

PROCEDURAL SUMMARY/FINDINGS OF FACT:

To the extent that the procedural summary includes findings of fact or conclusions of law, that the findings of fact or stipulations are conclusions of law, or that the conclusions of law are findings of fact, they should be so considered without regard to their given labels. *See, e.g., Bonnie Ann F. v. Callahan Independent School Board*, 835 F.Supp. 340 (S.D. Tex. 1993).

1. The Parents commenced this due process proceeding by letter dated September 8, 2001, requesting that a hearing officer:
 - (1) “Issue an order for the school district to provide [the Student] with homebound instruction by a qualified special education reading specialist immediately at a location acceptable to the [Parents] with such instruction continuing until such time as the parties can agree upon an appropriate education for [the Student].”
 - (2) “Issue an order for the school district to reimburse the [Parents] for independent evaluations conducted to date.”
2. The Parents’ request for due process states that these issues were raised at PPTs on June 14, 2001 and/or August 23, 2001.
3. The Parents’ request for due process states that the two issues they identified in their request “should be considered separately from those currently in dispute before [the DOE] in Case # 01-294.”
4. A Pre-Hearing Conference was convened on September 20, 2001. The Student’s mother and counsel for the Parents and the Board participated in that Pre-Hearing Conference.
5. At the Pre-Hearing Conference, counsel for the Board reported that Case # 01-294, which was presently pending before Hearing Officer Mangs, had been commenced by the Board and also arose from events taking place at the June 14, 2001 and/or August 23, 2001 PPTs. According to the Board’s counsel, the following four issues were presently pending before Hearing Officer Mangs:
 - (1) Board’s refusal to consent to an independent reading evaluation.
 - (2) Board’s refusal to reimburse the Parents for an independent neuropsychological evaluation by Dr. Thies.
 - (3) PPT’s refusal to provide homebound placement for the 2001-2002 academic year.
 - (4) The Board recommended a psychiatric evaluation and Parents are refusing. Board is requesting a hearing officer to order that the psychiatric evaluation go forward.
6. At the Pre-Hearing Conference, the Board took the position that the issues raised by the Board in Case # 01-294 and by the Parents in Case #01-305 were the same, and that it was

appropriate to consolidate both Cases. The Board had not, however, decided whether to move to consolidate both Cases before Hearing Officer Mangs in Case #01-294 or to withdraw Case #01-294 and raise its issues as “counterissues” in Case # 01-305.

7. At the Pre-Hearing Conference, the Parents took the position that consolidation of the two Cases was not appropriate because the Board had no standing to commence due process with respect to issues (1), (2) and (3) of Finding of Fact # 5 above, and that the two issues raised by the Parents were otherwise distinct and properly asserted by the Parents in Case # 01-305. The Parents also opposed the Board raising its issues as “counterissues” in Case # 01-305.
8. The parties at the Pre-Hearing Conference were unable to reach agreement on a statement of issues to be resolved in Case # 01-305, and on consolidation of Case #s 01-294 and 01-305. Based on the dispute between the parties as to what was pending before Hearing Officer Mangs, the Hearing Officer could not frame the issues to be resolved in this Case.
9. At the Pre-Hearing Conference, the Hearing Officer also questioned whether he had the authority to grant the relief requested by the Parents in their issue # 1 in Case # 01-305, as it did not appear that the Parents were seeking a determination as to an appropriate program for the Student for the 2001-2002 academic year, but rather appeared to be seeking interim, temporary relief. The Parents’ counsel was unable to articulate to the Hearing Officer’s satisfaction the statutory or regulatory authority that would permit the Hearing Officer to grant the relief requested by the Parents in their issue # 1, as framed by the Parents.
10. Pursuant to the Hearing Officer’s September 20, 2001 Scheduling Order, on September 24, 2001, the Board filed a motion to consolidate Case #s 01-294 and 01-305 and the Parents filed a “Motion to Dismiss and to Consolidate.”
11. Review of these two motions indicate that the parties are in agreement that Issue #s (1)-(4) set forth in Finding of Fact # 5 above are presently before Hearing Officer Mangs in Case # 01-294. The Parents in their motion state further that they conditionally agree to the granting of the Board’s motion to consolidate these Cases.
12. Upon receipt of these motions to consolidate, and pursuant to Section 10-76h-8(f)(3) of the Regulations of Connecticut State Agencies, the Hearing Officers conferred regarding how to proceed. The Hearing Officers concluded that the issues raised in both proceedings are essentially identical and involve common questions of law and fact; and, further, that to the extent there are unique issues raised in one proceeding but not the other, it would be a waste of the resources of the parties to proceed separately and doing so may unnecessarily delay resolution of issues regarding the Student’s special education program.
13. By order dated September 26, 2001, Case #s 01-294 and 01-305 were consolidated before Hearing Officer Mangs and the Scheduling Order in Case # 01-305 was suspended pending issuance of a decision dismissing Case # 01-305.

CONCLUSIONS OF LAW:

1. The issues raised by the Parents in their September 8, 2001 request for due process are the subject of a prior request for due process commenced by the Board, presently pending before another Hearing Officer in Case # 01-294. Permitting both this Case and Case # 01-294 to proceed simultaneously creates the risk that contradictory final decisions could be entered, represents a waste of resources for the parties and the Department, and is not appropriate precedent or policy.
2. Even assuming that Issue # 1 raised by the Parents in Case # 01-305 is not presently pending in Case # 01-294, that issue, as framed by the Parents, is not one upon which relief can be granted under either the IDEA or applicable Connecticut law.

FINAL DECISION AND ORDER:

1. This Case is hereby dismissed without prejudice to the Parents to refile upon the conclusion of Case # 01-294, whether by final decision, settlement agreement or withdrawal by the Board, and to the extent that any issues raised by the Parents in Case # 01-305 remain unresolved by a decision or settlement agreement (whichever is appropriate) in Case # 01-294.