



Due Process Digest

News from the Office for Dispute Resolution

Volume 14

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Due Process Digest Information

The Due Process Digest is a voluntary service of the Office for Dispute Resolution. The Digest is prepared periodically when work commitments allow. Copies of decisions are available on the web or requests may be directed to Betty File, Web Mistress, at bfile@pattan.net.

Hearing Officer Decisions/No Appeal Filed

ODR #5374/04-05

In Re The Educational Assignment of a Student in the Harbor Creek School District, Dr. David Lee, Hearing Officer, August 9, 2005

Parents Pro Se
Patricia K. Smith, Esquire – School District Attorney

Student is a five year/10 month old, receiving early intervention services since the age of six months. Diagnoses include neurofibromatosis Type 1; ADHD; MR; and PDD-NOS. As Student is of school age, District recommended a Life Skills Support Program with a primary disability category of mental retardation. Parents disagreed with the disability category and program placement in a classroom with a sibling.

Parents' position was that Student should be placed in an autism support classroom, and not in a life skills class with a sibling. Thereafter, Parents modified their position to be objection to the specific placement of Student in the classroom with a sibling. Thus, the issue as identified by the HO was whether the presence of a sibling in the same classroom rendered placement inappropriate. The HO did not find any evidence to suggest that the presence of a sibling would be harmful to Student.

ODR #5462/04-05

In Re The Educational Assignment of a Student in the Western Beaver County School District, Margaret Drayden, Esquire, Hearing Officer, October 3, 2005

Hilary Kinal, Esquire - Parent Attorney
Shannon Steele, Esquire - School District Attorney

Student is thirteen years old and first received emotional support services in 1st grade. She has continued in a regular classroom with itinerant

support since that time, with behaviors fluctuating, and most years conduct being disruptive. She was accused of threatening to kill school staff. A Manifestation Determination concluded that her conduct was not the result of her disability and, in lieu of being expelled, the parties agreed that Student would attend another school district where her IEP could be implemented. Placement lasted approximately two months, during which time Student had altercations with students and school staff, resulting in her no longer attending. For the last three months of 2004-2005 SY, Student received instruction in the home and tutoring. At issue for due process was whether the Manifestation Determination was correct; whether District implemented Student's IEP as well as protected her from harassment and bullying; and whether District could provide the appropriate placement and services, including a BMP, necessary for Student to receive FAPE.

The IEP team found that Student's IEP and placement were appropriate; that SDI was being delivered on a consistent basis; that Student's disability did not impair her ability to understand the impact and consequences of her behaviors; and that Student's disability did not impair her ability to control her behavior. However, the HO found deficiencies in the IEP team's analysis. There was no mention of Student's evaluation/ diagnostic results, or any relevant information provided by Parents; no information regarding her repeated outbursts, cursing of peers, teachers and administrators; or any mention of conduct related to her identified disability. There were also no indications of any observations of Student. Contrary to the team's determination, the HO concluded that Student's disability impaired her impulse control. 34 C.F.R. § 300.523(d) provides that if any of the standards in paragraph (c)(2) are not met, the behavior must be considered a manifestation of disability. Therefore, the Manifestation Determination failed.

The OFFICE FOR DISPUTE RESOLUTION (ODR), funded through the Pennsylvania Department of Education, is responsible for the operation and management of Pennsylvania's Special Education Dispute Resolution system. ODR is located in the Pennsylvania Training and Technical Assistance Network (PaTTAN) Harrisburg offices and is administered by Lancaster-Lebanon Intermediate Unit 13.

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HEARING OFFICER DECISIONS/NO APPEAL FILED (continued)

The next issue was whether District implemented the IEP. The 2003 IEP was “skeletal,” with only one annual goal and three short-term objectives, “[u]ndoubtedly it is because the IEP team found that Student ‘has very few behavioral problems’...” However, Student’s behaviors escalated in 7th grade. The HO believed the IEP team should have reconvened to address the behaviors and Student needed to be tested sufficiently to identify all of her education and related services needs. The HO found that District provided protection from harassment/bullying.

Finally, the HO had to determine whether District could provide the appropriate placement and services, including a BMP, necessary for Student to receive FAPE. The HO found that District needed to provide additional testing in order to determine the appropriate placement and services for Student. The HO believed Student needed a more restrictive placement, and commended the District for its continued efforts over numerous years to provide Student with an educational program in the regular classroom setting. “This rural District has worked diligently and assiduously to accommodate Student through an itinerant level of support in order to keep Student ‘in house’.” As District had no emotional support classroom in the junior-senior high school, the HO found it unable to provide the appropriate placement and services required for FAPE. No compensatory education was awarded, as it was not requested, and the family repeatedly rebuffed attempts to provide more services to Student.

ODR #6223/05-06

In Re The Educational Assignment of a Student in the Williamsport Area School District, Daniel J. Myers, Esquire, Hearing Officer, May 7, 2006

Parents Pro Se
Fred A. Holland, Esquire - School District Attorney

Student is nine years old with permanent and progressive hearing loss. Parents sought deaf/hard of hearing counseling for Student and an IEE. HO declined both, but did order District to obtain a limited independent evaluation of any deaf/hard of hearing identity related concerns.

The HO believed counseling would be premature, as Student had not yet been evaluated appropriately to determine whether or not she needed such counseling. It was unknown whether Student had any deafness identity issues because the District had refused to evaluate for it. District was ordered to conduct an appropriate evaluation through an independent examiner. The record did not support the need for a complete psychoeducational evaluation.

ODR #6283/05-06

In Re The Educational Assignment of a Student in the Moon Area School District, Margaret Drayden, Esquire, Hearing Officer, June 8, 2006

Jefferey Ruder, Esquire - Parent Attorney
Michael Brungo, Esquire - School District Attorney

Student is six years old with multiple needs including mental retardation, speech and language delays, OT needs, epilepsy, with autism having also been raised as a possibility. Student currently attends an EI program because the parties have not agreed upon what constitutes an appropriate placement for Student. District believed Student needed a part-time life skills program and part-time regular kindergarten while Parent believed Student should be in the regular classroom with supplementary aids and services.

The HO found no evidence that there were any serious discussions of supplementary aids and services to enable Student to remain in a regular classroom placement on a full-time basis. District offered no testimony to show that there was any consideration of any combination of supplementary aids and services or that Student would be unable to receiving a meaningful educational benefit with such aids and services. “Certainly absent the legally mandated full range of supplementary aids and services, Student is unlikely to receive educational benefit from the regular kindergarten class. This HO does not dispute that the life skills class could be the optimal placement. Nonetheless, the legal standard is not what is optimal. Rather, it is the least restrictive environment where student can obtain an adequate or meaningful educational benefit in light of his (sic) individual needs and potential.” Compensatory education was awarded.

ODR #6558/05-06

In Re The Educational Assignment of a Student in the Daniel Boone Area School District, Joy Waters Fleming, Esquire, Hearing Officer, June 14, 2006

Parents Pro Se
A. Kyle Berman, Esquire - School District Attorney

Student is nine years old and has been referred for gifted education evaluations on two occasions. The team concluded that Student was not gifted. Parents requested due process. The hearing was about the propriety of screening measures utilized and the interpretation of those results.

Since kindergarten, Student has been a high achiever surpassing nearly every educational expectation. Early in her academic career, District recommended that Student be tested for gifted programming because of her scores in the high 99.7th percentile on the KTEA. However, after administration of the Stanford-Binet (IQ: 119) in the 1st grade and consideration of



HEARING OFFICER DECISIONS/NO APPEAL FILED (continued)

other factors, the team concluded that Student was not eligible. Two years later, in 3rd grade, Student was again referred for an MDE. The team again concluded that Student was not eligible. IQ was now determined to be 123.

HO concluded that, based upon the totality of the evidence presented, Parents met their burden of proof; Student was found to be eligible and in need of SDI. The evidence established that Student fit the exceptions the regulations intended to address by prohibiting the use of a hard and fast IQ score as the sole means of qualification for giftedness.

ODR #6342/05-06

In Re The Educational Assignment of a Student in the Scranton City School District, William J. Wall, Esquire, Hearing Officer, June 15, 2006

John Bogdanovitz, Esquire - Parent Attorney
Harold McGrath, Esquire - School District Attorney

Student is seventeen years old and has been diagnosed with a SLD in numerical operations and basic reading. Student is in a half-day itinerant learning support class and half day at a community/work program. Parent requested due process because he wanted Student to return to a full academic program so that he could graduate with his class. Extensive discussions/negotiations occurred between the parties prior to hearing resulting in a proposed plan of action to provide an opportunity for Student to graduate with his class. Because of the failure to obtain a binding settlement earlier, both counsel requested that the plan be ordered after testimony and evidence confirmed that the plan was feasible and acceptable to the parties. The HO ordered implementation of the plan.

ODR #6301/05-06 & 6369/05-06

In Re The Educational Assignment of a Student in the South Western School District, Dr. Gregory Smith, Hearing Officer, June 21, 2006

Parents Pro Se
Stephen Russell, Esquire & Brooke Say, Esquire – School District Attorneys

Student is an eligible eight year old and diagnosed with cerebral palsy, developmental dysplasia of the hips, and a visual impairment. Student has a history of speech and language delays. District initially requested due process seeking an order affirming that a proposed IEP was appropriate, allowing District to complete a MDE, and requiring Parents to allow District to provide related services ordered as the result of a previous due process hearing. Parents requested due process, seeking an order adding a BMP to the IEP, requiring District to provide lesson plans in a more understandable fashion and prior to their use, limiting the services provided by a paraprofessional. Parents also wanted to be permitted to visit the classroom within 24 hours' notice.

District sought an order allowing it to implement a January 2006 IEP and the placement referenced in a February 3, 2006 NOREP (a change in program from an almost total inclusion program, except for a few related services, to a program where Student would be removed from his class for 13 hours each week to receive instruction in the learning support classroom). District also argued that an evaluation was needed to provide additional information to allow District to program appropriately for Student.

Except for the need for a personal care aide, the HO found that District failed to carry its burden of showing that the IEP would provide FAPE. In particular, it failed to prove the need to move Student to a more restrictive placement. District also failed to prove why proposed changes in related services were appropriate.

District failed to prove that Student could not be maintained in his current regular education program with appropriate support services, including those of his District-supplied aide. "This Hearing Officer realizes that in large measure that is because the District has been thwarted by [Student's] parents in its attempts to provide its complete program with supportive services, both the services his aide could provide and the services that the speech/language, PT, OT, and vision specialists could provide. Even so, it is the District that had the burden first to provide an appropriate program, if possible in the regular education setting with appropriate supports and services. Then, if that were not possible in order to provide [Student] with FAPE, it had the burden to prove the need to make changes in [Student's] program and the need for a more restrictive program. It failed to do so."

The HO found similar problems with the ESY component. Moreover, District failed to include two components in the IEP that a prior HO had determined were necessary (a goal for wheelchair use and the provision of lesson plans to Student in advance of the information taught in class). HO ordered that a comprehensive evaluation take place.

District sought an order to allow it to provide certain related services. Parent had either not wanted Student to receive the related service or did not want Student to receive them during class time. A previous HO denied Parent's request that the District be ordered to forego provision of related services and this HO declined to hold otherwise.

Because Student's behaviors did not indicate the need for a BMP, the HO concluded that a BMP was not necessary to ensure FAPE.

Parents sought lesson plans to be written in a more understandable fashion. The HO concluded that the weekly lesson plans in their current form met the requirement that District provide lesson plans to Student's Parents. District was ordered to provide them in advance of the information taught in the classroom.



HEARING OFFICER DECISIONS/NO APPEAL FILED (continued)

Parents sought an order directing that paraprofessional services be provided in a more limited fashion, contending that they were too actively involved with Student, limiting Student's ability to develop independence. Parents failed to prove that a reduction in services was necessary in order to receive FAPE.

Finally, with regard to classroom visits, it was appropriate to impose additional restrictions on Mother due to prior disruptions occurring; it was not appropriate to impose additional restrictions on Father.

ODR #5734/05-06

In Re The Educational Assignment of a Child in the Bucks County Mental Health/Mental Retardation System, Marcie Romberger, Esquire, Hearing Officer, June 24, 2006

Robert Lear, Esquire – Parent Attorney
Charissa Liller, Esquire – County Attorney

Child is three years old and received services from Bucks County MH/MR prior to this third birthday. Child seeks compensatory services for missed hours of therapy as well as reimbursement for services funded by Parents. MH/MR agreed that it owed services, but not as much as alleged by Parents. MH/MR denied responsibility for reimbursement to Parents, alleging that Parents' behavior was the cause of services not being provided. MH/MR also alleged that it could not reimburse Parents over the amount allowed by the DPW for MH/MR contractors. The HO noted that what was not at issue before her was whether the privately obtained services were appropriate, since MH/MR did not request the hearing.

HO stated that [f]or the first time in [her] tenure as a HO or with the Office for Dispute Resolution (ODR), [she] found no witness' testimony to be completely credible. There were numerous differences between testimony and documentation, and differences within a person's own testimony. She found most of the testimony to be self serving. Her conclusions, therefore, were based upon documentation and testimony corroborated by documentation.

There were many delays in the scheduling of meetings between the parties and instances of meetings being cancelled. The HO found both parties to blame for the delays. Furthermore, in a few areas MH/MR violated the natural environment mandate. Both parties were to blame for the delays in implementation or lack of implementation of IFSP services. There was no dispute that services were not provided to Child; what was in dispute was the reason for the lack of services and whether Parents were entitled to reimbursement for the services they retained. "Clearly, Child's parents are frustrated with MH/MR and their son's delays. Moreover, it is clear there was a breakdown in communication between MH/MR and Child's family to the point that it is difficult to ascertain whose story is completely accurate. I suspect the truth lies somewhere in between....I find that both sides acted improperly in this matter"- MH/MR should have done

more to provide services to the Child, and altering documents to show Child received services he did not was deemed "appalling" by the HO, while Child's Father's behavior was not one of collaboration. After reviewing each therapy, HO ordered compensatory services and reimbursement for private behavioral specialist services, but no additional reimbursement for private speech therapy obtained by Parents or for wraparound or support-ABA services.

ODR #6505/05-06

In Re The Educational Assignment of a Student in the North Pocono School District, William Culleton, Jr., Esquire, Hearing Officer, June 27, 2006

Drew Christian, Esquire – Parent Attorney
Anne E. Hendricks, Esquire – School District Attorney

Student is fourteen years old, identified with SLD in reading decoding, reading comprehension, mathematics calculation, mathematics reasoning and written expression. In 8th grade, Student received part-time learning support in a resource room. Parents sought compensatory education, alleging a child find violation, and a flawed ER resulting in a denial of FAPE. District countered that it did not have notice of a SLD before Student was referred for evaluation, as there was not a significant discrepancy between achievement and potential, Student had passing grades throughout elementary school, and Parents acquiesced in a previous 2000 NOREP finding that Student was not eligible.

HO determined District knew or should have known of Student's need for SDI by the beginning of Student's 7th grade year, at the latest, when District was in possession of the June 2004 reading specialist report and when Parent specifically requested evaluation in discussion with the assigned school guidance counselor. By that time, there was a long history of findings of weakness in reading decoding, auditory processing and attention to task; specific findings of such weaknesses in several previous evaluations; a long history of repeated interventions; teacher reports from multiple years; and multiple regular education accommodations-all unsuccessful. Compensatory education was owed.

HO found the IEP to be inadequate. Baseline functioning was unclear and not clear enough to enable a reasonably informed special education teacher to devise a meaningful goal in each of the areas of disability identified in the ER. Goals were missing, and because there was neither baselines nor benchmarks nor objectives the IEP did not disclose how progress was to be monitored.

Parent also argued that the IEP was deficient on LRE grounds. HO did not agree, but believed that placement in the resource room for English and mathematics was not supported by the record. District agreed to re-evaluate Student prior to hearing; the re-evaluation was to address whether Student could achieve meaningful progress in these subject areas in a regular education setting with itinerant services.



HEARING OFFICER DECISIONS/NO APPEAL FILED (continued)

ODR #6695/05-06

In Re The Educational Assignment of a Student in the School District of Philadelphia, Linda Valentini, Psy.D., Hearing Officer, July 2, 2006

Michael Basch, Esquire – Parent Attorney
Deborah DeLauro, Esquire – School District Attorney

Student is eighteen years old and was the subject of two previous due process hearings, both resolved by settlement. The current dispute centered on the implementation of the March 30, 2006 Settlement Agreement which addressed, among other things, Student's 2006 summer program. HO concluded that District was implementing the settlement terms by placing Student in the St. Christopher's Work Ready Philadelphia Employer Paid Summer Internship Program.

ODR #6514/05-06

In Re The Educational Assignment of a Student in the Philadelphia City School District, Anne L. Carroll, Esquire, Hearing Officer, July 8, 2006

Parents Pro Se
Kenneth Cooper, Esquire – School District Attorney

Student is eleven years old, eligible by virtue of a learning disability. Mother requested due process to seek a private school placement. District moved to dismiss the hearing request based in part upon an upcoming family court hearing in which legal custody of Student was expected to be vested entirely with Father. District also argued that there was an ongoing evaluation occurring, ordered as a result of a prior due process proceeding. Custody was awarded to Father, who opposed District's motion to dismiss, as he was concerned about Student's lack of educational progress, believed that Student needed more intensive services than had been provided; and believed that a private school placement would allow Student to make progress. During discussion regarding need for Father to participate in an IEP meeting, and whether the motion to dismiss should be granted or postponed until the IEP was completed, Mother became disruptive, and was escorted from the hearing room. Issues at hearing included who had the right to pursue due process, and whether the hearing request should be dismissed due to the incomplete IEP process.

HO determined that, as a result of the custody order, Mother no longer had the right to request due process on behalf of Student. Mother then declared herself a witness at hearing. HO found that "[a]lthough the Mother has a natural and understandable interest in the education of her son, and legitimate concerns about his lack of educational progress, it is quite clear from her conduct at the June 20 due process hearing that she does not intend to abide by the Court of Common Pleas order with respect to making special education decisions and will try every possible means to circumvent the order and continue to insert herself into the special education decision-making process." HO found that unless Mother regained legal custody and/or the right to make

special education decisions, District had the right to preclude her attendance at IEP meetings. Moreover, at District request, and discretion of the HO, Mother may also be prohibited from general participation in any future due process proceedings.

HO believed a hearing on the substantive issues--Father's concern about Student's lack of educational progress and District's ability to provide an effective program--was premature as the parties had not yet reviewed the recent evaluation report. Due process request was dismissed.

ODR #6515/05-06

In Re The Educational Assignment of a Student in the Philadelphia City School District, Anne L. Carroll, Esquire, Hearing Officer, July 8, 2006

Parents Pro Se
Kenneth Cooper, Esquire – School District Attorney

A companion case to ODR #6514/05-06 listed above, Student's sibling, pertained to the same issues with the same resolution. Due process was dismissed as being premature pending evaluation results.

ODR #6506/05-06

In Re The Educational Assignment of a Student in the Souderton Area School District, Linda Valentini, Psy.D., Hearing Officer, July 10, 2006

Frederick Stanczak, Esquire – Parent Attorney
Karl Romberger, Esquire – School District Attorney

Student is ten years old and eligible due to a learning disability. Following a re-evaluation by the District and an IEP meeting, a dispute arose between the parties, with District proposing conducting further assessments using an outside evaluator of its choosing. Parents initially declined request for permission to re-evaluate, but later agreed, contingent on the use of an outside evaluator whom they had selected. Although the issue was framed differently by each party, the issue involved the identity of the professional who would be conducting an outside assessment of Student.

Parents characterized the re-evaluation as being done at their request, whereas the District viewed it as a three-year evaluation. Mother's testimony on this point was found to be credible. District viewed the re-evaluation as only needing to address whether Student remained eligible; accepting this premise for purposes of discussion, the HO found that, even for a re-evaluation with a narrow focus, the actual procedures employed were "remarkably skimpy." None of the listed procedures were appropriately employed. HO did, however, find the District psychologist to be credible and did not bear alone the responsibility. HO attributed insufficient communication between the psychologist and guidance counselor as a factor. Because the evaluation was inappropriate, an IEE was ordered.



HEARING OFFICER DECISIONS/NO APPEAL FILED (continued)

ODR #6597/05-06

In Re The Educational Assignment of a Student in the Wilson Area School District, Rosemary E. Mullaly, Esquire, Hearing Officer, July 17, 2006

Frederick Stanczak, Esquire – Parent Attorney
Stephen Jacobson, Esquire – School District Attorney

Student is fourteen years old and eligible by virtue of learning disabilities in reading, math and written expression. For SY 2006-2007, Student will be transitioning to the high school. The sole dispute was whether the SDI of “in-class support will be provided by a special education teacher in all academic classes” was required in order for the proposed IEP to be appropriate. Parents believed that this level of support was previously provided to Student during his successful middle school years and having a special education teacher, rather than an instructional aide accompanying to his academic courses, was necessary for him to make meaningful progress. District did not believe Student previously received this level of service nor was it needed. Instead, District proposed an instructional aide supervised by Student’s special education teacher accompany him to all of his academic classes and the eight (8) learning support study hall periods each six-day cycle. Conflicting evidence was presented on the services provided to Student the prior SY; the preponderant evidence at hearing demonstrated that Student did not have in-class support provided by a special education teacher in all classes every day and, therefore, Parent request for this service was denied. Student made meaningful educational progress with much less than the services requested.

The preponderant evidence also supported the conclusion that a special education teacher did not need to accompany Student to his academic classes, although the HO indicated his IEP should be modified to provide for selection of regular education teachers with input by his special education teacher and for daily meetings between Student and his primary special education teacher.

Unlike the other academic classes, the issue of math and the level of services Student received in that subject did present a conflict regarding whether Student required a special education teacher with him to do on the spot interventions when he experienced difficulties. HO concluded that the preponderant evidence determined that this was not necessary.

Finally, the last issue to address was whether District’s discretion in placing an instructional aide in the classroom rather than a special education teacher violated LRE. HO concluded that it did not.

ODR #5664/05-06

In Re The Educational Assignment of a Student in the Centennial School District, Debra K. Wallet, Esquire, Hearing Officer, July 18, 2006

Ira Fingles, Esquire – Parent Attorney
Andria Saia, Esquire – School District Attorney

Student is nine years old with a full scale IQ of 136, but needs SDI in reading and written expression. Parents rejected the proposed IEP for 3rd grade and entered Student in the Center School. Parents argued that District had not been meeting Student’s needs for some time, requiring them to obtain tutoring and eventually a more appropriate private school placement where Student could receive an integrated Orton Gillingham multi-sensory program. Compensatory education was requested for 2nd grade and tuition reimbursement.

HO concluded that the IEP for SY 2004-2005 (2nd grade) was appropriate, albeit not perfect. She was not convinced that District knew or should have known that Student’s educational program was not entirely appropriate at the beginning of 2nd grade. (Student entered the District in 1st grade) This was primarily due to the very limited skills with which Student first entered public school. The 1st grade year was essentially a remedial one and the 2nd grade year was designed to provide instruction which would result in Student mastering 1st grade skills.

By contrast, the 3rd grade IEP (SY 2005-2006) should have been much different as District had a vastly more extensive fund of information about Student. HO believed that to a large degree the offer of FAPE boiled down to the difference of opinion between Parent’s psychologist expert and District’s reading/language arts coordinator. “Both women testified knowledgeably and candidly regarding their test results, the scoring of the tests, and their respective conclusions concerning Student’s reading levels. Both were impressive witnesses who are genuinely interested in helping Student.” Both women agreed generally about Student’s needs, but disagreed regarding appropriate placement and necessary program.

HO concluded District failed to offer the kind of intensive programming that was required to bring Student’s reading, spelling and written expression to a level commensurate with his academic potential. HO had no doubt that placement at the private school would be reasonably calculated to provide Student with educational benefit. The intensely personal interaction between Student and teacher using the Orton Gillingham method appeared to be extremely beneficial to Student in hindsight. In response to District’s argument regarding LRE, HO believed the private school placement was appropriate as a limited, remedial measure. Tuition reimbursement was awarded.



HEARING OFFICER DECISIONS/NO APPEAL FILED (continued)

ODR #6403/05-06

In Re The Educational Assignment of a Student in the Allentown School District, Dr. Gregory Smith, Hearing Officer, July 20, 2006

Parent Pro Se
Brian Ford, Esquire – School District Attorney

Student is fourteen years old and receives gifted education. The issue at hearing was the appropriateness of a February 2006 GIEP. The HO concluded that the District met its burden of proving that at the time it was written the GIEP fulfilled the statutory requirements. The proposed GIEP provided SDI based on Student's needs; it ensured a meaningful rate, level, and manner of instruction; and it provided for both acceleration and enrichment that would go beyond the program Student would have received in the general education curriculum. Development of the GIEP involved all of the required members of the team, plus many more District staff members. After an initial GIEP was rejected by Parents, District obtained additional information regarding Student's abilities from her teachers and additional information about her interests from Student. Based on all of the prior information collected and the new information obtained, a GIEP was offered in February 2006. Although there was an error in the GIEP in the way that the GRS scores were calculated, a review of the raw data showed that the results were essentially the same. District's conclusion that Student showed a relative weakness in creativity and leadership seemed to be supported by the raw data and therefore the error was harmless. Moreover, although not required to, District not only looked at areas in which it could provide acceleration and enrichment, it also looked at areas of relative weakness, and developed a program to address those relative weaknesses.

ODR #6484/05-06

In Re The Educational Assignment of a Student in the East Stroudsburg School District, Dr. Ambrose Finnegan, Hearing Officer, July 31, 2006

Parent Pro Se
Gina DePietro, Esquire – School District Attorney

Student is seventeen years old and classified as an emotional support student. District contended that Student had been a disruptive influence to the school environment and sought to incorporate more restrictive interventions in his program. Specifically, District wanted program/placement to be changed from an itinerant to resource room status in order to provide him social skills training and that he be assigned a 1:1 instructional aide or assistant. Parent disagreed and requested due process. Parent also wanted the FBA to be judged invalid due to procedural irregularities.

Credible evidence was presented to establish that Student was a disruptive influence in the school environment. Moreover, District had attempted to provide interventions and accommodations to address these behaviors. District had increasingly included

Student in the regular or general curriculum over the last several years to the point where he was receiving itinerant services in SY 2005-2006; allowed him to visit designated support staff whenever he became frustrated in class; altered his class schedule to take more demanding subjects; and established a behavioral plan that allowed for feedback concerning Student's behavior from all his teachers. Despite these accommodations, Student's behaviors remained disruptive and insubordinate. The District was commended for attempting to make the necessary interventions to both provide Student the required supplementary aides and services required to achieve and to provide an alternative milieu to allow all students to achieve free of unwarranted disruptions. Parent offered no evidence that a change in status was unwarranted. HO agreed with District with the exception of the need for a 1:1 aide. No testimony was rendered concerning the administration of the FBA and therefore the HO made no decisions regarding it.

ODR #6684/05-06 & 6685/05-06

In Re The Educational Assignment of a Student in the Penn Manor School District, Daniel J. Myers, Esquire, Hearing Officer, August 1, 2006

Parent Pro Se
Stephen Russell, Esquire – School District Attorney

Student is nine years old and receiving gifted education. The parties anticipate that for the upcoming school year Student will accelerate through the 5th grade math curriculum and be ready for the 6th grade math curriculum by November at the latest. The dispute centered on the proficiency level required of Student on a 5th grade math test before he would move on. District wanted 80% proficiency while Parent wanted 70% proficiency.

HO concluded that District's position was based upon speculation and not in response to Student's individualized needs. HO further concluded that both parties unnecessarily framed the issue around an arbitrary administrative structure involving grade placement. HO concluded that, to meet Student's needs, his GIEP must provide that Student be taught to 80% proficiency in the 5th grade math curriculum while simultaneously attending 6th grade math classes at the beginning of the 2006-2007 SY.



HEARING OFFICER DECISIONS/APPEAL FILED (continued)

ODR #6649/05-06

In Re The Educational Assignment of a Student in the Abington School District, Joseph G. Rosenfeld, Ph.D., Hearing Officer, August 2, 2006

Parents Pro Se
Lawrence Dodds, Esquire – School District Attorney

Student is eleven years old. Father lives in Abington School District; Mother lives in Philadelphia School District. Student has attended both schools, although a Court of Common Pleas order indicates Student is to remain in the Abington School District. During Student's time in the District, she has struggled academically in reading and math, and her teacher believed she needed additional supports not available in regular education. An evaluation revealed Student's eligibility. Father approved the NOREP; Mother believed the evaluation was inappropriate and requested an IEE, the issue at due process.

HO concluded that sufficient tests and data were taken to determine whether Student was eligible. The evaluation was sufficiently comprehensive to identify Student's needs and related services. The examination met the legal requirements and was appropriate. IEE was denied.

ODR #6150/05-06

In Re The Educational Assignment of a Student in the Pleasant Valley School District, William Culleton, Jr., Esquire, Hearing Officer, August 5, 2006

Caryl Oberman, Esquire – Parent Attorney
Jane Williams, Esquire – School District Attorney

Student is ten years old, identified with multiple disabilities including neurological impairment, mental retardation, orthopedic impairment, visual impairment and speech/language impairment. At the time of hearing, Student was receiving instruction in the home. Parent requested due process, alleging numerous deficiencies in educational program: IEP goals lacked scope and sequence and therefore failed to meet Student's needs; education was not provided in the LRE; District failed to implement an effective BMP; PT services were insufficient in quantity; and the OT assistants needed to be trained and supervised to deliver sensory stimulation services. Parent also asserted that District failed to provide supplies, communication systems and devices at District expense, and District staff had failed to utilize assistive technologies as required by the IEP. Compensatory education was requested. District countered Parents' allegations, and asserted that placement in the home was the LRE due to Student's seizure disorder and the medical imprudence of placing him in a school building.

Regarding the IEP, there was evidence to support a finding of appropriateness based upon what District knew about Student at the time in the areas of need identified in the IEPs. HO also noted that Student is severely disabled and as such,

“ostensibly small successes cannot prove the unreasonableness of an IEP in hindsight.” HO found that District's educational effort for Student was substantial and complex, with teachers reporting significant, substantial progress by Student on a significant number of educational goals, with both the data and documentation corroborating this judgment.

Regarding LRE, District primarily argued that it was impossible to provide greater social opportunities in a school setting due to Student's chemical sensitivities. The record supported a conclusion that Student's chemical sensitivities and concomitant seizure disorder were serious, potentially very damaging, and recurrent so that programming was disrupted repeatedly. Both parties agreed that instruction in the home was appropriate; however, District failed in providing contact with non-disabled peers “to the maximum extent possible.” HO did not import improper motive to District as Parent suggested; “however, the District, at the very least, appears to have misplaced the important goals of inclusion among the many other demands that this case placed upon it.” It was necessary to devise an order that gave due regard to the need to balance safety issues with the legal mandate for inclusion.

Regarding behavior management, HO found Parent's behavior specialist offered little in the way of fact about staff implementation of Student's educational plan and accorded his testimony no weight. Parent's school psychologist was found to be quite credible. HO found that many of the expert's recommendations were being performed or at least attempted by District.

Regarding assistive technology, Parent was able to identify instances that appeared to demonstrate serious lack of knowledge in some of District staff regarding the operation of the most sophisticated instruments Student was using. Nonetheless, HO did not find that evidence came close to establishing a failure to provide FAPE. The record as a whole demonstrated that the communication goals were implemented through an administrative process that was reasonably competent and calculated to provide the services set forth in the IEP. However, the PECS system was provided at Parent expense, and District was required to assume this obligation.

Regarding PT, HO concluded that since Student received less benefit in a given session due to unusual and disruptive behaviors, Student needed more sessions or longer ones to provide the ordinary amount of service that would be provided in a standard PT session.

Parent failed to prove that she was entitled to an order requiring more training and supervision for the OT assistants who were assigned to perform the sensory stimulation activities required by the IEP.

Compensatory education was awarded for LRE and Parent was reimbursed for creation of PECS materials.



LEGEND OF TERMS

ADHD	Attention Deficit Hyperactivity Disorder
APS	Approved Private School
BIP	Behavior Intervention Plan
BMP	Behavior Management Plan
BPR	Behavior Performance Review
CAP	Central Auditory Processing Disorder
CBA	Curriculum-Based Assessment
DPW	Department of Public Welfare
EI	Early Intervention
ER	Evaluation Report
ESOL	English for Speakers of Other Languages
ESY	Extended School Year
FAPE	Free Appropriate Public Education
FBA	Functional Behavior Assessment
GIEP	Gifted Individualized Education Program
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
MH/MR	Mental Health/Mental Retardation
NOREP	Notice of Recommended Educational Placement
ODR	Office for Dispute Resolution
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