

**Illinois State Board of Education
Due Process Summaries
Issued Between March 1, 2002 – June 30, 2002**

**Case #001844 – Marian F. McElroy
Dispute over Sufficiency of Services, Related Services, Initiation of Services**

The parents requested the hearing alleging that the District denied the student FAPE for failing to provide an effective Voice Output Communication System (VOCS), making an inappropriate determination of the student as mentally impaired, failing to provide appropriate services required for the student to access the general curriculum, failing to implement appropriate ESY services, and violating procedural safeguards under IDEA by failing to provide prior written notice (PWN).

The hearing officer found that IEPs developed for the student were reasonably calculated to enable the student to receive education benefits and that the School District complied with the prior written notice requirements of 20 U.S.C. Section 1415(b)(3). The hearing officer ordered the School District to convene an IEP meeting with regard to the student's program for the 2002-03 school year.

Both parties were represented by legal counsel.

**Case #002778 – Stacey Stutzman
Physician's Referral for Occupational Therapy**

The District requested the hearing because the parents refused to provide the requisite physician's referral for Occupational Therapy. The parents' refusal to provide the referral was interpreted by the District as an implicit revocation of their consent for occupational therapy services. The District was seeking an order to obtain a physician's referral allowing OT services and to conduct an OT re-evaluation.

The hearing officer ordered that the District be permitted to seek and obtain a physician's referral at its own expense, that the District be permitted to provide OT services to the student upon receipt of the physician's referral, and that the District conduct an OT re-evaluation.

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

**Case #002651 – Charles Aschenbrenner
Placement**

The School District requested the hearing seeking an order to place the student in a therapeutic day school. This hearing involved a 16-year-old emotionally disturbed student who had been serviced in the School District's Off-Campus Learning Center for most of the student's high school career. The IEP team determined the Off-Campus program was not meeting the student's needs and recommended placement in a therapeutic day school. The parent disagreed.

The hearing officer ordered that the student be placed in a therapeutic day school and progress be monitored on a quarterly basis. An additional psychiatric evaluation was also ordered, if necessary.

The District was represented by legal counsel. There was no representation on behalf of the parent at the due process hearing, and the parent chose not to attend the proceedings.

**Case #002606 – Carolyn Ann Smaron
Conduct of Case Study Evaluation, IEP, FAPE**

The parents requested the hearing alleging that the School District should have conducted a case study evaluation of the student in February 2002 upon receipt of a document indicating that the student has been diagnosed with Asperger's Syndrome. Instead, the School District modified the student's 504 Plan. In April 2001, the parties agreed upon a neuropsychological evaluation and an independent speech and language evaluation. Thereafter, the student was found eligible for special education as a student with Asperger's Syndrome, a form of high functioning autism. The parties prepared an IEP on November 12, 2001 but the IEP was left incomplete pending consultation with the Taz-Mason Autism Team regarding curricular and classroom modifications. The parents alleged that the consultants retained by the School District were not sufficiently trained and could not offer appropriate suggestions to the student's teachers.

The hearing officer found that all of the decisions made by the School District were reasonable given the circumstances then existing and the parent's apparent agreement and that all of the decisions represented a good faith effort on the part of the local School District to provide the student with a meaningful educational opportunity.

Both parties were represented by legal counsel.

**Case #002478 – Dr. Richard Brimer
Private vs. Public School Placement, FAPE**

At the time of the hearing, the student was enrolled in the eighth grade. The parent contended that the School District did not provide the student with a free appropriate public education (FAPE). In particular, the student scored significantly below his grade and age expectation in reading and in mathematics and profoundly below his grade, age and cognitive expectations in written language expression. The student also had significant problems in penmanship with his writing being slow, labored and difficult to read. Since the parent believed the School District was not providing the student with an appropriate education, she unilaterally removed the student from the School District's middle school and enrolled him in a private school in a neighboring community. Subsequently, the parent requested the School District to reimburse her for the expense associated with educating the student in the private school.

The issue in this matter centered on whether the School District provided the student with a FAPE. The Board of Education of the Hendrick Hudson Central School District v. Rowley established a basic floor of opportunity which consists to two steps: a) The School District's compliance with the procedural safeguards identified in the IDEA, and b) If the IEP can be reasonably calculated to provide the student with an educational benefit. The hearing officer concluded that the School District met the IDEA's requirements and ordered that the School District was not required to reimburse the parent for the expenses associated with educating the student in a private facility.

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

**Case #002666 – Carolyn Ann Smaron
Consent for Initial Evaluation**

The local School District requested this due process proceeding after the parents of the student refused to consent to a case study evaluation. After consideration of the documents and an Affidavit attached to the School District's motion for summary judgment, the hearing officer overruled the parents and ordered a case study evaluation.

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

**Case #002147 – Carolyn Ann Smaron
Placement, IEP, Independent Evaluation**

The parents requested the hearing alleging that the School District failed to provide the student with a free appropriate public education (FAPE) in the least restrictive environment (LRE) and that as a consequence thereof, the student was unilaterally placed in a residential facility. The Illinois State Board of Education's mediation system produced resolution of many issues but the dispute resurfaced as a dispute over the payment of money for the residential facility. The parties jointly stipulated to the remaining facts and after consideration of the joint stipulation and the IEP for the student, the hearing officer ordered ISBE to reimburse the local School District for the costs associated with the residential placement.

Both parties were represented by legal counsel.

**Case #002628 – Dr. James Wolter
FAPE, Speech/Language Evaluation, LRE**

In spite of a technical error made by the District's IEP team, their recommendation for a special education resource placement was granted over the parent's request for a full-time individual instructional assistant. The District's refusal to provide the student with an independent speech/language evaluation was sustained. The District was ordered to conduct a Functional Behavioral Analysis and implement a Behavioral Intervention Plan. The number of days the student was suspended from school was not found to be excessive and the parent's request for compensatory education for days the student was suspended was denied.

Neither party was represented by legal counsel.

**Case #002808 – Stacey Stutzman
Consent for Initial Evaluation**

The District requested the hearing on the issue of consent for evaluation. The parents were divorced and educational decisions were to be made jointly. The father consented to the evaluation, however, the Mother neither consented to the evaluation nor participated in the hearing. The District presented evidence of need for an evaluation. The hearing officer granted the District its request to conduct a full and individual evaluation of the student.

Both parties were represented by legal counsel.

**Case #002584 – Marian McElroy
Payment of Services**

Parents filed a due process hearing request seeking reimbursement for expenses for a private residential placement in Kansas. The parents claim that the School District's failure to conduct a case study evaluation of the student violated child find provisions of state and federal law. The School District argued that it recommended a case study evaluation to the parents but the parents elected not to follow the School District's recommendations. The parents unilaterally placed the student at a residential treatment facility.

The School District found the student ineligible for IDEA in that her behavior did not fit the eligibility criteria for emotional disturbance. The School District did develop a 504 plan for the student. The hearing officer found that the School District met its child find obligation and that the parents were not entitled to reimbursement absent a showing that the student's behavior affected her academic performance.

Neither party was represented by legal counsel.

**Case # 002596 – Marie Bracki, Hearing Officer
Appropriate Placement, Independent Evaluation**

The parent filed a request for due process claiming that the District failed to provide a free appropriate public education, failed to consider an independent evaluation, and failed to provide an IEP. The District requested that the hearing officer dismiss the matter citing that the student was home-schooled and, therefore, not entitled to the same safeguards under IDEA. Further, the District stated the hearing officer had no jurisdiction to reconsider a previous order issued in 2001, and that the guardian had not cooperated with the District to allow it to provide FAPE. The request was dismissed.

The District was represented by an attorney. The guardian was assisted by an advocate.

**Case #002804 – James Wolter, Hearing Officer
Change of Placement, LRE**

The District requested the due process hearing because the parent objected to the District's proposed change of placement. At the time of the hearing the student was completing the 5th grade in a self-contained special education class within a regular education school setting. The District was seeking an order to place the student in a public special education day school contained within a

regular education school building. The parent did not consent to the change of placement. Based on the testimony of District personnel, including the child's teachers, the hearing officer determined that the student's special education and related service needs would be appropriately met in the public special education day school. The District's proposed change of placement was affirmed by the hearing officer.

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

**Case #002789 – Charles Aschenbrenner, Hearing Officer
Consent for Initial Placement in Special Education**

The District requested the due process hearing seeking an order to compel placement in special education without parental consent. A previous hearing was held to compel consent to conduct a case study evaluation. The District's request to conduct the evaluation was granted. The hearing officer found the student eligible for special education under the category of learning and behavioral disabilities. However, the parent refused to provide consent for placement in special education. At the time of this hearing, the student was nine years old and enrolled in a third grade classroom. The District was seeking an order to place the student in a therapeutic day school. The hearing officer found that the preponderance of the evidence showed that the student's educational needs could best be met in a BD self-contained special education program.

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

**Case #002807 – Marie Bracki, Hearing Officer
Consent for Reevaluation**

The District requested a due process hearing to conduct a triennial evaluation of the student. The District attempted on multiple occasions to gain the parent's signature for consent for reevaluation. The hearing officer made numerous attempts to secure the parent's participation in the hearing proceedings. The District made a Motion for Summary Judgment. Timelines were given for response. An Order was made directing the School District to conduct a reevaluation of the student.

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

**Case #002362 – Gail Friedman, Hearing Officer
Sufficiency of IEP, Reimbursement for Unilateral Placement,
Reimbursement for Independent Evaluation**

The parent requested the hearing asserting that the District's proposed placement was inappropriate and the proposed individual education program was insufficient to provide for the student's individual needs. The parents requested reimbursement for a unilateral placement at a private school for the 2001-2002 school year, continued placement at the private school and transportation, and reimbursement for evaluations, a private educational consultant and out-pocket expenses related to the private evaluation.

It was concluded that the District was able to provide free appropriate public education in the least restrictive environment. Parents were denied reimbursement for the unilateral placement and other expenses and the continued placement at the private placement.

Both parties were represented by legal counsel.

**Case #002596 – Marie Bracki, Hearing Officer
Independent Education Evaluation, Unilaterally Placed in Private School
(Home Schooled)**

The child's guardian filed a request for due process claiming that the District failed to provide a free appropriate public education, failed to consider an independent evaluation, and failed to provide an IEP and special education services. The District requested that the hearing officer dismiss the matter citing that the student was home-schooled and, therefore, not entitled to the same safeguards under IDEA. Further the District stated the hearing officer had no jurisdiction to reconsider a previous Order issued in 2001, and that the guardian had not cooperated with the District to allow it to provide FAPE. The case was dismissed.

The District was represented by an attorney. The guardian was assisted by an advocate.

**Case #002744 – James A. Wolter, Hearing Officer
Eligibility Criteria, Independent Evaluation, Content of IEP, Services on IEP
Not Provided, FAPE**

The parents on behalf of their 15 year old son requested the hearing seeking a private evaluation and vision therapy. The student was eligible for special education and related services under the category of LD and had a history of reading difficulties. The hearing officer found that the parents had fully participated in the IEP process. It was further found that the student was deriving

appropriate benefit from his special education placement. The parents' motion to have the District pay for a private evaluation by an optometrist and vision therapy by the optometrist was denied.

Neither party was represented by legal counsel.

**Case #002553 – Carolyn Ann Smaron, Hearing Officer
Appropriate Placement, Conduct of Case Study Evaluation, Eligibility
Criteria, Unilateral Placement in Private School**

The parents filed for the hearing alleging that the School District failed in their "child find" responsibilities, failed in their responsibilities to properly evaluate the student, and in denying eligibility for special education, failed to provide the student a free appropriate public education. The parents unilaterally placed the student in an out-of-state residential facility, changed the student's placement to an in-state facility, and sought reimbursement for this unilateral placement.

The hearing officer found that the school District did not attempt to identify the student as a student eligible for special education and related services on a timely basis and as a consequence, the student was denied a free appropriate public education in the least restrictive environment; that the student met the criteria of severely emotionally disabled and as a consequence, should have been found eligible for special education and related services at the multidisciplinary conference; and that the least restrictive environment for this student is her current placement in Quincy, Illinois.

The hearing officer ordered an independent educational evaluation at School District's expense, development of an appropriate IEP, stay-put placement in the current placement; and reimbursement for unilateral placements.

Both parties were represented by legal counsel.

**Case #002743 – Robert F. Ladenson, Hearing Officer
Dispute Over Non Custodial Parent's Consent for Evaluation**

The custodial parent requested the hearing because she objected to the District's decision to conduct an evaluation of her daughter based on the written consent provided by the non-custodial parent. The District submitted a motion to dismiss the Parent's request for due process. The Hearing officer provided the Parent an opportunity to respond to the District's motion to dismiss. It was the District's position that consent from the student's natural father was legally sufficient, contending in this regard, that "absent a court order to the contrary, both parents in a divorce have the right to participate in and make educational decisions for the child." The District further argued that "there is no language in any divorce

decree that has been provided to the District regarding the mother's sole right to make educational decisions." The hearing officer accepted the position of the School District. In the opinion of the hearing officer, viewing a District as required to obtain consent for evaluation from only one of the student's parents (even in cases where neither parent has the exclusive right to make educational decisions for the Student under a court ordered divorce decree) is highly congruent with a reasonable interpretation of the basic purposes and values underlying the IDEA. The Hearing Officer dismissed the case and later through clarification amended his order dismissing the request and replaced it with a Summary Judgment in favor of the School District upholding its right to evaluate the Student.

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

**Case #002767 – Carolyn Ann Smaron, Hearing Officer
Motion to Dismiss – Student Parentally Placed in Private School**

The hearing officer dismissed the case on the grounds that 23 IAC 226.350(c) does not apply to disputes between a local school District and parents of a student unilaterally enrolled in a private school.

Both parties were represented by legal counsel.

**Case #002472 – Marian F. McElroy, Hearing Officer
Summary Judgment Decision – Consent for Reevaluation**

The District requested the hearing seeking an order to compel parental consent to conduct a reevaluation on a student who had not been evaluated for four years. The District documented repeated attempts to obtain parental consent. The parent was also unresponsive to the communications of the hearing officer regarding the hearing proceeding. The hearing officer ordered that an evaluation be conducted for the student immediately without the consent of the parent.

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

**Case #002567 – Ann Breen-Greco, Hearing Officer
Independent Educational Evaluation, FAPE, LRE**

The hearing was initiated to resolve a parental request for an independent education evaluation. However, before this matter got to hearing this issue was resolved because the District completed the independent evaluation. The only remaining issue was whether the District's IEP recommending a private day school placement denied the student a FAPE in the least restrictive environment. This case went to due process hearing initially in November 2000. It was

resolved at the hearing with an agreement regarding a private day placement. Subsequently the parent refused to enroll her son in the placement and the District was unable to implement the agreement. On May 14, 2002, the District developed a new IEP recommending private day placement. The hearing officer found that the District met its burden and concluded that the District had provided the student FAPE in the LRE.

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

**Case #002738 – Carolyn Ann Smaron, Hearing Officer
Change of Placement, LRE**

The hearing was requested by the parents because they objected to the District's recommended change of placement from a cross-categorical self-contained program in a public school to a public therapeutic day school. The School District alleged that the student's proposed placement in a therapeutic day school was necessary as the student's present behavior interfered with her ability to learn and that she was in need of intensive daily social and psychological services. The grandmother/legal guardian objected to the placement focusing her attention on the student's aide. The hearing officer found in favor of the District's recommended change of placement.

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

**Case #002407 – Stephen Rubin, Hearing Officer
Residential Placement**

This hearing was requested by the parent seeking a residential placement for her son who was eligible for special education and related services under the category of LD. The student was diagnosed with Disruptive Behavior Disorder, Impulsive Control Disorder, ADHD, Depression and possible Bipolar Disorder. Following a hospitalization precipitated by an episode of aggression the student was placed in a therapeutic residential facility with some educational services provided in a laboratory school. During the hearing the School District and the parent reached agreement concerning the educational placement for the student for the next year. Pursuant to that agreement the hearing officer ordered the residential placement for the student be provided by the school District.

Both parties were represented by legal counsel.

**Case #002649 – Marian McElroy, Hearing Officer
Dismissal Order, Parent Lack of Standing, Consent for Placement**

The hearing was requested by the child's mother who objected to the student's proposed placement in an EBD program which the child's father had consented to. The parents were divorced and entered into a Parenting and Custody agreement that provided the father with final decision making authority on educational issues. On a pre-hearing motion filed by the School District, the hearing officer dismissed the case finding that the mother had no standing to request the due process hearing.

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

**Case #002542 – Judge Julia Quinn Dempsey, Hearing Officer
Reimbursement for Tutoring Services, Compensatory Educational
Services, Money Damages for Alleged Pain and Suffering**

The parent requested the hearing alleging that her son had been wrongfully excluded from school. The District requested that the hearing officer dismiss the case arguing that the allegations were either without merit or the remedy being sought was not available under IDEA. Because the mother was unrepresented the hearing officer went over the District's motion point-by-point. The case was dismissed on a Motion for Summary Judgment.

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

**Case #002644 – Stephen B. Rubin, Hearing Officer
Consent for Full and Individual Evaluation**

The hearing was requested by the District seeking permission to conduct a full and individual evaluation without parental consent. According to the District the student was not receiving educational benefits from a general education program despite several interventions. At the time of the hearing, the student was repeating the third grade for the third time. The hearing officer ordered the district to promptly conduct a full and individual evaluation of the student without parental consent.

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

**Case #002773 – Charles L. Aschenbrenner, Hearing Officer
Removal Agreed Order**

The District requested the hearing to resolve a hygienic situation regarding a 10-year old mentally impaired student. At the pre-hearing conference the School District's representative presented a proposal to resolve the dispute. The parents accepted the proposal. An Agreed Order was entered which stated that if the student came to school in a non-hygienic (unclean) condition, the principal could suspend the student for the remainder of that school day, as well as, the next two school days.

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

**Case #002426 – Judge Julia Quinn Dempsey, Hearing Officer
Case Dismissed Against Elementary District**

The student waited 15 months and into the second school year after graduating from the elementary school district to request a due process hearing. The letter requesting the hearing described the nature of the problem as a 1995 change by the District to a "full inclusion format" which illegally changed the student's placement. Nowhere in the hearing request or in the filing in response to the motion to dismiss was there anything that indicated that the parents were unaware or uninformed or their rights under IDEA, thus the hearing officer concluded that the District's Motion to Dismiss the Due Process Hearing due to a lack of jurisdiction because of non-residency of the requested party should be granted.

Both parties were represented by legal counsel.