

A Family's Struggle to Achieve Justice in Education  
Fighting for FAPE  
By J. Mark Bade  
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*NOW COMES Per Matthew Hovem and his natural parents, Knut and Signe Hovem, by and through their attorney of record Martin J. Cirkiel, bring this their Original Complaint and Request for Special Education Due Process Hearing alleging that the Klein Independent School District violated the various rights of Per, as more specifically pled herein.*

By his senior year at Klein Collins High School in Spring, Texas, part of the Klein Independent School District (ISD), Per Hovem was receiving A's and B's with the occasional C. His IQ marked him as gifted with exceptional intelligence, and he was acknowledged to have exceptional receptive skills (reading and listening). His SAT scores were 650 for reading and 640 for math. He looked forward to going to college.

However, Per never saw a college guidance counselor that year to discuss his college plans. The reason: Per could not complete the written request for an appointment because he wrote at the first-grade level, four or five standard deviations below his intellectual capacity. So severe were Per's spelling, phonetics, and handwriting problems that, according to one of his teachers, it could take him two to four days to write a single paragraph.

Per Hovem is twice exceptional; and, according to the due process complaint filed by Per's family in 2008, the Klein ISD violated Per's rights by denying him a free, appropriate public education (FAPE) as required by the U.S. Individuals with Disabilities Education Act (IDEA) of 2004.

Per Hovem: 2e Puzzle

*The parties each agree that the child is a 12th grade student eligible for special education services under IDEA04... All parties agree that the child is highly intelligent...*

The due process complaint was the culmination of years of dialog between Per's parents, Signe and Knut Hovem, and the school district.

Signe Hovem, born and raised in the United States, met Knut Hovem when they attended the University of Colorado. A native of Norway and the recipient of a cross-country skiing scholarship, Knut was studying engineering. After Knut completed a master's degree at Dartmouth, the couple moved to Norway. Per was 11 months old.

Signe Hovem reports that Per's language skills developed somewhat late, and that when they lived in Norway he received speech therapy and assistance with his expressive skills. Some professionals dismissed Per's difficulties as typical in bilingual families.

In August of 2000, when Per was 11, the family moved with Per and his three younger siblings to the Houston area for Knut Hovem's employer. With irony, Signe Hovem relates that they settled within the boundaries of the Klein ISD because it had a reputation for providing good special education services.

In the family's first year in the district, fifth-grader Per was removed from special education services and placed in an ESL program. The rationale: Per's lack of exposure to English had created the discrepancies in his performance. The following year, the school district placed Per in a special education program and prepared an Individualized Education Program (IEP), but provided no aggressive therapies or services.

The pattern of the next few years was much the same, according to his mother. Through junior high and into Klein Collins High School, Per had IEPs and occasional assistive technology, but nothing was really done to help him improve his written expression. He had access to a computer and a portable speller, but lacked the skill to use them. (Even with a speller, one must be able to spell to some degree for the device to be useful.)

As a sophomore, Per took an honors social studies class, but his difficulties with writing and expression made him the object of humor by other gifted students, and the class teacher questioned the placement of a learning-disabled student in his class.

Because very little in-class writing was required of Per at Klein Collins High School, he managed to compensate for his disability and received good grades, although he remembers his time there as simply "punching in and out."

"I was too smart for my own good," says Per. "One of the reasons Klein Collins didn't do anything for me was that I performed well in all my classes."

Per, understandably, felt that he didn't fit the mold of a typical special needs student. But by the time he was a senior, his parents became aware of the extent of his expressive problem.

"We had the illusion that Per was a successful student," says his mother. "Our awakening came when we realized that they were trying to force a diploma on a non-functional child. In the last four years we had no feedback from the school to indicate that he was not functioning."

#### Leaving Public School

*Landmark specializes in highly intelligent children with language disabilities. (See, Trial transcript, pp. 179, 335.)*

After they realized the seriousness of Per's problems with written expression and Klein ISD's unwillingness to help resolve the problems, the Hovems turned to private Landmark School in Massachusetts. There, Per is redoing his junior and senior high school years.

Landmark School serves elementary through high school students who have language-based learning disabilities. According to the school's website, 92 percent of Landmark's graduates attend college. The teacher-to-student ratio is one to three.

Students at Landmark each have an academic case manager to organize their days, handle paperwork, and lead the team that educates and supports them. Per's case manager Brett Hall says that all classes at Landmark are highly structured.

Expressive language arts classes involve templating and structure to help students get their thoughts on paper, says Hall. An oral expression class focuses on sequencing events and telling stories.

"Students with lots of expressive LDs benefit because the strategies and structure allow them to be better able to express themselves," says Hall. "They've certainly got the ideas and cognitive abilities."

Signe Hovem says she's seen great strides in Per's abilities at Landmark, and that he has begun to express interest in pursuing subjects such as anthropology and physics research when he enters college. She says that, for Per, Landmark has given back hope that he has a future.

"My classes feel very good for me," says Per. "I get to work at what challenges me."

The down side: Per feels as if he wasted two years of his life during his junior and senior years at Klein Collins. He fears he won't be able to make up for that lost time. On the other hand, he knows it's far better to spend time at Landmark than to flunk out of college because of his difficulties in expressing his ideas.

#### The Complaint

*This action arises under Section 1415(f)(1) of the Individuals with Disabilities Act ("IDEA"), 10 U.S.C. § 1400 et seq.*

The 21-page complaint and request for a due process hearing was filed by the Hovem family's legal team, Martin Cirkiel and Dorene Philpot, on June 27, 2008. [See Ms. Philpot's article on due process hearings in the January/February, 2009, issue of 2e Newsletter.] The document defines the parties; provides a lengthy factual background and history of the case; lists the alleged violations by Klein ISD in regard to the case; and requests numerous, specific instances of relief for Per and his family. The complaint sought a finding that Klein ISD did not provide a FAPE to Per Hovem, and that the school grossly mismanaged his IEP. The complaint also sought the following from the school district:

- A transition plan to enable Per to function in academic settings and independent living (i.e., at college)
- Assessments of Per's learning style and the effect of Per's limitations on his college education
- Compensatory special education and related services
- Changes to the way the school district provides special education services.

The Hovem family also sought reimbursement for Per's education at Landmark School and for the costs of the due process hearing. By the time the hearing decision was issued, the Hovem family had spent approximately \$100,000 on the due process hearing, Landmark placement, and private educational testing.

#### The Hearing

*On the 3<sup>rd</sup> day of December, 2008, the petitioner and the respondent appeared at the Special Education Department at Klein ISD for a Due Process Hearing pursuant to IDEA04. The hearing concluded on the 5<sup>th</sup> day of December, 2008.*

The hearing was held in a conference room at the school. There were a few observers who trickled in and out in addition

to the parties, their attorneys, the hearing officer, and the court reporter. Per says that the hearing was “similar to TV dramas but a lot more mundane and monotonous.”

The hearing officer was Tomas Ramirez, III. According to Dorene Philpot, hearing officers are all attorneys who are on contract with the Texas Education Agency (TEA) to hear cases. Hearing officers receive training about IDEA and conduct hearings at least once a year.

According to Signe Hovem, the school district tried to take the parents off the case because Per by this time was 18 years old. This would have meant separating the witnesses, forcing Per to testify alone. However, Dorene Philpot arranged for the parents to have power of attorney, allowing them to be present at the proceedings.

“I don’t think people realize how the school treats people who are pushed into due process,” says Signe Hovem.

Per’s mother says that while the school did not allow him to pursue gifted/talented courses, during the hearing the district’s attorney asked Per whether he tried “hard enough” to get into those courses. Per, who did not want to get his teachers or anyone else into trouble, indicated that perhaps he could have tried harder, a statement that the district would seize upon later.

On January 9, 2009, hearing officer Tomas Ramirez released his decision in a 25-page document. The conclusions of law reached by Ramirez were that the Klein ISD violated the procedural safeguards of IDEA by failing to implement a transition plan with appropriate transition goals and by failing to develop an IEP to address the individual needs of Per Hovem. In addition, Ramirez concluded that the IEP developed for Per failed to confer a meaningful educational benefit likely to produce progress for the young man. Finally, Ramirez concluded that Per’s placement at Landmark School was appropriate.

#### A Victory for the Hovem Family

*Based upon a preponderance of the evidence and the foregoing Findings of Fact and Conclusions of Law, it is hereby ORDERED that the relief requested by the petitioner is GRANTED.*

Signe Hovem says, “We feel vindicated that we pushed this through. We hope other people will see that justice will be served after all. We really do not want this school district or any other to think that it’s cost effective to deny a kid his rights.”

The hearing officer ordered that the Klein ISD develop an appropriate transition plan and an appropriate IEP. The IEP is now a moot point; Per will not likely set foot inside a Klein ISD facility. He will graduate in another year from Landmark School, and Klein ISD has been ordered to reimburse the Hovem family for the cost of Per’s time at Landmark, past and future.

#### But Short-Lived?

*This is an action under the IDEA appealing the decision of a Special Education Hearing Officer appointed by the Commissioner of Education of the State of Texas to consider an administrative complaint filed against KISD on behalf of Per, an adult student with a disability within the meaning of the IDEA... The hearing officer’s decision is erroneous as a matter of law. Additionally, the decision is not supported by the evidence presented in the hearing. As such, KISD is entitled to an Order from this Court reversing and vacating the hearing officer’s decision.*

Unfortunately for the Hovems, their victory may be short-lived. On January 20, 2009, less than two weeks after the hearing officer’s decision, Klein ISD served notice to the family that the district is appealing the hearing officer’s decision in the U.S. District Court in Houston. According to Signe Hovem, she is continually warned that the court rarely rules for parents.

In the appeal, Klein ISD claims several times that Per “did not put forth his best effort” in high school. The district also claims that IDEA does not require public schools to remediate disabilities or prepare children to be successful in college, and, among other things, says that the hearing officer “grossly misconstrued the letter and spirit of IDEA.” In the appeal document, the district also seeks to avoid paying for Per’s time at Landmark School.

Dorene Philpot says that in the appeal the school bears the burden of proof. She is hopeful that the court will affirm the hearing officer’s decision, and notes that the hearing officer wrote a decision that specifically cited in the record where he came up with his findings. Furthermore, she points out that some of the violations that occurred were proven and undisputed in the school’s own documents.

While the appeal is in process, Per Hovem continues at Landmark School. He is looking at colleges, supported by what case manager Brett Hall calls a strong guidance program to help students find appropriate higher education.

His parents, in spite of cautionary words from friends and advocacy groups, continue to pursue what they perceive as justice, all the while, as Signe Hovem puts it, “watching our savings drain and our debt mount.” She continues to speak out against “the treacherous legal terrain that learning disabled children have to navigate to ensure that their educational rights are protected.” She warns of the “punitive and prohibitive education system in Texas” for parents who are forced to take legal action against a public school. The school district, she feels, takes such an adversarial stance against families like hers in order to protect itself from future liability and responsibilities.

Has it been worth it to stand up for what the Hovems perceived as their rights? “We never looked for the fight,” says Per’s father Knut, “but we could not walk away from it. It was one of those things you’d think about for the rest of your life.”

*J. Mark Bade is co-publisher of 2e: Twice-Exceptional Newsletter, the only publication directed squarely at the intersection of giftedness and learning difficulties. Find out more at [www.2eNewsletter.com](http://www.2eNewsletter.com). Copyright © 2009, Glen Ellyn Media. Used by  permission.*