



Due Process Diggest News from the Office for Dispute Resolution

Volume 10

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Hearing Officer/Appeals Panel Decisions

**ODR #5727/05-06/Opinion #1691
In Re The Educational Assignment of a Student
in the Cumberland Valley School District, Linda
Stengle, Hearing Officer, December 30, 2005**

Yvonne Husic, Esquire – Parent Attorney
Gina DePietro, Esquire – School District Attorney

Student is fifteen years old, eligible by virtue of a specific learning disability. Student moved into the District during 8th grade (2004/2005), with an IEP which noted that Student exhibited behaviors that impeded Student’s learning or that of others, and Student received a secondary diagnosis of emotional disturbance. Student takes medication for ADHD.

Parent requested due process alleging a denial of FAPE during 2004/2005, and seeking compensation education for ESY for summer 2005, tuition reimbursement and travel expenses for enrollment at the Janus School, and IEE reimbursement. Parent alleged that District did not re-evaluate Student upon enrollment in June 2004; failed to prepare an IEP by the agreed-upon date; and unnecessarily segregated Student for the first half of the school year.

Hearing Officer found that Student was entitled to compensatory education because the District “unnecessarily segregated him for social studies and science”. Compensatory education for ESY was denied as was reimbursement for the Janus School, finding it to be too restrictive to be appropriate. Reimbursement was awarded for the IEE and the team was ordered to develop an appropriate IEP that considered a full range of supplementary aids and services to support Student in an appropriate placement and to add OT as a related service.

**Special Education Opinion #1691
In Re The Educational Assignment of a
Student in the Cumberland Valley School
District, February 18, 2006**

Panel Members John Salvia, Samuel Lonich,
Jeffrey Gonick
John Salvia – Appeal Author

Both parties filed exceptions. District alleged error in awarding compensatory education and IEE reimbursement, and ordering changes to the IEP. Parent alleged error in applying Schaffer v. Weast, that resulted in denying ESY compensatory education; in denying tuition and travel reimbursement; in calculating incorrectly compensatory education for denial of OT and by failing to find compensatory education due for

other FAPE denials.

Because Student’s last evaluation was done the same year Student enrolled in District, the Panel found no evidence that the District should have suspected that conditions warranted another evaluation, nor was there evidence that Parent requested re-evaluation upon enrollment in District. District’s reliance on the out-of-district IEP was appropriate; however, the failure to issue a new IEP by the agreed- upon date delayed placement.

The Panel found that District denied FAPE to Student, but not because it failed to include Student, but because it failed to provide adequate supports, supplementary aids, modified curriculum and methods, and support of Student’s emotional needs. Compensatory education was owed. It was clear to the Panel, however, that Student did not meet the requirements for mandatory ESY. The Panel determined that the District evaluation was appropriate and therefore reimbursement for the IEE was denied. Tuition reimbursement was awarded. The exception regarding the Hearing Officer’s order of OT was dismissed.

**ODR #5769/05-06 & 5861/05-06/Opinion #1704
In Re The Educational Assignment of a
Student in the Pittston Area School District,
Daniel Myers, Esquire, Hearing Officer,
January 26, 2006**

Parent Pro Se
Gina DePietro, Esquire – School District Attorney

Student is fifteen years old, with a specific learning disability in written expression and ADHD. Parent contends Student has been denied FAPE since Student’s most recent re-enrollment in the District in January 2005. District contends Student isn’t even a special education student any longer. Due process was requested to determine the appropriate program/placement for the 2005/2006 school year.

Because District unilaterally exited Student from special education status without following applicable exit procedures, Student was found to have been denied FAPE and compensatory education was awarded. The Hearing Officer was challenged as to how to calculate the appropriate award, when the FAPE denial was procedural rather than substantive, and where the most appropriate substantive special education services for the Student might be no special education services (if all procedural requirements were satisfied). Ultimately, 32 hours were awarded.

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Kerry Voss Smith, Esquire
Director
Office for Dispute Resolution

Cindy Judy, Legal Assistant
Office for Dispute Resolution

Editors:
Kerry Voss Smith, Esquire

Administrative Support by
Cindy Judy, Legal Assistant

Designed by
CommunicationLink

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Intermediate Unit 13

Questions or comments regarding the material contained in this document may be directed to
Kerry Smith, ODR Director, at ksmith@pattan.net



HEARING OFFICER/APPEALS PANEL DECISIONS (continued)

**Special Education Opinion #1704
In Re The Educational Assignment of a Student in the
Pittston Area School District, March 1, 2006**

Panel Members Joseph Rogan, Cathy Skidmore, Perry Zirkel
Perry Zirkel – Appeal Author

Both parties filed exceptions. Parent excepted to the amount of compensatory education awarded. District claimed error in the refusal of the Hearing Officer to conclude that Student was ineligible. In dismissing both sets of exceptions, the Panel first noted that Parent’s argument was fatally flawed because both parties did not agree to the IEP which served as the basis for Parent’s argument. The Panel was also not persuaded by the District’s argument, noting that a series of procedural errors occurred, with the cumulative effect being prejudicial. The “nominal but not de minimis award of 32 hours of compensatory education is equitable, particularly in light of the Parents’ less than forthcoming sharing of information upon initially enrolling the Student in the District and the District’s far from complete compliance with the IDEA...” The Panel directed the award to be used for family counseling directed toward the Student’s educational benefit.

**ODR #5773/05-06/Opinion #1692
In Re The Educational Assignment of a Student in The
School District of Philadelphia, Joy Waters Fleming,
Esquire, Hearing Officer, December 31, 2005**

Heidi Konkler-Goldsmith, Esquire – Parent Attorney
Deborah Greenfield DeLauro, Esquire – School District
Attorney

Student is seventeen years old and attending a private residential school, Maplebrook School. Student is eligible on the basis of a specific learning disability (neurological impairment) and a hearing impairment. At issue was the appropriateness of the proffered IEP for 2005/2006 at Pathway School, an Approved Private School. Parent sought tuition reimbursement for Maplebrook, contending that the March 2004 ER which served as the basis for the IEP was so deficient as to render the IEP fatally flawed. The Hearing Officer determined that, while the ER was not perfect, Parent’s contention failed. Parents were part of the team and agreed with the report. The proffered IEP also met legal requirements. Transition planning was skeletal, but adequate and appropriate. The Pathway School was found to be appropriate to meet Student’s needs.

**Special Education Opinion #1692
In Re The Educational Assignment of a Student in The
School District of Philadelphia, February 3, 2006**

Panel Members Joseph Rogan, Cathy Skidmore, Perry Zirkel
Perry Zirkel – Appeal Author

Parent filed exceptions. The Panel agreed that while the ER was far from optimal, it sufficiently served as a re-evaluation for programming and placement purposes. “In any event, it is too removed from issue in this case to be close to controlling. It is the basis for the 2003/2004 IEP rather than the 2005/2006

IEP, much less the 2005/2006 proposed placement.” Finding that Parent participated in the ER-IEP process, took the lead on the resulting 2003/2004 placement, and had their request for the SLT evaluation met in preparation for the 2005/2006 IEP and NOREP, the Panel believed any deficiencies in the ER were not prejudicial to Student’s proposed placement.

Parent also asserted that the PELs in the 2005 IEP were fatally inadequate. Although the Panel believed the levels were far from precise, they were found to be reasonable in light of Pathway’s thorough intake evaluation-customization process. The Panel also did not agree with Parent that the transition plan was fatally deficient.

**ODR #5786/05-06/Opinion #1694
In Re The Educational Assignment of a Student in the
Central Bucks School District, Debra Wallet, Esquire,
Hearing Officer, January 7, 2006**

Robert Lear, Esquire – Parent Attorney
Grace Deon, Esquire – School District Attorney

Student is eighteen years old and in 12th grade at New Hope Academy. Student attended District schools until March 2005. Student was initially deemed to be eligible on the basis of OHI and later Specific Learning Disability. “Student is of average intelligence, but she has a complicated learning profile including ADHD, an anxiety disorder, and significant learning disabilities, particularly in math, relating to brain damage during the neonatal period.” Parent argued that District had not been meeting Student’s needs, particularly those relating to Student’s extreme anxiety and the auditory and sensory processing disorders, and that they were required to seek a more appropriate program.

The Hearing Officer stated that this was “admittedly a close case. The Hearing Officer is convinced that the School District has performed acceptable evaluations and that the team has done its very best to describe a program which would address Student’s needs... On the other hand, Parents testified quite credibly that their daughter became increasingly anxious about her attendance in the public school setting.” While acknowledging that the District had done what it could to accommodate Student’s “extraordinarily complicated needs”, the Hearing Officer agreed with Parents that the SDI for the 2005/2006 school year was essentially the same as prior years. The District was found to be doing its best, but the program wasn’t appropriate for Student. The Private School was found to be appropriate and tuition reimbursement was awarded.

**Special Education Opinion #1694
In Re The Educational Assignment of a Student in the
Central Bucks School District, February 22, 2006**

Panel Members Michael McElligott, Madeleine Kaufman,
Joseph Cautilli
Michael McElligott – Appeal Author

Because the exceptions were deemed to be untimely, the Panel affirmed the Hearing Officer.



HEARING OFFICER/APPEALS PANEL DECISIONS (continued)

ODR #5806/05-06/Opinion #1687

In Re The Educational Assignment of a Student in the Upper Perkiomen School District, Rosemary Mullaly, Esquire, Hearing Officer, December 17, 2005

Parent Pro Se

Lawrence Dodds, Esquire – School District Attorney

Student was twelve years old during the 2004/2005 school year and the issue was Parental request for tuition reimbursement of costs associated with placement at the United Friends School (“UFS”) during that year. Student attended another Private School at Parent expense for the 2003/2004 school year. Student was identified as having an orthopedic impairment during the 2002/2003 school year while Student attended a District elementary school. Parents raised procedural and substantive issues as to why they believed the proposed IEP for the 2004/2005 school year was not appropriate, and that UFS was an appropriate alternative.

Because Parents stipulated to the fact that the physical therapy and occupational therapy services offered by the District for the 2004/2005 school year were appropriate, those services did not factor into the analysis of whether the District offered FAPE to Student, leaving only the appropriateness of the IEP as it relates to other services contained therein: SDI, supports for personnel and the content of the IEP which articulated the Student’s current levels of functioning related to two issues. The first issue was the manner in which Student’s physical limitations would impact Student’s ability to access the regular education curriculum in physical education, home economics, wood and metal shops. The second was the manner in which information from the central auditory evaluation was incorporated into the IEP.

While the regular education representative who attended the meeting testified that she did not make recommendations regarding adaptations to the regular education curriculum necessitated by the Student’s physical limitations, the occupational therapist who attended both IEP meetings was able to do so. She explained at the hearing how the list of adaptations would be accomplished through ongoing consultation that she would have with the Student’s regular education teachers.

The Hearing Officer found that the lack of a specific reference in the IEP to the central auditory evaluation did not render it inappropriate. The IEP did include supports that the speech therapist testified were appropriate, with similar testimony from the occupational therapist.

The Hearing Officer believed that perhaps more detail could have been added to the IEP had Parents consented to requested evaluations, but based upon the information it had, the District proposal was appropriate.

Special Education Opinion #1687

In Re The Educational Assignment of a Student in the Upper Perkiomen School District, February 1, 2006

Panel Members Cathy Skidmore, John Salvia, Samuel Lonich
Cathy Skidmore – Appeal Author

Parents filed exceptions. The first exception challenged the finding that the District had only “limited access to

information” which would have aided its development of the IEP. The Panel agreed with the Hearing Officer; the District had not evaluated Student in over a year and was asked to develop an IEP based solely on outside reports and records with virtually no input from Parents.

Parent suggested that it was the District, not them, who was responsible for the delay in meeting. The Panel found that the timing of the IEP meeting did not operate to deny Student FAPE and therefore could not form the basis for reversing the Hearing Officer. The challenges to credibility determinations were dismissed. The Panel found no evidence to disturb the Hearing Officer’s determination that the IEP was not procedurally or substantively flawed so as to deny Student FAPE.

ODR #5823/05-06/Opinion #1680

In Re The Educational Assignment of a Student in the Pittston Area School District, Daniel Myers, Esquire, Hearing Officer, November 17, 2005

Sarah Davis, Esquire – Parent Attorney

Sharon Montanye, Esquire – School District Attorney

Student is sixteen years old and eligible by virtue of ADHD and specific learning disabilities in the areas of basis reading and written expression. Although the parties expect to be able to program appropriately for Student’s current school year, they disagreed over whether or not District appropriately programmed for Student’s needs over the last five (5) years. Hearing Officer determined that Student was denied FAPE since September 2000, but limited compensatory education since 2004.

Finding numerous deficiencies in District’s “paper trail”, and lack of progress, the Hearing Officer found a denial of FAPE since 4th grade. Based upon statute of limitations, Student was awarded one year of compensatory education minus a grace period for re-mediation.

Special Education Opinion #1680

In Re The Educational Assignment of a Student in the Pittston Area School District, December 14, 2005

Panel Members Michael McElligott, Joseph Rogan, Perry Zirkel
Perry Zirkel – Appeal Author

Parent and District filed exceptions. Applying the statute of limitations contained in IDEA 2004, the Panel modified the Hearing Officer’s calculation of compensatory education. The Panel agreed that for the 2003/2004 and 2004/2005 school years, the conclusion was inescapable that each of the two successive IEPs were prejudicially flawed. The combination of the various facial defects and the inadequate progress results were fatal. “Although the substantive standard of reasonable calculation of meaningful benefit gauged in proportion to the child’s intellectual potential, based on what the IEP team knew or had reason to know at the time of formulating the IEP, is far from the gap-closing optimum for SLD, the District’s efforts in terms of the combination of paperwork and results in this case did not pass muster.”



HEARING OFFICER/APPEALS PANEL DECISIONS (continued)

ODR #5873/05-06/Opinion #1689

In Re The Educational Assignment of a Student in the Exeter Township School District, Kenneth Rose, Hearing Officer, December 20, 2005

Elizabeth Kapo, Esquire – Parent Attorney
Sharon Montanye, Esquire – School District Attorney

Student is sixteen years old and eligible by virtue of Asperger's Syndrome; ADHD ODD, Reading Disorder, Mathematics Disorder, Disorder of Written Expression and Developmental Coordination Disorder. Student is in a full-time life schools program. At issue was the implementation of the 2005/2006 IEP (and specifically the implementation of a behavior support plan) and the provision of a personal care aide (PCA) for Student.

There were several behavioral incidents addressed at hearing. The Hearing Officer determined that the teacher and PCA used strategies in the IEP which were effective and the IEP was implemented. The Hearing Officer also determined that Student was assigned a PCA as established in the IEP. The IEP did not prohibit suspension, and the assistant principal exercised his administrative prerogative and suspended Student for an incident. There was no denial of FAPE.

Special Education Opinion #1689

In Re The Educational Assignment of a Student in the Exeter Township School District, February 8, 2006

Panel Members Constance Lyttle, Lorraine Heeter,
James McAfee
Constance Lyttle – Appeal Author

Parent filed exceptions. The Panel affirmed that portion of the decision which confined the issue to implementation of the IEP. The Panel disagreed with the Hearing Officer's conclusion that District provided FAPE. The Panel found that the denial of FAPE began the first moment the District personnel unilaterally supplanted Student's IEP and positive behavior management plan with their independent strategies, based upon their subjective opinions and in contradiction to the IEP. Therefore, this portion of the Hearing Officer decision was reversed. Compensatory education was awarded.

ODR #5891/05-06/Opinion #1698

In Re The Educational Assignment of a Student in The School District of Philadelphia, Daniel Myers, Esquire, Hearing Officer, January 5, 2006

Parent Pro Se
Kimberly Caputo, Esquire – School District Attorney

Student is eighteen years old and hopes to graduate at the end of the 2005/2006 school year. Parent requested due process, alleging that Student was not receiving FAPE, District breached an agreement to provide bus tokens, and District used compensatory education to supplant, rather than to supplement, other educational services to which Student was entitled. Hearing Officer found for District on all counts.

All parties believed, at the time it was written, that the May 2005 IEP was an appropriate program for Student. It provided a three prong approach, allowing Student to gain work experience; benefit from his tutoring during the day; and receive school-based instructional services during the late afternoon/evening hours at the Twilight Program. After the fall

2005 semester began, District provided what it had promised. District personnel followed up on Student's progress during the semester. By the end of November, the high school principal was urging Student's Parent to meet and re-visit Student's IEP. All parties agree that Student needs a new IEP that takes into account Student's new circumstances now that Student is not working. That did not mean, however, that Student's May 2005 IEP was not appropriate or that it was not implemented appropriately.

When Student asked for bus tokens, Student received them, so the Hearing Officer found no breach of any agreement.

District is using the same vendor, Sylvan Learning Center, to provide to Student both his hours of compensatory education along with the supplemental educational services (SES) to which Student is entitled under the No Child Left Behind Act. "Clearly, the School District is treating the compensatory education tutoring and the SES tutoring as two separate obligations. There is no basis for concluding that the compensatory education services are being used to supplant, rather than to supplement, any other educational service to which Student is entitled."

Special Education Opinion #1698

In Re The Educational Assignment of a Student in The School District of Philadelphia, February 9, 2006

Michael McElligott – Appeal Author

By letter dated February 9, 2006, the Panel dismissed Parent's appeal as being untimely.

ODR #5896/05-06/Opinion #1679

In Re The Educational Assignment of a Student in The School District of Philadelphia, Linda Valentini, Psy.D., Hearing Officer, November 10, 2005

Franca Palumbo, Esquire – Parent Attorney
James Tone, Esquire – School District Attorney

Student is thirteen years old and has resided in the District since the start of the 2004/2005 school year. Student has been receiving regular education; when enrolled out of state, Student was a special education student. It was disputed as to when Parent informed District that Student had previously been in special education. In April 2005, Parent requested an IEE, and, in response, District conducted an evaluation, finding Student to be ineligible. Parent requested due process.

The Hearing Officer resolved the factual dispute in favor of the District as to when the District had knowledge of Student's prior enrollment in special education. Hearing Officer believed it was likely that Parent wanted to try Student in regular education; accordingly, the District was found to have conducted a timely evaluation.

Hearing Officer found for District on three factors: the persuasiveness of the District psychologist's testimony and the data contained in her report; Student's performance in regular education the previous year; and the lack of persuasiveness of the Parent and her psychologist witness. District's psychologist recommended that Student not be found to be eligible based upon testing results and Student's actual performance in the general education curriculum. Hearing Officer did agree with Parent's psychologist witness that it was difficult to discern the reasons that Student was



HEARING OFFICER/APPEALS PANEL DECISIONS (continued)

previously in special education. "It is possible that [Student] may simply have been tracked in special education year after year without benefit of a thorough evaluation and/or a proactive push toward inclusion. In any event there is no evidence that [Student] currently has a disability or that he requires specially designed instruction."

Special Education Opinion #1679 In Re The Educational Assignment of a Student in The School District of Philadelphia, December 20, 2005

Panel Members Samuel Lonich, Jeffrey Gonick,
Cathy Skidmore
Samuel Lonich – Appeal Author

Parent filed one exception, alleging error in the Hearing Officer ruling that District's evaluation was appropriate. The Panel agreed with the Hearing Officer's determination that the District conducted an appropriate evaluation and that Student is not currently eligible, noting that Hearing Officer specifically addressed the credibility of the District's psychologist. Nothing in the documentary evidence persuaded the Panel to dispute the Hearing Officer's determination. The Panel noted that Student has experienced academic progress in regular education and there was no indication of significant underachievement or behavioral issues which influenced Student's academic performance.

ODR #5907/05-06/Opinion #1688 In Re The Educational Assignment of a Student in the Indiana Area School District, Dr. Dorothy O'Shea, Hearing Officer, December 20, 2005

Charles Jelley, Esquire – Parent Attorney
William Andrews, Esquire – School District Attorney

Student was an 8th grader during the 2005/2006 school year and is eligible by virtue of OHI (due to epilepsy) and speech and language impairment. Due process was requested to determine whether the 2003/2004 and 2004/2005 IEPs were appropriate. The Hearing Officer concluded that District did not provide appropriate IEPs and ordered the District to provide a comprehensive and in-depth re-evaluation, with a subsequently revised IEP and compensatory education equivalent to two full school years.

Special Education Opinion #1688 In Re The Educational Assignment of a Student in the Indiana Area School District, January 19, 2006

Panel Members Perry Zirkel, Joseph Rogan, Samuel Lonich
Perry Zirkel – Appeal Author

Both parties filed exceptions. The District was found to be correct in asserting that Parent failed to establish mitigating circumstances. "All that the Parent's exceptions specifically identify is the failure of the District to provide the Parent with a notice of procedural safeguards upon the 1/10/03 re-evaluation report. The procedural deficiency did not "come close to parental incapacity, District deception, or other such demanding alternatives that demarcate this narrow exception." Therefore, the Panel did not address whether the Hearing Officer was correct in determining that Student was denied

FAPE for 2003/2004. Based on the applicable limitations period, that part of the Hearing Officer's order was vacated and the Panel limited its review on the merits to the year of June 2004/2005. That IEP was found to constitute a denial of FAPE.

ODR #5914/05-06/Opinion #1699 In Re The Educational Assignment of a Student in the McKeesport Area School District, Dr. Gerald Dambach, January 12, 2006

Pamela Berger, Esquire – Parent Attorney
John Rushford, Esquire – School District Attorney

Student is seventeen years old and eligible by virtue of emotional disturbance. Student is placed in an ES program and has a history of high absenteeism. Parent requested due process, alleging a child find violation and alleging that the Service Agreement was inappropriate.

The Service Agreement listed six accommodations designed to address Student's diagnosis of Major Depressive Disorder and Anxiety Disorder as specified by her psychiatrist. Parent presented no direct testimony concerning the appropriateness of these accommodations. There was testimony concerning implementation. Parent and Student testified that Student was not always permitted to leave class to go to the guidance office when an anxiety attack or panic attack was imminent. District provided contravening testimony.

Regarding child find, the Hearing Officer noted that Student had repeated grade nine three times. In September 2003, Student attempted suicide. Since that attempt, there were ongoing discussions and meetings between the District, Student, her Parents and psychiatrist in an attempt to develop and provide success to Student. Student's psychiatrist repeatedly asked for an IEP or Service Agreement. It was not until February 2005 that it was developed. Student also had an absenteeism problem which, according to testimony, affected Student's grades. Hearing Officer determined that District violated its child find responsibilities and compensatory education was owing.

Special Education Opinion #1699 In Re The Educational Assignment of a Student in the McKeesport Area School District, February 28, 2006

Panel Members Jeffrey Gonick, Cathy Skidmore, John Salvia
Jeffrey Gonick – Appeal Author

District filed exceptions. The evidence was overwhelming to the Panel that child find responsibilities were not met. Student's psychiatrist had advocated that Student be evaluated for special education eligibility and that an IEP be considered. Student failed 9th grade multiple times and had an absenteeism problem. Student received homebound instruction for two (2) days, after which no educational services were provided. Implementation of the 504 Service Plan did not improve Student's situation. The Panel found no error in the Hearing Officer's conclusion that child find duties were not met. Because the Panel was persuaded that the problems caused by Student's disability pervaded the entire school day during the two years at issue, the compensatory education award was not disturbed.



HEARING OFFICER/APPEALS PANEL DECISIONS (continued)

**ODR #5919/05-06/Opinion #1681
In Re The Educational Assignment of a Student in the
Freire Charter School, Joy Waters Fleming, Esquire,
Hearing Officer, November 8, 2005**

Parent Pro Se
School District Attorney – None

Student is nearly seventeen years old and classified as gifted. In September 2005, Parent requested due process, naming both a Charter School (Student’s former school) and the District, where Student is currently enrolled. The Hearing Officer determined that the matter involving the Charter School was not “justiciable” but that the matter could proceed against the District.

**Special Education Opinion #1681
In Re The Educational Assignment of a Student in the
Freire Charter School, December 16, 2005**

Panel Members James McAfee, Constance Lyttle,
Lorraine Heeter
James McAfee – Appeal Author

Parent filed exceptions. Although exceptions were filed late, the Panel nonetheless addressed the merits and affirmed the Hearing Officer. The applicable law was found to be Montour and the Hearing Officer’s determination that a one-year statute of limitations applied was correct.

**ODR #5951/05-06/Opinion #1682
In Re The Educational Assignment of a Student in the
Charleroi School District, David Lee, Hearing Officer,
November 16, 2005**

Parent Pro Se
Barbara Rizzo, Esquire – School District Attorney

Student is a sixteen year old student classified as gifted. Parent requested due process, alleging that the GIEP in French was not appropriately implemented and sought compensatory education. The Hearing Officer found that at all times Parent and Student participated in the GIEP team meetings. The GIEP was written in accordance with regulations. Parent did not object to the overall goal as it related to the course content of French IV or the 16 items listed under SDI. A slight revision was made, upon Parent request, to clarify that course work in French IV was to occur during regular classroom time to preclude expectations of independent work outside of the classroom. There was no further revision of the GIEP regarding French. The Hearing Officer determined that the contention that the GIEP regarding French IV was not written appropriately was unsubstantiated. Implementation was deficient in the opportunity for individualized instruction and support with the use of the software that accompanied the French IV text, and the District was ordered to make it available to Student.

**Special Education Opinion #1682
In Re The Educational Assignment of a Student in the
Charleroi School District, December 31, 2005**

Panel Members Michael McElligott, Madeleine Kaufman,
Joseph Cautilli
Madeleine Kaufman – Appeal Author

Parent filed exceptions. Parent objected to the award of software, claiming that it was really repetitive material which is inappropriate. The exceptions were dismissed, with the Panel affirming in part and reversing in part the Hearing Officer’s decision.

The Panel concurred with the Hearing Officer that the GIEP was appropriately drafted, in compliance with regulations, and noted that it stood as a comprehensive document with detail not typically seen in a GIEP. The Panel did not agree that the GIEP was not appropriately implemented. Student was given appropriate assignments and completed them successfully. Student made progress and completed a major project. “That the Student now complains that the Student does not feel proficient or fluent in French should not be and is in fact not the type of subjective criteria to be used in assessing whether progress has been made.”

**ODR #6097/05-06/Opinion #1695
In Re The Educational Assignment of a Student in The
School District of Philadelphia, David Bateman, Ph.D.,
December 19, 2005**

David Sambolin, Esquire – Parent Attorney
Mimi Rose, Esquire – School District Attorney

Student is sixteen years old and identified as needing emotional support. In November 2005, Student was involved in an incident which prompted a manifestation determination. The team determined that Student’s behavior was not a manifestation of Student’s disability. Parent requested due process, challenging this finding.

The Hearing Officer agreed with the team and found that Student could be disciplined according to the student code of conduct. It was clear to the Hearing Officer that Student was a danger to himself and others and that Student needed to be educated in a more restrictive setting.

**Special Education Opinion #1695
In Re The Educational Assignment of a Student in The
School District of Philadelphia, March 1, 2006**

Panel Members Samuel Lonich, Jeffrey Gonick, Cathy Skidmore
Samuel Lonich – Appeal Author

Parent filed exceptions. The Panel’s review found the team’s manifestation determination to be both procedurally and substantively proper. Student had a behavior management plan and there was no substantial evidence presented that it was not being implemented.



HEARING OFFICER/APPEALS PANEL DECISIONS (continued)

ODR #6126/05-06/Opinion #1697

In Re The Educational Assignment of a Student in the Southern York County School District, Joy Waters Fleming, Esquire, Hearing Officer, January 15, 2006

Daniel Fennick, Esquire – Parent Attorney
Hollie John, Esquire – School District Attorney

Student is fifteen years old, eligible by virtue of OHI (ADHD) and was found to be in violation of District policy regarding drugs. A manifestation determination resulted in a finding that Student's behavior was not a manifestation of Student's disability. Parent initially agreed with the determination and then later disagreed. Parent requested due process to establish whether the team's conclusion was appropriate.

"Because Student knows the difference between right and wrong and .. the incident took place over two school periods, the team concluded that Student's disability was not responsible for his actions...". Although Parent, through expert testimony, attempted to establish that Student's impulsivity resulted in Student ingesting a Zoloft, Parent did not meet the requisite burden of proof. The expert indicated that he based his determination regarding Student's impulsiveness primarily on information from Student and Student's Parent, without input from District. Although the Hearing Officer found the expert's testimony to be credible in certain respects, it was not sufficiently compelling or credible to defeat District's conclusion that Student's ADHD was not responsible for Student buying and ingesting a Zoloft. There was no credible evidence that Student's misconduct was the result of a failure to implement the IEP.

Special Education Opinion #1697

In Re The Educational Assignment of a Student in the York County School District, February 14, 2006

Panel Members Lorraine Heeter, James McAfee,
Constance Lyttle
Lorraine Heeter – Appeal Author

Parent filed exceptions. Parent had very little dispute with the Hearing Officer's findings of fact, but rather took exception to the interpretation of those facts as well as alleged disregard of certain evidence concerning the Student. Parent asserted that Hearing Officer erred in the analysis of what constitutes an impulsive act.

By Student's own admission, he knew such an act was against the rules and knew the consequences of the actions. These actions, occurring with planning over several days, were not impulsive. Impulsivity would have been evident had Student acted quickly as a result of sudden temptation. Here the Student knew what he intended to do and planned the course of action. In affirming the Hearing Officer, the Panel stated that the facts of the case presented reflection, not impulse.