awarded for that portion of the 1998/99 school year until an IEP is promulgated by the district that is reasonably calculated to provide the student with meaningful academic benefit. Because of the district's failure to provide the child with ESY programming, the hearing officer also ordered that the district reimburse the parents for tuition and travel expenses in provided private ESY services. The hearing officer found no merit in the parent's arguments concerning hostile relationship or failure to properly evaluate.

Both parties were represented by legal counsel.

000560 (Karen Anderson, Hearing Officer)

Part C Services, Availability of Part C Services, Reimbursement for Services on IFSP

The family requested a due process hearing under Part C of the Individuals with Disabilities Education Act alleging violations in the development and revision of the child's IFSP and the delivery of those services at public expense. According to the record, an IFSP was developed indicating that speech therapy would be provided, identifying the individual who would serve as the child's deaf educator and the person to deliver audiological services. The state did not pay for these services. A second IFSP meeting was convened, at which time the parents inquired about reimbursement under the Part C program for the private services that they had purchased. At that meeting the family was informed that they would have to file a due process hearing in order to address the reimbursement issue.

The hearing officer ordered the Illinois Department of Human Services (IDHS), the lead agency for Part C, to reimburse the family and the family's insurance provider.

Both parties were represented by legal counsel.

000548 (Stacey Stutzman, Hearing Officer)

Private v. Public School Placement, Content of IEP, Cultural Background of Student

Parents of an Orthodox Jewish Student, age 10, requested the district to pay tuition for the 1998-99 school year for a learning disabilities instructional program in a private Hebrew Day School in a suburban community outside of the city in which the student resides, and in which program the student was unilaterally placed by the parents in 1996. Parents request was denied for the reason that the district had conducted a case study reevaluation and had developed an IEP offering the student FAPE in an LD instructional program in her neighborhood school.

Both parties were represented by legal counsel.

000525 (Charles Aschenbrenner, Hearing Officer)

Comparable Services, Grade Retention, School Transfer, Amount of Services

The mother requested the due process hearing on behalf of her 13 year old son who was eligible for special education under the category of learning disabilities. The parent did not agree with the IEP team's recommendation and the school's final decision to have her son repeat 6th grade the year before last. The mother felt her rights were not clearly explained to her and that was why she did not request a due process hearing a year ago. The remedy sought by the mother included bypassing the seventh grade, thus moving the student immediately to the eighth grade in his current school, or having the student transferred to another school within the district.

At the hearing, the mother requested an immediate transfer for her son to another school with the provision he would be placed in seventh grade and continue in special education. The district agreed to comply with the mothers request, but asked in turn that she withdraw the request for the due process hearing and that an order be entered that the issues presented for this due process hearing are no longer issues and will not be raised in the future. The mother agreed and the hearing officer entered the order for the official record.

The district was represented by legal counsel; the parent was not represented.

000376 (Francis Nowik, Hearing Officer)

Appropriateness of Placement

The parents claimed that by not giving written consent to the district approving the trial transfer of their child from a cluster program, as provided for in the current IEP, to a regular classroom with LD resources and speech and language services, the district denied the child a FAPE. The parents gave their verbal consent and participated in the trial period and filed the request for a due process hearing approximately 18 months after the trial period began. The hearing officer found that because the parents gave their verbal consent prior to the

transfer and their subsequent acquiesce during the trial period, the written notice requirement of IDEA was not violated. If there was a violation it did not compromise the child's right to an appropriate education, nor hamper the parent's ability to participate in the process or deprive the child of an educational benefit, thus did not deprive the child of FAPE.

The district was represented by legal counsel; the parent was not represented.

000439 (Jill Quinones, Hearing Officer)

Least Restrictive Environment, Discipline, Inadequate Notice, IEP Development, Behavior Management/Intervention

This hearing was requested by the parent on behalf of a 15 year old child who was eligible for special education services under the category of behavior disorder. He was also identified by a physician as ADHD. The parent brought the request seeking a determination that the school district's proposed placement of the child at a therapeutic day school did not offer him a FAPE in the least restrictive environment. The mother sought to have the student placed in a district attendance center with appropriate programming.

The hearing officer ruled that the parent did not sustain her burden. The hearing officer also found that the school district had failed to provide a FAPE in the LRE to the child in prior years and, therefore, did not order the child's placement in a therapeutic school without the school district first remedying its earlier shortcomings. More specifically, the hearing officer found that the school district had not appropriately disciplined the child, had not created and implemented effective behavior management plans for him, and had failed to include the parent in the decision-making process as required by IDEA. The hearing officer ordered that the child remain at the school district for a limited period of time with these conditions remedied to see if the child showed any academic benefit.

Both parties were represented by legal counsel.

000280 (Ralph Goren, Hearing Officer)

Termination of Services, Residency

The hearing was requested by the parent on behalf of her son who resided in a pediatric nursing home located outside of the resident district. Following a year's notice to the parent, the resident district stopped providing educational services to the student on the grounds that the child's mother moved out-of-state and was, therefore, no longer a resident of the district. The hearing officer issued a pre-hearing order requiring that the resident district continue to provide educational services until the matter was heard. The resident district refused to comply with the order. When this case was finally decided (six months later) the hearing officer found in favor of the mother. This decision was appealed.

Both parties were represented by legal counsel.

000352 (Charles L. Aschenbrenner, Hearing Officer)

Change in Services, Sufficiency of Services, Inadequate Notice, LRE, IEP Procedures

The parent of a 12-year-old son who was diagnosed as having a severe learning disability alleged that the school district had decreased her son's time in special education. This was done at an IEP meeting that the parent did not attend because she alleged proper notice was not given. As a result, the parent sought to have the time spent in a regular classroom inclusive reading program eliminated and have the student spend his entire instructional time in a self-contained special education program. The parent also requested that the district be required to notify her in a timely and proper manner so that she could participate in the IEP meetings affecting her son.

The hearing officer found that the district did not violate any parental rights regarding notification. The hearing officer ordered that the district's IEP be implemented and that a meeting be scheduled with the parent to review the student's academic program.

The district was represented by legal counsel; the parent was not represented.

000426 (Francis Nowik, Hearing Officer)

Residency, Motion for Summary Judgement

The issue in this matter is whether or not a hearing officer has the power to grant a Motion for Summary Judgement in a due process hearing on the grounds that the parent is not a resident of the school district the special education child is attending. The hearing officer granted a Motion for Summary Judgement based upon the fact that the parent was not a resident of the district. The case was dismissed.

The district was represented by legal counsel; the parent was not represented.

000487 (Francis Nowik, Hearing Officer)

Consent for Reevaluation

The hearing was requested by the district seeking authority to conduct a three-year reevaluation of the child. The parents refused to grant consent, when the parents indicated they would not attend a hearing, the hearing officer made the decision based upon documents submitted to him by the district. The hearing officer ordered the district to proceed immediately with the tri-annual reevaluation of the child.

The District was represented by legal counsel; the parent was not represented and did not participate in the hearing.

000451 (Paul Vega, Hearing Officer)
Least Restrictive Environment, Change in Placement, Agreed Order

The parent requested the hearing because she objected to the district's proposed placement of the student in an alternative public day school program for behavior-disordered students. During the course of the hearing, the parent requested leave to go off the record to ask several questions regarding her concerns regarding the District's proposed placement. After a lengthy discussion, the parties went back on the record and the parent agreed to withdraw her objection to the proposed change in placement, subject to the terms and conditions contained in the Agreed Order.

The district was represented by legal counsel; the parent was not represented.

000401 (Charles Aschenbrenner, Hearing Officer)
Change in Placement, Discipline, Revocation of Consent

The parents requested the due process hearing on behalf of their 16-year old son whose primary disability was behavior/emotional disorder with learning disabilities as a secondary disability. The student received BD itinerant/consultative services for ninth and tenth grades. Because of escalating behaviors and academic failures in the standard program, the IEP team recommended a special education behavior disorder instructional program for the 1998-99 school year. The parents objected to the recommendation and wanted their son out of special education and placed in the standard high school program.

In this matter the hearing officer found the district was appropriate in their recommendation and ordered that the student be placed in the BD instructional program. The district, however, was found to be in violation of the student's right for FAPE because of excessive suspensions.

Neither party was represented by legal counsel.

000220 (Vivian Gordon, Hearing Officer)
Least Restrictive Environment, Public School vs. Private Day Placement

The grandparents as legal guardians requested the hearing on behalf of their grandson because they disagreed with the district's recommended placement. Other issues included failure to provide FAPE, failure to accept an independent evaluation provided by the parent, failure to provide protection from other students, discrimination against the student, falsification of the educational record, the release of information without consent, and not allowing the student to participate in extracurricular activities.

The primary determination was whether the more restrictive private behavioral disordered placement recommended by the district was appropriate. The guardians wanted the student to be educated at a public school site in regular education with special education and supportive services. The hearing officer found on this issue that while the district's proposed placement was appropriate because it was reasonably calculated to provide educational benefit, the grandparents' hostility towards the proposed placement would seriously

compromise its benefits. Therefore, the public school site with combined regular and special education classes, supportive services and a mandated behavioral management plan was found to be the appropriate placement.

The district was represented by legal counsel the grandparents were not represented.

000263 (Marie Bracki, Hearing Officer)

Appropriate Placement, Amount of Instructional Services Provided, Services on the IEP Not Provided

The parent of the student filed for a due process hearing citing failure of the district to provide a FAPE, not implementing the IEP, suspensions, and not providing services consistent with the student's needs. The school failed to demonstrate that it correctly implemented the IEP and a number of other violations were noted. A new case study added emotional/behavior disorder as a diagnosis. Parent and school agreed that the diagnosis was appropriate and that a full day instructional program should be provided. The parent wanted the student to attend the same school. The Order entered made the placement outside of the current school since it would have been highly unlikely that the student could receive a FAPE in the same building.

The parent was represented by an advocate; the district was represented by legal counsel.

000539 (Karen Anderson, Hearing Officer)

Dispute Over Placement, Directed Verdict

The parents requested the hearing because they disagreed with the district's placement recommendation for the 1998-99 school year. The parent did not present any witnesses at the hearing. The school district requested a directed verdict because nothing was presented by the parents to challenge the district's IEP. The hearing officer ordered that the district's IEP for the 1998-99 school year be implemented.

The District was represented by legal counsel; the parents were not represented.

000700 (Charles Ashenbrenner, Hearing Officer)

Stay-Put Order

Because the student had been on a home school program since May 1997, there was disagreement between both parties regarding his Stay-Put placement as provided in 20 USC -1415(j). The parent's position was that the student was initially enrolled in the first grade at the elementary school on July 8, 1998 which should be his Stay-Put placement as provided in 20 USC - 1415(j). The school district's position was that the Stay-Put provision of IDEA does not require placement of a student with disabilities in a regular public school program and the student should be placed in the self-contained program.

The hearing officer ruled that the Stay-Put placement during the pendency of the due process hearing shall be the elementary school as a first grader eligible for and entitled to a special education program and services.

The district was represented by legal counsel; the parent was not represented.

000615 (Stacey Stutzman, Hearing Officer)

Least Restrictive Environment, Proximity to the Student's Home, Content of the IEP

The parents requested the hearing due to the district's proposed change of placement for their 12-year-old mentally impaired son. The district had proposed to change the student's placement from a cross-categorical instructional program in a jr./sr. high school building in his own district (not his home school) to a life skills program supervised by the special education cooperative outside of the district, one hour each way by bus, from the student's home.

The hearing officer held that the student could be satisfactorily educated in his home district. The hearing officer also ordered an independent case study evaluation to determine accurate current levels of functioning, since the district failed to do a triennial evaluation in 1997 and the student had not been evaluated since 1994.

The district was represented by legal counsel; the parent was not represented.

000342 (Julius Menacker, Hearing Officer)

Compensatory Services, Statute of Limitations

The parents through their attorney requested the due process hearing seeking 32 hours of compensatory speech and language services. The parents contended that the former district superintendent agreed to fund compensatory speech and language services to the student at least through the 1997-98 school year, or until there was mutual agreement to terminate the services. The present superintendent terminated services on February 1998. The parents contended that this was arbitrary and in violation of their agreement and IDEA. The district held that no such open-ended agreement was in effect and that the extent of compensatory speech and language services offered was appropriate.

The district contended that judicial decisions governing special education impose a statute of limitations that limits claims for compensation on issues occurring during the 1997-98 school year, based on *Dell v. Board of Education of Township High School District 113*, 32 F.3d. 1053 (7th Cir. 1994) and *Farrell v. Carol Stream School District No. 25*, 24 IDELR 370 (N.D. Ill. 1996), which held a 120 day limit. Alternately, the district claimed that at most, the district can raise claims limited to two years prior to the filing of the due process claim based on a decision in *Oak Park & River Forest High School District 200 v. Illinois State Board of Education*, 886 F. Supp. 1417 (N.D. Ill 1995).

The hearing officer rejected the district's argument that the complaint was not filed in a timely manner. The hearing officer further ordered that the student was entitled to additional compensatory hours of speech/language therapy. However the requested 32

hours of services was found to be excessive. The hearing officer ordered that the district fund 13 additional hours of speech/language therapy.

Both parties were represented by legal counsel.

000216 (Jill Quinones, Hearing Officer)

Reimbursement for Unilateral Placement, Statute of Limitations

This hearing was requested by the parents on behalf of their 13 year old son. The student had been diagnosed as having a severe cross-modal learning disability and was eligible for special education and related services. The parents were seeking reimbursement for the child's unilateral placement in a private school since February 1994 because of: (1) the school district's failure to hold an appropriate MDC/IEP in February 1994, (2) the school district's failure to hold annual IEP reviews and a triennial re-evaluation for the child during the school years of 1995/96, 1996/97, 1997/98, and (3) the school district's inability to provide the child with a free appropriate public education for the 1998/99 school year.

The hearing officer held that (1) the parent's claim for those years prior to school year 1995/96 were barred because of a two year statute of limitations which the hearing officer found applicable, (2) the school district was not liable for reimbursement to parents for the 1995/96 school year because the related services which the child received from the school district at the private school were not in place at the time the annual review for the 1995/96 school year was held, (3) the school district was not liable for reimbursement to the parents for the 1996/97 and 1997/98 school years because it did not have an obligation pursuant to 34 CFR 300.349, on the facts in this case, to convene an IEP annual review or triennial evaluation for the child, and (4) the school district was found liable for reimbursement to the parent for the 1998/99 school year because it could not offer the child a free appropriate public education.

Both parties were represented by legal counsel.

000630 (Michael Havey, Hearing Officer)

Conduct of Case Study Evaluation, Eligibility Criteria

The parent's requested the hearing. The district was represented by counsel; the parents were not represented. At the time of the hearing the student was five-years-old. The disability category was in dispute. The issues in dispute were whether the transactional play-based assessment conducted by the district fulfilled the requirements of the Illinois Administrative Code for a comprehensive case study evaluation; whether the student was eligible for special education; and whether the district was obligated to distribute medication to the student.

The hearing officer ruled that the evaluation conducted by the district met the criteria set forth in 23 IAC 226.535 and that the student was ineligible for special education and related services. No evidence was produced to demonstrate that the student had ever been denied a dietary supplement prescribed by his physician. The petitioners' request to have the

evaluation declared inappropriate and to have the student declared eligible for special education was denied.

000563 (Robert Ladenson, Hearing Officer)
Best v. Appropriate, Related Services

In this case the student, an eighteen year old male in his fifth year of high school, had a program that focused upon development of independent living skills, aimed at a successful transition to employment upon leaving high school. The parents contended that the program was inappropriate in virtue of not providing a mentor, trained to assist adolescents with Asperger's Syndrome, who would accompany the student throughout the school day on a one-to-one basis. The parents also viewed the program as inappropriate because the school district had not procured the services of an expert consultant in Asperger's Syndrome, through an organization recommended by the parents, to train personnel in the student's program. The parents accordingly requested the hearing officer to order the school district to incorporate into the student's program the above mentioned mentor and expert consultant. The hearing officer found the school district's program for the student to be appropriate, and thus denied the parents' request. Neither party was represented by legal counsel.

000020 (Richard Brimer, Hearing Officer)
Reimbursement for Independent Educational Evaluation, Reimbursement for Attorney Fees, Free Appropriate Public Education

The hearing was requested by the parents. For several years, the parent felt that the student did not receive a free appropriate public education. To obtain what the parent felt was an appropriate public education, the parent incurred evaluation, doctor, and hospital expenses and attorney fees. The Illinois Court cases of *Max M. v. Thompson and River Forest School District No. 90 v. Illinois State Board of Education* and a May 4, 1998, letter from the U.S. Department of Education provided guidelines for the reimbursement of evaluation expenses. The parent was awarded reimbursement of evaluation expenses; the parent was not awarded reimbursement of non-evaluation expenses.

The district was represented by legal counsel; the parent was not represented at the pre-hearing or the hearing.

000659 (Michael Havey, Hearing Officer)
Related Services, Transportation Services, Length of the School Day

The parents requested the hearing on behalf of their 12-year-old child who was eligible for special education and related services under the category of mental impairment. The district was represented by legal counsel; the parent was not represented. The issue in dispute was whether the transportation services provided to the student allowed his educational needs to be met. The district changed the start time of the student's school day to one hour and ten minutes earlier than the previous school year. The parent found this change to be

burdensome because the multiple needs of the student posed problems both getting ready for school and for after school care. The hearing officer found that the district had met its legal obligation to provide transportation for the student.

000654 (Jill Quinones, Hearing Officer)

Independent Education Evaluation, Clean Intermittent Catheterization, Counseling, Physical Therapy, Calculation of Educational Benefit, Section 504 Accessibility

Parent requested a hearing on behalf of her 13-year-old son who was born with spina bifida. The child is eligible for special education services under the category of physical impaired. The parent filed the request pursuant to IDEA and Section 504 of the Rehabilitation Act claiming that the child was denied a FAPE and was discriminated against because of his disability because he was required to ride a stair climber to his classes which were held above ground level. The parent sought a relocation of all the child's classes not on the ground level to the ground level. The parent also claimed that the child was not given adequate facilities to self-catheterize because he had no access to a washroom.

The hearing officer held that the child was denied FAPE and was discriminated against because of his disability because he was required to utilize the stair climber to gain access to his classes above ground level. The hearing officer also found that the child's IEP did not provide him with a FAPE because it did not consider recommendations concerning eligibility and services from an independent evaluation and did not include specific PT goals and amount of services to be provided. Finally, the hearing officer found that the parent's complaints regarding catheterization facilities had been remedied prior to the hearing.

Both parties were represented by legal counsel.

000454 (Francis Nowik, Hearing Officer)

Amount of Related Services Offered, Participation in Graduation Ceremonies Occupational Therapy and Transitional Planning

The central issue in this case was the adequacy of the transition plan. While the district did provide linkages to outside services for the quad amputee, the district failed to provide the student with basic skills and knowledge about independent living. The hearing officer ruled that the district shall provide O/T services to assist the student to adjust to independent living. The district is to provide for remedial mathematics course to enable the student to move on to postsecondary education as part of the transitional plan. Both parties were represented by legal counsel

**Impartial Due Process Decisions
Issued between December 1, 1998 and June 1, 1999**

Following is a summary of impartial due process hearing decisions issued between December 1, 1998, and June 1, 1999. Each summary identifies the case number, moving party, the issue or issues in dispute, the student's disability (if known), the hearing officer's finding, 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.

**000799 (Aschenbrenner, Charles, Hearing Officer)
*Consent for Case Study Evaluation***

The school district requested a due process hearing for the purpose of compelling consent to conduct a case study evaluation. The hearing was brought on behalf of a second grade boy who was exhibiting excessive and difficult behaviors in the school setting. The parents refused to give their consent for the district to administer a case study evaluation.

The hearing officer found that the district should proceed with the case study evaluation and so ordered.

The school district was represented by legal counsel and the parents represented themselves.

**000900 (Aschenbrenner, Charles, Hearing Officer)
*Placement in Interim Alternative Educational Setting***

The school district requested an expedited due process hearing regarding a nine-year-old boy with Aspergers disability. At the time of the hearing the student was enrolled in the third grade and was receiving special education resources and related services in his home district. Prior to being enrolled in his current placement, the student attended for 1-½ years an instructional program for children with emotional problems at a special education joint agreement. For the 1998-99 school year, the parents insisted that the student be placed in his regular school with resource assistance. The school district disagreed but proceeded to make arrangements for the placement in accordance with the parents' request.

During the school year, the student had violent outbursts that resulted in staff being injured and school property being damaged. Because of disagreements regarding the student's educational program, the parents filed for a due process hearing and a hearing date had been set for March 30 and 21, 1999. In the meantime, the student continued to have recurrences of violent behavior and the school district sought relief through the request for an expedited hearing to place the student in an interim alternative educational placement during the pendency of the due process hearing proceedings.

The hearing officer determined there was substantial evidence that if the student remained in his current placement, it would likely result in injury to the student or to others. After consideration of the current placement and the reasonable effort that the district took to minimize the risk of harm, the hearing officer found that the proposed interim alternative

placement was appropriate and enabled the student to participate in the general curriculum and implement his current IEP.

Both parties were represented by legal counsel.

000710 (Wolter, James – Hearing Officer)
Appropriateness of Case Study Evaluation, Sufficiency of IEP and LRE

The parents requested the hearing, challenging the appropriateness and sufficiency of the district's evaluation, the appropriateness of the student's IEP and the placement of the student in what they believed was not the least restrictive environment.

The remedy sought by the parents was a monetary award. The hearing officer informed the parents that he lacked the authority to issue monetary relief. The hearing officer found the district need take no action with regard to the issues brought before the hearing but ordered the district to conduct a functional behavioral assessment and develop a behavioral intervention plan, which it had been prevented from doing because parental failure to grant permission.

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

000425 (Anderson, Karen – Hearing Officer)
Residential Placement, Agreed upon Order

The parents requested the hearing, seeking placement of the student in a residential special education program. An agreed order was written by the hearing officer placing the student at Island View, which was not on the ISBE approved list. The district was ordered to pay the cost of the placement at Island View and file the appropriate reimbursement claims with the Illinois State Board of Education, including reimbursement of travel expenses. ISBE was ordered to approve the student's placement at Island View and reimburse the district pursuant to the relevant statutes.

Both parties were represented by legal counsel.

000805 (Stutzman, Stacey – Hearing Officer)
Private Day/Residential Placement vs. Public School Program

The parents requested the hearing on behalf of their son who was diagnosed with a learning disability and was receiving special education and related services in the 6th grade. The parents were seeking placement of the student in a private day/residential placement on the grounds that he needed more intensive services. The hearing officer found that the district's proposed placement was appropriate.

Legal counsel represented both parties.

000614 (Stutzman, Stacey – Hearing Officer)

Private vs. Public Placement, Least Restrictive Environment, Sufficiency of Services Related services, IEP services not provided

The parent requested the hearing on behalf of their seven-year-old son who was eligible for special education and related services under the category of TMH. The parents were seeking placement of the student in a self-contained therapeutic private day school. The parents alleged that the district failed to provide the student with a free, appropriate public education because of its failure to provide a small class size and 1:1 instruction by a certified teacher throughout the day. Other issues in dispute included the delivery of appropriate related services and needed extended school year services.

The hearing officer found that the district had not provided FAPE but held that the evidence did not show that the student required a self-contained therapeutic school for disabled children in order to receive a satisfactory education.

Legal counsel represented district, parents were not.

000801 (Quinones, Jill – Hearing Officer)

Eligibility Determination, Placement, Access to Medical Records

The hearing was requested by the parent of a 12-year-old child who was eligible for special education services with a primary disability of behavior disorder/emotional disorder. The parent objected to the school district's eligibility determination and proposed placement for the student in a self-contained classroom for over 50% of the day with regular education mainstreaming for the remainder of the day. The school district also requested a ruling concerning its rights to the child's psychiatric records without parental consent. Parent sought a finding that the child was not eligible for special education services and should remain in the regular education program.

Hearing officer found in favor of the school district on the issues of eligibility and placement. The hearing officer found the child's mental status was at issue given the parent's objection to the BD/ED eligibility; therefore, the school district could pursue appropriate access to child's psychiatrist records in a court of competent jurisdiction.

District was represented by legal counsel, parents were not.

000577 (Bracki, Marie – Hearing Officer)

Part C, Early Intervention Services, Co-funding

Parents requested mediation/due process to continue services with a non-Part C provider for Early Intervention physical therapy. The Department of Human Services had offered to continue to fund the insurance co-payment for physical therapy until December 1999. The order denied protracted co-funding and required that DHS make appropriate Part C services available to the family.

000763 (Brimer, Richard – Hearing Officer)

Placement, Functional Analysis, Implement of IEP, LRE, Behavioral Intervention Plan, Stay of Placement

The main issue in this due process hearing was the appropriate placement of a student with behavior disorders. In the second semester of the 1997-1998 school year, the school district began to reintegrate this student back to his home school on a part-time basis. Due to his success in this part-time placement, the participants in the IEP meeting decided to attempt full-time placement in his home school with resource room and counseling supports for the 1998-1999 school year. Shortly after the start of school, the student's misconduct increased in frequency and intensity. In an IEP meeting, the participants decided to return him to the previously enrolled program so his goals and objectives could be met. The parents opposed this placement. Besides this issue, the parents raised concerns on the development of a functional analysis, the development of a behavior management plan, the 10-day forewarning to contest placement, the stay-put placement, the development of a manifestation determination, the student's participation in extra-curricular activities, the participation of the general education teacher in the development of an IEP, and the appropriateness of the general education program in his home school.

The decision of this hearing officer determined that the school district had followed the legal mandates in all the disputed issues.

000733 (Brimer, Richard – Hearing Officer)

Resource Services in Regular Building vs. Therapeutic Day School, Appropriateness of Placement, Behavioral Intervention Plan

In 1997 and 1998, a due process hearing was held between the parties involved in this hearing. Order #10 of the previous hearing established a criteria through which the school district could enroll the student in a therapeutic day school. The two criteria the previous hearing officer established were 1) "to demonstrate academic success" and 2) a "suggestion of improved behavior." The previous hearing officer established a five week time period following the development of a Behavior Management Plan as the index to determine behavior change. The school district contends the student has not improved academically or behaviorally over this time period. The school district asserts that the most appropriate placement for this student is a therapeutic day school. The parent contends the most appropriate placement is the school in which the student is currently enrolled. The parent holds that his case manager should be changed and the student should discontinue his enrollment in the resource room.

The hearing officer found that the school district proved through testimony and evidence that the student did not improve either academically or behaviorally; therefore, the should be enrolled in a therapeutic day school.

000850 (Wolter, James – Hearing Officer)

Interim Alternative Educational Setting

The district requested an expedited due process hearing for the purpose of moving a student to an interim alternative educational setting. The district demonstrated that maintaining the student in the current placement was substantially likely to result in injury to the student or to others. The student's current placement was found to be appropriate. The hearing officer also found that the district had made reasonable efforts to minimize the risk of harm in the student's current placement, including the use of supplementary aids

and services. It was the hearing officer's finding that the proposed interim alternative educational setting recommended by the IEP team would enable the student to continue to participate in the general curriculum. The IAES also provided for the services, modifications and goals in the current IEP and included services and modifications designed to address behavior that is substantially likely to result in injury to the student or to others. The district was ordered to place the student at the separate public special education day school operated by the special education co-operative as an appropriate interim alternative educational setting for not more than 45 calendar days.

000774 (Stutzman, Stacey – Hearing Officer)
Neighborhood School vs. Therapeutic Day School

The parents requested the hearing because they disagreed with the district's recommended change of placement from a neighborhood high school self-contained EBD classroom with mainstreaming to a therapeutic day school. The district failed to provide written notices to parents of two IEP meetings, and the parents did not attend either, the second of which resulted in the change of placement for the following year. The parents were not advised of the specific school the student was to attend until October of the next school year.

The student was prevented from remaining in the neighborhood school, which should have been the stay-put placement upon the parent's filing of the due process hearing. The district failed to provide ESY even though the IEP it drafted required it. The hearing officer found in favor of the parents with respect to the student's placement and other issues. The hearing officer ordered the district to readmit the student to the neighborhood school and draft a new IEP.

District was represented by legal counsel, parents were not.

000718 (Stutzman, Stacey – Hearing Officer)
Consent for Reevaluation

The district requested the hearing to obtain an order permitting a triennial evaluation of the student upon the parent's refusal to give consent. The parent chose not to participate. The district submitted an option for summary judgement supported by sworn affidavits.

The hearing officer decided in favor of the district ordering that the evaluation be completed. Legal counsel represented the district and parents did not participate in the hearing process.

000767 (Aschenbrenner, Charles – Hearing Officer)
Regular Education Classroom vs. Therapeutic Day School

The parent of a ten-year old boy diagnosed as having behavioral/emotional and learning disabilities requested the due process hearing. Because of dissatisfaction with the public school program, the parent requested that the student either be dismissed from his special education program and placed in a regular classroom or be placed, because of his severe disabilities, in a therapeutic day school.

It was the finding of the hearing officer that the student continue to be eligible for a public school special education instructional program, but emphasized the need to address the student's behavioral/emotional disability.

District was represented by legal counsel, parent was not.

000724 (Aschenbrenner, Charles – Hearing Officer)
Consent for Triennial Evaluation

The school district filed for a due process hearing after being unsuccessful in obtaining parental permission to conduct the required triennial evaluation. The district complied with all of the procedural requirements of the law and provided the necessary facts for the hearing officer to grant their relief by ordering the district to proceed with the triennial evaluation.

Neither parties were represented by legal counsel.

000728 (Gordon, Vivian – Hearing Officer)
Stay of Placement, LRE, Placement

The parent brought her request for a due process hearing on behalf of her 13-year-old son. The two issues in this case were, What is the stay-put placement? What is the appropriate placement? An MDC/IEP meeting was held at the prior school district, culminating in a changed IEP and a more restrictive off-site placement. The parent did not agree with this placement. Also, the parent withdrew the student from school; evidence and testimony indicated this withdrawal was in large part related to personal family difficulties. The new school district was unaware of the student's eligibility for special education and, upon learning of an existing IEP, immediately implemented it. In this case, it was found the existing IEP/placement from the former school district's MDC determination was the stay-put placement because it was the last uncontested placement. The exiting IEP/placement was also found to be the appropriate placement.

District was represented by legal counsel, parents were not.

000791 (Aschenbrenner, Charles – Hearing Officer)
Implementation of IEP, Private Day School vs. Public School Placement, Case Dismissed

The parent of a six-year boy diagnosed as having autism requested the due process hearing. Because of complicating health problems, the student had difficulty attending school and his IEP was not implemented properly. Also, the district failed to acknowledge and understand the severity of the student's disability, which resulted in his regression while attending school. As an outcome of the due process hearing, the parent sought the remedy of placing her son in a private day school whose teachers were specially trained to educate children with autistic disabilities. At a MDC/IEP conference the district agreed with the parent and authorized placement of her son in the private day school that she had recommended. As a result of this action, the district felt the case was settled and no further action was necessary. The parent, however, stated she still had concerns and wanted to continue the case. In the meantime, the district requested that the case be dismissed. Because the parent was given the relief she had sought and did not respond in writing for a continuance or state an objection to the dismissal request, the hearing officer ruled that the case be dismissed.

Parents were not represented by legal counsel.

000611 (Ladenson, Robert – Hearing Officer)

Reimbursement for Unilateral Placement in Non-approved Sectarian School

The parents and the school district agreed upon the appropriateness of the parent's unilateral placement of the student in a sectarian school that is not approved by the Illinois State Board of Education for special education purposes. The school district contended, in good faith, that both state law and the establishment clause of the first amendment of the US constitution barred it from directly sponsoring the student's placement. The school district and the parents, however, urged that the hearing officer is not so barred from ordering the school district to reimburse the parents for the expenses they have incurred in regard to their unilateral placement of the child, if he (the hearing officer) finds the placement appropriate. The hearing officer agreed with the school district and the parents in this regard and accordingly ordered such reimbursement.

Neither parties were represented.

000631 (Anderson, Karen – Hearing Officer)

LRE, Promotion, Independent Educational Evaluation, Sufficiency of the IEP

The issues in this case were whether the school district held the student back without permission and as a result did not provide her with the least restrictive environment, whether child qualified for special education services that were not addressed in her IEP, whether the school district addressed the student's cultural and social needs, whether the independent evaluation was written correctly, and whether the IEP that was written is appropriate to meet the student's needs.

The hearing officer found that the student did not have a secondary disability, that the decision to retain her was in the student's best interest, that her social and cultural needs were addressed appropriately, and that the August 10, 1998, IEP is appropriate to meet the student's needs. The issue of how the independent evaluation was written was beyond the scope of the due process hearing officer.

The hearing officer ordered the following: 1) the student shall remain retained in the 2nd grade with the implementation of an IEP in the area of Speech and Language and, 2) the school district shall re-evaluate the student at the end of the 1998-99 school year, as recommended by the independent evaluator, when she has been in an English-speaking environment for some time to more accurately assess her academic potential and needs.

000700 (Aschenbrenner, Charles – Hearing Officer)

Stay of Placement, LRE, Placement, Sufficiency of IEP

The parents of a seven-year old boy diagnosed as having autism requested the due process hearing. It was their position that their son would be deprived of FAPE if placed in a primary instructional program for autistic children in a nearby school district. They felt their son should be placed in the least restricted environment, which would be his neighborhood school placement in the local district's cross-categorical special education program, and the regular first grade with supplemental aids and services would be the most appropriate educational program. The school district disagreed and recommended the student be placed in the specialized program designed for autistic children at the primary level.

After having been enrolled in the special education cooperative's early childhood program, the parents withdrew their son from the public school program and opted for over eighteen (18) months of home schooling. In July 1998, they enrolled him in their local district's elementary school, and subsequently an IEP meeting was scheduled on August 31, 1998. It was at this point the parents did not agree with the IEP team's recommendations for placement and services.

In preparing for the due process hearing, the matter of the stay-put placement became an issue and two pre-hearing conferences were scheduled to resolve the dispute. It was the parent's position that the stay-put placement should be in the regular classroom at his neighborhood school because it was the student's initial enrollment in that setting. The hearing officer eventually ruled that the student should remain on the home-schooling program during the pendency of the due process hearing with the district providing related services.

The due process hearing was conducted over a three-day period of time. As a result of the proceedings, the hearing officer found that the school district did not deny the student FAPE and so ordered the placement of the student in the primary instructional program for autistic children operated by the special education cooperative.

000852 (Gordon, Vivian, Hearing Officer)
Agreed Upon Order, Specialized Instruction, Extended School Year

During the hearing, the parties requested time to come to an agreement. The result was an agreed upon order, which was signed by both parties and issued in the form of a decision by the hearing office. The agreed upon order called for specialized instruction in reading and language arts, and pre-and post-testing in reading. The parties were in agreement that extended school year services would not be required.

Legal counsel represented the district; the parents were not represented

000907 (Wolter, James, Hearing Officer)
Consent for Case Study Evaluation

The hearing was requested by the district seeking parental consent to conduct a case study evaluation for a student receiving speech/language services. The parents refused to grant the district consent to conduct the evaluation, but would consent to a modified speech/language evaluation.

The district was ordered to provide the student with a full case study evaluation.

Legal counsel represented both parties.

000262 (Gordon, Vivian, Hearing Officer)
Compensatory Services, Reimbursement for Unilateral Placement, Child Find Procedures

The parents requested the hearing seeking reimbursement for unilateral placement in residential facility. The 16-year-old high school student, diagnosed as ADD, clinical depression with suicidal ideation, did not enter high school as a special education student. The student exhibited ADD symptoms throughout schooling. During the second year of high

school, declining grades increased disciplinary referrals and an independent evaluation occurred. He was found eligible for Section 504 services in late March 1997. The student was thereafter involved in a marijuana incident. Parents chose to withdraw the student and unilaterally placed him in a residential placement in Oregon. It was found the hearing officer had subject matter jurisdiction because the relief sought by the parents falls under the IDEA. It was found the school district failed its child find obligations to this student and would be responsible for reimbursement of the educational component of the residential placement. The existence of an ISBE-approved local child find policy does not preclude a finding that the student is eligible for special education under the IDEA. Compensatory services were awarded for the failure to identify, evaluate and provide FAPE for the spring 1997 semester. Testimony and evidence indicated some of the reasons for placing the student in the residential placement were for non-academic reasons, and the parents would be responsible for the residential component of the unilateral placement. The school district is obligated to pay the cost for the independent evaluation. The school district is required to evaluate the student consistent with the IDEA and provide FAPE.

Legal counsel represented both parties.

000891 (Wolter, James, Hearing Officer)

The district requested the hearing to obtain an order to conduct a case study evaluation. The parents were demanding that they observe the student while being tested by the school psychologist. The district desired to conduct the psychological testing under conditions that would not invalidate the results of the test nor compromise the test instrument.

The hearing officer ordered that the districts commence a case study evaluation for the student and that district personnel exercise their professional judgement in determining the date, time, location and whether the parent may observe the assessment process through a one-way mirror. Further, district personnel were ordered to exercise their professional judgement in determining what tests to administer and what proportion of English/Spanish assessment instruments shall be utilized in the assessment.

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

**Impartial Due Process Decisions
Issued between June 1, 1999 and October 15, 1999**

Following is a summary of impartial due process hearing decisions issued between June 1, 1999 and October 15, 1999. Each summary identifies the case number, moving party, the issue or issues in dispute, the student's disability (if known), the hearing officer's finding, 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 a 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 #000639 – Marie Bracki, Hearing Officer
Change of Placement and Extended School Year Services

This hearing was requested by the parents following a manifestation determination, case study evaluation and an IEP team meeting that recommended a therapeutic day placement for the student. The parent objected to such a restrictive setting. The preponderance of evidence and testimony supported the additional diagnosis of ED/BD, the appropriateness of the district's IEP and the recommended placement for the summer term. However, the hearing officer did find that the school district had failed to monitor and correctly identify the rapidly deteriorating emotional/behavioral condition of the student. A difficulty encountered in the case was the fact that the student, age 18, did not give his consent for case study or the release of hospital records until May 1999.

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

Case #000907 – James Wolter, Hearing Officer
Consent for a Case Study Evaluation

The district requested the hearing seeking parental consent to conduct a full case study evaluation for a student receiving speech/language services. The parent refused to grant the district consent to conduct a full case study evaluation but would consent to a modified speech/language evaluation. The district was ordered to provide the student with a full case study evaluation under 34 CFR Sections 300.536(b) and 300.535(d).

Attorneys represented both parties. The timeline for conducting the hearing was extended to enable the parent to obtain legal counsel and to accommodate counsel's calendar.

Case #001018 – Charles Aschenbrenner, Hearing Officer
Applied Behavior Analysis, FAPE, Appropriateness of Placement, Home Instruction

The parents of a five-year old daughter who was diagnosed as autistic requested the due process hearing. The reason(s) for the request dealt with whether or not the school district denied "the Student" FAPE because of an inappropriate IEP and the failure of the school district to provide a good faith effort to achieve the IEP objectives. Starting in December of the 1998-99 school year, the parents began an Applied Behavior Analysis/Discrete Trial Training (ABA/DTT) home program in addition to sending their daughter to the public school special education program. The parents asked that they be reimbursed for the home program during the 1998-99 school year and that the ABA/DTT home program be

determined as the appropriate placement for their daughter for the 1999-2000 school year with provisions for occupational and speech therapy.

The hearing officer ruled that the appropriate placement for "the Student" was in the self-contained autistic program operated by the school district for the 1999-2000 school year. The hearing officer did not find a violation of FAPE and the parents were not reimbursed for the 1998-99 home program.

Attorneys represented both parties.

Case #001031 – Charles Aschenbrenner, Hearing Officer
Consent for a Case Study Evaluation

The school district requested a due process hearing in order to be granted authority to conduct a case study evaluation for a student who was having difficulties in a regular fifth grade classroom. The parent of this eleven-year-old girl declined repeated attempts by the district to conduct a case study evaluation since. The hearing officer found that "the Student" did have problems interfering with her learning and authorized the school district to proceed with the case study evaluation.

Legal counsel represented the district; parent was Pro Se.

Case #000831 – Robert Ladenson, Hearing Officer
Appropriate Placement, Compensatory Services

The critical questions in this case concerned the appropriateness of two therapeutic school placements proposed for the student by the school district, and also the appropriateness of the program developed and implemented by the school district during the 1997-98 and 1998-99 to address the student's behavior problems. All critical questions in the case turned on disputed factual matters between the parties. Based on a full review of the evidence and testimony presented at the hearing, the hearing officer ruled in favor of the school district. The parent's request for compensatory services and reimbursement for an independent evaluation was denied.

Legal counsel represented both parties.

Case #001077 – Julia Quinn Dempsey, Hearing Officer
Private vs. Public School Placement, Appropriate Placement, Change in Services, Amount of Services Offered

The parents requested the hearing on behalf of their 9-year-old son who had been receiving special education services as an LD/BD child since 4 ½ years old. The child was mainstreamed through 2nd grade with LD resource services and social work services. The parents were seeking placement in a private LD day school, alleging that the child was falling farther behind each year and was not benefiting from the district's program. The parents rejected the placement offered by the district in either their self contained LD or BD classroom, or a regular 3rd grade with increased LD resource time, social work services and a part-time 1:1 aide for the child.

The hearing officer found that the student's needs were more unique and complex than were apparent at the spring MDC/IEP conference. Based on the testimony of the child's

psychiatrist and the new psychological testing and report done by the district's school psychologist between the pre-hearing and the hearing, the child was found to be LD and ADHD, not BD. It was held inappropriate for the parents to request a private school for children with disabilities only while rejecting the school district's self-contained LD classroom in a public school building with mainstreaming opportunities throughout the school day.

The district was ordered to convene a new MDC/IEP conference to include among the other participants; the proposed LD classroom teacher, the speech/language therapist, the psychologist, the child's educational therapist and his psychiatrist. The conferees were ordered to develop a highly structured educational plan that covered the entire school day to include a 1:1 aide for lunch, recess, gym, etc., a minimum 30 minutes weekly meeting between the parents and lead classroom teacher and 1:1 remedial work during the school day.

An attorney represented the district and the parents were not represented.

Case #000637 – Charles Aschenbrenner, Hearing Officer
Content of the IEP, Development of a Behavioral Management Plan, Services on the IEP Not Provided

The legal guardians requested the due process hearing on behalf of their "son" who at the time of the hearing was seven years old and diagnosed as having emotional disabilities and eligible for ED/BD special education services. Four of five issues dealt with whether or not the school district provided the services listed in the IEP. These included paraprofessional assistance, social work therapy, ED/BD resource assistance, and sensory integration training. In addition, the parents wanted a behavioral management plan developed and the school district disagreed. The guardians wanted the district to provide the services to help "the Student" achieve his potential. They also wanted a specific sensory integration program implemented daily to reduce emotional stress during the school day and a behavioral management plan to share "the Student's" needs with all staff members.

The hearing officer ruled that the school district provided the services listed on the IEP and that "the Student" made reasonable gains during the school year. Further, the hearing officer found that the school district was not required to develop a behavioral management plan as defined by federal and state rules and regulations.

Attorneys represented both parties.

Case #000667 – Charles Aschenbrenner, Hearing Officer
Change of Placement, Compensatory Services, Inclusion, Appropriate Placement

The parent requested the due process hearing on behalf of her eleven-year old daughter whose primary disability is mild retardation. The daughter was also found eligible for speech and language services. The parent objected to her daughter's placement in special education program for more than fifty percent of the school day after having been in a regular classroom program with special education resource services in grades first through third.

Several alleged procedural violations became the basis for the development of an extensive list of issues, which were resolved for the most part prior to the hearing. Resolutions for all but two issues were approved and became part of the hearing record as stipulations or

agreed upon orders. The remaining two issues involved the delivery of compensatory education services and whether or not "the Student" was denied FAPE during the 1998-99 school year.

The hearing officer ruled in favor of the parent regarding compensatory services, however, with modifications as set forth in the Orders. It was also the finding of the hearing officer that the school district denied "the Student" FAPE from the beginning of the school year until a change of placement took place on April 5, 1999.

Legal counsel represented both parties.

Case #000636 - Francis J. Nowik, Hearing Officer
Residential Placement, Agreed upon Order

The parents requested the hearing, seeking reimbursement for placing the Student at Allendale during the 1998-99 school year and during the 1999 summer program. The hearing officer wrote an agreed upon order ordering the district, with statutory reimbursement from the Illinois State Board of Education, to pay tuition, room and board, and transportation expenses to Allendale for the period of 1998-99 school year and the 1999 summer term.

Legal counsel represented both parties.

Case #000984 Richard Brimer, Hearing Officer
Appropriateness of Services, Provision of Services, Eligibility Determination, Treatment of the Parent by the School

The hearing was requested by the parent because she believed that the district had not adequately considered the fact that the child had a high level of lead poisoning, abnormal EEG, a seizure disorder and a history of passing out both in and out of school. The parents requested the school district to assess "child" to determine if he met the qualifications specified in IDEA for a disability. The case study evaluation concluded that "child" was not disabled as defined by IDEA. The parents objected to this conclusion and requested a due process hearing to contest the school district's decision. In the pre-hearing conference, the mother identified four issues, which generally centered on the case study evaluation process and the appropriate placement issue. The impartial due process hearing proceeded with these points being the ones of contention. During the mother's opening statement, the school district's attorney asked the mother exactly what she wanted and if this dispute could be resolved at this point rather than continuing with the hearing. The parties requested the hearing be temporarily postponed so they could possibly resolve their differences. The parties reached an agreed upon order that centered on eight points. In general, these points focused on the parents' treatment by staff in the home school. The points the mother raised in pre-hearing conference were no longer important; the agreed points, in actuality, did not "fit" within the perimeters of IDEA. Yet, it was felt that this agreed upon order could provide a foundation in which the parents and the school district could work cooperatively for the best interests of the child

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

Case #001040 Carolyn Ann Smaron, Hearing Officer
Consent for a Case Study Evaluation

The school district requested a due process hearing for the purpose of compelling consent to conduct a case study evaluation. The request was brought on behalf of a fourteen year old boy who, although a sixth grade student, had an extremely limited ability to read and had math skills far below grade level. The parent refused to give her consent for the district to conduct a case study evaluation. The school district submitted a Motion for Summary Judgement supported by Affidavits. The hearing officer decided in favor of the school district ordering that the case study evaluation proceed.

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

Case #000729 Richard Brimer, Hearing Officer
Reimbursement for Unilateral Placement in Private School, Agreed Upon Order

In November of 1998, the parents unilaterally placed "child" in a private school program (a school on the Governor's Approved Care List). The parents felt that the school district was not providing "child" with an appropriate education. The parents sought the remedy of: reimbursement for the tuition expenses, reimbursement of the transportation costs to and from the school, reimbursement of the private tutoring, reimbursement of the private speech and language services, and reimbursement of the independent evaluation. The school district countered that it was providing an appropriate education program for "child." Before the scheduled date of the hearing, representatives for the parents and the school district reached a resolution that became the basis of an agreed upon order. There were three major points reached in this agreement. (1) The school district will reimburse the parents retroactively from the date of placement in the private school. (2) The school district will provide transportation services as set forth in "child's" IEP. (3) The funding of the placement will be shared between the local education agency and the Illinois State Board of Education.

Legal counsel represented both parties.

Case #000800 Richard Brimer, Hearing Officer
Change of Placement, Neighborhood School, Trial Placement

In December 1998, the school district recommended "child" be placed in a self-contained, cross-categorical program in an in-district school other than his home school. The parents disagreed with the proposed placement. The parents and the school district mediated their dispute, and agreed to place "child" in a self-contained, cross-categorical program on a "trial" basis until the end of the school year. During his placement in the self-contained, cross-categorical program, his behaviors became increasingly more severe, frequent, and intense. While placed in the cross-categorical program, he expressed intent to harm other students, the staff, and presented an imminent threat to his own safety. As a result of these threats, the multidisciplinary conference at the end of the school year recommended "child" be placed in a therapeutic day school beginning in the fall of 1999. The parents disagreed with the proposed placement and renewed their request for a due process hearing.

In the hearing, the parents argued that the school district ignored some of the child's and the parents' rights as specified in the IDEA. They also argued that his behavior was not severe and he should continue to be served in the cross-categorical program. The school

district contended they met formally over ten times and dozens of times informally during the school year to discuss ways to modify and control "child's" behaviors. It was ordered that "child" be placed in an alternative therapeutic day school for the 1999-2000 school year.

Legal counsel represented both parties.

Case #000834 Richard Brimer, Hearing Officer
Oral vs. Total Communication, Amount of Related Services

In May of 1998, at the age of three years, "child" underwent a successful cochlear implantation. After the implantation, audiologic evaluations demonstrated a significant improvement in "child's" ability to hear sounds. In the summer of 1998, the school district assessed the student and developed an IEP, and at the mother's request, increased the length of instruction from a half day to a full day. The IEP team members determined that the most appropriate program for "child" would be a total communication program. The mother, in contrast, felt that an oral education program would be the most effective program for her daughter. The mother also wanted to increase the amount of speech/language services that her daughter received to 150 minutes per week. The witnesses testified that "child" requires a total communication program because of the size and complexity of her language base. Since her language base is extremely limited, "child" needs a variety of communication modes to increase her receptive and expressive language skills. Furthermore, since "child's" language base was limited, she would not experience success in an oral education program (where the total communication program was taught). The hearing officer ordered the child continue in the district's total communication program. The hearing officer also ordered that the amount of speech/language services the student was receiving was appropriate for her current needs.

Legal counsel represented district, the parents were not represented.

Case #001035 – Stacey Stutzman, Hearing Officer
Extended School Year Services, Compensatory Services, Private Day Placement

Parent requested the hearing on the issue of placement and compensatory services because of the district's failure to provide ESY as required by the IEP and failure to find a placement in which the student's IEP could be fully implemented when private day school terminated its contract with district, thereby, terminating student's enrollment in the school. Decision was for parent on both issues. The district was ordered to provide 80 hours of tutoring as compensation for denial of ESY services and to place student at said private day school for 1999-00 school term.

Legal counsel represented both parties.

Case #001098 – Marian McElroy, Hearing Officer
Change of Placement, LRE

The parents requested the hearing because they objected to the district's proposal to change the student's placement from the district's communications disorders program to the speech center program at another school. At the time of the hearing, the student was 7 years old and in the second grade. With the exception of the portion of the day that the student was receiving speech and language services, the student participated in all

academic areas of the curriculum within the regular educational setting. The primary issue in this dispute was whether the student had progressed sufficiently to be placed in a LRE in another school.

The hearing officer found that the district did not violate any parental rights of notification. During the hearing, the district agreed to have the student tested for auditory processing difficulties. The hearing officer ordered that the district test the student as agreed, and convene an IEP conference once the test results are received by the parties for the purposes of revising the current IEP. The hearing officer ordered that the student's placement not be changed for the 1999-2000 school year.

Legal counsel represented the district; a relative with knowledge regarding special education matters represented the parent.

Case #001061 – Marian McElroy, Hearing Officer
Consent for Placement in Special Education, Disagreement Regarding Eligibility, Motion for Summary Judgement

The hearing was requested by the district due to the parent's failure to give consent to place the student in a program that consisted of 1250 minutes per week of special education instructional services in a separate classroom setting with 20 minutes per week of social work services to meet the student's emotional needs. The parent disagreed with the finding of eligibility for special education and related services under the category of behavior disorder/learning disability. At the time of the request, the student was in the third grade.

The hearing officer found that the student was eligible for special education services under the category of behavior disorder/learning disability. The hearing officer ordered the district to implement the IEP developed during the 1998-99 school year and within 30 days of the decision and orders to have an IEP meeting to review and revise the current IEP.

The school district filed a motion of summary judgement. The parent filed no response to the motion. The hearing officer ruled in favor of the district's summary judgement motion.

Legal counsel represented the school district. The parent did not participate in any of the proceeding.

Case #001093 – James Wolter, Hearing Officer
Residential Placement vs. Private Day Placement

The district offered to place the student in a private special education day school with an extended day program. The parent requested the hearing seeking a residential school placement at public expense. The timeline for the due process hearing was extended by mutual consent of the parties because the student was in a psychiatric hospital and not available for a school placement. The district's motion to join the Illinois State Board of Education and the Illinois Department of Human Services was granted when those two agencies failed to respond to the motion. If residential placement was found appropriate, the district requested that the hearing officer order ISBE and/or DHS to provide the residential component.

The hearing officer ordered that the student be placed in the residential facility upon discharge from the hospital. He further ordered that the district pay the tuition cost of the

placement. The Illinois State Board of Education and the Illinois Department of Human Services were ordered to be responsible for the direct payment of the room and board, mental health and related service cost of the placement.

Legal counsel represented district, parents were not represented.

Case #000723 – Karen Anderson, Hearing Officer
One Individual to serve as an One-on-One Aide

The parent requested the hearing because they believed that the one-on-one aide assigned to their son should be one consistent individual. It was the opinion of the hearing officer that the IEP did not specify only one individual be assigned to the student and that the professionals working with the student on a daily basis had the right to make that decision. Another issue placed before the hearing officer was whether the student's placement for the 1999-00 was appropriate if an individual one-on-one aide was not provided. With respect to this issue, the hearing officer found that the student's placement for the 1999-00 school year was appropriate with the services outlined in the IEP. A third issue brought before the hearing officer focused on whether the school district had an appropriately certified person to conduct the MDC/IEP meeting prior to the spring 1998 IEP. The hearing officer found in favor of the district on this issue.

Legal counsel represented both parties.

Case # 000256 – Stacey Stutzman, Hearing Officer
Self-contained Public Therapeutic Day School vs. Neighborhood School, Classification, Behavior Management Plan, Least Restrictive Placement

The hearing was initially requested by the parents alleging inappropriate discipline and behavior interventions. During the pendency of this hearing, the district requested and expedited the hearing for the purpose of moving the student to an interim alternative education setting (case #850). Hearing Officer Wolter on February 10, 1999, ordered that the child's placement be changed to a therapeutic day school for 45 days. However, the parents chose to home school the student rather than place him in the ordered IAES. The issues presented for hearing and decision were as follows:

- Whether the student was "Health Impaired," as proposed by the parents, or "Multiply Impaired" as proposed by the district?
- Whether the behavior management plan proposed by the district violated the student's rights under IDEA?
- Whether the LRE for the student was in a regular junior high school, as proposed by the parent, or a separate public therapeutic day school program in another district as proposed by the district?

The hearing officer ruled in favor of the parents on all issues. Legal counsel represented both the district and the parent.

Case #001091, Julia Quinn Dempsey, Hearing Officer
Appropriate Placement, Private vs. Public School Placement, Discipline,
Compensatory Services, Implementation of the IEP, Implementation of Previous
Hearing Officer's Decision

This was the second due process hearing for this 12-year-old student in less than a year. The parent and advocate before the hearing agreed they wanted therapeutic day school, ESY and compensatory services for the student, all of which the district had offered. The parent and advocate insisted on going through with the hearing anyway. There were 23 witnesses who basically detailed the student's totally out of control behavior in school – throwing chairs, leaving class, fighting, using profanity to one and all with the addition this year of a sexual component. The advocate alleged it was the failure of the teacher and other school personnel that caused the student's behavior to deteriorate.

The hearing officer found that the district had tried to implement the IEP and the functional analysis and behavior management plan but its best efforts (which were found to be more than adequate) were fruitless. The student was ordered into therapeutic day school with extended school year services next summer and compensatory services for all the missed school because of suspensions during the previous school year.

Legal counsel represented the district; an advocate assisted the parent.

000070 – Marie Bracki, Hearing Officer
Placement in Consumer Education

The parents requested this hearing on August 19, 1997. The parties participated in four separate days of hearings with the most recent date held on September 12, 1999. The parties requested that the hearing officer render an order regarding the student's classes at the school which he was enrolled at the time of the hearing. The parents requested that the student be taken out of consumer education and placed in a content required credit class. The district requested that the student continue his placement in the consumer education class.

The consumer education class in dispute is considered a non-credit course, taken for one semester and is required of all students for high school graduation. The hearing officer ruled that the student continue in the consumer education course.

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

**Due Process Hearing Decisions
October 16, 1999 and March 15, 2000**

Following is a summary of impartial due process hearing decisions issued between October 16, 1999 and March 15, 2000. Each summary identifies the case number, moving party, the issue or issues in dispute, the student's disability (if known), the hearing officer's finding, 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 a 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 #001268 – Charles Aschenbrenner, Hearing Officer
Reimbursement for Unilateral Placement**

The parents of a 15-year old son who was diagnosed as having a behavior/emotional disability requested the due process hearing. An inter-agency agreement between the Department of Human Services, Children and Family Services, and the Chicago Public Schools was arranged for placement of the student in a state approved residential facility. After approximately one (1) year, the student was discharged and placed unilaterally by his parents in a residential military academy that was not on the state-approved list. The parents alleged that the school district did not provide FAPE for their son in a timely manner. The school district maintained they were in the process of determining an appropriate placement for the student when the parent made the unilateral placement. The relief sought by the parents was for the school district to assume the financial responsibility for the placement and make arrangements for the completion of an appropriate IEP. The hearing officer found that the school district did not complete the IEP and offer the student FAPE in a timely manner. Further, the parents' unilateral placement was determined appropriate and the district was ordered to assume the financial responsibility for the student's placement. Legal counsel represented both parties.

**Case #001237 – Stephen Rubin, Hearing Officer
Consent for Evaluation**

The district requested the hearing for the sole purpose of compelling consent to conduct a case study evaluation. The student had been in special education when he was in the second grade. At the time of the hearing the student was over 14 years old and was repeating the 8th grade. His last IEP was dated June 8, 1998. At the request of the parents, in the fall of 1998, special education services were withdrawn despite the concerns of the district. The district found the student's progress thereafter to be unsatisfactory. The parents were objecting to the evaluation because the student's previous experiences in special education had been negative.

The hearing officer ordered the district to promptly conduct a case study evaluation. Legal counsel represented the district; the parents were not represented.

**Case #001241 – Marian F. McElroy, Hearing Officer
Reimbursement for Tuition and Fees at a University**

The parent requested the hearing seeking reimbursement for tuition and fees incurred by the student during his first year at the university of 1998-99. The student was placed on academic probation by the university and did not return after his first year. The student graduated from high school in June 1998. The parent contended that the school district did not provide the student FAPE during high school and that therefore the district should be held accountable for the student's lack of success during his first year at the university. The student is hearing impaired.

The hearing officer ruled that although the school district did not provide the student FAPE, there was no authority either in IDEA or case law that permitted the hearing officer to order the district to reimburse the parent for tuition and fees.

The parent appeared pro se. Legal counsel represented the district.

**Case # 00125 – Karen Anderson, Hearing Officer
Sensitive Training of Staff, Sufficiency of IEP, FAPE**

The parents requested the hearing seeking an order requiring that the district staff participate in sensitive training, that the student receive compensatory speech and language services and that the student receive an independent educational evaluation at district expense. The parents contended that the student's IEP was not written appropriately and as a result the student was being denied FAPE. At the time of the hearing, the student who was diagnosed with cerebral palsy and spastic quadriplegia at the age of one, was 15 years old and attending the 8th grade in a public junior high setting.

The hearing officer found that the district prevailed on all issues pertaining to this student. Legal counsel represented both parties.

**Case #001266 – James Wolter, Hearing Officer
Private Day School vs. Public High School**

The parent requested the hearing to obtain an order requiring that the district place their daughter in a private special education day school. At the time of the hearing the student was 17 years of age and receiving special education services in a regular public high school. The parents alleged that the district had failed to provide the services listed on the student's IEP. The parents also expressed concern regarding the student's safety in a large public school.

The district argued that a separate special education day school was too restrictive and recommended transferring the student to a regular public school closer to her home. The district proposed placing the student in a program with 4 students, 1 special education teacher and 1 aide who would provide the student with one-on-one services.

The hearing officer ordered that the student be placed in a special education program within a regular public high school. Legal counsel represented the district; the parent was not represented.

**Case #000851 – Karen Anderson, Hearing Officer
Summary Judgement – Appropriateness of IEP**

A summary judgement was granted in favor of the school district. The individualized educational program (IEP) dated December 15, 1999, including the transition plan was found to provide a free appropriate education in the least restrictive environment. The hearing was initially requested on January 25, 1999, and the issues regarding placement were resolved pursuant to a stipulated agreement reached on May 28, 1999. The stipulated agreement included a transition plan changing the student's placement from a private day school to a public day school. The hearing was reinitiated because the parent alleged that the district had not successfully implemented the transition plan.

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

**Case #001007 – Richard Brimer, Hearing Officer
Therapeutic Day vs. Residential Placement**

The student in this matter exhibited a number of inappropriate behaviors in the classroom: noncompliance, work refusal, disruptive behaviors, rude verbalizations, and threats to other students. The school district proposed to place the student in a special education therapeutic day school. The parents opposed that placement. The parents felt that he academically regressed in comparison to his peers while in that program previously. Furthermore, the parents felt that the current placement could be appropriate, but if he had to be placed in another setting, the parents preferred that he be placed in a residential program where he could receive an adequate education.

The hearing officer found that the district failed to protect the procedural safeguards required by the IDEA and failed to satisfy its affirmative obligations and its IDEA responsibilities to supplement and realign its resources as required by *Oberti*. Therefore, it was ordered that the student remain in his current placement. The school district was also ordered to convene a MDC to consider appropriate modifications, which could enhance the student's education and decrease the frequency of his inappropriate behaviors. The district was also ordered to increase the counseling and coordinate those services with the independent counseling the parents are providing. The hearing officer also ordered that the student be seen by a psychiatrist to address his depression.

Legal counsel represented both parties.

**Case # 000445 – Vivian Gordon, Hearing Officer
FAPE, IEP Inadequate and Improperly Implemented**

Parents asserted the school district failed to provide the student with FAPE, that the IEP was both inadequate and improperly implemented, that services were inappropriately provided, and that specific accommodations were necessary to provide the student with FAPE. The parents argued the student needed a structured sequential multisensory approach to learning in order to meet his educational needs. Parents also argued the school district retaliated against the parents and the student. Eligibility for an extended school year was also an issue; the hearing was bifurcated to allow testimony. Evidence and a decision are to be issued in a timely manner regarding extended school year services for this year.

It was concluded the school district has provided FAPE, that the IEP should be more detailed consistent with Rowley and that services are required to be provided not only in terms of minutes but also in a timely manner. It was determined that methodology is left to the school district to determine and that the student in this case rather than the local private clinic requested by parents. It was also found that the requested accommodations were either already provided, were not necessary to provide the student with FAPE, or fell under the rubric of methodology to be determined by the school district.

**Case # 000844 – Gail Friedman, Hearing Officer
Home-based ABA , Discrete Trial Format, Placement, Compensatory Services,
Sufficiency of the IEP**

Parents requested the hearing citing the district's failure to provide an appropriate placement for the implementation of the child's IEP objectives using discrete trial format; failure to have the evaluation, IEP, and placement secured by the child's third birthday; failure to arrange for the continued provision of services in the child's IFSP pending placement; and failure to provide related services included in the child's IEP and later modified through the mediation agreement.

The hearing officer found that the placement was an appropriate placement to implement the child's IEP goals and objectives using the discrete trial format. The hearing officer ordered the district to implement the IEP goals and objectives in the discrete trail format for 20 hours per week, employ an ABA consultant, and convene an IEP meeting within 10 days for the purpose of reviewing the child's goals and objectives and developing a highly structured plan. Because of the district's failure to have the child's evaluation IEP, and placement secured by his third birthday, arrange for the continued provision of services in his IFSP pending placement, implement IEP objectives using the discrete trial format, and provide related services included in his IEP and later modified through a mediation agreement, the hearing officer also ordered the district to provide compensatory speech/language and occupational therapy services and 10 hours of home-based discrete trial therapy for the remainder of the 1999-2000 school year.

Both parties were represented by legal counsel.

**Case #001139 – Carolyn Ann Smaron, Hearing Officer
Consent for Placement, Alternative Public Day School vs. Public Day School**

At an IEP convened in spring 1999, the school district concluded that this student should be placed in an alternative public day school for students with behavior/emotional disorders. Upon the failure of the parents to consent to this placement, the school district filed for due process. The hearing officer found that the school district properly notified the parents of the change in placement. The parents elected to withdraw the student on the day of the due process hearing. In order to determine the student's "stay put" placement should he return to the school district, the hearing officer found that the school district, based upon the facts known to them at the time of the IEP, had properly concluded that the student was eligible for special education services under the classification of behavior/emotional disorder and that said special education services should be provided the student in a public behavior disorder program at the alternative school. The hearing officer ordered the school district to turn over the student's records to the alternative school if and when the student re-enrolled in the school district.

**Case #000629 – Marie Bracki, Hearing Officer
Eligibility for Special Education**

The parents of a foster child requested a due process hearing because they disagreed with the district's finding that the child was not eligible for special education as a learning disabled student. Eligibility for special education services for Speech and Language was determined at an MDC. The district provided services during the school year in a FLEX Service Model. Additional evaluations were completed. The child was again found to be ineligible for special education as a learning disabled student by the MDC nor was the diagnosis supported at the hearing. The district was ordered to continue to offer flexible services as needed and as provided for any other students. Legal counsel represented the district. The parents presented their own case.

**Case #001314 – Alan J. Cook, Hearing Officer
Dismissal Order**

The hearing officer dismissed the case based on a notice received from the guardian withdrawing her request for due process.

**Case #001298 – Alan J. Cook, Hearing Officer
Dismissal Order**

Hearing officer dismissed the hearing upon notice that the student had transferred to a private school. The district's request for an order for a case study evaluation, and for a due process hearing was denied.

**Case #0000933 – Gail Friedman, Hearing Officer
Order of Dismissal**

The parent requested the hearing because she disagreed with the district's recommended special education placement. Through mediation, the district and the parent reached an agreement and a placement decision was finalized. Based on the parent's satisfaction with the placement, the hearing officer dismissed the case in its entirety.

**Case #000746 – Marie Bracki, Hearing Officer
Therapeutic Day Placement vs Residential Placement**

The request for due process hearing was made subsequent to an IEP meeting at which a therapeutic day placement was recommended for the student. The parent believed that a more restrictive setting, specifically residential, was appropriate based on his complex needs. Multiple agencies have been involved in securing an appropriate and ISBE approved facility. After a nationwide search, only one school will accept the student. The district was ordered to pay the educational costs of the placement in conjunction with co-funding by IDCFS and DHS even though the school is not on the state approved list.

Counsel represented the district. At the time of hearing, the parent was not represented, though had been advised by attorneys and agency representatives.

**Case #001063 – Francis J. Nowik, Hearing Officer
Transportation of Charter School**

The guardian of the student elected to send the student to a charter school rather than a neighborhood school. The district informed the guardian that while special education services are made available to special education students at the charter school, the district does not provide transportation to charter schools to any student. In a pre-hearing ruling the hearing officer ruled that as a matter of law the district is not obligated to provide transportation to a special education student when the district does not provide transportation to any student electing to attend a charter school.

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

**Case #001048 – Francis J. Nowik, Hearing Officer
FAPE, Assignment of an Individual Aide**

The hearing officer found that the district employed a qualified individual aide for the student and denied the parent's request that the former aide be reemployed in that position. The hearing officer also found the omission of the designation of "other health impaired" on the IEP did not result in the denial of FAPE. He did find that not sharing with the parents the annual assessment of the extent to which the student's goals and objectives were reached was a denial of FAPE. He also determined that the student should remain in the eighth grade.

Legal counsel represented both the district and the parents.

**Case #001084 – Stacey Stutzman, Hearing Officer
Interim Placement, Private Therapeutic vs. Self-contained Placement**

The parent requested the hearing seeking implementation of the student's IEP of October 28, 1999. The parents were seeking immediate placement at Cove School until June 16, 2000, which is the date he is to be enrolled at Cove School per an agreement of the parties pursuant to the IEP of October 28, 1999.

The student was eligible for special education and related services under the classification of specific learning disabilities. The district argued that it could keep the student in a public self-contained classroom as an "interim" placement until the end of the school year because transportation would be costly, difficult for the student, and he would be changing schools again in June. The hearing officer ruled in favor of the parent pursuant to 23 IAC 226.575.

Legal counsel represented the district. A legal assistant represented the parent.

**Case #001257 – Carolyn Ann Smaron, Hearing Officer
Jurisdiction over Expulsion Hearings**

The student's foster mother requested the hearing because she objected to the district's decision to place her foster son in an alternative educational program instead of expulsion. Following the completion of the alternative program the student returned to his home school. The student was initially recommended for expulsion for bringing a knife to school. An MDC was convened and it was determined that the misconduct was not related to the disability. The hearing officer dismissed the case on the grounds that the dispute did not

involve any disagreement involving the status of the student as a special education student. The district provided the student with an interim alternative placement and later returned the student to his local school.

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

**Case #000803 – Karen Anderson, Hearing Officer
Reimbursement for Unilateral Placement, FAPE, Graduation, Independent
Education Evaluation**

The parents requested the hearing seeking reimbursement for a unilateral placement, compensatory services until December 2001, and reimbursement for an independent evaluation. The hearing officer found that the student had been denied FAPE and ordered the remedies being sought by the family. The hearing officer found that while the student may have had the "paper" credits to graduate according to the school district's general requirements, this did not preclude the district from providing him with an appropriate IEP to meet his identified special education needs under IDEA.

Legal counsel represented both the district and the family.

**Case #001153 – Richard Brimer, Hearing Officer
Compensatory Services Beyond the Age of 21**

The student's parent requested the hearing seeking compensatory services beyond the age of 21. The student was diagnosed as multiple disabled with autistic tendencies, Down Syndrome and diabetes and frequent upper respiratory infections. At the time of the hearing, he was functioning at approximately the 3 years of age level and was classified as severely/profoundly mentally retarded.

While enrolled in a school district's program the student learned a Spanish word and spoke it at home. Since English is spoken in the home, the mother held that the school district taught the student Spanish communication skills rather than English communication skills. Therefore, the parent contended that the school district should provide him with additional educational services to compensate for the Spanish instruction he received and the English instruction that he did not receive. This was the issue involved in this due process hearing: Should HB receive compensatory instruction in English language usage and English communication skills? The testimony of the school staff and principal/program director repeatedly stated that only English was taught to the students; all instruction was in English.

Relative to this hearing, two points were decided: (1) the operation of the statute of limitations was not applicable in this matter and (2) the student received a free appropriate public education as defined by the IDEA using the *Board of Education of Hendrick Hudson Central School District vs. Rowley* standard.

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

**Case #001210 – Stacey Stutzman, Hearing Officer
Consent for Placement**

The district requested the hearing due to parent's refusal to consent to special education placement per MDC and IEP from the previous district, where student had repeated 7th grade. At the time of the hearing the student was in a regular 8th grade class and failing. The new district initiated the hearing, requesting an order allowing additional testing of the student to further aid in identifying the student's needs and an appropriate program. The parent chose not to participate in the process. Therefore, the hearing officer entered an order in favor of the district upon a motion for Summary Judgement.

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

**Case #001120 – Ann Breen-Greco, Hearing Officer
Location of Services, Neighborhood School vs. Cluster-Site**

The parents requested the hearing on behalf of their 15-year-old daughter. The student was eligible for special education and related services under the primary disability of physical impairment and a secondary classification of mental impairment with limited communication. During junior high, the district provided supplementary aides and services, including educational facilitator, individual aide, health care aide, and modification of curriculum down to 1st grade level. The district also paid for physical therapy at Easter Seals. The student was transported by bus with an aide, tube fed at school, had diapers changed, and was repositioned throughout the day. The student was in a multi-needs class and also mainstreamed into regular education classes at the request of parents.

The student aged-out of junior high school. The IEP was developed for high school and the district refused to place the student at her neighborhood school, as requested by the parents. The district offered two multi-needs opportunities, which would assist the student in meeting her IEP goals. Parents refused, claiming travel to the multi-needs setting posed a health risk to the student and that she should receive supplemental aides and services at the local school.

The hearing officer found, based on the evidence, that the student made no progress in the regular education classes and received no benefit from them. The hearing office found that the student's needs could best be met in the multi-needs setting with teachers trained and able to use a multi-sensory approach in teaching. The district had provided supplemental aides and services accordingly and had offered a FAPE to the student. No health risk was found for the student to be transported to the multi-needs setting. The multi-needs program was found to be the least restrictive environment for the student and provides mainstreaming opportunities in access to computer and media centers, field trips, school clubs and other activities. The district is not required to duplicate existing services at the neighborhood school.

Legal counsel represented both parties.

**Case #001396 – James Wolter, Hearing Officer
Notice of Dismissal**

The hearing was requested by the district seeking an order to conduct a triennial case study evaluation over parent objection. The case was dismissed by the hearing officer on the grounds that the initial evaluation was in violation of 20USC 1414 SEC.614(a)(C)(I).

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

**Case #001381 – James Wolter, Hearing Officer
Eligibility Classification/Identification**

The parents requested the hearing seeking an order to change the student's eligibility classification from mental impairment to autism. At the time of the hearing, the student was 4 years 5 months old and not attending a public school program. The hearing officer found that the case study evaluation conducted by the district was consistent with the diagnostic profile of a student with mental retardation and speech/language disabilities. The hearing officer found that the IEP developed by the district was reasonably calculated to provide the student with an opportunity to learn.

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

**Case #000970 – Richard Brimer, Hearing Officer
Consent for Evaluation**

The hearing was requested by the child's mother to force the school district to discontinue a case study evaluation, which was initiated with the written consent of the child's father. The student was referred for a case study evaluation because of inappropriate behaviors at school. The father signed the consent form. Subsequently, the mother filed a request for a due process hearing to prevent the school district from conducting the evaluation. Shortly before the date of the hearing, the mother withdrew her request for a hearing. The father once again gave his permission for the case study evaluation. The school district informed the mother that testing was going to proceed. The mother told the student not to participate, not to cooperate, and not to respond to any of the questions during the testing process. Subsequently, the father filed a request for a due process hearing to force the school district to conduct the evaluation.

It was ordered that the school district should begin the assessment, evaluation, and testing process to complete the case study evaluation on behalf of the student. Legal counsel represented neither party.

**Case #001168 – James Wolter, Hearing Officer
Least Restrictive Environment, Inclusion, Neighborhood School**

The parent requested the hearing to obtain an order to have the student immediately returned from a separate day school to his neighborhood school. At the time of the hearing, the student was 11 years 11 months old and eligible for special education and related services under the category of behavior/emotional disorder. The record showed that the student had been eligible for special education services since 1st grade. An IEP meeting was held and all parties were in agreement that the student had exhibited sufficient progress to warrant reintegration into his home school. The question to be decided was not one of

whether the student should be reintegrated into his home school, but when and how the student should be reintegrated.

The hearing officer ordered the district to convene an IEP meeting, develop a behavioral intervention plan and a plan to reintegrate the student into his home school on a part time basis at the beginning of the next school semester. The hearing officer ordered that the IEP provide for a minimum of 400 minutes of regular education, a minimum of 200 minutes of special education and a minimum of 30 minutes of school social work counseling in his home school at the beginning of the next semester.

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

**Case #001113 – Stacey Stutzman, Hearing Officer
Deprivation of FAPE, Change of Placement, Least Restrictive Environment,
Sufficiency of Behavioral Intervention Plan**

The parents requested the hearing on behalf of their fifteen-year-old son who was diagnosed with attention deficit hyperactivity disorder at age, four. The student was identified as disabled because his "behavior has an adverse effect on the ability to benefit from the educational environment and interferes with the learning of himself and/or others." The issues identified by the parents were (1) deprivation of FAPE due to removal of the student from school and failure to provide a sufficient behavioral intervention plan, (2) objection to change of placement, and (3) failure to educate the student in the least restrictive environment.

The hearing officer found that the preponderance of evidence did not support the parents' contention that the student had been deprived of FAPE due to the failure of the district to develop and implement a behavior modification plan. However, the hearing officer did find that the district had failed to provide FAPE in the least restrictive environment after removing (suspending) the student from school and providing him with only nine hours of tutoring or homebound instruction. The hearing officer found that the district had ignored the procedural safeguards pursuant to removal of students with disabilities for disciplinary purposes.

The hearing officer ordered the district to reimburse the parents the amount of \$1310 which they incurred for counseling services related to the student's educational needs following the student's removal from school.

Legal counsel represented by parties. This case is currently in appeal

**Case #001128 – Karen Anderson, Hearing Officer
Movement of Early Childhood Classroom**

The parent requested the hearing because she objected to the district's decision to move the early childhood education/at-risk classroom to the junior high school section of the building. The parent alleged that the location of the classroom significantly hampered the children in the classroom from contact with age-appropriate peers. The hearing officer ordered that prior to the beginning of the 2000-2001 school year, the district move the early childhood classroom back to the section of the building housing the primary age children.

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

**Case #001233 – Richard Brimer, Hearing Officer
Expedited Hearing – Removal to Interim Alternative Educational Setting**

This was an expedited hearing. On or about August 20, 1999, the parent requested that the school district conduct a case study evaluation on behalf of her son. On September 16, 1999, the student was observed to have a nail clipper. The nail clipper had a blade of 1 5/8 inches in length. The school district classified it as a weapon and suspended him for 10 days pending disciplinary hearing. The school district subsequently placed him in an alternative educational setting for a 45 day period. Under IDEA, the student was entitled to due process protections that the school district did not follow. A matter similar to his case occurred in Minnesota, Independent School District No. 279, Osseo Area School. In that case, the student was erroneously charged with possession of a dangerous weapon and sought relief similar to the relief sought in this matter. It was concluded the nail clipper was not a weapon. The hearing officer ordered: (1) the child will be immediately reinstated in school, (2) the school district will conduct an immediate case study evaluation and, if appropriate, an Individual Education Program, a functional analysis, and a behavior intervention plan, and (3) the school district will provide an extended school year program for the student to compensate for the exclusion from school.

Legal counsel represented by parties.

**Case #001275 – Gail Friedman, Hearing Officer
Selection of One-on-One Aide**

Parents requested the hearing citing the district's failure to provide the student with a new one-on-one aide. At the hearing the parents were represented by an advocate and the district by an attorney.

The hearing officer found that the retention or selection of an aide to assist a student with disabilities is an administrative function and not subject to review, unless the selection or retention of a particular aide deprives a student of a free appropriate public education by interfering with the implementation of the student's IEP or poses a danger to the student's health, safety or welfare. The hearing officer stated there was not reason to interfere with the district's discretionary authority to choose its personnel and denied the parents request for a new aide.

**Due Process Hearing Decisions
March 16, 2000 through June 30, 2000**

Following is a summary of impartial due process hearing decisions issued between March 16, 2000 and June 30, 2000. Each summary identifies the case number, moving party, the issue or issues in dispute, the student's disability (if known), the hearing officer's finding, 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 #001361 – Robert Ladenson, Hearing Officer
Failure to Implement IEP, Refusal to Provide one-on-one Tutorial Assistant.
Failure to Comply with Child Find Provisions of IDEA97**

In this case the parents contended that the school district denied the student her right to FAPE by refusing to provide her one-on-one tutorial assistance in various academic subjects, not implementing her IEP in an appropriate manner, failing to comply with diverse procedural requirements of the IDEA, and not adhering to the Act's child find provisions. The parents requested various measures of relief, most significantly, that the student receive 10 hours per week of one-on-one tutoring in her academic subjects, as well as compensatory education, and that the school district reimburse the parents relative to their expenses for private tutoring of the student in her freshman and sophomore high school years. The school district contended that it had provided the student FAPE and accordingly, requested the hearing officer to deny all the parents requests for relief.

The hearing officer ruled in favor of the school district based upon the evidence and testimony presented to him in the case.

Legal counsel represented both parties.

**Case #001355 – Susan Einspar-Wayne, Hearing Officer
Change in Placement, Self-contained vs. Therapeutic Placement**

Parent requested the due process hearing to contest the school district's proposed change in placement to a therapeutic day school. Parent also contended that the change of placement that took place in the spring 1999 from resource to self-contained was done without the parent's knowledge or approval.

The student was first evaluated and identified as behavior disordered in March of 98. His initial placement was in a self-contained classroom. By spring 99, his behavior had improved sufficiently so that he was placed in a mainstream classroom with resource support. By the end of the spring 99 semester, his behavior had deteriorated so that the school again recommended a self-contained placement. The parent did not dispute that she received a copy of the spring 99 IEP and did not contact the school to dispute this change in placement to a full day self-contained placement.

In the fall of 99, the student's behavior continued to decline. His behaviors included: kicking and flailing his arms, sometimes resulting in harm to others; constantly moving around in

and out of his chair; becoming upset, shutting down and refusing to do any work whatsoever; and running from the room. On September 29, 1999, he brandished scissors at another student during an altercation with the student.

An emergency MDC/IEP meeting was held. The school team members determined that while his behavior in brandishing the scissors was not related to his disability in that it was not impulsive, his IEP was not appropriate. The team therefore concluded that he should not be expelled but rather that he required a highly structured therapeutic day school setting.

The hearing officer found that the school district had progressively restricted his placement in an attempt to meet his needs at his neighborhood school. The attempts had failed and his behaviors had deteriorated so that he was a danger to himself and others in that school. Thus a change to a therapeutic day school was clearly appropriate.

Hearing officer held for the school district.

Legal counsel represented the school district; parents represented themselves.

**Case #001414 – Ann Breen-Greco, Hearing Officer
Change of Placement - Reevaluation**

The parent requested the hearing because she objected to the district's recommendation of a self-contained placement for her son. The parent did not attend the hearing. The hearing officer determined that sufficient notice was given to all parties so as to meet due process rights consistent with federal and state law; the hearing officer had the authority to proceed with the due process hearing without the parent present.

After the parents refusal for the self-contained education setting, which had been based on a case study, the district offered a consult for "if needed" services, to which the parent agreed. The student was placed in the regular education setting. In this setting, the student's behavior continued to escalate and his grades deteriorated. The student has not met the requirements to graduate from eighth grade. The student was suspended for sexual harassment of another student and the parent withdrew him from the district.

The hearing officer determined that the district complied with the law in recommending a self-contained education setting for the student. Additionally, the hearing officer granted the district's request to conduct a re-evaluation, in accordance with law, to determine appropriate services, if the parent returns the student to the district school.

Neither party was represented by legal counsel.

**Case #001579 – Marie Bracki, Hearing Officer
Change of Placement to Alternative Day School**

Parent requested a due process hearing because she objected to the recommended placement made by the school district. The preponderance of evidence and testimony substantiated the appropriateness of the placement. The district was ordered to place the student in the proposed alternative day school for the coming academic year and to ensure the provision of related services.

Legal counsel represented the school district, parents represented themselves.

**Case #001643 – Richard Brimer, Hearing Officer
Conduct of Case Study Evaluation**

This is the student's first year in the school district. According to the parent, this school district is more academically advanced than her previous school. As a result, the student is progressing at a slower rate academically than her classmates. Also according to the teacher, the student is having social problems in the classroom. Because of her difficulties at the school, the school district requested an opportunity to conduct a comprehensive case study evaluation on behalf of the student. The parent opposed this action. The parent contends there are two reasons why the student is not progressing. First, the student has a visual-motor disorder, and second, the student has a personality conflict with the teacher. These two problems in concert have hindered her progress. There is one other factor that should be noted. The student was absent, tardy, or departed early 59 times during this past school year. (This is approximately ½ of the school year). This amount of absences, tardies, or early departures will have a significant impact on her educational achievement.

In the finding of fact section, the hearing officer concluded the student has an unspecified learning problem that is interfering with her ability to learn/remember information. In the conclusions of law section, the hearing officer was directed by 34 CFR 300.505(b) and 20 USC 1415(a). This code and regulation states that if a parent refuses 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.

Neither party was represented by legal counsel.

**Case #001512 – Charles Aschenbrenner, Hearing Officer
Sufficiency of Services, Parents Seeking Intensive Reading Program**

The parents requested the due process hearing on behalf of their eleven-year-old daughter whose disability is classified under the category of other health impaired. Because the student was of average ability, it was the parents' contention she should be reading at or near grade level. In order to accomplish this level of functioning the parents felt the student needed an intense reading program because of her age and self esteem. According to the parents, the IEP was insufficient and did not include a goal to enable the student to read at grade level. The school district maintained that the student was reading and achieving at a level commensurate with her ability in the regular classroom with special education resource assistance. The student was receiving above average grades and her reading concerns were being addressed in the IEP. The parents disagreed and unilaterally placed their daughter in an intense six-week reading program. They alleged their daughter was being denied FAPE and filed for a due process hearing seeking relief from the school district for payment of the private reading program for their daughter. The hearing officer found that the district did offer the student FAPE and, therefore, was not financially responsible for the services provided at the private facility.

Legal counsel represented the school district, parents represented themselves.

**Case #001480 – Charles Aschenbrenner, Hearing Officer
Case Dismissed**

Student no longer a resident of the district.

**Case #001223 – Nancy Hablutzel, Hearing Officer
Case Dismissed**

Parent was seeking payment for private school tuition. Due process case was dismissed for want of jurisdiction – the student was no longer a minor, and the right to request a hearing was vested in him.

**Case #001462 – Charles Aschenbrenner, Hearing Officer
Case Dismissed**

Father's request for a due process hearing was dismissed. Pursuant to the terms of the Judgement for Dissolution of Marriage, the mother has sole care, (control and education) of the student.

**Case #001425 – Carolyn Ann Smaron, Hearing Officer
Consent for Re-evaluation**

The local school district requested a due process hearing for the purpose of compelling consent to conduct a reevaluation. The request was brought on behalf of an eleven-year-old young man who, after being identified as eligible for special education services by his prior school district, was enrolled in this school district with an incomplete individualized education plan. The parent refused to give consent for the district to conduct re-evaluation and the local school district filed its request for a due process hearing officer. The school district submitted a Motion of Summary Judgement supported by Affidavits. The hearing officer granted summary judgement in favor of the school district ordering the case study re-evaluation to proceed. The local school district requested clarification of certain aspects of the decision and the clarification directed the local school district to either (a) conduct a re-evaluation or (b) reconvene the special education team and complete the Individualized Education Plan. Legal counsel represented the School District. After initial telephone conferences, the parent chose not to participate in the hearing process.

Legal counsel represented both parties.

**Case #001157 – Ann Breen-Greco, Hearing Officer
Independent Education Evaluation at Public Expense**

The parent requested an independent education evaluation subsequent to the district's case study evaluation, which determined her son to be autistic. The district denied the request and requested a hearing. Prior to the pre-hearing conference, the district proposed a resolution. It offered the parent a consultation for her son with an autism expert, to be paid for by the district. As part of the resolution, the district asked the parent to withdraw her request for an independent evaluation. The parent refused to sign the agreement. The matter was set for hearing. The parent notified the hearing officer and district that she would not attend the hearing. The district requested that the hearing officer consider the parent's refusal to attend the hearing as a withdrawal of her request for an independent evaluation or in the alternative set the matter for hearing. A hearing was conducted.

The hearing officer determined that: the parent's refusal to attend the hearing did not constitute a withdrawal of her required for an independent education evaluation; sufficient notice was given to all parties so as to meet due process rights consistent with federal and state law; the hearing officer had the authority to proceed with the due process hearing without the parent present; the district complied with law in refusing to conduct an independent educational evaluation at public expense and appropriately requesting a hearing within five (5) school days following receipt of the parent's request; the district's evaluation of the student meets the standards contained in the applicable regulation; the parent's request for an independent education evaluation is denied.

Legal counsel represented both parties.

**Case #001390 – Stephen Rubin, Hearing Officer
Least Restrictive Environment, Day Treatment Center vs. Regular
Education Classroom, Change of Placement**

The hearing was requested by the school district seeking an order to place the student in a day treatment center. At the time of the hearing the student was nine years old. According to the district the student was acting out toward adults and other children, unable to make progress at neighborhood schools with medication and interventions and was several grade levels behind his peers. The district contended that the neighborhood school was unable to create an IEP with educational benefits, even in a separate classroom.

The hearing officer found that the district's proposed placement in a therapeutic day school was LRE and ordered the student be placed accordingly.

Legal counsel represented the school district, parents represented themselves.

**CASE #001231 – Stacey Stutzman, Hearing Officer
Free Appropriate Public Education (FAPE), LRE**

Parents requested hearing on the issues of FAPE, specifically the district's failure to provide Auditory-Verbal Therapy and a sound field system for their 4 year-old hearing impaired child and failure to place the child in a regular preschool classroom with non-disabled peers. The hearing officer held for parents on the issues of Auditory-Verbal Therapy and placement and for the district on the issue of provision of sound field system. District was ordered to pay for private AVT and preschool tuition and to reimburse parents for past payment of these expenses.

Legal counsel represented both parties.

**CASE #001471 – James Wolter, Hearing Officer
Revocation of Parental Consent for Placement, Separate Public
Special Education School vs. Regular Education School**

The parent requested a due process hearing on behalf of her 12-year-old 6th grade son when the district made an initial special education placement in a separate public special education school after the student had made two suicide gestures at school. The parent consented to the placement while the student was still in a psychiatric hospital program but revoked consent when she learned the hospital recommended the student return to his regular education school upon discharge from the hospital program. The district denied the

parent's right to revoke consent and barred the student from returning to his regular education school. The hearing officer found that the district failed to consider the hospital's recommendation, conduct an assessment of the learning environment, conduct a functional behavioral analysis, develop and implement a behavioral intervention plan, and failed to consider the harmful effects of placing the student in a separate public special education school before placing him in at that school. The district was ordered to provide the student with a free appropriate public education in his regular education school.

Legal counsel represented both parties.

**CASE #000917 – Richard Brimer, Hearing Officer
Least Restrictive Environment, Appropriate Placement, Failure to Follow IEP**

The school district requested the hearing contending that the student's current placement was not appropriate to his needs and that he required a more restrictive placement. At the time of the hearing, the student was enrolled in the seventh grade. His school performance and academic progress in kindergarten through the second grade was uneventful. In the third grade, his grades began to deteriorate and his behavior problems increased in frequency and severity. At the beginning of the fourth grade, his mother and the coordinator of special education requested a comprehensive case study evaluation be conducted. From the fourth through the seventh grade, the school district provided a variety of special education and related services to the student. These services progressed from the general education program with assistance to an instructional behavior disorders program with a full-time aide. Throughout this process, the school district convened a MDC approximately every other month to evaluate the student's program and to improve the services that he was receiving. The school district, at its own expense, obtained an independent psychological evaluation and an independent neurological evaluation and sought to obtain an independent psychiatric evaluation.

The two-step inquiry process of the Board of Education of Hendrick Hudson Central School District v. Rowley and the proactive response to the student's behavior concept of the Oberti v. Board of Education of the Borough of Clemonton School District formed the basis of interpreting this matter. Throughout this process, the school district has acted in a legal and responsible manner. It followed the guidelines specified by the IDEA and consistently attempted to decrease inappropriate behaviors and increase academic performance. It was ordered that the student be placed in an alternative day school program of the school district's choice.

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

**CASE #0001228 – Vivian Gordon, Hearing Officer
District's Athletic Eligibility Policy**

After proposing a list of accommodations at an IEP meeting, to which the school district agreed to some but not all, and after the student was removed from the high school football team for failing two courses, the parent requested a due process hearing. A pre-hearing motion to reinstate the student on the football team was denied because it was found that administrative remedies within the school's athletic code's had not been exhausted.

During the pendency of the hearing, the student continued to fail from 2 to 4 courses out of 5 courses. The school district argued it had made a FAPE available but the student failed to avail himself of educational opportunities. The parent argued that the school district failed

to address the student's needs, that sports was essential to the student, and therefore he needed to have sports and/or a provision requiring his obtaining a grade of C or above to maintain his athletic eligibility.

It was determined the student was exhibiting behaviors which interfered with his ability to obtain educational benefit. These specific behaviors and concomitant strategies and/or consequences, as well as transition planning, determined by the IEP Team and parent, should be identified and considered for incorporation in the student's IEP. It was also determined that, while there were some misunderstandings regarding accessibility and/or appropriate summer course offerings for this student, because the student was not eligible for extended school year services, there were no violations of IDEA. The additional accommodations requested by the parent, except for two requests, were found to be related to methodology, to be left to the school district's discretion, or have already been incorporated into the student's IEP. The two remaining requests were related to maintaining the student's athletic eligibility. It was found that a FAPE consistent with IDEA does not require goals related to maintaining a grade level to ensure athletic eligibility or delineating student's participation in organized sports within his IEP, though these can be considered by the IEP Team for incorporation into the student's IEP.

Legal counsel represented the district. A trained advocate represented the parent.

**CASE #001060 – Stacey Stutzman, Hearing Officer
Compensatory Services, Placement at Private Day School, Classification/Eligibility**

The parent requested the hearing seeking compensation services, placement at Cove School, eligibility recognition as health impaired due to ADHD, counseling for parent, inservicing of district staff, and reimbursement for neuro psych evaluation relating to deprivation of FAPE dating back to 1996 for student who was dyslexic, speech/language impaired, and diagnosed at ADHD with recognized adverse effect on educational performance.

It was held that the district had violated procedural rights and that student had been denied appropriate education and related services, that the student had made no meaningful progress in the district's self contained LD/EBD (cross-cat) classroom where he had been placed since transferring to the district in 1996. The district filed to provide a timely annual review and presented no evidence of what IEP, if any, it was following in the '96-97 school year. District admitted that errors had been made, and its own psychologist testified that the student was not progressing in the district's program. The district offered no alternatives to the placement in question. Therefore, immediate placement at Cove School was ordered, including one-year compensatory education at Cove. Additionally, district was ordered to pay for the neuro psych eval. The student's new IEP was ordered to reflect eligibility for health impairment due to ADHD.

Legal counsel represented the district. Legal counsel and a trained advocate represented the parent.

**000006 – Robert Ladenson, Hearing Officer
Inclusion, Regular Education Placement vs. Self-contained Placement**

This hearing was requested by the parents in July 1997. After 19 days of hearing the hearing officer ruled that the placement proposed by the school district complied with IDEA.

The hearing officer declined to issue any of the findings or grant any of the relief requested by the parents.

This case involved a twelve-year-old student, enrolled in a fifth grade class in her resident school district. The student was diagnosed with Rett Syndrome, a condition which appears only to affect girls, and is characterized as a form of autistic disorder involving multiple severe to profound disabilities in the areas of motor functioning, communication, and cognition. The school district proposed a self-contained special education placement for the student in the Co-op's Educational Life Skills (ELS) Program. The parents rejected this proposal emphatically as inappropriate. They contended instead that the appropriate program for the student in the least restrictive environment was an inclusive program in a regular education classroom.

Legal counsel represented both parties.

**001395 – Susan Einspar-Wayne, Hearing Officer
Consent for Re-evaluation, Independent Educational Evaluation**

The hearing was requested by the school district, following the parent's written refusal to consent to a three-year re-evaluation. At the pre-hearing conference, the parent advised the school district of her intention to seek an independent evaluation and request reimbursement from the school district. The parents request for an independent evaluation at public expense was denied. The district was granted leave to re-evaluate the student.

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

**001569 – Ann Breen-Greco, Hearing Officer
Consent for Case Study Evaluation**

The district requested a hearing because the parent refused to consent to a case study evaluation of the student. The parent did not participate in the due process hearing. The hearing officer determined that sufficient notice was given to all parties so as to meet due process rights consistent with federal and state law; the hearing officer had the authority to proceed with the due process hearing without the parent present.

The student's behavior and grades deteriorated from 2nd grade to 4th grade. The student had only one friend and other students were afraid of him because of his anger. After the parent's refusal to consent to a case study evaluation, the district provided as many services as possible. Despite these services the student's behavior and grades did not improve.

The hearing officer determined that the district had complied with applicable law in requesting parent's consent for the case study evaluation. The hearing officer ordered the district to proceed with the case study evaluation without consent.

Neither party was represented by legal counsel.

**Case #001499 – Richard Brimer
Private vs. Public School Placement, Failure to Implement Services
on the IEP, Compensatory Services**

This hearing was requested by the parent of a 10 year, 1 month old student who at the time of the hearing was repeating the 3rd grade. At the end of December, the speech/language pathologist left the employment of the school district. After unsuccessfully attempting to hire a replacement therapist, the school district contracted with a private agency to provide speech/language services to its students. There was an interval between the speech/language pathologist leaving the school district and the contract being finalized with the private agency. During this interval, the student did not receive the 80 minutes per week of speech and language services required by his IEP. The school district recognized that it must compensate the student for the services he was denied. The school district projected that compensatory services should be completed by the end of the third week of June. From documents presented by the school district, the student had severe academic achievement problems. On the most recent California Achievement Test, he earned a total battery score of the 17th percentile rank.

The parent contends that school district employees were abusive, neglectful and discriminatory toward the student; therefore, the parent argues that he should be placed in a private school at school district expense. The parent was also seeking monetary damages for the abuse, neglect, and discrimination that the student received. The parent believed that the student should “skip” the 4th grade and go directly to the 5th grade for the 2000-2001 school year.

The school district was ordered to complete the speech/language services as scheduled until the student received all the entitled services. It was also ordered that a comprehensive case study evaluation be completed to determine if the student fulfilled the IDEA criteria of a disability.

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

**Case #001579 – Marie Bracki, Hearing Officer
Change of Placement to Alternative Day School**

Parent requested a due process hearing because she objected to the recommended placement made by the school district. The preponderance of evidence and testimony substantiated the appropriateness of the placement. Counsel represented the district. The parent presented her own case. The district was ordered to place the student in the proposed alternative day school for the coming academic year and to ensure the provision of related services.

**Case #001377 – Marian McElroy, Hearing Officer
Residential Placement in Nonpublic Facility**

Parents requested a due process hearing due to the district's failure to provide the student FAPE. The remedy requested was an appropriate placement for the student in a nonpublic, residential facility at the district's expense. A settlement agreement was negotiated following the pre-hearing conference. The hearing officer reviewed the agreement reached by the parties and found that the agreement appeared to resolve the issues between the parties. By mutual agreement of the parties, the residential placement proposed by the parents was determined to be in the student's best interest. It was ordered that the

district, with the statutory reimbursement of the Illinois State Board of Education, pay tuition, room and board costs and transportation expenses on behalf of the student for the 2000-2001 school year and the 2000 summer term.

Legal counsel represented both parties.

**Case #001458 – Judge Julia Quinn Dempsey, Hearing Officer
Least Restrictive Environment, Location of Services/Attendance Center**

The parents requested the hearing on behalf of their son who had been eligible for special education since he was 7 years old. At the time of the hearing, the student was attending 8th grade at Kinzie School. Prior to the student's placement at Kinzie School, the parents alleged that the district had not provided him an appropriate program and as a result he fell behind academically. The parents were pleased with the current placement at Kinzie. The district was proposing that the student attend 9th grade at his neighborhood school, Wendell Phillips High School, with continued LD and social work services.

The hearing officer found that the proposed placement at Wendell Phillips High School would be totally inadequate for the student and would in all likelihood fail to provide any meaningful academic benefit. The district was ordered to place the student at Kenwood Academy, which was the placement proposed by the parent.

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

**Case #001303 – James Wolter, Hearing Officer
Independent Educational Evaluation at Public Expense, Consent for Initial Placement**

The district requested the hearing in response to the parent's request for an independent educational evaluation at public expense and to seek an order to compel placement in a special education program. At the time of the hearing, the student was 8 years old and attending a third grade classroom. The district first evaluated the student when he was in the first grade and found that he exhibited the profile of a student with ADHD at school but not at home. The district implemented a behavior intervention plan during the first, second and third grades. When the student's behavior failed to improve by the third grade, the district requested parental consent to conduct a case study evaluation. The parent refused consent and the district requested a due process hearing. The case was assigned to this hearing officer. After the initial pre-hearing conference, the parent consented to the case study evaluation and the district withdrew the request for due process.

The district completed the evaluation and conducted the MDC/IEP and found the child eligible for special education under the classification of emotional/behavior disorder. The parents refused to grant consent for special education placement. The district then requested a due process hearing to compel consent for placement. The parent requested an independent evaluation because of her concern that the evaluation by the district might be biased.

The hearing officer denied the parent's request for an independent educational evaluation at public expense and ordered the student placed in special education in accordance with the IEP developed by the district.

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

**Case #001517 – Marie Bracki, Hearing Officer
Consent for Case Study Evaluation**

The only issue in this case was to obtain consent for a case study evaluation. The district made multiple requests to obtain permission from the parent. There was no indication in the documents presented that the parent's objection was to an evaluation. The parent failed to contact the hearing officer to identify any other issues. At the time of the hearing the student was repeating third grade for the third time. She was eleven years old.

The hearing officer found that the school district had met its obligation to identify and refer this student for a case study evaluation. The district was ordered to conduct the evaluation of the student either during the summer assessment prior or by September 22, 2000.

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

**Case #001664 – Marian McElroy, Hearing Officer
Expedited Hearing – Change of Placement to Interim Alternative Educational
Setting**

The school district requested an expedited hearing seeking an order for a change of placement for the student to an appropriate interim alternative educational setting. The student was suspended for ten days for assaulting another student and the district was seeking to expel the student. The school district convened a manifestation determination review and determined that the student's behavior was a manifestation of his disability. The team also found that in relationship to the behavior subject to disciplinary action, the child's IEP and placement were not appropriate. The issue presented for hearing therefore was whether maintaining the current placement of the student was likely to result in injury to the student or to others. The hearing officer found that maintaining the student in his current placement would most likely result in injury to the student and to others. The school district was ordered to place the student in an appropriate interim alternative program for not more than 45 days and to immediately convene an IEP meeting for the student.

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

**Case #001498 – Marie Bracki, Hearing Officer
Placement in Alternative Day School**

The parent requested a due process hearing to resolve a long list of issues most of which were not special education matters. The parent withdrew her request at the hearing when some witnesses were excluded. The district countered with a request for due process hearing in order to provide a free appropriate public education (FAPE). The district was ordered to place the student in the recommended alternative day school with related services.

Counsel represented the district; the parent presented her own case.

**Case #001415 – Nancy Hablutzel, Hearing Officer
Expedited Hearing, Manifestation Determination**

The school district requested an expedited hearing in order to obtain permission to perform an evaluation necessary for making a manifestation determination. The hearing officer ordered the evaluation and manifestation determination be completed. The student was involved in misconduct causing serious injury to another student and was suspended for 10 days with a recommendation to expel. The district unilaterally placed the student in a 45-day interim alternative education placement.

Legal counsel represented both parties.

**Case #001171 – Karen Anderson, Hearing Officer
Private School vs. Public School Placement, Least Restrictive Placement**

The parents seeking placement at public expense in a private day school requested the hearing. The student entered the school district in kindergarten and continued through the end of his 4th grade year. He was diagnosed as having a congenital spastic left hemisphere of the brain. The School District evaluated him prior to his entry into kindergarten and found him eligible for special education services. During the student's 4th grade year, he received 300 minutes of learning disability services. Although these services began as in-class services, ultimately they were provided by pullout to the resource room.

According to the parents, the student's productivity and self-esteem dropped drastically despite tremendous levels of support from the home, including private occupational therapy and private tutoring in reading, writing, and math throughout the school year and summer and dispute two hours per night of assistance with homework from his mother. The parents disagreed with the district's recommended IEP that would simply continue the current program, which the parents felt, had failed to produce meaningful results over the past few years. Because of their dissatisfaction with the public school program and the student's lack of progress, the parents unilaterally placed the student in a private day school.

The hearing officer found that the district's placement was appropriate. However, the district was ordered to provide an in-service training program to be delivered by Project CHOICES or an independent consultant, to cease the practice of requiring a non-IEP member to approve a request for a classroom aide, and ordered that the student be provided with an individual aide during large group instruction.

Legal counsel represented by parties.

**Due Process Hearing Decisions
July 1, 2000 through October 31, 2000**

Following is a summary of impartial due process hearing decisions issued between July 1, 2000 and October 31, 2000. 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 #001535 – Marie Bracki, Hearing Officer
Case Dismissed – Failure of the Moving Party to Move Forward**

The hearing officer dismissed the case because of the parent's unwillingness to move forward. The case involved reimbursement for a bill. The district made an offer of settlement to the parents. The parents were given until October 15, 2000 to move forward or the case would be dismissed. The parent did not contact the hearing officer to set a date for a hearing; therefore the case was dismissed for lack of intent to proceed.

**Case #000742 – Vivian Gordon, Hearing Officer
Least Restrictive Environment, Change of Placement, Independent Evaluation, IEP**

The parents requested a due process hearing because they objected to the school district's proposed change of placement. The IEP team recommended that the student be placed in a separate building, serving students with behavior disorders.

The hearing officer found that the school district's proposed placement was appropriate. The procedural and other violations alleged by the parents were found not to be sufficient to overturn the appropriateness of the school district's proposed placement, subject to the mainstreaming requirements. It was also found the parents had adequate opportunity to carry out an independent evaluation because their expert did have the opportunity to observe the student in the classroom setting on three occasions and did have access to the student's school records.

Legal counsel represented both parties.

**Case #001658 – Dr. Richard Brimer, Hearing Officer
Consent for Initial Case Study Evaluation**

The district requested the hearing to compel consent for an initial case study evaluation. The hearing officer was directed by 34 CFR 300.505(b) and 20 USC 1415(a). This code and regulation state that if a parent refuses to consent for an initial evaluation, the school district may initiate a due process hearing. In this case, the hearing officer concluded that 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 parent was not represented.

**Case #001775 – Charles Aschenbrenner, Hearing Officer
Extended School Year Services, Least Restrictive Environment, FAPE**

The parents requested the due process hearing on behalf of their 8-year-old son whose primary disability was mild retardation and his secondary disability was mild autism and speech and language. At the time of the hearing, the student was placed for slightly more than 50% of his day in a regular 2nd grade classroom. From the time the student entered kindergarten, he had participated in a regular classroom program for at least half of his school day. In addition, he had received special education instruction from a resource teacher and related services in speech and occupational therapy. The parents contended that their son had been denied FAPE because he did not receive extended school year services for the past two years and he was not currently being placed in LRE. They also felt that the school district had not been cooperative in establishing a mutually agreed upon time to schedule IEP conferences. As relief, the parents' requested that the school district reimbursement them for summer school services they provided over the past two years; and that the district place their son in a regular classroom on a full-time basis with an instructional aide.

The school district maintains that they have provided FAPE by placing the student in LRE. According to the district the child was not eligible for ESY services.

The hearing officer affirmed the district's placement. An advocate represented the parents and the school district had legal counsel.

**Case #001649 – Judge Julia Quinn Dempsey, Hearing Officer
Conductive Education, Methodology, Reimbursement of Privately Purchased
Services, Extended School Year Services, Appropriateness of Educational Services**

The parent requested the hearing on behalf of her 7-year-old severely disabled cerebral palsy quadriplegic son. The student had received 3 years of special education services in the district's early childhood program, which also included occupational therapy and physical therapy, and one year of special education services in a Kindergarten-equivalent multi needs self-contained program. The IEP's had never measured or recorded success or lack thereof on PT & OT goals. Each year the goals were continued, rewritten, omitted or reduced. The PT evaluations done each year bore little relevancy to the IEP goals, and could not be interfaced with the IEP. A rarely supervised PT assistant provided almost all the physical therapy for 4 years by contract with a local hospital. The parent alleged the student was regressing and enrolled him in the "Center for Independence through Conductive Education" for an intensive summer program and then for 2½ hours 3 mornings/wk during the 1999-2000 school year. The student was then in the multi needs classroom at the district with the mother providing transportation. Conductive Education is an alternate physical rehabilitation therapy for children with cerebral palsy who have at least near average cognitive ability. The research studies are few and with mixed results, but no more so than the more common physical therapy method. The child made good progress with Conductive Education. The parent requested continuation for the 2000-2001 school year and payment by the district for the past year.

It was held that the district had violated procedural rights and that the child had made no meaningful progress with the school district related services of PT & OT which he had been receiving since 1996.

The district was ordered to provide Conductive Education Services, transportation and consultation. No reimbursement was ordered.

Both parties were represented by legal counsel.

**Case #001782 – Judge Julia Quinn Dempsey, Hearing Officer
Failure to Implement the IEP, Sufficiency of Services, Inadequate Facilities,
Private vs. Public School Placement**

The parent requested the hearing because the district placement was alleged to be inadequate, overcrowded, not implementing the IEP and not appropriate, given the student's severe, multiple disabilities. The parent wanted the child in a private placement – The Lighthouse for the Blind.

The district was able to demonstrate it had an appropriate placement, which the parents had never looked at. The student had been placed in a program, which was closer to the child's home, but was too over crowded to provide appropriate services. The district was ordered to move the child to the appropriate placement within the district and provide compensatory services for 2 months.

Legal counsel represented the district and an advocate represented the parents.

**Case #001706 - Judge Julia Quinn Dempsey, Hearing Officer
Independent Educational Evaluations, IEP Violations, Parental Involvement**

District requested a due process hearing as required after denying the parent's request for an independent evaluation of occupational physical therapy needs and services. The parent's attorney then expanded the issues by bring up 8 more issues relating to alleged violations of IEP preparation, goals, parental involvement, issues regarding licensure of the occupational therapist, training of aides and training of all staff on the sensitivity to students with disabilities. The district prevailed on all issues except the lack of specificity in the social/emotional goals and the technical violation that the occupation therapist was not licensed until May. The OT/PT evaluations were found to be adequate and the parent's request for payment of independent evaluations was denied

Legal counsel represented both parties.

**Case #001524 – Gail Friedman, Hearing Officer
Consent for Evaluation**

The district filed a due process hearing after the parent refused to give consent for her son to be evaluated unless she was allowed to select the psychologist to perform the evaluation. In 1996 the parent requested that the district provide the parent with an African-American male psychologist to evaluate her son because she disagreed with the two previous psychologists' evaluations. At that time the district obliged the parent. The parent continued to disagree with all the evaluations, alleging that her son was not cognitively delayed, but rather dyslexic.

The hearing officer in response to a Motion for Summary Judgment, filed by the district found that the district was not obligated to honor the parent's request regarding the gender and ethnicity of an evaluator.

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

**Case #001517 – Marie A. Bracki, Hearing Officer
Consent for Case Study Evaluation**

The district requested the hearing to compel parental consent for a case study evaluation. The student was repeating third grade for the third time, and was struggling in all classroom areas. The hearing officer in response to a Motion for Summary Judgment ordered that the district conduct a case study evaluation.

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

**Case #001699 – Gail Friedman, Hearing Officer
Order of Dismissal**

Hearing officer dismissed the case based on Court Order deciding the same issue.

**Case #001701 – Stephen Rubin, Hearing Officer
Agreed Order, Dispute over Eligibility Classification, Placement in Self-contained,
Cross-categorical Classroom**

The district requested the hearing for the purpose of compelling placement of the student in a self-contained, cross-categorical classroom. The parties entered into an "Agreed Order" which called for the student to be placed in a self-contained, cross-categorical classroom to be promoted to the 7th grade. The MDC team was ordered to meet after the first semester of the school year to review the student's progress.

Legal counsel represented both parties.

**Case #001670 – Frank Nowik, Hearing Officer
Agreed Order, Residential vs. Therapeutic Day Placement**

The hearing officer issued an agreed order following an agreement reached by the parties as to the student's placement. Initially, the parents had requested the hearing seeking a residential placement because they felt that the district's placement in a therapeutic day school would not meet the student's needs. It was agreed that the student would remain in the therapeutic day school for the summer period and that the district would explore the possibility of other day schools for the fall and assess the vocational options for the student. The district agreed that should the student be asked to leave the therapeutic school for fail to make satisfactory progress toward his IEP goals the district would recommend residential placement.

Legal counsel represented both parties.

**Case #00070 – Marie Bracki, Hearing Officer
Graduation, Supportive Services, Sufficiency of IEP**

The parent originally requested the due process hearing on August 19, 1997, listing twenty-seven points to be resolved. The issues summarized at the pre-hearing conference to include: graduation from 8th grade, supportive services (1-1 aide, untimed tests, homework issues, assistive technology evaluation at district expense, high level/low level instruction,

format of grade level work), and IEP disputes (administration of medication, food allergy tested, listing of disabilities, suspensions, cursive writing goals). In the parent's final summary statement, she identified 101 remedies. The major disagreement, however, appeared to be the student's appropriate placement. The district maintained that the residential setting was no longer necessary and the parent claimed that it was.

The hearing officer ordered that a transcript of all high school level courses and credits earned be sent to the parent, that the district secure an appropriate educational placement for the student for the 200-2001 school year, that the residential placement continue until November 2000 and that transitional planning begin immediately upon receipt of the order. The district was also ordered to conduct a psychiatric evaluation of the student and to appoint a different person (from the individual who has been representing the district in this matter) to oversee the development of the plan and all future IEPs until the student graduates high school. The order also called for private tutoring services and several changes in the IEP. The district was not ordered to provide a one-on-one aide or to provide the parent with lesson plans. No change was ordered in the reports prepared by school person.

The delays in the conduct of the hearing were documented in the decision. Legal counsel represented the district. The attorney representing the parent withdrew from the case.

**Case #001685 – Marian F. McElroy, Hearing Officer
Summary Judgment Decision, Consent for Evaluation**

The school district requested the hearing for the purpose of compelling consent to conduct a full and individual evaluation. The hearing was brought on behalf of a their grade student who was performing poorly academically. The parent refused to give her consent for the district to administer the evaluation. The parent did not participate in the due process hearing and the district filed a motion for summary judgment. The hearing officer ruled in favor of the district should proceed with the case study evaluation.

Legal counsel represented the school district and the parent did not participate and was not represented by legal counsel.

**Case #001680 – Stephen Rubin, Hearing Officer
Compensatory Education, High School Graduation**

The Student and his parents requested the hearing challenging the district's recommendation that the student graduate high school. At the time of the hearing, the student was 19 years old and eligible for special education under the category of specific learning disabilities. The hearing officer found that the district had provided the student FAPE and that graduation with a regular diploma was appropriate. The parents' request for compensatory education was also denied.

Both parties were represented by legal counsel

**Case #001568 – Stephen Rubin, Hearing Officer
Behavior Plan with Positive Reinforcements, Change of Placement, Classroom aide,
Assessment for Specific Learning disabilities**

The parent requested the hearing contesting the alternative educational placement recommended by the District. The agreed issues included: (1) whether the district shall prepare a new behavior plan with one positive reinforcement as the parents requests, (2) whether the District will test the student for specific learning disabilities as the parents requested, (3) whether the District shall be permitted to change the student's placement and (4) whether the district shall provide the classroom aide as the parents requested.

The hearing officer found that the student's current placement could not afford him FAPE as he had shown no progress in the current placement, even with the interventions and accommodations and would not be likely to make progress in a separate classroom, an individual aide, more positive reinforcements or any of the alternatives suggested by the parent.

The hearing officer concluded that the district's proposed change of placement was appropriate. The hearing officer also found that there was no need for the district to test the student for learning disabilities at this time.

Neither party was represented by legal counsel. The parent was accompanied to the hearing by an advocate.

**Case # 001444 – Marian McElroy, Hearing Officer
Change in Placement, Alternative Program**

The parents requested the hearing because they objected to the district's proposed change in placement. The District's IEP team recommended change in placement for the student to an alternative program. The student had initially been placed in special education for behavior disorder issues. At the time of the filing of the due process hearing request, the student was a fourteen year-old ninth grader eligible for special education services as a student with a behavior/emotional disorder. The student was exhibiting serious behavior concerns and receiving grades of D's and F's. The hearing officer found that the regular education program did not provide the student a free appropriate public education and that the placement of the student in the alternative program was appropriate.

The parents were not represented by legal counsel. The district was represented.

**Case # 001070 – Richard Brimer, Hearing Officer
Interim Order – Independent Educational Evaluation, Regular Education Placement
vs. Self-contained Placement, Least Restrictive Environment**

This hearing was originally requested in June 1999. The parents objected to the student's placement in general education 1st grade program and were seeking a more restrictive placement. The parties agreed to place the student in a primary self-contained behavior disordered program during the hearing procedure. The record contains documentation of all continuance, which included an emergency placement of the student in a local hospital for emotional/behavioral reasons, a joint continuance to obtain an IEE, a serious illness of the student and an independent psychiatric evaluation.

The parents contended that the first IEE did not contain a psychiatric/emotional component. The district believe the evaluation contained a behavioral rating scale and that the psychologist who conducted the IEE felt the student did not exhibit any abnormal behavioral problems or emotional disorders. The school District also conducted a case study evaluation on the student and did not observe a behavioral or emotional problem.

Another continuance was granted to permit the parents to obtain an IEE at district expense. Since the parties could not agree on an independent evaluator the hearing officer appointed Dr. Vaal. In general the evaluator indicated the student was functioning at or near grade level in everything except reading and written expression skills. The parents contended that the student has some deep-seated psychiatric/emotional disorders.

The hearing officer issued an interim decision, ordering the parents to schedule a psychiatric/emotional evaluation at district expense. Upon receipt of the psychiatric/emotional report, the hearing officer will issue a final decision and order.

Legal counsel represents both parties.

**Case #001329 – Ann Breen-Greco, Hearing Officer
Reimbursement for Trips to Out-of-State Residential Facility**

The parents requested the hearing because they objected to the district's proposal to reduce the number of reimbursable trips to Boston Higachi from twelve per year to six. The student who was diagnosed with autism was placed in 1996 in an out-of-state residential facility. The IEP since December 1995 included reimbursement for 12 trips for parent training. While the parents argued that they must be entitled to 12 trips per year for training purposes, the record showed that they did not take 12 trips per year. The hearing officer found that the district's reduction in transportation reimbursement for parent trips to the private facility comports with applicable law.

Both parties were represented by legal counsel.

**Case #001477 – Vivian Gordon, Hearing Officer
Eligibility for Special Education, Discipline, Placement**

In May 1999, the student, a 16-year-old regular education student, brought a home made bomb to school which detonated in the boys bathroom. In October 1999, the student brought another set of materials for a bomb, including nails to be detonated in the boys bathroom. The student provided a number of explanations for this incident, including a reaction to an altercation involving a group of students. The parents requested a case study evaluation after the incident but before the student was expelled. Two MDCs were held, including one on February 9, 2000. The school district did not find the student eligible for special education. The student was subsequently expelled on February 10, 2000, for two calendar years. The expulsion was held in abeyance and alternatively, the school district placed the student in an alternative school where he currently remains. After the October bomb incident, there was also a court case during which the student was placed in a Youth Home for a period of time.

While the school district found the student met three of the five characteristics of the behavior disorder/emotional disorder criteria, it argued the student was not eligible for special education because he was not failing academically and was passing from grade to

grade. The district argued that while the student was disabled, the disability did not impact his academic performance, thus finding him ineligible for special education. The parents argued the student had depressive disorder which did adversely impact his educational progress, as exemplified by erratic and sometimes failing or low grades, frequently over an extended period of time to a marked degree after some support services were provided by the alternative school and parents.

It was determined there was sufficient evidence at the February 2000 MDC to find that the student did have a disability, that his disability impacts his educational and behavioral performance in school such that he is eligible for special education and related services under IDEA. The appropriate placement for the student was found to be his current placement at the alternative school. Legal counsel represented both parties.

**Case #001451 – Marie Bracki, Hearing Officer
Consent for Reevaluation**

The district requested a due process hearing in order to conduct the reevaluation of a student who was receiving special education services. The parents did not give consent nor did they participate in the due process hearing. The district made a Motion for Summary Judgment. The district was ordered to conduct a reevaluation of the student and to make appropriate placement based on her needs. Counsel represented the district. The parents did not participate.

**Case #01645 – Gail Friedman, Hearing Officer
Sufficiency of Occupational Therapy and Social Work Services, Eligibility for
Extended School Year Services, Appropriate Placement, Monetary Compensation
for Damages**

The parents requested the hearing asserting inappropriate placement, that the IEP was both inadequate and improperly implemented, that occupational therapy and social work services were not timely provided, and that the student should have been found eligible for extended school year services. In addition, the parents requested reimbursement for an outside evaluation and monetary compensation for psychological damages to the student and the family for inappropriately placing the student.

It was concluded that the district had inappropriately placed the student and that the student should be placed in a self-contained classroom with tutorial support, that a behavioral modification plan should be developed, and the student be found eligible for an extended school year. It was also found that the parents were not entitled to compensation for an outside evaluation and were not entitled to monetary compensation for psychological damages.

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

**Case #001662 – Carolyn Ann Smaron, Hearing Officer
FAPE, Conduct of Case Study Evaluation, Content and Implementation of IEP,
Placement**

The parent requested a due process hearing alleging that the local school district had failed to provide her daughter a free appropriate public education during the 1999-2000 school year and further alleging that the school district could not provide her daughter a free

appropriate public education in her current placement. At the time of the hearing the student was a junior in high school. She had been identified as eligible for special education and related services under the category of learning disabilities towards the end of her sophomore year.

The parent sought removal of her daughter from her current placement to another high school of the parent's choice. The hearing officer found that the testimony and documented tendered by the local school district supported all of the parent's contentions and consequently the hearing officer ordered that the student be removed from her current high school. The hearing officer further ordered that the new high school IEP team reevaluate the student and prepare an appropriate IEP.

Legal counsel represented both parties.

**Case #001737 – Stacey Stutzman, Hearing Officer
Private vs. Public School Placement, Eligibility, LRE Compensatory Services,
Content of IEP, Implementation of IEP, FAPE**

Parents of an 11-year-old boy requested the hearing to resolve a dispute over the child's special education eligibility classification. The parents were seeking an order to have the student's classification expanded to include the category of emotional/behavior disorder claiming the student had psychiatric diagnoses of anxiety disorder and bipolar disorder. The student was already eligible for services under the undisputed eligibility categories of learning disabilities and other health impairment due to a diagnosis of ADHD. In addition, the parents were also seeking placement in a private therapeutic day school. They claimed a denial of FAPE due to defects in the IEP and failure to implement the IEP.

The hearing officer ordered that the child's IEP be implemented with the deficiencies corrected and that the child be placed in the neighborhood school with LD resource programming and related services and accommodations. The district was ordered to provide compensatory services to make up for services not provided. The student was found eligible for services under the categories of LD and other health impairment, but not under the category of emotional disturbance.

**Case #001536 – Stacey Stutzman, Hearing Officer
Placement, Independent Educational Evaluation at Public Expense, FAPE,
Functional Analysis and Behavior Management Plan**

The parents originally requested the hearing based solely on discipline of student for misbehavior on the bus resulting in a two-day bus suspension. As the hearing proceed the parent's advocate expanded the issues to include eligibility as health impaired as opposed to behavior disordered, placement in cross-categorical classroom at the student's home school verses placement in a self contained BD program operated by the special education cooperative. Various violations of FAPE dating back as far as two years prior to the request were also raised as issues. The original issues were not included in those presented at the prehearing conference. The district presented a number of creditable witnesses who testified to fact supporting its contention that the student has a behavioral disorder that negatively impacts his ability to be educated, that it offered the student FAPE and attempted to provide it to him, and that the LRE for this student is the cooperative's BD instructional program, not the district's cross-categorical program. The parents gave little testimony. The parent's private evaluator stated he had no opinion on whether the student has a behavior disorder. Therefore the preponderance of the evidence resulted in the

following orders: (1) that the student is eligible under IDEA under the category of emotional disturbance, as well as learning disability; and (2) that he shall remain placed in the B.D. instructional classroom for the 2000-01 school year.

Legal counsel represented both parties.

**Case #001140 – Alan J. Cook, Hearing Officer
Private Day School Placement vs. Public School Inclusive Placement, Independent Educational Evaluation at Public Expense, Compensatory Services, Content of the IEP, Reimbursement for Unilateral Placement**

The parents requested the hearing seeking reimbursement for a unilateral placement in a private day school because of their child's lack of progress in the public school's inclusive program. The child had been receiving special education and related services in an inclusive regular education program since the first grade. Her May 10, 1999 IEP listed her primary disability as mild mental retardation and her secondary disability as speech and language and attention deficit disorder. The IEP team recommended continued placement in a fourth grade inclusive program with related services. The parents wanted the district to follow the recommendations of their private evaluator and place the student in a self-contained classroom.

The district would not change its placement recommendation, and the parents unilaterally enrolled the student in the Bartlett Learning Center and filed for a due process hearing. The decision affirmed the parents' action and ordered reimbursement for the independent evaluation, expenses and transportation at Bartlett for the 1999-2000 school year. The hearing officer ordered that the child remain at Bartlett at district expense for the 2000-2001 and 2001-2001 school years, as compensatory education.

Legal counsel represented both parties.

**Case #001654 – Nancy Hablutzel, Hearing Officer
Consent for Initial Placement, Appropriate Placement, Free Appropriate Public Education, Payment for Services**

The district requested the hearing seeking an order to compel parental consent for initial placement in special education. The district conducted a case study evaluation and found the student eligible for special education under the category of behavior disorder. It was recommended that the student receive 135 minutes per week of special education services. According to the district, the student's behavior had worsened and they were concerned over his ability to participate in the fifth grade because of his impulse, behaviors, and crying. The district staff testified that the school had gone well beyond what was usual in making accommodations, in an effort to please the parents and eliminate the undesirable behaviors, which consisted of fighting, touching, pushing and shoving, among other things.

The hearing officer ordered the district to implement the proposed placement without written consent of the parents and place the student in a regular fifth grade classroom with 135 minutes per week of EBD services, as well as any other services and accommodations provided by the district's IEP. The expenses listed in the parent's letter to the hearing officer were found not be the responsibility of the school district.

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

**Case #001715 – Nancy Hablutzel, Hearing Officer
Consent for Placement in Private School, Extended School Year Services, Least Restrictive Environment**

The hearing was requested by the district because of the parents refusal to sign permission for the student's placement in a private day school for children with emotional/behavior disorders as recommended by the IEP team. At the time of the request, the student had just completed the fourth grade. All parties agreed that there were serious behavioral issues in the classroom, and the student's problems increased significantly in the fall of 1999. The student's medication had been changed several times in that period of time and he required hospitalization and a hospital evaluation. The parents contended that the problem in the classroom was a direct result of an inappropriate class placement along with ineffective use of behavior management techniques. The district contended it was the result of the student's unstable medical condition, which may have been due to his central nervous system problems as well as changing physiological conditions.

The hearing officer found that the information needed to make an appropriate placement was not provided. The district and the parents were ordered to obtain new educational and neuropsychological evaluations at public expense. The parents were also ordered to immediately execute the necessary releases of information to allow the district personnel to confer with and obtain the evaluations and medical examines obtained over the past two years. Once the medical information is received the district was ordered to convene a new IEP meeting and make a placement recommendation. Prior to the reconvened IEP meeting, the district was ordered to do additional classroom observations. ESY services must be considered at the reconvened IEP meeting.

Neither party was represented.