



Due Process Digjest News from the Office for Dispute Resolution

February 2005

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Hearing Officer Decisions

ODR #4350/04-05
In Re The Educational Assignment of a Student in the Council Rock School District, Before Linda J. Stengle, Hearing Officer, November 18, 2004.

Issues Addressed: Gifted

Student, a fifteen year old, was identified as a gifted Student in elementary school. After an evaluation following deteriorating performance, the District recommended leaving the gifted program. Parents disagreed and removed Student to a private school, so the District requested a hearing as to appropriateness, but Parents did not attend. In seventh grade, Student's marks had ranged from A's to D's, with failures the next year, and teachers believed this was due to "over" placement, with performance not meeting gifted criteria, the same appearing to be true of other gifted skills. Parents overrode these opinions several times and had Student's honors placement continued. During this period, certain supports were offered Student, organizationally and with additional teacher time, none of which was taken advantage of. In spring 2003, Student's physician requested several excused absences for "therapeutic" trips and "spiritual retreats". A new GIEP was developed and approved in May. That September, a District evaluation found that Student was properly placed, but lack of success emanated from failure to complete tasks and indifference. The Hearing Officer found that the evidence supported the District's position. The proper criteria were reviewed by witnesses at the hearing who testified that Student did not meet criteria and had neither a learning disability nor emotional disturbance. The District, Hearing Officer continued, completed a comprehensive evaluation which yielded no evidence that the Student was gifted or had a disability. Parents failed to present any evidence contradicting that evaluation.

ODR #4379/04-05
In Re The Educational Assignment of a Student in the Owen J. Roberts School District, Before Joy Waters Fleming, Esquire, Hearing Officer, February 7, 2005.

Issues Addressed: Compensatory Education, Independent Educational Evaluation, Tuition Reimbursement

Student is an eighteen year old known to have ADHD prior to an August 1999 District evaluation finding a learning disability in written expression requiring specialized instruction, reversed the following January, indicating likely poor impulse control and basic skills weaknesses. Parent

agreed with the latter as well as an April 2000 recommendation for regular education, an agreed-upon Chapter 15 plan was ultimately developed, and Parent evidenced concern about drug abuse which the District addressed. By tenth grade, a new agreement had been agreed to, and teachers saw no academic weaknesses. The same service agreement remained in effect for eleventh grade, but in September 2003 Student was placed on probation in connection with burglary charges. During ninth, tenth, and into eleventh grades, Student's marks ranged from the 60's to the 80's, with periodic attendance and assignment completion issues. By the latter part of eleventh grade, Student's performance deteriorated. In 2004, Student was placed in an out-of-state drug and alcohol treatment facility that a court-appointed Master accepted. Parent then secured an independent evaluation that found eligibility based on ADHD as well as an emotional disturbance. Since the private placement had nothing to do with FAPE, tuition reimbursement was denied orally at the hearing. In the Hearing Officer's decision, the Hearing Officer also denied compensatory education, since during the period in question FAPE had been offered, as well as IEE reimbursement as there was no contemporaneous evaluation with which to disagree.

ODR #4454/04-05
In Re The Educational Assignment of a Student in the Donegal School District, Before Joy Waters Fleming, Esquire, Hearing Officer, December 16, 2004.

Issues Addressed: Independent Educational Evaluations

Student is a ten year old who was in District classes from first through third grades. Student was referred for a District evaluation at the end of first grade based on the belief that Student may have had a learning disability. After reviewing the resulting evaluation report, which found a specific learning disability requiring specialized instruction, Parents secured an IEE recommending auditory as well as speech/language evaluations and this was incorporated into the District's IEP. More than two years later, Parents informed the District that Parents would be placing Student in private school, and would be securing an evaluation and Parent wanted reimbursement from the District. The District then requested a hearing, and the Hearing Officer found that Parents were not entitled to IEE reimbursement as Parents waited two years to seek it, and did not indicate disagreement with the District's evaluation.

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HEARING OFFICER DECISIONS *(continued)*

ODR #4482/04-05

In Re The Educational Assignment of a Student in the Manheim Area School District, Before Joy Waters Fleming, Esquire, Hearing Officer, December 31, 2004.

Issues Addressed: Compensatory Education, Independent Educational Evaluations, Tuition Reimbursement
Student entered the District in first grade, immediately receiving reading support until second grade, when an IST was provided and a pediatrician diagnosed mild ADD. That pre-third grade summer, Parents secured an IEE which diagnosed language difficulties, which caused the District to conduct a fall MDE which found no learning disability. In sixth grade, Parents secured another IEE, diagnosing a learning disability in written expression, prompting the District to again conduct an evaluation, and District agreed. Parents accepted a NOREP conditioned on itinerant support on a trial basis and more intensive direct instruction in written expression, while providing private tutoring from this point through ninth grade. Parent refused permission for a tenth grade re-evaluation as Parents were securing yet another IEE, which diagnosed learning disabilities related to written/oral expression and math as well as spelling. By the end of that year, grades were mixed, a transition plan was in effect, and Student had expressed interest in a technical school. The summer after tenth grade, Parents advised the District Parents were placing Student at a private school specializing in learning disabilities, requested reimbursement as well as compensatory education and a hearing. The Hearing Officer rejected IEE reimbursement because the requisite disagreement was not present, ordered compensatory education for 2003-2004 since the IEP was not reasonably calculated to provide educational benefit, tuition reimbursement, and transportation for the following year at the private school given the inappropriateness of the District's proposed IEP.

ODR #4552/04-05

In Re The Educational of a Student in The School District of Philadelphia, Before Linda J. Stengle, Hearing Officer, November 24, 2004.

Issues Addressed: Manifestation Determination
Student, a seventeen year old in part-time learning support due to a specific learning disability, has a history of disciplinary code violations, most low level for cutting class, but some involving fighting. Previous repeated class cutting was handled with a Saturday Philadelphia Police program emphasizing the need to be in school. An April 2004 re-evaluation indicated that Student's only problems involved poor attendance and lateness, which adversely impacted academic performance, and development of the ensuing IEP was not participated in by Parents. In October 2004, Student was accused of assaulting another high school student on public transportation, ultimately leading to a criminal complaint, as well as a manifestation determination prior to disciplinary placement, that Student understood the consequences of Student's behavior and that it was not a manifestation of Student's disability. Parents disagreed. The Hearing Officer agreed with the manifestation determination, in that the incidents in question were not the result of Student's learning disability. Hearing Officer noted that Student does have behaviors which interfere with learning, but those behaviors were previously identified as cutting class and failing to complete assignments.

ODR #4578/04-05

In Re The Educational Assignment of a Student in the Daniel Boone Area School District, Before Dr. Barry O. Smith, Hearing Officer, February 1, 2005.

Issues Addressed: Compensatory Education, Gifted
Student had functioned in the superior range, and by April 2003 the GIEP noted public speaking and peer interaction weakness. Parent objected to dropping seventh grade honors courses at the middle school, and requested a GIEP with language services in lieu of band instruction every other day. By late fall, a GIEP indicated Student was easily distracted with routine tasks, and addressed language arts/reading issues, accompanied by a NOREP for the District's gifted program, all of which Parent approved. Student's high functioning continued in early 2004, but on an Algebra I achievement test in September Student correctly completed ten of fifty items. Parents were invited to a meeting later that month to develop an eighth grade GIEP, which the District indicated was different. The GIEP referenced self-discipline, organizations, challenges, and higher order thinking skills, but not content although there was a NOREP for that and the next year. When the parties disagreed on Parents' requested compensatory education due to lack of curriculum compaction, differentiated homework, and pre-testing out of some courses, a hearing was requested. Pursuant to Montour, the Hearing Officer limited the compensatory education to one year and the District's curriculum, as modified by the period for which Parents voiced objections, even though this was a Chapter 16 not IDEA case. Hearing Officer then found the GIEPs inappropriate as neither the present levels nor goals nor objectives were discernable, and the needs outlined were not those described in the CER.

ODR #4603/04-05

In Re The Educational Assignment of a Student in The School District of Philadelphia, Before Max Wald, Ed.D., Hearing Officer, November 18, 2004.

Issues Addressed: Manifestation Determination
Student is a twelve year old sixth grader with a learning disability and ADHD, initially identified in the first grade while at another district that assigned full-time emotional support for second grade. Almost immediately thereafter, Student was transferred to the current District and assigned to full-time learning support. By third grade, the placement was "Resource Learning Support", which continued to the time of the hearing. On October 7, 2004, an investigation conducted by school police concluded Student had carried a Swiss army knife to school the previous day, discarding it in an adjacent park after showing it to friends, but before entering the building. Student was suspended from school and the IEP team convened for a manifestation determination, concluding the behavior was not a manifestation of Student's disability and assigning a remedial disciplinary school. Parents objected and requested an expedited due process hearing. The Hearing Officer ruled that a review of documents and testimony was persuasive that the complete record of Student was not given sufficient attention when the manifestation determination was made. Hearing Officer pointed out that testimony attempted to convince Hearing Officer that Student was not subject to impulsive behavior despite inherent with ADHD, and that only one witness had actual contact with Student, whose initial diagnosis was full-time emotional support.



HEARING OFFICER DECISIONS (continued)

ODR #4691/04-05

In Re The Educational Assignment of a Student in the Annville-Cleona School District, Before Dr. Barry O. Smith, Hearing Officer, February 11, 2005.

Issues Addressed: Independent Educational Evaluation

Student is a twelve year old seventh grader with a hearing impairment and all "A's." Parents believed Student was eligible and requested that the District develop an IEP so that a hearing aid could be provided. The District, however, believed Student was no longer eligible for an IEP and that a Section 504 Service Agreement would suffice, since District saw the issue as one of properly positioning auditory equipment. Parents disagreed and requested an IEE at public expense, prompting the District to ask for this hearing to defend the evaluation District believed appropriate. Two classroom evaluations during this period found Student performing similarly to peers without disabilities. Denying IEE reimbursement, the Hearing Officer found that the District complied with the requirements necessary for an appropriate evaluation, using tests administered by a school psychologist that are standard non-discriminatory instruments, as well as a variety of assessment tools, to gather the relevant information.

ODR #4816/04-05

In Re The Educational Assignment of a Student in The School District of Philadelphia, Before Linda M. Valentini, Psy.D., February 13, 2005.

Issues Addressed: Evaluations

Student is an eligible ten year old who in October 2002 was identified with a learning disability due to serious reading/comprehension deficits, and thereafter received resource room level learning support. Parent became concerned that the District had not adequately evaluated Student's learning difficulties and requested an IEE, which the District responded to by offering an earlier than required re-evaluation. Parent believed that testing was inadequate and, therefore, refused to sign the permission to evaluate. The District, on the other hand, thought Parent's request for evaluation too broad, maintaining District would do an appropriate evaluation, including appropriate elements requested by Parent, if Parent specified exact concerns. The Hearing Officer expressed serious reservations about whether the amount of resource room time was sufficient, and whether reading instruction was adequate. Hearing Officer ordered an in-depth District evaluation, to include interviews, classroom observations, achievement testing, memory functioning, and other areas. ■

Appeals Panel Decisions

Special Education Opinion #1533

In Re The Educational Assignment of a Student in the Fox Chapel Area School District, November 15, 2004.

Issues Addressed: Independent Educational Evaluations, Procedure, Scope of Review, Statute of Limitations

Student is a sixteen year old with endocrine and hormonal problems as well as an emotional illness. Student is struggling medically and emotionally, missing school, falling behind, and feeling depressed, and receiving homebound instruction for extended periods pursuant to prescriptions. Student was identified in 2002-2003 as eligible. This hearing resulted after four previous requests by one or both parties in the previous two years, one of which resulted in a Panel ruling allowing Child Find and FAPE to be raised since the previous ones had not addressed them. The Hearing Officer found that the District did not "find" Student in a timely manner. District was aware of medical problems impacting Student's educational needs as early as elementary school, knew of Student's medical leave in seventh grade, received physician letters, and knew Student was attending school only intermittently early in 1999-2000. The Hearing Officer held that all of this constituted knowledge to the District according to its own homebound instruction policies. The District failed to act on and fulfill its Cordero responsibilities. Hearing Officer did find, however, that Student's evaluations relied upon accepted tools, but that Student was then classified inappropriately given the presenting data. Hearing Officer's ruling on Montour declined to apply same in the absence of a signed IEP. Further, Hearing Officer ruled that once the District determined eligibility District violated the right to FAPE when the District did not offer an IEP within 30 calendar days. Both parties appealed.

Affirming, the Panel ruled that reliance on Parents' testimony, evidence that the District knew or should have known of the Student's disabilities, and on evidence that Parents simply did not receive a procedural safeguards notice, to conclude that FAPE had been denied, was permissible under Carlisle. Likewise, the Panel found no basis for Parents excepting to findings that the IEE contained nothing more than what was in the District's evaluations, since it largely re-stated what Parents' professionals had been saying all along. Further, the Hearing Officer's application of Montour was endorsed, in that acceptance of an IEP was held to be the correct triggering event.

Special Education Opinion #1543

In Re The Educational Assignment of a Student in the Wissahickon School District, November 29, 2004.

Issues Addressed: FAPE, Procedure, Scope of Review

Student is an eligible fourteen old in a wheelchair because of cerebral palsy with no leg or right arm use and 20% use of left arm. Student attended District kindergarten to eighth grade with various support services and physical modifications while earning mostly "A" grades. The District believed its offer for 2004-2005 was appropriate and capable of being implemented in the public high school, where District began



APPEALS PANEL DECISIONS (continued)

physical modifications. Parents disagreed and asserted that Student needed a placement in a particular regular education private high school, where District unilaterally placed Student, because of its smaller size and Student's socialization needs. The Hearing Officer found the proposed program/placement appropriate. Hearing Officer denied tuition reimbursement since the proposed IEP contained every element required by federal and state regulations. Hearing Officer further found that the District's witnesses were highly credible and their credentials were professional, years of experience, extensive knowledge of the Student, and responses during testimony, were highly persuasive. District's facilities management personnel were likewise clear, thoughtful and convincing as they described their knowledge of the physical plant and planned modifications for the Student. The Hearing Officer could not say the same for Parents' witnesses. Parents' witnesses had seen neither the public nor private high school, and in some instances offered opinions or recommendations that could not have been objective. While socialization was a concern, the Hearing Officer also observed that some of these issues were common to all of this gender and age. Parents appealed.

Affirming, the Panel held that a few negative experiences with middle school peers did not establish inappropriateness of the District's program, just because that peer group may not undergo significant change. The Hearing Officer, the Panel ruled, specifically found credible the testimony of the District witnesses who described the educational program offered, as well as those involved in planning and making the physical modifications to the high school building. The Panel's review of the record in its entirety found no basis to disturb the Hearing Officer's credibility assessment as the evidence amply supported the conclusion that the District's offered program for entry into high school was appropriate. The program as a whole, Panel concluded, balanced physical needs with minimizing the impact of Student's disability on social growth, while demonstrating a clear intent to ensure that transition into the high school would be successful.

Special Education Opinion #1546
In Re The Educational Assignment of a Student in the
Keystone Central School District, December 17, 2004.

Issues Addressed: Compensatory Education, FAPE, Independent Educational Evaluations

Student is a seventeen old high school senior with a fourth to fifth grade reading level. Parents contend that the District's proposed IEP was inappropriate along with the recent evaluation report, and that it has not complied with a pre-hearing agreement. In fourth grade, a private neuropsychological evaluation diagnosed ADHD and mild learning disabilities in reading, spelling and mathematics, while the team developed an IEP for learning support in language arts and math. The Hearing Officer found that the proposed IEP was not reasonably calculated to provide meaningful educational benefit as it did not address reading skills deficits, nor use any specially-designed instruction or program modifications to accomplish necessary reading goals. The IEP failed, the Hearing Officer observed, to offer any daily, direct reading instruction, program modifications, or goals, evidenced as a need in its own testimony, relying instead on an "embedded" reading program that was ineffective the previous year. As a result, concluding that the Student failed to make meaningful educational progress, the Hearing Officer ordered

one year of compensatory education, in accordance with Montour. Hearing Officer also ordered IEE reimbursement as Parents contested the District's evaluation and the IEE added new and essential information. Finally, Hearing Officer ruled that the District had abided by its pre-hearing agreement, and that the District's most recent evaluation report was inappropriate as it lacked a comprehensive, systematic method of data collection and analysis. Parents appealed.

Affirming, while modifying the compensatory education award structurally and commensurate with the ongoing denial of FAPE, the Panel noted that the District had not objected to the Hearing Officer's statement of the issues at the beginning of the hearing defeating claims Hearing Officer moved beyond the scope of the proceeding. Panel agreed that the IEP governing 2003-2004 was fatally flawed, that the Student's disability in reading is multi-layered and complex, and that for years the District has been aware of the Student's significant deficits in all areas of reading, but the IEP proposed in May 2003 contained one goal in reading, with faulty implementation lacking progress documentation. Continuing, the Panel found that with a completely deficient evaluation history, the District had very little with which to plan the following year's programming, the resulting IEP for which was completely inappropriate.

Special Education Opinion #1553
In Re The Educational Assignment of a Student in the Syl-
van Heights Science Charter School, December 13, 2004.

Issues Addressed: Procedure

A due process hearing was scheduled for Student, but Parent claimed notice was never received and did not appear, and requested a continuance. The hearing was to address an alleged denial of FAPE and applicability of Montour to a compensatory education claim. When asked for his position, the School's counsel objected to the continuance, the Hearing Officer agreed to consider the matter and issue an order "in due course."

Ultimately denying the continuance, however, the Hearing Officer dismissed the hearing request, which the Panel reversed as Panel found no support for dismissing a case because of non-appearance. Rather, Panel ruled, the Hearing Officer denied the continuance after the hearing, and then effectively ruled on the substantive issues by dismissing the case, when the continuance should have either been granted, or denied and the School then allowed to present School's case.

Special Education Opinion #1553A
In Re The Educational Assignment of a Student in the
Sylvan Heights Science Charter School, February 15, 2005.

Issues Addressed: Procedure

A due process hearing was scheduled for Student, but Parent claimed notice was never received and did not appear, and requested a continuance. The hearing was to address an alleged denial of FAPE and applicability of Montour to a compensatory education claim. When asked for his position, the School's counsel objected to the continuance, the Hearing Officer agreed to consider the matter and issue an order "in due course." Ultimately denying the continuance, however, the Hearing Officer dismissed the hearing request, which in a previous proceeding the Panel reversed as Panel



APPEALS PANEL DECISIONS (continued)

found no support for dismissing a case because of non-appearance. Rather, Panel ruled, the Hearing Officer denied the continuance after the hearing, and then effectively ruled on the substantive issues by dismissing the case, when the continuance should have either been granted, or denied and the School then allowed to present School's case.

In this appeal, the School asserted that under Pennsylvania Appellate Rules the matter involved a controlling question of law as the Panel had refused to apply the Montour limit, and requested that the Panel modify its previous order to include the necessary language permitting an immediate appeal under those Rules. The Panel denied that request, noting that Panel had never refused to apply Montour, but only reversed the Hearing Officer as no record had been made.

Special Education Opinion #1560
In Re The Educational Assignment of a Student in The School District of Philadelphia, January 30, 2005.

Issues Addressed: Compensatory Education, Inclusion Student, a fifth grader with mental retardation and a secondary disability of speech/language impairment, has been fully included while never having behavioral difficulties, but Student's progress has been minimal. A June 2004 IEP and NOREP rejected by Parents recommended transfer to a full-time life skills class, with certain non-academic mainstreaming, as Student's teachers did not feel inclusion was beneficial to Student. A hearing was requested, the Hearing Officer ordered a revised IEP to be administered in an inclusion setting along with 24 hours of compensatory education, which the District appealed.

Reversing, the Panel noted Student's extensive needs and lack of progress while assigned the inclusion placement, despite supplemental aids and services. Also referenced was a need to spend considerable time with a TSS worker, all of which was held to demonstrate that full-time life skills with mainstreaming, as proposed by the District, was appropriate.

Special Education Opinion #1564
In Re The Educational Assignment of a Student in the Lower Merion School District, January 10, 2005.

Issues Addressed: Gifted Student attended private kindergarten in 1999-2000, where a private evaluation found an IQ of 135. The next year, Student was found eligible for gifted programming. The resulting GIEP provided for specialized instruction, in the form of reading and math enrichment. Parents agreed for the current year and the next year, with the addition of a small pullout literature group, continuing to express specificity concerns. The GIEP for third grade was more to Parents liking in that respect, although Parents did have implementation concerns around scheduling, and progress was made under this as well as the fourth grade version. During fourth grade, Parents arranged for another private evaluation that showed a full-scale IQ of 129, and differential small-group instruction was provided that year. The document proposed for sixth grade contained detailed present educational levels, along with revised goals and objectives. Parent rejected this which resulted in a hearing at which the proposal was found appropriate, after the duration of consideration was limited by Montour. A preponderance of the evidence, the Hearing Officer held, established that the GIEPs for both third and fourth grade were procedurally correct

and appropriate, although perhaps not examples of best practices. Parents rejected GIEP which resulted in a hearing at which the proposal was found appropriate, causing them to appeal.

Affirming, the Panel first held that Parents' continuation of the GIEP process was not a mitigating circumstance under Montour. Claims of prejudice were also dismissed as were challenges to the way the Hearing Officer's decision was written with the Panel indicating Panel would have reached the same conclusion. Then, the Panel concluded, while the GIEP may have fallen short of best practices, those deficiencies were not prejudicial in that acceleration and enrichment were still provided.

Special Education Opinion #1566
In Re The Educational Assignment of a Student in the Saucon Valley School District, February 4, 2005.

Issues Addressed: Autism, Compensatory Education Student is an eight year old second grader eligible for special education on the basis of Autism. Student also has other disabilities including mental retardation and speech/language impairment, for which Student is in a learning support class, receiving OT, speech/language therapy, a one-on-one aide, and a TSS worker. Student also exhibited some behavioral difficulties beginning in kindergarten. Student showed progress at the beginning of first grade that tapered off as the year went on. The District desired to place Student in a full-time autistic support class for second grade, in a neighboring district, which Parents opposed favoring the less restrictive placement of Student's local elementary school, in the regular education setting, with more appropriate supports and services. The Hearing Officer found the District's support services and proposed program appropriate, ordered development of a plan for transitioning to that placement, and denied Parents' compensatory education claim. Parents appealed.

Affirming, the Panel pointed out that the District's proposed placement was only put forth after less restrictive programming was unsuccessfully tried. These less restrictive settings, the Panel continued, had quite obviously not been serving the Student well, as behavior along with academic and social progress were below expectation. All professionals involved basically believed, the Panel ruled, that Student needed intensive, direct instruction in a wide spectrum of disciplines. The Panel also noted that even Parent's witnesses believed Student would profit from a less distractible, more rigid environment, using devices intended to address Student's sensory needs.

Special Education Opinion #1567
In Re The Educational Assignment of a Student in the Donegal School District, February 2, 2005.

Issues Addressed: Independent Educational Evaluations Student is a ten year old who attended District classes from first through third grades, and was referred for a District evaluation at the end of first grade based upon suspicions of a learning disability. After reviewing the resulting evaluation report, which found Student had a specific learning disability requiring specialized instruction, Parents secured an IEE that recommended auditory as well as speech/language evaluations and this was incorporated into the District's



APPEALS PANEL DECISIONS (continued)

IEP. More than two years later, Parents informed the District that Parents would be placing Student in private school, and securing an evaluation that Parents would be seeking the District to reimburse. The District then requested a hearing, and the Hearing Officer found that Parents were not entitled to IEE reimbursement.

Affirming, the Panel found that the first requirement for IEE reimbursement, disagreement with the District's evaluation, had not been satisfied. Rather, the Panel pointed out, Parents specifically indicated that Parents did not secure an IEE because of disagreement with the District's evaluation. Indeed, the Panel continued, none of the evidence suggested such a disagreement and, in fact, Parents' own testimony suggested otherwise.

Special Education Opinion #1570 In Re The Educational Assignment of a Student in the Central Bucks School District, February 8, 2005.

Issues Addressed: Procedure, Scope of Review

Student entered the District in 1999 from early intervention and was placed in a full-time autistic support class, remaining there until January 2003 when the District agreed to Parents' request for part-time learning support in the school that Student would have otherwise been attended. That October, when a revised IEP could not be agreed on, Parents requested a hearing which ended in a finding that certain services had not been provided, that Parents had meaningful participation in the process, that the proposed IEP was inappropriate, and that compensatory education was proper pending offering of an appropriate program. An Appeals Panel reversed the finding as to the proposed IEP, reducing the compensatory education award proportionally. Shortly thereafter, Parents requested this hearing, asserting that the IEP had not been implemented, and that Hearing Officer agreed as to certain parts of the program. Parents appealed.

Affirming, the Panel found the Hearing Officer's conclusions fully supported by the record. Where the Hearing Officer found instances of non-implementation, the Panel continued, the record was clear that those findings are well-grounded in a consideration of the relevant testimony. Likewise, Panel held, where there was appropriate implementation, the record did not undermine those wholly credibility-based determinations.

Special Education Opinion #1571 In Re The Educational Assignment of a Student in the Centennial School District, February 11, 2005.

Issues Addressed: Compensatory Education, FAPE

Student is a nineteen year old who transferred into the District for fifth through eighth grade. At the end of eighth grade, Student began exhibiting behavior problems, and was referred for an evaluation that showed low average intellectual functioning with academics of low average to average, and a serious emotional disturbance. After trying regular education in September 2000, Student was re-evaluated and began receiving emotional support. Beginning in January 2001, and three times thereafter, Student was hospitalized for suicide attempts, after which Student was incarcerated on several occasions for substance and parole abuse. An agreed-upon June 2003 IEP called for a job coach who was unfamiliar with

disabilities, but Student left an October 2003 planning meeting and was not heard from until a May 2004 incarceration. While incarcerated, Student's IEP team met to craft a program for then and post release, agreeing on a document to be reviewed and adjusted as needed, although Student was apparently ineligible to graduate. On June 14, 2004, Parent requested a hearing and asked for compensatory education for February 2002 through August 2002, February 2003 through June 2003 and for the entire 2003-2004 school year. The Hearing Officer found no mitigating circumstances under Montour, proceeding to conclude compensatory education was proper since FAPE had not been provided, but under that case only for 2003-2004. Other than for a brief time, Student was available yet was not found on any class roles and no effort was made to contact Parent. Parents appealed as to those periods for which compensatory education was denied.

Affirming, the Panel found that the September 2004 evaluation complied on all necessary respects with the regulations and was sufficiently comprehensive. Likewise, Panel also ruled that the resulting IEP the following month was appropriate, comporting with the regulations as well, which included measurable annual goals, specialized instruction, and job coaching. Finally, the Panel concluded, there were no procedural errors giving rise to a denial of FAPE.

Special Education Opinion #1575 In Re The Educational Assignment of a Student in the Morrisville School District, February 15, 2005.

Issues Addressed: FAPE, Procedure, Statute of Limitations

Student is an eligible seventeen year old, with PDD and mental retardation, who has a history of self-injurious behavior which was not rectified in a multiple disabilities support classroom. The District, therefore, began exploring the possibility of placement outside public school, but an IU intensive life skills program with applied behavior analysis was tried first, where Student remained for 2002-2003 and into the following school year. When the District officially recommended continuing the program in November 2003, Parents disagreed seeking instead a residential placement, and following the February 2004 evaluations, Parents requested a hearing that April. The Hearing Officer found that Montour barred compensatory education claims prior to April 2003, that the Student was not denied FAPE, and that a residential program was not required. Parents appealed.

Affirming, the Panel found no error in the application of Montour. Further, Panel agreed that an appropriate program had been offered in that it was reasonably calculated to confer meaningful educational benefit, and contained all other necessary elements. The IEPs during the relevant time period, the Panel observed, consistently included goals and objectives responding to needs, together with objective means of assessing progress. The Panel also noted that numerous items of specially-designed instruction, including a sensory diet, were part of the programming, which also specified occupational, physical, and speech therapy as related services, as well as a behavior management plan. Thus, Parents' laudable motives notwithstanding, a residential program was inappropriate and unnecessary.



APPEALS PANEL DECISIONS (continued)

Special Education Opinion #1576 In Re The Educational Assignment of a Student in the Mountain View School District, February 14, 2005.

Issues Addressed: Independent Educational Evaluations

Student has consistently received failing grades and remedial instruction for them, exemplified by having to return to a second year in first grade because of reading and math difficulty. During tenth grade, disciplinary difficulties surfaced, Student continued attending summer school, but to that point the District never evaluated for special education eligibility. In March 2004, suspecting learning disabilities, Parents requested such an evaluation and also secured an IEE. The IEE found a classic non-verbal learning disorder, but not a specific learning disability due to lack of the requisite discrepancy, and recommended specially-designed instruction in reading as well as math along with one-to-one assistance around behavioral issues. The District's evaluation, although only partial in that Parents had denied full permission, did not find a specific learning disability either, noted a serious emotional disturbance requiring more consistent counseling, and recommended learning support for math as well as writing. Parents rejected the ensuing IEP and a hearing was requested. Concluding that the proposed IEP was inappropriate, the Hearing Officer ordered an appropriate IEP developed with specific contents and an appropriate placement as well as a behavior management plan, but IEE reimbursement was denied. Compensatory education was also awarded. Parents appealed the denial of IEE reimbursement.

Affirming, the Panel noted that Parents were not prompted to seek an IEE because of disagreement with a District evaluation. Rather, Panel held, the IEE itself was inappropriate in that IEE relied on categories not keyed to statutory requirements for special education placements. Likewise, the Panel noted parenthetically, Parents did not grant the District permission to conduct a full evaluation, thereby likely preempting its efforts.

Special Education #1577 In Re The Educational Assignment of a Student in the Harrisburg School District, February 14, 2005.

Issue Addressed: Harmless Error, Procedure

Student, an eligible eleven year old with a serious emotional disturbance, entered the District from a combined charter school/private alternative school placement, but continued attending the latter. Shortly after enrollment, Parent agreed to adoption of the previous IEP and placement at the private school. That 2003 IEP addressed math, reading, and social skills. The Student was at a late first grade level in reading and at a second grade level for math. Student had needs in many areas including improving Student's social and coping skills, an understanding of how to direct Student's frustration, follow directions, accepting consequences, and remain on task. In June 2003, a District re-evaluation was conducted without Parent's consent, prompted by Student's arrest for assaulting a private school staff member, and no changes were made in the IEP. Months before, in March 2003, Parent had consented to the private school's use of therapeutic behavior management. In May 2004, after filing a compliance complaint that later exonerated the District, Parent requested a hearing. The Hearing Officer found that the District failed to provide the notice of procedural safeguards while District had placed the

Student at private school, and that learning impeding behavior problems causing other difficulties were not addressed. A TSS worker was not provided, the special education teacher was not properly certified, compensatory education for 2003-2004 was proper, and that the District failed to properly supervise the private school resulting in improper use of restraints. The District appealed.

Reversing, the Panel agreed with the District that numerous issues the Hearing Officer decided had not been enumerated by the parties at the hearing's inception and, therefore, were not properly decided, particularly since the list of original issues was never challenged during the hearing. Indeed, the Panel noted, beyond issues agreed to that revolved almost exclusively around implementation, the District had been denied an opportunity to address the additional ones the Hearing Officer dealt with. For example, the Panel ruled, while implementation issues were agreed to, the Hearing Officer addressed appropriateness of the behavior management plan. Further, the Panel found the teacher certification issue to have resulted from apparently changed requirements having no negative impact on FAPE, making it harmless error.

Special Education Opinion #1578 In Re The Educational Assignment of a Student in the Sto-Rox School District, February 18, 2005.

Issues Addressed: Five-Day Rule, Procedure

Student is a fifteen year old attending private school at District expense. A previous proceeding was resolved in a settlement agreement that provided for an evaluation in 30 days and development of an IEP in 40 days, with either party permitted to request a hearing in the event of inability to agree. Parent subsequently sought a hearing based on the District's alleged failure to comply with that agreement, and the Hearing Officer established the first hearing session as an attempt to develop an IEP. When the hearing was convened, however, Parents and their counsel indicated they had not received the District's evidence prior thereto, although Parents did admit to receiving a letter indicating that District would be adding an evaluation report to the District list. Likewise, the District asserted District had not received Parents' list of evidence either, and suggested a continuance so that Parents could review District's evidence. After determining that the District failed to comply with the five-day evidence rule, the Hearing Officer did not allow District to present evidence, held District consequently could not prove compliance with the agreement, and granted the compensatory education asked for as a remedy. The District appealed.

Affirming, the Panel found it undisputed that both parties failed to comply with the five-day rule, but also found that rule mandated that a party may prohibit introduction of evidence not so disclosed. The Hearing Officer, Panel continued, followed the law given Parental objection to introduction of evidence the District needed to prove its case. The crucial evidence in proving compliance with the agreement, the Panel ruled, was the evaluation report, without which the District could not prove that the District performed the re-evaluation within the requisite time. The Panel did find, however, that the Hearing Officer did not clearly delineate how the compensatory education had been computed, Panel believed it incorrect, and adjusted it accordingly.



APPEALS PANEL DECISIONS (continued)

Special Education Opinion #1579 In Re The Educational Assignment of a Student in the Great Valley School District, February 22, 2005.

Issues Addressed: Child Find, Procedure

Student, a nineteen year old, has attended a California therapeutic residential school since 2001. The District proposed an evaluation in December 2000, which Parents agreed to, but because of Student's psychological inability to return to Pennsylvania Parents suggested various California personnel, which was rejected by the District. Parents requested a hearing, and after a dismissal and then remand by an Appeals Panel, the Hearing Officer found that the District must conduct its evaluation in California. The District then appealed and Commonwealth Court ultimately reversed the Hearing Officer and Appeals Panel. Subsequently, a May 2004 federal court suit was dismissed on the grounds that the previous Commonwealth Court decision precluded Parents' claim for compensatory education as well as damages. In September 2004, Parents requested a hearing asserting failure to identify and provide an appropriate program since 1998-1999, seeking tuition reimbursement for 2000-2001 through 2002-2003, reimbursement for IEEs, and monetary damages. The District moved to dismiss the proceedings, arguing that the matters had already been adjudicated, and the Hearing Officer agreed.

Affirming, this Panel found that at the original hearing Parents appeared pro se, and did not specifically argue that the District violated the provisions of Child Find and hence denied FAPE. Panel continued, however, that when the Hearing Officer found no violation of federal or Commonwealth law that ruled out violation of Child Find as well as any denial of FAPE, Hearing Officer ordered the out-of-state evaluation simply due to Student's fragile condition. The Pennsylvania court, the Panel concluded, found that there was no obligation to conduct the out-of-state evaluation because the District had not violated the requirements of Commonwealth or federal law.

Special Education Opinion #1580 In Re The Educational Assignment of a Student in the Pen Argyl School District, February 8, 2005.

Issues Addressed: Procedure

Student was found eligible in the Other Health Impaired category, in the form of ADHD, as the result of a second grade MDT evaluation. At the end of eighth grade, responding to the desires of the Student as well as Parents who disagreed with the ADHD diagnosis, the District removed Student from special education. The following year in ninth grade, Student was expelled for one year following a computer use violation, action the Parents apparently agreed to along with their counsel, without requesting a manifestation review. In September 2004, having secured specialized counsel, Parents requested a hearing, prior to which all issues were resolved except propriety of the expulsion and expunging of Student's records. In October, Parents secured an IEE that found numerous disorders, but ultimately Student returned to school for the 2004-2005 school year, and the MDT concluded that Student was eligible for special education. The Hearing Officer, in January 2005, concluded that the expulsion had not violated IDEA, and Parents appealed.

Affirming, the Panel rejected Parents' argument that Student was still under the auspices of IDEA, since Parents had removed Student from special education. Likewise, the Panel was unimpressed with Parents' argument that Student was within either the "thought to be" or "deemed to be known" disabled. Indeed, the Panel ruled that none of the prerequisites for triggering those provisions were present. Specifically, vague and contradicted assertions that Parents orally requested further testing was held not to meet the specified standard of a request for an evaluation or re-evaluation, and there was no evidence that District personnel expressed concern about performance in accordance with the District special education referral process. Finally, measured as of the time preceding the Student's precipitating misconduct, the District did not know or have reason to know of a need for special education services.

Special Education Opinion #1584 In Re The Educational Assignment of a Student in the Lancaster School District, February 23, 2005.

Issues Addressed: Compensatory Education, Individualized Education Plans, Tuition Reimbursement

An IU evaluation conducted in 1999, while Student was receiving wraparound services, concluded that Student was eligible because of speech/language impairment, and the resulting IEP provided for transition to the District in 2000-2001. An evaluation in that year, kindergarten, added Other Health Impairment to Student's eligibility, as well as increased services and OT, most of which continued in first grade with quarterly progress reports showing significant though incomplete progress. There was a change to marked or mixed progress when speech/language was increased and OT decreased in second grade. Parent requested re-evaluation that summer, which found peer consistent OT skills, but continued deficiencies in writing, reading, and math, giving rise to the conclusion Student was also eligible due to a learning disability. A commensurate IEP was agreed to that fall, after Parents moved within the District and Student's new school lacked speech/language specialists, a situation not resolved by April 2004 when Parents gave written notice of intent to shift to a private school. The following summer, an IEE diagnosed a primary language disorder, and Parents requested a hearing. The Hearing Officer found that Student was entitled to compensatory speech/language services as stipulated to, but not compensatory education, tuition reimbursement, nor ESY. Parents appealed.

Modifying the compensatory education award, while otherwise affirming, the Panel dismissed Parents' burden of proof exceptions as misconstruing the concept as to aspects of the case not constituting reversible error. Further, Panel found, as to basic reading skill, formulation as well as implementation of the 2003-2004 IEP satisfied the substantive standard, and identical standard scores at the beginning and end of the year actually showed progress. Likewise, Panel dismissed implementation-based exceptions in that appropriate reading instruction was given, and numerous accommodations and modifications in the IEP were provided. Tuition reimbursement was also ruled improper, since the District's program was appropriate, and challenges to ESY and OT rulings were summarily rejected. Finally, Panel held the stipulated to compensatory education equitably insufficient, modifying the Hearing Officer's order accordingly. ■