



Due Process Digest

News from the Office for Dispute Resolution

Volume 15

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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/Appeal Filed

ODR #2626/02-03 | Opinion #1541

In Re The Educational Assignment of a Student in the Wissahickon School District, David Bateman, Ph.D., Hearing Officer, October 8, 2004

Heidi Konkler-Goldsmith, Esquire – Parent Attorney
Scott Wolpert, Esquire – School District Attorney

Student is an eligible eighteen-year-old who in January 2002 was found to have a learning disability, ADHD, requires emotional support, and was ultimately diagnosed in January 2004 with depression. Numerous IEP meetings occurred, including at least one NOREP. Parents approved, and the District took the position it satisfied IDEA while Student neither cared nor tried. An initial 2nd grade evaluation had not disclosed these disabilities, although problematic areas were shown as attention, handwriting, and a need for reinforcement. Then, although Student was average to above in 6th grade, Student's marks slid through 11th grade and absences along with behavioral issues increased. By February 2003, Parents indicated they wanted Student withdrawn from special education, and that summer arrangements were made for Student to receive tutoring while out-of-state. In February 2004, after the depression diagnosis, an IEP and NOREP were issued for an alternative school setting, which Parents approved with the proviso that it would be reviewed that April, and when that was done the team found that Student needed full-time emotional support. Student was then discharged from the first alternative setting with problematic progress, and the following September Student withdrew from school. Limiting the compensatory education claim to one year under Montour, HO found implementation difficulties with the behavior plan when there was one, and for these and other reasons held FAPE had been denied and ordered compensatory education. Both parties appealed.

Special Education Opinion #1541

In Re The Educational Assignment of a Student in the Wissahickon School District, December 16, 2004

Panel Members Constance Lyttle, James McAfee, Edward Titterton
Edward Titterton – Appeal Author

Reversing, the Panel first held that the HO had erroneously omitted "reasonably calculated" from HO's analysis of meaningful educational benefit. That, in turn, led to an erroneous finding of inappropriateness with respect to the IEPs. Some of them, the Panel further ruled, Parents had accepted.

ODR #2626/02-03 | Opinion #1755 (REMAND)

In Re the Educational Assignment of a Student in the Wissahickon School District, David Bateman, Ph.D., Hearing Officer, June 25, 2006

Heidi Konkler-Goldsmith, Esquire – Parent Attorney
Scott Wolpert, Esquire, School District Attorney

Student is a twenty year old former student who was diagnosed in high school with learning disabilities and ADHD. Although previous HO and Panel decisions limited the extent that Student's child find and compensatory education claims could go back, a federal district court remanded to ODR to determine whether Student should have been evaluated and received special education in his 7th and 8th grade SYs. Teachers testified that Student was attentive and performed appropriately in class, but had difficulty completing homework. The HO found that the record demonstrated neither a learning disability nor an OHI. HO also found no impairment qualifying for a Section 504 Service Agreement.

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 & HEARING OFFICER DECISIONS/APPEAL FILED

Special Education Opinion #1755

In Re The Educational Assignment of a Student in the Wissahickon School District, August 11, 2006

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

The Panel reversed the HO. The District had been on notice since 2nd grade that the Student had ADHD, although for many years it did not impact his educational progress. In 7th grade, his ADHD symptoms became apparent, manifesting in failure to complete homework, study effectively, avoid careless mistakes, etc. Because Student was not hyperactive, however, his teachers erroneously considered his poor academic performance to be volitional rather than disability based. The District had sufficient evidence to conclude that Student needed special education. Because Student's needs pervaded his entire school day, the Panel awarded a full day of compensatory education for every day he attended school during 7th and 8th grades.

ODR #4154/03-04 | Opinion #1568

In Re The Educational Assignment of a Student in the Methacton School District, Anne Carroll, Esquire, Hearing Officer, December 16, 2004

Tanya Alvarado, Esquire – Parent Attorney
Jane Williams, Esquire – School District

Student, who has various medical conditions including asthma, allergies, sleep disturbance, and severe eczema, also has a history of difficulties in language arts and inconsistent academic progress. Parents rejected 3rd grade tutoring, because Parents did not want Student singled out, as well as a pre-referral process for intervention services, and arranged for reading camp services in the summer of 2003. The following SY, the same difficulties persisted, as did Student's medical conditions. In January, Parents applied to a private school for students with learning disabilities while also making arrangements for a private evaluation. That February, Parents provided the District with an IEE diagnosing a SLD and a qualification as OHI due to his eczema and allergies. The District agreed with the latter, adding as a basis ADHD, but Parents rejected the resulting IEP and sought tuition reimbursement for the private school. The HO denied tuition reimbursement, since evidence as to appropriateness of the IEP was scant, but did order reimbursement for the IEE and compensatory education for the difference between the small group instruction actually received versus resource room services that would have been provided under the proposed IEP. Parents appealed.

Special Education Opinion #1568

In Re The Educational Assignment of a Student in the Methacton School District, January 20, 2005

Panel Members Margaret Drayden, Joseph Rogan, Perry Zirkel
Perry Zirkel - Appeal Author

Affirming, the Panel noted some difficulties with the IEE award, but observed that IEE had not been appealed. As to tuition reimbursement, the Panel agreed that there was insufficient evidence to determine appropriateness of the IEP, but also found the need for special education at the private school was totally geared to the learning disability rather than at addressing the OHI issues. Indeed, the Panel further ruled that in any event balancing of the equities would not favor Parents, since Parents had failed to cooperate in development of the District's proposed IEP. Finally, challenges to calculation of the compensatory education award were rejected since Montour limited consideration to one year, and even within that year there was no support for Parents' contention that the award should have been in full days.

ODR #4154/03-04 | Opinion #1722 (REMAND)

In Re The Educational Assignment of a Student in the Methacton School District, Anne Carroll, Esquire, Hearing Officer, March 21, 2006

Tanya Alvarado, Esquire - Parent Attorney
Jane Williams, Esquire - School District Attorney

The HO applied Montour when assessing the compensatory education claim, and awarded one year for denial of FAPE during Student's 2nd grade year. The Panel affirmed both the denial of tuition reimbursement and the compensatory education award. This matter was appealed to the United States District Court for the Eastern District of Pennsylvania, which remanded the matter back to the HO with a directive to follow federal law.

On remand, the HO concluded that while she had applied Montour and limited the award to one year, "such legal constraint had no effect on the decision and award in this case." Parent testified that Student exhibited no attentional difficulties in kindergarten and that she did not become concerned about his progress in school until some time after 1st grade began. Such testimony supported the conclusion that District was not reasonably on notice that Student might be eligible by the end of kindergarten or at the beginning of 1st grade. The testimony and evidence supported the conclusion that District had no obligation to initiate a MDE until the middle of 1st grade at the earliest. Student was not denied FAPE until the District's obligation to provide him with special education services accrued, which occurred at the beginning of his 2nd grade year. No further award of compensatory education was warranted.



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

Special Education Opinion #1722

In Re The Educational Assignment of a Student in the Methacton School District, May 4, 2006

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

Parent filed exceptions. In upholding the HO, the Panel determined that it would be unreasonable to find that identification should have occurred a year earlier, in kindergarten, and the Panel declined to do so, "particularly in the context in which Parent failed to accept certain accommodations and remediation methods that were indeed offered."

ODR #4528/04-05 | Opinion #1591

In Re The Educational Assignment of a Student in the Donegal School District, Joy Waters Fleming, Esquire, Hearing Officer, February 18, 2005

Sarah Davis, Esquire – Parent Attorney
Jeffrey Champagne, Esquire – School District Attorney

Student is a ten-year-old who was in District classes from 1st through 3rd grades, and was referred for a District evaluation at the end of 1st grade based on the belief that Student may have had a learning disability. After reviewing the resulting evaluation report, which found a SLD requiring specialized instruction, Parents secured an IEE recommending auditory as well as speech/language evaluations and this was incorporated into the District's IEP. More than two years later, Parents informed the District that Parents would be placing Student in private school, and would be securing an evaluation Parents wanted the District to reimburse. The District then requested a hearing, and the HO found that Parents were not entitled to IEE reimbursement as Parents waited two years to seek it, and did not indicate disagreement with the District's evaluation. The HO further found that Student had been denied FAPE only as to writing instruction during 2003-2004 SY, and awarded compensatory education of 0.25 hours per day beginning October 6, 2003. HO also found the June 2004 IEP was fatally deficient and awarded tuition reimbursement for 2004-2005 SY. Both parties appealed.

Special Education Opinion #1591

In Re The Educational Assignment of a Student in the Donegal School District, April 6, 2005

Panel Members John Salvia, Sam Lonich, Cathy Skidmore
Cathy Skidmore - Appeal Author

Affirming in part and reversing in part, the Panel sanctioned the HO's application of Montour's one-year limitation period. The Panel also agreed that Student's 2003-2004 IEP was reasonably calculated to provide meaningful educational benefit in reading, but disagreed with the HO's assessment that Student's writing needs were not adequately addressed by the 2003-2004 program and reversed the compensatory education award for

it. Based on all its contents, the Panel also reversed the HO's finding that the IEP was inappropriate, and with it the award of tuition reimbursement.

ODR #4528/04-05 | Opinion #1718 (REMAND)

In Re The Educational Assignment of a Student in the Donegal School District, Joy Waters Fleming, Esquire Hearing Officer, March 10, 2006

Sarah Davis, Esquire – Parent Attorney
Jeffrey Champagne, Esquire – School District

Student is ten years old and a 4th grader at The Janus School. From 2001-2004, Student attended District schools. Student is eligible by virtue of a SLD manifesting itself in basic reading, reading comprehension and written expression. Parent participated in the IEP meeting for the 2004-2005 SY, but ultimately rejected it and notified District of Parent's intention to place Student at Janus. Due process was requested, alleging a denial of FAPE during the 2003-2004 SY and entitlement to compensatory education, and further alleging the lack of an appropriate program/placement for 2004-2005 SY and entitlement to tuition reimbursement.

HO disagreed with Parent, who believed that the reporting of the educational levels were not sufficiently clear so as to draft an appropriate IEP. On the contrary, the baseline data in the reading goal sufficiently identified Student's current performance level in relationship to his needs, and provided the appropriate starting point for reading goal development within the IEP. Student's reading goals were both measurable and functional, but, according to the HO, were acceptable but not optimal. Separate goals for decoding and comprehension needs should have been drafted; instructional reading levels in reading decoding and comprehension were noticeably absent; although progress was to be monitored using curriculum-based assessments, this method of evaluation was not the same measure used to establish Student's baseline level of performance in reading; and reading and reading comprehension objectives/benchmarks were barely adequate. District alleged that even if there were IEP deficiencies, Student showed progress. HO concluded that although Student did not make "stratospheric gains," Student did progress. The totality of the evidence established that District provided Student with an appropriate reading program. The writing and spelling goals were found to be deficient, however, with progress difficult, if not impossible, to gauge. Therefore, HO believed that Student was denied FAPE and compensatory education was awarded.

The proposed IEP, while an improvement over the prior IEP, did not meet the reasonably calculated, meaningful standard. Under the tuition reimbursement analysis, District stipulated to the appropriateness of The Janus School. Tuition reimbursement was awarded.



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

Special Education Opinion #1718

In Re The Educational Assignment of a Student in the Donegal School District, April 24, 2006

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

Parent filed exceptions. The HO found that Parent’s new claim period for consideration exceeded the scope of the issues agreed upon for determination. The Panel found nothing in their reading of the record to suggest that the HO exceeded her scope of authority or acted arbitrarily or capriciously in limiting the hearing to alleged denials of FAPE after 10/4/2002.

Parent asserted that almost all substantive aspects of the October 2002 IEP were deficient. The Panel found the document to be reasonably calculated to yield meaningful educational benefit. While perhaps not perfect, it was found to meet all the legal requirements. The Panel also noted that Student made measurable progress under the terms of the IEP. Thus, in both its design and implementation, the District provided FAPE under this IEP.

ODR #4706/04-05 | Opinion #1608

In Re The Educational Assignment of a Student in the Wissahickon School District, Linda J. Stengle, Hearing Officer, April 19, 2005

Sarah Davis, Esquire – Parent Attorney
Scott Wolpert, Esquire – School District Attorney

Student is an eligible 12th grader for whom Parents seek compensatory education from 1994 until the end of the hearing, as well as IEE reimbursement. The HO allowed creation of a record as to Montour, and midway through the hearing Student was admitted to a psychiatric facility, which was only learned through happenstance. A September 2002 Parent-requested evaluation found Student’s reading performance to be average overall with a 91 full scale IQ, although word recognition and overall phonetics were in the 23rd percentile while processing difficulties required support, structure, and additional time. Parents obtained a private psychological, provided to the District 10 months later, finding slow processing, with a full-scale IQ of 78 but a general font of information in the 98th percentile, and for which reimbursement was never requested until the hearing. Student’s 11th and 12th grade school performance, which the private psychologist indicated was a better measure in this situation than standardized testing, constituted “A’s” and “B’s” and the report contained nothing not already known or provided. The record showed Student had received meaningful educational benefit while making significant educational progress, and that impressed the HO in denying compensatory education, after limiting the period of consideration for it to one year under Montour. HO also indicated that “religious reasons” did not constitute mitigating circumstances. IEE reimbursement was also denied since no complaints were made about the District’s evaluations, and Parents limited its distribution.

Special Education Opinion #1608

In Re The Educational Assignment of a Student in the Wissahickon School District, May 19, 2005

Panel Members Steven Goldberg, Joseph Rogan. Perry Zirkel
Perry Zirkel - Appeal Author

Parents appealed. Affirming, the Panel sanctioned the HO’s application of Montour, holding that the then recent federal court decision did not change its reasoning for the application of same in earlier cases. Likewise, the Panel rejected Parents’ tolling argument, noting that IDEA provides a special representational role for Parents, including the right and responsibility to file for a hearing when FAPE or other such issues are in dispute, and the establishment of a limitations period under IDEA would be negated were tolling to apply. For that period, it was ruled that although the IEPs were not at all optimal in terms of their contents, they were reasonably calculated to yield meaningful benefit in light of Student’s individual potential, based on the information available at the time. Finally, the Panel agreed with rejection of the IEE claim since the District’s evaluation was appropriate, the IEE added nothing significant, and Parents did not make the results available until after they had signed the 11th grade IEP.

ODR #4706/04-05 | Opinion #1731 (REMAND)

In Re The Educational Assignment of a Student in the Wissahickon School District, Linda J. Stengle, Hearing Officer, April 10, 2006

Sarah Davis, Esquire – Parent Attorney
Scott Wolpert, Esquire – School District Attorney

The case was remanded back to the HO to determine compensatory education without a Montour limitation. The HO stated that “[t]he instant case is relatively simple, despite the extensive record generated. The Parents simply were unsuccessful in persuading me that the District’s program failed to result in meaningful educational progress for the student.” While some IEPs were poorly written, all accounts indicated that Student made meaningful educational progress. When Parent requested support for Student, the requested support was provided promptly. IEE reimbursement was disallowed.

Special Education Opinion #1731

In Re The Educational Assignment of a Student in the Wissahickon School District, May 30, 2006

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

Parent filed exceptions. The Panel first agreed with District that the periods addressed in the initial HO decision and prior Panel opinion exceeded the scope of the remand. The Panel read the remand to mean that the HO and Panel were required to consider the compensatory education claim for those periods previously thought to be precluded by Montour. The remand did



HEARING OFFICER DECISIONS/APPEAL FILED

not direct the state administrative process to entertain or re-visit the issues and periods that were denied as matters properly within the Montour period.

The Panel found that the inadequacy of District evaluations, together with procedural flaws, resulted in the development of educational programs that were not calculated to provide, and did not offer, meaningful educational benefit. The Panel's opinion outlines the deficiencies in detail. The HO concluded that Student made meaningful progress between 1995 and November 2003, finding that while some IEPs were poorly written, Parent had the burden to show District denied FAPE and failed to do so. The Panel reached the opposite conclusion. The Panel was convinced that Student's progress was not nearly as great as District contended, and was due, in large part, to the efforts of Parent. The Panel believed District knew or should have known of Student's special education needs in October 1995. Compensatory education was awarded.

ODR #5853/05-06 | Opinion #1741

In Re the Educational Assignment of a Student in the Council Rock School District, Linda Valentini, Psy.D., Hearing Officer, May 16, 2006

Ilene Young, Esquire – Parent Attorney
Grace Deon, Esquire – School District Attorney

Student is a fourteen-year-old, 8th-grade student with an OHI (ADHD) and a SLD in written expression, seeking compensatory education as well as reimbursement for an IEE and tuition at a private school for children with learning disabilities in Princeton, New Jersey. The HO awarded tuition reimbursement for 8th grade as well as 5 hours per day of compensatory education for two years, minus a two-month grace period within which the District could have rectified its FAPE denial.

The HO found increasingly restrictive placements over the years with no changes in behavioral supports, no individualized academic instruction, no written expression program, and an improper IEP meeting that lacked professionals knowledgeable about Student and his records. The HO also reluctantly concluded that Student's Parents were not entitled to IEE reimbursement because the IEE was not prompted by dissatisfaction with a District ER and it did not contribute substantial new information.

Procedurally, the HO refused to hear the testimony of Student's proposed 8th grade public school teacher because that teacher did not participate in the IEP and was not proposed to be Student's teacher at the time that Student's Parents were deciding whether to accept or reject the District's proposed IEP. The HO also found District testimony of Student's educational progress to be not credible because in some instances it was contradicted by documentary evidence, and in other instances it could not be corroborated due to the District's loss of Student's records.

Special Education Opinion #1741

In Re the Educational Assignment of a Student in the Council Rock School District, June 19, 2006

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

The Panel affirmed the HO. The Panel noted that the District's apparent use of an "inclusion" class as a pre-designated general education class intended to receive students with disabilities would violate LRE because it would limit "inclusive" placements to particular classes and non-disabled peers and would not constitute "nondiscriminatory" inclusion. The Panel deferred to the HO's credibility determinations and agreed with the HO that the purported 8th grade teacher's testimony was immaterial because the issue was not who would teach the Student but whether the proposed IEP was appropriate. The Panel agreed that previous and proposed IEPs were deficient because they failed to address Student's attention and organization issues.

ODR #6002/05-06 | Opinion #1743

In Re The Educational Assignment of a Student in the Saucon Valley School District, Vicki McGinley, Ph.D., Hearing Officer, May 15, 2006

Elizabeth Kapo, Esquire – Parent Attorney
Michael Connolly, Esquire – School District Attorney

A fifteen-year-old, 9th-grade student with Fragile X Syndrome sought compensatory education for denial of FAPE for the entire 2005-2006 SY, as well as an IEE at public expense. The HO denied relief, finding that Student progressed appropriately in math, reading, written expression, and Speech/Language (S/L), and finding that the District's ER was appropriate. The HO rejected the District's argument that, because the IEP failed to specify the S/L setting, the District may unilaterally switch between individual and group S/L settings without an IEP team meeting. The HO found, however, that the District's unilateral change in placement from an individual to a group setting in this case was not a FAPE denial because, in fact, the group placement more appropriately met Student's need to learn pragmatic social skills. The HO also gave little weight to the report of Student's expert witness who, although clearly an expert in Fragile X Syndrome, had not spoken to any District IEP team members, had not observed Student in the school setting, and had not read the IEP and District ER very closely.



HEARING OFFICER DECISIONS/NO APPEAL FILED

Special Education Opinion #1743

In Re The Educational Assignment of a Student in the Saucon Valley School District, June 30, 2006

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

The Panel affirmed in part, and modified in part, the HO's decision. First, the Panel rejected the Student's argument that the HO erred by failing to disclose that she was Chair of the West Chester University Department of Early Childhood and Special Education, and that one of the District's witnesses had recently graduated from West Chester University. The Panel found no abuse of discretion, nor any indication in the record of bias or lack of impartiality. The Panel also agreed with the HO that the District's ER was appropriate, consisting of various assessments and sufficiently assessing Student's needs, and, therefore, that Student was not entitled to an IEE at public expense. The Panel agreed with the HO that the District provided FAPE in reading and S/L. The Panel found FAPE denial, however, in progress reports and teacher admissions that math and written expression goals were not implemented for the first quarter of the SY. Accordingly, the Panel ordered compensatory education in the form of one hour for each hour of math and written expression that should have been provided during the first quarter of the SY.

ODR #6214/05-06 | Opinion #1745

In Re The Educational Assignment of a Student in The School District of Philadelphia, Linda Valentini, Psy.D., Hearing Officer, June 1, 2006

David Painter, Esquire - Parent Attorney
James Tone, Esquire - School District Attorney

Student was an eleven-year-old, 5th-grade student attending a public school, in a full-time emotional support classroom operated under contract with a private mental health agency. Student sought compensatory education for the entire 5th grade school year, contending that his IEP was not implemented appropriately. The HO found that Student's most difficult period, i.e., mid-to-late November through the beginning of January, involved numerous acute factors, including his premature puberty, Mother's decision to observe the classroom full-time, supervisory changes to the classroom behavior plan, and classroom staff turnover. The HO also found that during this period Student's IEP team timely addressed Student's needs and the District successfully restructured the classroom. The HO noted that any compensatory education award for FAPE denial during the month of December would have to be mitigated to allow the District time to adjust to the complex problems that had arisen. HO also found that Student's historically poor attendance pattern deprived the District of a reasonable opportunity to see if its carefully revised IEP would work. Accordingly, the HO found that the District had appropriately implemented Student's IEP and had provided FAPE.

Special Education Opinion #1745

In Re The Educational Assignment of a Student in The School District of Philadelphia, July 14, 2006

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

The Panel affirmed the HO. The Panel found it was harmless error when the District failed to conduct an IEP team meeting after restraining Student on December 5. The Panel noted that although no IEP team meeting was conducted expressly to discuss the restraint episode, the IEP team had met three times between October and the end of November to discuss Student's behaviors and, on December 8, Student's Parent approved a new IEP rather than rejecting it in light of the restraint episode. The Panel also rejected the Student's procedural argument that his IEP team lacked a regular education teacher, concluding both that Student did not have a regular education teacher at the time and that the issue was the implementation of the IEP, not the composition of the IEP team. The Panel rejected Student's argument that his classroom was taught by a non-certified teacher for two weeks, noting that the teacher is certified but not in Pennsylvania, and that Student has demonstrated no harm or nexus between the teacher's credentials and any inappropriate implementation of the IEP. The Panel found harmless error in the lack of written progress reports, noting the continuous progress reporting that actually occurred during IEP team meetings and in Parent/District communications. Finally, the Panel rejected Student's argument that FAPE was denied due to the chaotic nature of the classroom, noting that the District moved rapidly to correct classroom obstacles and irregularities.

ODR #6251/05-06 | Opinion #1746

In Re the Educational Assignment of a Student in the Mars Area School District, Dorothy O'Shea, Ph.D., Hearing Officer, May 25, 2006

Lillian Akin, Esquire – Parent Attorney
Thomas Breth, Esquire – School District

Student was a fourteen-year-old, 9th-grade student seeking HO's determination that he was eligible for special education services and entitled to four years of compensatory education. The HO found that the District's ERs repeatedly failed to fully evaluate Student's behavioral and academic problems, preferring instead to single out selected assessment results and either ignore or not include other relevant information and test scores. The HO also rejected the District's contention that Student's academic performance was related to his drug and alcohol use and/or to socially maladjusted conduct-related behavior, noting that the District's evidence failed to support either alleged basis. Instead, the HO found that Student's attention, distractibility and academic learning needs were interfering with his ability to learn, and that he was entitled to special education services due to a SLD. Although the HO



HEARING OFFICER DECISIONS/APPEAL FILED

also determined that the District's failure to fulfill its child find obligations satisfied one of the exceptions to the IDEA's two-year statute of limitations, HO nevertheless limited her compensatory education award to two years because that is what Student's Parents requested.

Special Education Opinion #1746

In Re the Educational Assignment of a Student in the Mars Area School District, July 19, 2006

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

The Panel affirmed the HO , but modified her compensatory education award. The Panel agreed that the record supported a conclusion that Student has a SLD and ADD warranting special education services. The Panel also noted flaws in evaluations and District failure to address Student's academic red flags. The Panel, however, concluded that the Montour case governed the compensatory education time period, and that Student was entitled to only 3 hours per day of compensatory education, rather than the 5 hours per day awarded by the HO.

ODR #6290/05-06 | Opinion #1750

In Re the Educational Assignment of a Student in the Souderton Area School District, Daniel Myers, Esquire, Hearing Officer, June 5, 2006

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

Student was a fourteen-year-old, 8th-grade student seeking a publicly-funded placement in a private school for the upcoming SY. The HO found the District's proposed IEP to be inappropriate and, while Student's reading difficulties were perplexing, it was clear that Student needed more intensive, systematic and individualized reading instruction than the District had offered. The HO further found that the Student's proposed private school placement, offering a systematic, focused, very organized, Orton-Gillingham based program in very small classes, was appropriate to meet his needs. The HO concluded, however, that there was no reason that the District could not provide the same intensity, care and small class sizes that the proposed private school offered, and so the HO ordered the District to provide such a program, either in its own classrooms or by placing Student at the private school. The HO also found that Student was entitled to 2 years of compensatory education (less a 30-day rectification period) due to lack of meaningful progress monitoring and vague, unmeasurable IEP goals (including use of the PSSA writing rubric). Finally, Student's request for reimbursement of private evaluations was denied because the private evaluations lacked credibility and did not assist in programming.

Special Education Opinion #1750

In Re the Educational Assignment of a Student in the Souderton Area School District, July 26, 2006

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

The Panel affirmed the HO's decision, but reversed his order mandating that the District replicate the methodology and class size offered by the private school. The Panel noted that matters of methodology are left in the hands of school districts and, even where there has been a denial of FAPE, the ultimate authority for the methodology used to deliver specially designed instruction, as well as the class size, is the District's prerogative.

ODR #6317/05-06 | Opinion #1749

In Re The Educational Assignment of a Student in the Bristol Township School District, Daniel Myers, Esquire, Hearing Officer, June 1, 2006

Frederick Stanczak, Esquire – Parent Attorney
David Conn, Esquire – School District

Student is a fifteen-year-old, 9th-grade private school student with ADHD whose arents were unhappy with his 8th grade performance at a private college-preparatory school for children with learning disabilities, grades 7-12 (annual tuition is \$20,000+). Following public and private educational evaluations, the District concluded that Student did not have a disability because his performance was adequate and on grade level despite his ADHD. Student's Parents rejected the District's offer of a regular 9th grade educational placement, contending that Student needed a smaller, more structured and nurturing educational environment, and gave notice of their intention to re-enroll Student in the private school and to seek tuition reimbursement.

The HO rejected the District's expert testimony that Student's poor math achievement was due to lack of interest and inconsistent teaching, and found more credible Student's expert testimony attributing his reading and math difficulties to his ADHD. The HO further rejected the District's argument that, because all of the accommodations that might be contained in a Section 504 Service Agreement (after-school tutoring, additional time for tests and assignments, parent/teacher meetings) are already available to all regular education children, Student does not need a Section 504 Service Agreement.

The HO found that the District's failure to offer a Section 504 Service Agreement constituted a denial of FAPE, that the private school was an appropriate unilateral placement, and that the equities favored the parent. Thus, Student's Parents were awarded tuition reimbursement for 9th grade.



HEARING OFFICER DECISIONS/APPEAL FILED

Special Education Opinion #1749

In Re The Educational Assignment of a Student in the Bristol Township School District, July 22, 2006

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

The District filed exceptions, which were dismissed without prejudice because the Panel lacks jurisdiction to review Section 504 issues. By way of dicta, the Panel rejected the District's argument that, by offering accommodations to the general student population at large, it has no duty to provide a Section 504 Service Agreement for this Student. The Panel noted its concern that many LEAs appear to consistently misconstrue the Gaskin Settlement Agreement to mean that students with disabilities should be placed in regular education classes without aids and services, or that the provision of special education and related services may be delayed while students with disabilities are served in regular classes.

ODR #6380/05-06 | Opinion #1753

In re the Educational Assignment of a Student in the Methacton School District, Rosemary Mullaly, Esquire, Hearing Officer, June 20, 2006

Vincent Vangrossi, Esquire – Parent Attorney
Sharon Montanye, Esquire – School District Attorney

Student was an eighteen year old high school junior with learning disabilities and OHI who had been excluded from school at various times years during the previous two school years when the District believed that Student was not a resident. After Commonwealth Court determined that the District had never issued a final residency adjudication, Student brought this due process hearing seeking relief for FAPE denial during those times of exclusion. The HO found FAPE denial during the periods of exclusion, rejecting the District's argument that Student's alternate enrollment in a parochial school during those exclusion periods should limit the District's liability. The HO also rejected the Student's arguments regarding the retaliatory motives of various District personnel, noting that intentional violation or bad faith is irrelevant to the issue of FAPE denial.

Special Education Opinion #1753

In re the Educational Assignment of a Student in the Methacton School District, July 21, 2006

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

The Panel dismissed Student's appeal as untimely, but discussed Student's exceptions because the result would have been the same. Student apparently sought additional findings of fact regarding allegedly inappropriate behaviors

by the District. The Panel concluded, however, that because Student had already prevailed on the issue of FAPE denial, there was no need to revisit the issue simply to establish additional reasons to support the HO's decision. The Panel also rejected Student's argument that the HO erred in ordering Student to attend Vo-Tech classes on a part-time, rather than full-time, basis. The Panel noted that the HO did not explicitly refer to either part-time or full-time, and that the exact nature and scheduling of Student's Vo-Tech placement is determined by the IEP team. Finally, the Panel rejected Student's argument that the HO's order, stating that the District may seek additional medical information from Student's physicians or undertake its own evaluation, was a requirement that Student must produce privileged medical records.

ODR #6399/05-06 | Opinion #1754

In Re the Educational Assignment of a Student in the School District of Lancaster, Gregory Smith, Hearing Officer, June 8, 2006

Parent Pro Se
Jeffrey Champagne, Esquire – School District Attorney

Student was a thirteen-year-old with an emotional disturbance seeking a HO's order that the District refer him to a privately-run intensive day treatment (IDT) program comprised of therapeutic mental health services and IU-provided educational services. The District recommended a part-time emotional support (ES) placement, with all academic courses to be provided in the ES classroom and inclusion in all specials. The HO rejected the District's proposed program and placement because the ER, upon which it was based, lacked a FBA and failed to adequately evaluate a possible learning disability. The District's argument that Student's severe behaviors occurred mostly at home, and were not seen at school, was rejected because the proposed IEP included very restrictive monitoring, hallway escorts, and time in the substantial ES class. The HO also did not believe the IEP would be implemented appropriately, because the teacher's progress monitoring appeared to be merely record-keeping and never used for program design. The HO also concluded, however, that Student had not demonstrated the appropriateness of the IDT, and therefore the HO ordered that the District expedite a comprehensive evaluation and new IEP for Student.



HEARING OFFICER DECISIONS/APPEAL FILED

Special Education Opinion #1754

In Re the Educational Assignment of a Student in the School District of Lancaster, August 15, 2006

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

The Panel rejected Student’s argument that the IDT’s appropriateness should not have been considered and that, once the District’s proposed IEP was found to be inappropriate, the HO was required to simply order the District to refer Student to IDT. The Panel also rejected the District’s argument that only its IEP, and not its underlying evaluation report, had been at issue below. The Panel affirmed the HO except with respect to the expedited nature of the evaluation and new IEP, concluding that regulatory timelines apply to the timing of the evaluation and new IEP.

ODR #6444|05-06 | Opinion #1747

In Re the Educational Assignment of a Student in The School District of Philadelphia, Linda Valentini, Psy.D., Hearing Officer, June 4, 2006

Parent Pro Se
Kenneth Cooper, Esquire – School District Attorney

Student was a fifteen-year-old, 9th grade student with an emotional disturbance whose Mother alleged that the District was not properly implementing his IEP. The HO found the Student’s testimony to be credible and unrefuted by District evidence. The HO found Student’s FBA and behavior plan to be inappropriate, and that the District’s behaviors in implementing FAPE were dilatory and careless. The HO also rejected the District’s argument that Student was resistant to following his IEP, concluding that while this was true, it is not uncommon in students with emotional disturbance and must be factored into a District’s approach to providing FAPE. The HO ordered an independent FBA, independent ongoing behavioral consultation, daily reporting of the IEP behavior strategies used in the classroom, twice-weekly guidance counseling, specific SDI/ accommodations to be included in the IEP, and strict compliance by both Student and the District with a recent Truancy Court Order.

Special Education Opinion #1747

In Re the Educational Assignment of a Student in The School District of Philadelphia, July 20, 2006

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

The Panel affirmed the HO’s decision. The Panel dismissed Student’s challenges to particular findings of fact, finding the HO’s decision to be thorough and well-reasoned. The Panel also rejected Student’s exception that the HO should have awarded compensatory education, concluding that this issue was not raised before.

ODR #6513|05-06 | Opinion #1751

In Re the Educational Assignment of a Student in the North Penn School District, Rosemary Mullaly, Esquire, Hearing Officer, June 16, 2006

Mark Voigt, Esquire – Parent Attorney
Gina DePietro, Esquire – School District Attorney

Student was a fourteen year old middle school student with severe asthma and an allergy to the cockroach aeroallergen, who sought compensatory education for denial of FAPE as well as future placement at one of the District’s other middle schools. In October of his first year of middle school, Student was the subject of a Child Study Team due to excessive asthma-related absences. In November, his family physician recommended homebound instruction to allow the asthma to cool down. Ultimately, Student received 1 hour per day of homebound instruction from November through the remainder of the SY. While the HO agreed with the District that Student was not IDEA-eligible because he did not require SDI, HO concluded that Student was Section 504-eligible because his asthma and allergies prevented him from accessing his general education program. HO further determined that the District should have initiated an evaluation as soon as Student’s excessive absences triggered the Child Study Team, and that the District violated compulsory attendance regulations (22 Pa. Code §11.5) by extending Student’s homebound instruction beyond the regulations’ maximum 3 months. The HO awarded 4.5 hours per day of compensatory education for every day of homebound instruction after the maximum 3 months, and she ordered that a Section 504 Service Agreement be developed to include a change in location to one of the District’s other middle schools and close monitoring of Student’s health at that location.

Special Education Opinion #1751

In Re the Educational Assignment of a Student in the North Penn School District, Rosemary Mullaly, Esquire, Hearing Officer, July 26, 2006

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

Student’s Parents appealed the form of the compensatory education award, although their precise complaint is not clear. The Panel affirmed the HO’s decision because the single claim presented related to a Section 504 issue and the Panel lacks jurisdiction over purely Section 504 issues.



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
ES	Emotional Support
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
IDT	Intensive Day Treatment
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
S/L	Speech/Language
SBBH	School-Based Behavioral Health
SDI	Specially Designed Instruction
SLD	Specific Learning Disability
SY	School Year
WISC-IV	Wechsler Intelligence Scales for Children