



# Due Process Digest

News from the Office for Dispute Resolution

Volume 13

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## Hearing Officer Decisions/No Appeal Filed

### **ODR #5605/04-05**

***In Re The Educational Assignment of a Student in the Central Dauphin School District, Linda Stengle, Hearing Officer, March 23, 2006***

Yvonne Husic, Esquire – Parent Attorney  
Sharon O'Donnell, Esquire – School District Attorney

Student is sixteen years old and an eligible student. Parent requested due process, seeking compensatory education and alleging that District discriminated against Student by unnecessarily segregating him. The HO found a child find violation at the start of kindergarten. The HO believed Student had all the hallmarks of a language-based learning disability upon Student's entry into the District and was not assessed on all areas of need, nor was Student provided with an IEP that addressed all areas of need. HO found numerous problems with Student's program in ensuing years. Student had behavioral, social, and emotional issues which impacted upon him throughout the day. HO believed Student was entitled to ESY from 4th grade on. Compensatory education was awarded.

### **ODR #5797/05-06 & 5807/05-06**

***In Re The Educational Assignment of a Student in the Keystone Central School District, Daniel Myers, Esquire, Hearing Officer, October 27, 2005***

Parent Pro Se  
Karl Romberger, Esquire – School District Attorney

Student is twelve years old and has been identified in the past with ADHD-Inattentive, and with a SLD in the areas of reading and written expression. When Parent requested an IEP meeting, District requested permission to evaluate Student for the purpose of updating an earlier evaluation report. Parent then requested due process, seeking, among other things, "that the needed determination and provision of special education and related services for [Student]...move forward." HO concluded that Parent prevented Student from receiving special education and related services and there was no denial of FAPE by District.

### **ODR #5910/05-06**

***In Re The Educational Assignment of a Student in the Lancaster School District, Joy Waters Fleming, Esquire, Hearing Officer, January 20, 2006***

Parent Pro Se  
Jeffrey Champagne, Esquire – School District Attorney

Student is nineteen years old, and last attended District schools during the 2004-2005 SY. In the 1st grade, Student was first evaluated by the District and found to be eligible for gifted support. During the 2003-2004 SY, Student attended the high school with a GIEP in place. Midway through the year, Student withdrew and enrolled in a cyber charter school, where Student was not identified as gifted. Student returned to the District for his senior year, with no GIEP in place. After an unsuccessful year, Student was not deemed to be eligible to graduate. Parent requested due process, alleging that an appropriate gifted program/placement was not provided during SY 2004-2005. District brought its own claim, asking that Student be evaluated.

It was not in dispute that Student did not have a GIEP in place during the 2004-2005 SY. District argued at hearing that, upon Student's return to District in 12th grade, Student did not meet the second prong of the eligibility test, in that Student does not require SDI. HO concluded that the exiting or decertifying of eligibility needed to occur as part of a team process. An evaluation was ordered to determine ongoing eligibility. Compensatory education was awarded.

### **ODR #6081/05-06**

***In Re The Educational Assignment of a Student in the Delaware County IUIEI Program, Joy Waters Fleming, Esquire, Hearing Officer, March 15, 2006***

Parent Pro Se  
Leo Hackett, Esquire – Intermediate Unit Attorney

Child is four years old and receiving pre-school services through the IU for autism. In September 2004, the IEP team agreed to the implementation

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## HEARING OFFICER DECISIONS/NO APPEAL FILED (continued)

of two hours of relationship-based therapy to assist Child with his social and language skills. During the 2004-2005 SY, Child received one hour of OT at the Elwyn Development Center using general OT therapies/strategies and an additional hour of OT at A Total Approach (ATA), using a relationship based approach. The IU selected ATA as the provider of Child's additional OT because it had a contract in place for the provision of services. By July 2005, the IU's contract with ATA was in the process of being discontinued and the children served by that provider were being transitioned to other therapists within the IU. Brookline Center and Roosevelt School were two possible sites.

At issue was the appropriateness of the proposed social skills program in the proffered IEP and the proffered occupational therapy program. Parent had two concerns: first, that the proposed IEP would sever ties with a therapist with whom their Child had bonded, with this relationship-based methodology responsible for much of Child's progress, the loss of which could result in regression; second, that the proffered social skills program was not an appropriate environment where their Child could make progress, and they desired for him to remain involved at the social group at ATA.

HO found that parent failed to establish by a preponderance of the evidence the IU failed to offer FAPE: the IU established that each site had individuals trained in the relationship-based methodology; the distance to Brookline Center was not determined to be unduly burdensome and a denial of FAPE; although Child did sustain a minor injury at Roosevelt, there was no credible evidence that a pattern of unsafe or neglectful conditions prevailed at that location that threatened to jeopardize Child's potential for progress; although the Roosevelt site was "undoubtedly full of activity and children," the evidence established that professionals were accustomed to dealing with children of various needs in a variety of settings and most importantly in working toward their individual goals. Finally, with regard to the change in therapists, the IU proposed programs had options to assist with Child's transition and to ensure that his care and progress were minimally disrupted. The IU was found to have offered a variety of OT options and choices that were sufficiently individualized and responsive to Child's unique needs yet calculated to provide meaningful educational benefit.

Parent also contended that the environment of the proposed social skills program was not appropriate and would not afford Child educational progress. Parent wanted Child to continue receiving these services privately, at ATA, at public expense. The IU offered Child a six-week social skills program at the Brookline Center, the Roosevelt School, or with two different private providers. At the end of six weeks, the IEP team would review the progress of Child to determine whether he should continue in the program. Parent rejected this option, citing the same environmental concerns above, as well as concerns that the IU staff could not sufficiently continue the relationship-based methodology in the social skills program. The HO concluded

that the IU had offered an appropriate social skills program and had tried a variety of avenues to support Parent in their pursuit of a relationship-based therapeutic approach. Parent failed to meet their burden of establishing that the IU failed to offer FAPE regarding the social skills program.

*Note:* Any appeal of this decision would have been to the appropriate court, not the Appeals Panel.

### **ODR #6094/05-06**

#### ***In Re The Educational Assignment of a Student in The School District of Philadelphia, Joy Waters Fleming, Esquire, Hearing Officer, February 20, 2006***

Parent Pro Se  
Kenneth Cooper, Esquire – School District Attorney

Student is ten years old and previously identified as having a SLD. Parent has not been willing to participate in IEP conferences, and refused to sign a PTE so that Student could be assessed and his program updated. District requested due process, believing that a comprehensive re-evaluation was necessary in light of Student's minimal academic progress, his struggle staying focused and his falling asleep in school. Parent believed District had enough information concerning her son's needs. HO determined that District presented credible and convincing evidence that Student's needs had changed and warranted the collection of additional information in order to offer appropriate programming to Student.

### **ODR #6270/05-06**

#### ***In Re The Educational Assignment of a Student in the Oley Valley School District, Daniel Myers, Esquire, Hearing Officer, April 14, 2006***

Parent Pro Se  
Sharon Montanye, Esquire – School District Attorney

Student is fifteen years old and eligible due to autism. District proposed a publicly funded private school placement for the 2005-2006 SY. Parent disputed the appropriateness of the placement, contending that personnel were inadequately trained, did not adhere to Student's restricted diet, and were more concerned with criticizing Parent than educating Student. HO found the placement to be appropriate.

HO determined that the school was designed to educate children with mental retardation and developmental disabilities; relevant personnel had appropriate credentials; and personnel were adequately trained in addressing Student's needs. There was no evidence presented that Student was given inappropriate foods. Parent's concern that personnel were critical of her was deemed to be "unfounded perceptions of Student's parent that appear to be based upon the general fears of Student's parent and not upon fact."



## HEARING OFFICER DECISIONS/NO APPEAL FILED & HEARING OFFICER DECISIONS/APPEAL FILED

### **ODR #6395/05-06**

#### ***In Re The Educational Assignment of a Student in The School District of Philadelphia, Daniel Myers, Esquire, Hearing Officer, May 24, 2006***

Parent Pro Se  
Kenneth Cooper, Esquire – School District Attorney

Student is eleven years old and attending regular education classes. At issue was Parent’s refusal to allow an educational evaluation. Within two weeks of the 2005-2006 SY, Student presented behavioral and academic difficulties. District initiated its Comprehensive Student Assistance Process (“CSAP”), with Level 1 interventions tried, followed by a Level II meeting with resulting recommendations. In January 2006, Student was suspended for a code of conduct violation. Thereafter, a Level III CSAP was initiated, as well as a behavioral performance review (“BPR”) to determine whether Student might be thought to be exceptional and need a psycho-educational evaluation. The BPR team thought that Student needed a psycho-educational evaluation. A PTE was issued on three occasions, with no response from Parent. Parent wanted Student to receive more one-on-one tutoring and/or counseling, and wanted to know what his IQ was. Parent believed Student’s removal from classroom instruction for disruptive behavior was detrimental to his education, and Parent had relatives who received behavior programming/tutoring without having been evaluated, so she did not believe it was necessary.

HO believed District was justified in requesting an evaluation. Student’s academic performance in the then current regular education setting appeared to be below level, and all parties appeared to agree that his behaviors were interfering with his education. “A multidisciplinary evaluation may enable the parties to understand in greater depth the reasons for Student’s difficulties, as well as assist in developing systematic strategies for addressing those difficulties.” An evaluation was ordered.

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### **HEARING OFFICER DECISIONS/APPEALS FILED**

### **ODR #6008/05-06 | Opinion #1703**

#### ***In Re The Educational Assignment of a Student in The School District of Philadelphia, Linda Valentini, Psy.D., Hearing Officer, January 11, 2006***

Parent Pro Se  
Kenneth Cooper, Esquire – School District Attorney

Student is sixteen years old and eligible by virtue of an emotional disturbance. Since 2003 Student has not attended her regional neighborhood high school, but a school (“Lincoln”) which provides a “magnet” program for students interested in certain subjects, in Student’s case, the law. Student receives itinerant emotional support at Lincoln. Almost since the beginning of her tenure at Lincoln, Student has had behavioral problems. Following a re-evaluation in June 2005, District

recommended a higher level of service, namely a part-time emotional support class in her regional neighborhood high school, which also offers a “law academy.” Parent disagreed with the NOREP, preferring Student to remain at Lincoln, and contending that Student did not receive appropriate emotional support services there. District requested due process.

District provided credible, clear and compelling testimony from Lincoln faculty members that Student requires a higher level of service. As the HO noted on the record and reiterated in her decision, Student was being extremely difficult with, and interfering with the teaching of, both a seasoned, experienced male teacher (English) and a young, understanding female teacher (Spanish). Student was deliberately defiant towards a teacher with whom initially Student seemed to be cooperative (Science). Student refused to utilize the guidance counselor or the assistant principal for emotional/behavioral support. Student rejected and/or argued about a behavior support/report mechanism and even on the occasions when Student used it did not take the next step of processing it with a counselor or the assistant principal and/or show it to her Mother on a consistent basis. The HO was convinced Lincoln did make every attempt to accommodate Student and that there was nothing more there for Student. In dicta, the HO surmised that Student may ultimately need an even higher level of service than was being sought by District.

### **Special Education Opinion #1703**

#### ***In Re The Educational Assignment of a Student in The School District of Philadelphia, March 10, 2006***

#### ***Panel Members John Salvia, Sam Lonich, Cathy Skidmore***

Cathy Skidmore – Appeal Author

Parent filed exceptions. Based upon the absence of “any real behavior plan” in the December 2004 IEP, the Panel was not surprised that the Spring of 2005 was not a successful semester for Student. The Panel was thus compelled to conclude that the IEP was substantively deficient and that District’s response to Student’s lack of progress in developing a new IEP proposing a part-time placement was premature and unsupported by the record. “It may well be that Student requires a different placement than itinerant emotional support, but the District’s evidence, including its June 2005 ER, fell far short of establishing that such a program is warranted at this juncture.” HO’s decision was reversed.



## HEARING OFFICER DECISIONS/APPEAL FILED (continued)

### **ODR #6013/05-06 | Opinion #1715**

#### ***In Re The Educational Assignment of a Student in The School District of Philadelphia, Daniel Myers, Esquire, Hearing Officer, February 28, 2006***

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

Student is nineteen years old and eligible by virtue of emotional disturbance and ADHD. In December 2004 Student's APS could no longer meet Student's emotional and safety needs. For nearly a year, no alternative educational program/placement was offered. Parent unilaterally placed Student into several hospitalization programs and residential treatment centers. District acknowledged its responsibility to reimburse for one of the unilateral placements, but opposed reimbursement for the most recent. Parent requested due process, seeking such reimbursement, as well as travel and related expenses, and IEE costs. Only reimbursement for the most recent placement was awarded.

The HO found that District did not offer any alternative educational program/placement until its proposed IEP in November 2005. The HO found no basis in the record for finding that FAPE was offered to Student at any time between December 10, 2004 and the date of the proposed IEP in November 2005. HO did not accept District's argument that Student was unable to access an educational program for a period of time due to Student's emotional disturbance. HO identified the issue as whether Student's full-time residential placement between May 2005 and the present was considered necessary for educational purposes, or whether the residential placement was a response to medical, social or emotional problems that were segregable from the learning process. "The unseverability or inextricability of medical and educational grounds for certain services are the very basis for holding that the services are an essential prerequisite for learning." Expert witnesses testified that Student's needs were intertwined. HO concluded that FAPE was not offered.

Turning to the second prong of the tuition reimbursement analysis, HO concluded that the unilateral placement was appropriate, specifically in response to Student's mental health needs, and concomitant need for safety, becoming top priorities. The HO noted that hospitalization placements, while exceptional, are not prohibited per se. HO believed there was adequate evidence in the record to suggest that this was such an exceptional case in which a hospitalization placement would have been an appropriate FAPE offer by District. Nonetheless, all that was necessary for reimbursement purposes was HO's determination that the District did not offer FAPE, the unilateral placement was appropriate, and the equities favored Parent. Failure to give District notice of the IEE reimbursement request precluded an award, as did a failure to articulate sufficiently the other expenses for which they sought reimbursement.

### **Special Education Opinion #1715**

#### ***In Re The Educational Assignment of a Student in The School District of Philadelphia, April 24, 2006***

#### ***Panel Members John Salvia, Cathy Skidmore, Jeffrey Gonick***

Jeffrey Gonick – Appeal Author

District filed exceptions, alleging that the unilateral placement was medical, not educational, and when Student's mental health improved, District timely offered an appropriate educational program. The Panel reversed the HO.

The Panel carefully considered Student's circumstances at the time of placement, the course of treatment and services provided to Student while in residence there, and the District's efforts to address Student's educational needs during the placement. Student was admitted to the acute care component of the facility because Student was too out of control to be in a one-on-one setting unless accompanied by someone trained in crisis intervention. From the first day of this placement until the beginning of October 2005, Student continued to self injure, to be aggressive, and to require one-on-one staff support. Because of the acute nature of Student's mental illness during this period, the treatment goals and services were almost entirely devoted to stabilizing Student's mental health; the treatment plan did not include any academic goals. At the time of June 2005 IEP meeting, held three weeks after placement in the facility, Parent agreed that an IEP could not be implemented due to Student's acute emotional status. "The record clearly and convincingly establishes that [Student]'s admission to the New York facility was prompted by a psychiatric crisis, was necessary for medical reasons rather than educational purposes, and that the services provided to [Student] during the first four months there were medical rather than educational in nature." Neither tuition reimbursement nor compensatory education was warranted.

### **ODR #6033/05-06 | Opinion #1720**

#### ***In Re The Educational Assignment of a Student in the North Hills School District, Daniel Myers, Esquire, Hearing Officer, March 8, 2006***

Parent Pro Se  
Michael Witherel, Esquire – School District Attorney

Student is six years old and eligible due to autism. Parent disputed the appropriateness of District's proposed IEP for 2005-2006 SY, believing that it failed to comply with age range restrictions. District requested due process. The IEP was found to be appropriate. The HO concluded that the proposed placement placed Student in a class that met the age range requirements of 22 Pa. §14.142(f) independent of a PDE finding, which HO considered to be hearsay. On the merits, the program was also found to be appropriate.



## HEARING OFFICER DECISIONS/APPEAL FILED (continued)

### **Special Education Opinion #1720**

***In Re The Educational Assignment of a Student in the North Hills School District, April 17, 2006***

**Panel Members Cathy Skidmore, Perry Zirkel, Joseph Rogan**

Perry Zirkel – Appeal Author

Parent filed exceptions. “The jurisdiction of the hearing officer and appeals panel is limited to the appropriateness of the placement and program of the Student, thus only implicating the particular application of the relevant regulation to this individual child. The state’s determination sufficiently resolves the threshold general matter”. HO’s decision was modified in that the IEP team was ordered to re-visit the IEP to include an appropriate BIP, resolve issues regarding a paraprofessional, and determine and provide the requisite specifics for related services.

### **ODR #6061/05-06 | Opinion #1709**

***In Re The Educational Assignment of a Student in the Council Rock School District, William Culleton, Jr., Esquire, Hearing Officer, February 9, 2006***

David Painter, Esquire – Parent Attorney  
Hollie John, Esquire – School District Attorney

Student is fifteen years old, and is gifted along with classified as OHI-ADHD and SLD in written expression. Student has also been diagnosed with Asperger’s. Student attended district schools for 9th and 10th grades and was then unilaterally placed in private school. Parent requested an IEE and District filed for due process to determine whether its latest evaluation was appropriate. That evaluation ruled out autism and found that any educational interference was due to oppositional behavior due to social maladjustment, and not due to emotional disturbance. Parent countered that the evaluation was not appropriate because it was not comprehensive in light of the history of prior evaluations and classifications, and because it employed instruments that were not valid for the purposes for which they were used. As a result, Parent argued that the evaluation failed to classify Student as having Asperger’s and serious emotional disturbance.

The HO concluded that the school psychologist was credible, and the evaluation meet the statutory requirements. The ER was also sufficiently comprehensive, addressing all areas of suspected disability and educational need. “It did not ignore the questions of autism or emotional disturbance; rather, the District’s psychologist described her careful and comprehensive attempt to harmonize a vast amount of often contradictory data, both standardized and historical, observed and subjective.” The ER was found to be appropriate.

### **Special Education Opinion #1709**

***In Re The Educational Assignment of a Student in the Council Rock School District, March 27, 2006***

**Panel Members Lorraine Heeter, James McAfee, Constance Lyttle**

Lorraine Heeter – Appeal Author

Parent filed exceptions. HO was affirmed. Parent did not present documentary or testimonial evidence to support the position that the decision should be overturned. The Panel agreed with the HO that the ER met all of the statutory requirements.

### **ODR #6072/05-06 | Opinion #1724**

***In Re The Educational Assignment of a Student in the Methacton School District, Joseph Rosenfeld, Ph.D., Hearing Officer, March 16, 2006***

David Painter, Esquire – Parent Attorney  
Sharon Montanye, Esquire – School District Attorney

Student is ten years old and eligible due to mental retardation. Parent alleged a denial of FAPE due to the absence of an FBA and believed the 2005-2006 IEP was inappropriate as not being delivered in the LRE (specifically, a one hour or longer bus ride one way to the placement).

During September and October 2004, Student’s behavior was not problematic. By the end of November, however, there were some severe behavioral episodes that disrupted the class and necessitated Student’s removal. Parent alleged, successfully, that an FBA should have occurred within a reasonable time after this behavior started. The HO had no doubt that District tried to find a solution to the problems presented, and that the behavior specialist was involved with the special education teacher; however, HO calculated a compensatory education award based upon the date of the psychiatrist’s report, which indicated that the program, and hence the IEP, was no longer viable.

Regarding transportation, the issue was whether the length of the bus ride lead to Student being unable to benefit from the IEP. The evidence suggested that it did not, although Student arrived at school thirty minutes late each day, giving rise to compensatory education for that period of time.



**HEARING OFFICER DECISIONS/APEAL FILED** (continued)

**Special Education Opinion #1724**  
**In Re The Educational Assignment of a Student in the Methacton School District, April 24, 2006**  
**Panel Members Joseph Rogan, Cathy Skidmore, Perry Zirkel**

Perry Zirkel – Appeal Author

Both parties filed exceptions. IDEA only expressly requires a FBA and a BIP upon removal of an eligible child for ten school days in a school year, which did not occur here. The Panel found the evidence to be clear that Student’s behavior impeded Student’s learning and that of others by mid November, and that the District promptly initiated an FBA and IEP revisions. District also held various meetings and when the problem did not abate, successively arranged for a 1:1 aide and a psychiatric report as further efforts to resolve the situation. Impartial application of the law, including the reasonable rectification factor lead the Panel to conclude that compensatory education was not warranted for the 2004-2005 SY.

The Panel had before it only the issue of whether the placement violated the LRE in light of the lengthy bus ride. The Panel concluded that District took reasonable steps to maintain the learning support placement with appropriate supplementary aids and services; the comparable benefits, with such aids and services, favored the out-of-District life skills placement; and Student’s behavior, with aids and services, had a dramatically negative effect on the learning of others and Student’s own.

**ODR #6073/05-06 | Opinion #1708**

**In Re The Educational Assignment of a Student in the Upper Perkiomen School District, Kenneth Rose, Hearing Officer, February 13, 2006**

Parent Pro Se  
Lawrence Dodds, Esquire – School District Attorney

Student is thirteen years old and eligible by virtue of an orthopedic impairment. Student has had a history of medical problems since birth. For SYs 2003-2004 and 2004-2005, Student attended two different regular education private schools. Student re-enrolled in District in July 2005. At issue was the appropriateness of the 2005-2006 IEP, the provision of speech/language and physical therapy, and the appropriate physical education program. Parent sought an IEP which would include auditory processing support, an appropriate physical education/adapted physical education program, speech and language therapy and physical therapy.

The HO determined that the IEP was legally sufficient and Parent approved it. Revisions started in a timely manner but the final IEP was delayed due to District’s attempt to respond to Parental concerns and use of additional information it had received. The “temporary” IEP was found to be substantially implemented. Any failures of implementation were termed minor and it was clear to the HO that Student was doing well in school.

District’s speech/language therapist was found to be credible, and her report placed Student within the normal range. The HO concluded that there was no need for S/L therapy. Likewise, the District’s physical therapist was found to be credible, in that the needs of Student did not hinder her ability to access the educational environment or to benefit from special education. Finally, District used an Adaptive Physical Education evaluation of Student to design an appropriate program. Parent had significant input into what activities were safe for Student. District demonstrated a willingness to work with Student to find alternative activities more to her liking for the times Student could not participate with the rest of the class.

The District was not ordered to take any action.

**Special Education Opinion #1708**  
**In Re The Educational Assignment of a Student in the Upper Perkiomen School District, March 13, 2006, Panel Members Joseph Rogan, Cathy Skidmore, Perry Zirkel**

Perry Zirkel – Appeal Author

Parent filed exceptions. Because the Panel compiled the factual background based on their independent review of the record and did not find any prejudicial errors in the HO’s findings, it did not address each of Parent’s “rather microscopic points” for two interrelated reasons: none of them were deemed to be outcome determinative, and the Panel believed that the big picture was being missed. The two overriding issues as identified by the Panel was whether the District provided, in terms of formulation and implementation, FAPE to Student for 2005-2006 SY. Although the procedural and substantive dimensions were not optimal, District did not engage in any prejudicial violations and the proposed IEP was reasonably calculated to provide meaningful benefit. District reasonably rectified the lack of revised provisions for adaptive PE in the October 2005 proposal after being notified of the concern. District also provided FAPE in implementing the successive versions of the IEP in a reasonably timely and complete manner. The implementation of adaptive PE services –specifically, District’s use of a “non Cadillac” exercise bike and its interrelated 80% estimate of LRE, while bearing correction, did not constitute a denial of FAPE that mandated a compensatory education award.

**ODR #6108/05-06 | Opinion #1733**  
**In Re The Educational Assignment of a Student in the Methacton School District, Linda Stengle, Hearing Officer, April 28, 2006**

Franca Palumbo, Esquire – Parent Attorney  
Gina DePietro, Esquire – School District Attorney

Student is twelve years old and recently identified as eligible. Both parties agreed on his current placement and IEP; the dispute centered around entitlement to compensatory education from June 2002 through September 2005.



**HEARING OFFICER DECISIONS/APPEAL FILED** (continued)

Compensatory education was awarded for the period in question, with the HO noting that Student evidenced signs of considerable academic and emotional difficulty far in advance of June 2002. Student's anxiety issues escalated to the point where he was pulling out his own hair. The HO found that District knew that Student might have a disability and instead of promptly evaluating him, waited until the end of the year and referred Parent to an outside evaluator and tutoring. The District evaluation was found to be fatally flawed. Parent was entitled to reimbursement for IEEs. The compensatory education award considered the fact that Parent provided psychological counseling, Benchmark summer reading program for summer 2003, and tutoring; therefore, no further award was necessary. Parent was entitled to reimbursement for text on tape as a necessary part of the school program.

**Special Education Opinion #1733**  
**In Re The Educational Assignment of a Student in the Methacton School District, June 7, 2006**  
**Panel Members Lorraine Heeter, James McAfee, Constance Lyttle**

Lorraine Heeter – Appeal Author

District filed exceptions, alleging error in failing to apply a statute of limitations, in awarding compensatory education, and IEE reimbursement. The Panel applied a statute of limitations, thereby limiting the claim to 2003-2004 and 2004-2005, noting that Parent's IEE revealed Student's need for SDI in 2002, and Parent had an obligation to act upon that knowledge at that time, not three years later.

The March 2003 ER did not identify Student as eligible, yet Student continued to struggle. In April 2003 Parent was notified of the possibility that Student would fail 3rd grade. Even while in the IST program, Student was inconsistent in eight skill areas. Struggles continued in 4th and 5th grades. All of these factors lead the Panel to conclude that Student should have been identified in March 2003. Compensatory education was awarded. IEE reimbursement was affirmed. The Panel agreed with District that there was no foundation for an award for ESY services.

**ODR #6144/05-06 | Opinion #1712**  
**In Re The Educational Assignment of a Student in the Spring-Ford Area School District, Daniel Myers, Esquire, Hearing Officer, February 20, 2006**

Kathleen Larkin, Esquire – Parent Attorney  
Bonnie Sheehan, Esquire – School District Attorney

Student is thirteen years old with autism and ADD. In 2004, a previous HO and Appeal Panel determined that Student was denied FAPE for the entire 2002-2003 SY and for a portion of the 2003-2004 SY; compensatory education was awarded. Parent requested due process to resolve a dispute regarding the proper

implementation of the 2004 award. At issue was whether HO had jurisdiction to address implementation of prior orders. District's Motion to Dismiss was dismissed. BSE investigates failure of Districts to implement HO and Panel decisions.

**Special Education Opinion #1712**  
**In Re The Educational Assignment of a Student in the Spring-Ford Area School District, March 28, 2006, Panel Members Perry Zirkel, Joseph Rogan, Cathy Skidmore**

Perry Zirkel – Appeal Author

Parent filed exceptions. The state complaint resolution process, not the HO/review officer process, is the appropriate forum for enforcing a hearing or review officer's decision under IDEA. However, because the HO did not have a hearing, but rather, decided the case on pre-hearing procedures, his decision was vacated.

**ODR #6148/05-06 | Opinion #1726**  
**In Re The Educational Assignment of a Student in the Council Rock School District, Anne Carroll, Esquire, Hearing Officer, March 26, 2006**

Mark Voigt, Esquire – Parent Attorney  
Grace Deon, Esquire – School District Attorney

Student is sixteen years old and attends District schools as a special education student. Prior to enrolling in District in 2004, Student attended private schools. District provided Student with a learning support IEP for 9th grade based upon his Mother's representation that he had a learning disability and was attending a school for learning disabled students. Student has never been identified as an eligible student, however. Shortly after enrollment in the District, District sought permission to evaluate, which Parent ultimately provided. District then concluded that Student was not eligible, and recommended termination of special education services. District requested due process.

Two District evaluators concluded that Student's standardized test scores showed no discrepancy between ability and achievement, since his scores fell within the average range on all measures of ability and achievement. Although District witnesses noted that discrepancies between Student's verbal and performance scores might merit additional investigation under some circumstances, they believed that his clear lack of need for SDI made such investigation unnecessary. The HO determined that Student's relative weaknesses in some cognitive areas were not disabilities, but, rather, lesser ability in non-verbal areas, and commensurately lesser achievement in the same areas. As District argued, there is no child of average ability who would not draw extraordinary benefit from special education services, but this is not the same as needing SDI. HO ordered a discontinuation of special education services to Student.



## HEARING OFFICER DECISIONS/APPEAL FILED (continued)

### Special Education Opinion #1726

#### ***In Re The Educational Assignment of a Student in the Council Rock School District, May 19, 2006***

**Panel Members Joseph Cautilli, Madeleine Kaufman, Michael McElligott**

Madeleine Kaufman – Appeal Author

Parent filed exceptions and also requested that the Panel accept additional evidence (the final IEE). In affirming the HO, the Panel noted that Student’s I.Q. was average and performance on standardized tests was at least average; grades were at least average, if not better; and there was not a need for accommodations. The (rough draft) IEE did not sufficiently refute District’s contentions as the document showed achievement in the average or slightly below average range. The Panel further noted that it rarely hears new evidence and there was no compelling reason to do so in this case.

### ODR #6198/05-06 | Opinion #1728

#### ***In Re The Assignment of a Student in the North Penn School District, Daniel Myers, Esquire, Hearing Officer, March 27, 2006***

Parent Pro Se  
Stephen Jacobson, Esquire – School District Attorney

Student is eight years old and a former resident of District. Parent sought reimbursement of private school tuition and the costs of privately-secured evaluations because District did not retain Student in kindergarten as requested by Parent.

The evidence presented established that Student was not a child with a disability. Everyone attending the 11/04 multidisciplinary team meeting, including Parent, concluded that Student was neither a child with a disability nor did she have a need for special education services. No evidence presented at hearing established that the team was incorrect. The HO concluded that Student demonstrated average intelligence, average functioning, no discrepancy between ability and achievement, and she has always functioned within expectations. Tuition reimbursement was denied.

### Special Education Opinion #1728

#### ***In Re The Educational Assignment of a Student in the North Penn School District, May 1, 2006, Panel Members Joseph Rogan, Cathy Skidmore, Perry Zirkel***

Perry Zirkel – Appeal Author

Parent filed exceptions. The exceptions were deemed to be untimely and not within the purview of the hearing/review process.

### LEGEND OF TERMS

ADHD	Attention Deficit Hyperactivity Disorder
BMP	Behavior Management Plan
CAP	Central Auditory Processing Disorder
CBA	Curriculum-Based Assessment
CSAP	Comprehensive Student Assistance Process
ER	Evaluation Report
ESOL	English for Speakers of Other Languages
ESY	Extended School Year
FAPE	Free Appropriate Public Education
FBA	Functional Behavior Assessment
HO	Hearing Officer
IDEA	Individuals with Disabilities Education Act
IEE	Independent Educational Evaluation
IEP	Individualized Education Program
IFSP	Individualized Family Service Plan
IST	Instructional Support Team
LEA	Local Education Agency
LRE	Least Restrictive Environment
LS	Learning Support
MDE	Multi-Disciplinary Evaluation
NOREP	Notice of Recommended Educational Placement
OHI	Other Health Impairment
OT	Occupational Therapy
PDD-NOS	Pervasive Developmental Disorder Not Otherwise Specified
PECS	Picture Exchange Communication System
PELs	Present Education Levels
PT	Physical Therapy
PTE	Permission to Evaluate Form
SBBH	School-Based Behavioral Health
SDI	Specially Designed Instruction
SLD	Specific Learning Disability
SY	School Year
WISC-IV	Wechsler Intelligence Scales for Children