



# Due Process Digest

News from the Office for Dispute Resolution

Volume 18

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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](mailto:bfile@pattan.net).

## Hearing Officer Decisions/No Appeal Filed

**ODR #6222/05-06**

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

Parent Pro Se  
Fred Holland, Esquire – School District Attorney

Student, 9, has permanent and progressive hearing loss and uses a total communication approach, including bilateral hearing aids, sign language, FM system and interpreter. Parents seek counseling for Student on deaf/identity issues, and an IEE. Student and twin were placed in separate classes this SY, Student is now one of only a few students in the class receiving special education services, and feels conspicuous. Parent alleges Student has no close friends, is not allowed to play kickball by peers, and does not participate in sleepovers with peers unless they are facilitated by Student's Parents. Student receives average grades, and plays soccer, basketball and competitive motorcycle riding. Evaluation by District recommended no counseling because it concluded Student was functioning appropriately within the school setting academically, socially and behaviorally. District did not evaluate for deaf/identity issues. HO denied counseling and psychoeducational IEE, but ordered District to fund a limited independent evaluation of any deaf/hard of hearing identity-related concerns. HO believed an order for counseling would be premature, as Student had not yet been evaluated appropriately to determine whether there is a need for such counseling.

**ODR #7159/06-07**

***In Re The Educational Assignment of a Student in the Delaware County IUIEI Program, Before David Bateman, Ph.D., Hearing Officer, February 15, 2007***

Parent Pro Se  
Leo Hackett Esquire – Intermediate Unit Attorney

Student, 5, with autism, had deficits in social/emotional, S/L, self-help, and fine motor areas. Evaluation after a year in IU program showed improvements in cognitive levels, social emotional, communication, gross motor, locomotion, object manipulation, and fine motor/visual motor/self-help areas. IU recommended placement in Head Start program for following year, believing Student was ready for a less restrictive placement; Parents preferred private Montessori school, as they wanted Student in a typical preschool, and requested public funding for the placement.

HO examined appropriateness of the IU-offered placement and found it was appropriate. HO was given no evidence upon which to base an assessment of the appropriateness of the Montessori program. Further, HO was presented with no evidence that Parents had actually paid tuition to the Montessori school. HO found for the IU.

### The Office for Dispute Resolution

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## HEARING OFFICER DECISIONS/NO APPEAL FILED

### **ODR #7197/06-07**

#### ***In Re The Educational Assignment of a Student in the Wyomissing Area School District, Before Gregory Smith, Ph.D., Hearing Officer, April 2, 2007***

Mark Voigt, Esquire – Parent Attorney  
Andrew Faust, Esquire – School District Attorney

Student, 10, OHI, has tracheostomy; is wheelchair and ventilator dependent. Private nurse accompanies Student to perform tracheal suctioning when needed. First through 4th grades nurse allowed to use discretion relative to location for suctioning in non-emergency situations; usually it was done in regular classroom, unless an exam or other quiet activity was going on. During suctioning no student is within a two-foot radius and surfaces/equipment in immediate area are sanitized after suctioning. Starting April 2006 nurse required to suction outside regular classroom except for emergency situations. Parents requested hearing to allow continued suctioning in regular classroom, and asked for compensatory education for the times Student was removed during the current year. Over a 73-day period, Student was suctioned in school a total of 26 times in the regular classroom and five times outside of the regular classroom. Suctioning in the regular classroom takes between 90 seconds and four minutes to complete. Suctioning outside the classroom is typically in the hallway, adding about two minutes to the total time needed. Father, Mother, private nurse, school nurse, principal and teacher testified no parent, teacher, student, or administrator has ever complained that suctioning in the regular classroom was disruptive; principal and teacher observed some students looking during suctioning, a “handful” did not continue working, and some students blushed or appeared to be worried/concerned. There has been no reduction in other students’ performance as the result of Student being suctioned in the regular classroom.

HO noted although courts addressed scope of District’s responsibility in providing medically-related services, HO could find no case law (nor direct reference in the IDEA legislation or implementing regulations) that set precedent in this jurisdiction regarding the location for the provision of medically-related services generally or tracheal suctioning specifically. The case before this HO appeared to be one of first impression in the commonwealth. HO turned to IDEA’s LRE requirement language, then examined the three factors comprising the Oberti test, and concluded 1) with the appropriate supports, the efforts by the District to include Student in the classroom have been successful; 2) there were no educational or other benefits to Student gained from being removed from the regular classroom for suctioning; and 3) suctioning does not cause the level of disruption discussed by the Oberti court and did not demand so much of the teacher’s attention that the teacher would be required to ignore the other students, another factor weighed by the Oberti court. HO concluded that because Student can be educated satisfactorily in

the regular classroom, removal from the regular classroom for suctioning violates the IDEA inclusion mandate, fails to educate Student in the LRE, and is a denial of FAPE. HO however, found that Student’s grades indicated Student had received an educational benefit this SY, that Parents failed to meet burden of proof on issue of compensatory education, and additionally that since 30 minutes was the only period of potential deprivation established on the record, it was not enough to warrant compensatory education. HO also cautioned District that an Individualized Health Care Plan, developed by the school nurse, written almost a week after the IEP team meeting, and attached to the IEP and sent to the Parents, does not match the procedures required under the IDEA and its implementing regulations for the development of the IEP as the requirement is that all aspects of the IEP are developed by and discussed by the IEP team.

### **ODR #7250/06-07**

#### ***In Re The Educational Assignment of a Student in the Pocono Mountain School District, Before Debra Wallet, Esquire, Hearing Officer, March 20, 2007***

Parent Pro Se  
Brian Ford, Esquire – School District Attorney

Student, 15, has SLD in reading. Parents contend IEP has not been properly implemented resulting in denial of FAPE for 9th grade. Parents sought compensatory education for the first semester of 2006-2007 SY, requested that a private clinical psychologist selected by them become part of IEP team, and asked that progress monitoring be strengthened by way of a report submitted to them bi-monthly. Parents had previously challenged the appropriateness of the IEP, but in November 2006 a HO had determined that the IEP was appropriate, the District had complied with its pendency obligations, and that no compensatory education was owed for an alleged denial of FAPE during the 7th grade SY. District contended it provided FAPE, many of Parents’ concerns about the IEP were resolved in the prior hearing, and that none of the requested relief is appropriate.

Less than a month after the prior HO’s decision, Parents requested a compliance monitoring investigation by PDE, raising seven specific issues; District requested that PDE dismiss its investigation because the matter was barred by res judicata, citing the previous decision. When PDE responded that it considered the matter to be one of proper implementation, the District moved the complaint from PDE to due process. Parties engaged in a resolution session, and at time of first scheduled hearing session, HO allowed parties to continue settlement negotiations; agreement was tentatively reached, but not signed so hearing took place on another date.

HO found no substantive failure to provide required services



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in area of reading instruction; chided District for “sloppiness” in providing DIBELS progress reports, but could not conclude failure to provide progress reports was anything more than a technical violation; found it was relatively clear that the parties do not communicate well and that very desirable weekly contacts between the case manager and the Parents had not occurred and urged District to remedy this deficiency immediately; expressed puzzlement about Parents’ assertion to an RR from April 2006 was “still pending” and noted lack of meeting Parents’ burden of proof; found record supported no failure in training of reading teachers; found no evidence why Parents’ preferred psychologist should be included on IEP team; and found no evidence about a computer-based tutoring program or the District’s failure to implement such a program. Again, Parents have failed in meeting their burden of proof on this sub-issue.

HO encouraged parties to work together in the best interest of child. On the available record, there could be no finding of a denial of FAPE, but HO noted District’s communication with the Parents “absolutely must improve.”

### **ODR #7259/06-07**

#### ***In Re The Educational Assignment of a Student in the Carlynton School District, Before Margaret Drayden, Esquire, Hearing Officer, March 28, 2007***

Parent Pro Se  
Jocelyn Perry, Esquire – School District Attorney

Student, 15, held dual exceptionality, giftedness and SLD in reading. In 2nd grade, Student has FS IQ of 137, in 4th grade a FS IQ of 151, but three later IQ tests yielded scores below 130. Parent requests that an IEE finding Student to be dually diagnosed be the basis of the District’s Reevaluation Report (RR) and the basis for the new IEP. District maintains Student no longer qualifies for special education under either giftedness or SLD. Parent also sought sanctions against District and that HO ordered training for its employees, and wanted HO to address alleged failure to implement a previous HO order.

HO denied IEE reimbursement because Parent sought her own IEE before District completed its own ER and thus there was no basis of disagreement, disagreement with a District’s ER being the basis for granting of an IEE. HO noted she had no jurisdiction to impose sanctions or order training for the District employees. HO declined to address implementation of a previous order as that function belongs to BSE, and oversight of gifted education is with the Bureau of Curriculum and Academic Services. HO found Parent’s IEE lacking as there was no regular education teacher as part of the IEE team; no classroom observation; the S/L portion was three years old; no finding regarding whether or not Student was achieving adequately or

making sufficient progress for age or meeting state-approved grade-level standards; and it was not considered by the MDT for them to certify they are in agreement with the findings in the evaluation as it was only provided to District as part of the five-day notice package. In contrast, the RR provided by the District contained all the legally-mandated elements. HO noted Parent has the right to present the IEE to the IEP team and have it considered, but HO lacked jurisdiction to require the District to supplant its RR with the IEE. HO determined that Student does not meet minimum IQ required for gifted program, and noted Student’s teachers including gifted coordinator did not believe Student was gifted. Finally HO determined that Student was not in need of SDI for SLD as Student does not utilize resources of learning support teacher in English class, is successfully mastering Spanish II, and excels in all other classes. Although Student does exhibit a weakness in reading – specifically in working memory and processing speed – this weakness does not rise to the level required by federal or state law to require special education services, and an independent certified school psychologist/reading specialist consultant with no ties to the District testified credibly that Student is not dyslexic and does not qualify for special education as a student with SLD.

### **ODR #7357/06-07**

#### ***In Re The Educational Assignment of a Student in the Pittsburgh School District, Before Dorothy O’Shea, Ph.D., Hearing Officer, February 27, 2007***

Eugene Lincoln, Esquire – Parent Attorney  
Jocelyn Kramer, Esquire – School District Attorney

Student, 16, educated in District from kindergarten through 9th grade is no longer enrolled in District. Student was never identified as eligible in District. Parent alleges District did not meet its Child Find obligations and sought an IEE at public expense and payment for private counseling and tutoring; Parent alleges District did not forward educational records on request and that District failed to convene a resolution meeting. District moved to dismiss.

HO considered District’s motion to dismiss and applied the required test, finding that because Student was enrolled in the District, and Parent made the hearing request based on a Child Find issue within the two-year statute of limitation as defined by the IDEA, Parent was entitled to present evidence in support of her claim(s). HO ordered District to convene a resolution meeting, and scheduled a hearing in the event the parties did not resolve the issue.



## Hearing Officer Decisions/Appeal Filed

### **ODR #5794/05-06 | Opinion #1748**

#### ***In Re The Educational Assignment of a Student in the West Chester Area School District Linda Valentini, Psy.D., Hearing Officer, June 9, 2006***

Tanya Alvarado, Esquire – Parent Attorney  
Hollie John, Esquire – School District Attorney

Student is a 17-year-old 11th grade gifted student with ADHD who is now attending a charter school. Student seeks compensatory education for her 9th and 10th grade SYs, alleging lack of FAPE. The HO found the District's ERs to be appropriate. HO also determined that Student did not have either a learning disability or an emotional disturbance and, despite Student's ADHD, Student did not have a need for SDI. Thus, the HO found no violations of either IDEA or Section 504. The HO limited Student's claim regarding gifted education to one year, found that the District did not offer gifted programming to Student in 10th grade, and awarded four hours per week for 40 weeks, for a total of 160 hours.

### **Special Education Opinion #1748**

#### ***In Re The Educational Assignment of a Student in the West Chester Area School District, July 10, 2006***

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

The AP agreed on all issues except with respect to the compensatory education award. The AP concluded that Student was entitled to a significantly smaller award of compensatory education, consisting of an average of 30 minutes per day for 150 school days (180 days less a reasonable rectification period of 30 school days) for a total of 75 hours, which was further reduced by 1/3 to 50 hours in light of the equities and Student's relatively narrow needs.

### **ODR #6413/05-06 | Opinion #1752**

#### ***In Re The Educational Assignment of a Student in the North Pocono School District, Rosemary Mullaly, Esquire, Hearing Officer, June 10, 2006***

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

Student is a 13-year-old 7th grader with learning disabilities who challenges the District's proposed IEP and seeks compensatory education for failure to identify his disability sooner. Noting that Student's Parent had provided private tutoring for three years, and that objective testing indicated a lower reading level than his report card grades reflected, the HO determined that the District had, indeed, failed to provide FAPE to Student for at least the

two years permitted under the statute of limitations. HO therefore ordered the IEP team to develop compensatory education in the form of small group instruction in reading and written expression, for 42 minutes each, for each school day attended by Student for the previous two years. The HO also determined that the District's proposed IEP was inappropriate because it did not address Student's SLD in written expression and, while the SRA Corrective Reading program was appropriate, the IEP reading goal did not contain a reading baseline. The HO also found that the District had not met its LRE requirement because it had made no effort to determine whether it could implement its reading program in Student's regular education classroom.

### **Special Education Opinion #1752**

#### ***In Re The Educational Assignment of a Student in the North Pocono School District, July 24, 2006***

Panel Members James Nevant, Joseph Rogan, Perry Zirkel  
Perry Zirkel – Appeal Author

The District appealed only the HO's LRE determination while Student's Parent appealed only the requirement that the IEP team develop the compensatory education program. The AP agreed with the District that LRE does not require the reading program in a regular education classroom, but the AP concluded that the record supported the HO's conclusion that the IEP was inappropriate. The AP agreed that the nature and location of the reading program was based on convenience rather than Student's needs, and the IEP lacked any written expression goals, the reading goals lacked baselines. Regarding the compensatory education award, the AP noted that it is equity based and AP have differed regarding who develops the compensatory education program. The AP ultimately affirmed the HO's decision in its entirety.

### **ODR #2942/03-04 | Opinion #1455**

#### ***In Re The Educational Assignment of a Student in the Wissahickon School District, Linda Stengle, Hearing Officer, January 2, 2004***

Judith Gran, Esquire – Parent Attorney  
Scott Wolpert, Esquire – School District Attorney

A 12 ½-year-old student with multiple disabilities, whose adaptive behavior, academic skills, spoken language, and developmental functioning were all at or below the first percentile, objected to a District proposal for a LS placement at a middle school with very limited inclusion. Student sought full inclusion in her neighborhood 6th grade, facilitated communication (FC), and three years compensatory education. The HO cited the Oberti and Girty cases as support for determining that the District had not met its LRE burden, found



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that FC was not appropriate for this Student, determined that Montour limited Student to a single year of compensatory education. HO ordered the IEP team to add appropriate supplemental aids and supports to enable the Student to participate full time in regular education in her neighborhood school, and HO ordered 180 days of compensatory education.

### **Special Education Opinion #1455**

#### ***In Re The Educational Assignment of a Student in the Wissahickon School District February 23, 2004***

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

The AP agreed that FC was not appropriate, and that the District failed to consider LRE seriously for this Student. The AP disagreed, however, that Student has the right to a neighborhood school placement, and it questioned the educational benefits of full inclusion in regular academic classes. The AP also noted that in almost all cases where Parents prevailed on LRE claims, the award has been declaratory, not compensatory education, relief. Thus, the AP reversed the compensatory education award and ordered the IEP team to provide for inclusion in lunch, recess, PE, homeroom, music, art and at least one academic class.

#### ***Wissahickon Sch. Dist., 45 IDELR ¶ 34 (E.D. Pa. 2006)***

On February 3, 2006, the federal district court remanded the case to the HO to put the burden of persuasion on the Parents pursuant to the Supreme Court's intervening decision in Schaffer v. Weast, 126 S. Ct. 528 (2005)

### **ODR #2942/03-04 | Opinion #1756 (Remand Decision)**

#### ***In Re The Educational Assignment of a Student in the Wissahickon School District, Linda Stengle, Hearing Officer, June 27, 2006***

On remand, Student who now was a 15-year-old 9th grader, was found to be entitled to full inclusion because the District had not satisfied the Oberti test for a more restrictive placement. Facilitated communication was not ordered for Student's IEP because the technique lacked scientific validation generally and it had not been successful in the past for this Student in particular. For FAPE denial due to overly restrictive placements, the HO awarded 180 days of compensatory education for the three years that Student was in full-time life skills classes, and 60% (108 days) for the two years that the District included Student in regular education specials.

### **Special Education Opinion #1756 (Remand Decision) In Re The Educational Assignment of a Student in the Wissahickon School District, August 10, 2006**

Panel Members Mary Leshinskie, Joseph Rogan, Perry Zirkel  
Perry Zirkel – Appeal Author

Both parties appealed. Noting that the impartiality standard for HOs is actual bias rather than the appearance of partiality that is typical for judges, the AP found that the HO may have been imprudent, but not in error, when HO incompletely disclosed her public advocacy activities in the area of LRE and denied the parties' joint request for recusal. Regarding FC, the AP noted that districts are entitled to deference regarding methodology, this particular methodology is an unproven approach, and evidence showed that it was not an effective strategy for this particular Student. Regarding inclusion, the AP reversed the HO, rejecting Student's expert witnesses, and finding District efforts at inclusion to be appropriate as well as limited in educational benefit to Student or her peers. The AP reversed all compensatory education, found all District IEPs appropriate except for the most recent, and ordered the most recent IEP to be modified to include at least one academic class in regular education.

### **ODR #5928/05-06 | Opinion #1757**

#### ***In Re The Educational Assignment of a Student in the West Chester Area School District, Linda Valentini, Psy.D., Hearing Officer, June 30, 2006***

Tanya Alvarado, Esquire - Parent Attorney  
Hollie John, Esquire - School District Attorney

Student is a 10-year-old resident who attended parochial schools until his 2005-2006 SY, at which time he attended a private, nonreligious school that specializes in education for bright, struggling readers. Student's Parents sought IEE and tuition reimbursement, as well as compensatory education for the years he attended parochial school. The HO determined that Student's claims were limited to two years, and that the District had no knowledge of Student's potential need for special education services until it received a written request for evaluation from Student's Parents. Noting a substantial delay in the evaluation, however, the HO determined that, if the ER and subsequent IEP had been more timely, Student's Parents might have enrolled Student in the District and, therefore, Student was entitled to compensatory education of three hours per day for 34 school days while attending a parochial school. The HO denied IEE reimbursement because Student's Parents did not challenge a District evaluation before getting their own. HO also found that, although the District did not offer an IEP until six days into the 2005-2006 SY, Student's Parents had already opted in April 2005 for early enrollment of Student into the private, nonreligious school. Under those circumstances, the HO found no entitlement



## HEARING OFFICER DECISIONS/APPEAL FILED

to tuition reimbursement.

### **Special Education Opinion #1757**

#### ***In Re The Educational Assignment of a Student in the West Chester Area School District, August 17, 2006***

Panel Members Lorraine Heeter, James McAfee, Constance Lyttle

Lorraine Heeter – Appeal Author

The AP affirmed the HO in all respects except for compensatory education. The AP found the HO erred in assuming that, if the ER and IEP had been more timely, Student's Parents would have enrolled Student into the public schools, and therefore Student was entitled to compensatory education.

### **ODR #6368/05-06 | Opinion #1759**

#### ***In Re The Educational Assignment of a Student in the New Hope-Solebury School District, Joseph G. Rosenfeld, Ph.D., Hearing Officer, July 5, 2006***

Frederick Stanczak, Esquire – Parent Attorney  
Mark Fitzgerald, Esquire – School District Attorney

Student is a six-year-old 1st grader with autism whose Parents challenged the District's proposed IEP, arguing that Student requires more daily hours of ABA therapy, more weekly OT time, ABA-certified staff, and a longer summer ESY program with more exposure to typical peers. Student's Parents also sought compensatory education for missed services and reimbursement of a private OT evaluation. The HO determined that the 1.5 hours of ABA services offered by the District were appropriate and that Student's IEP did not require three hours of ABA services. HO found the District's proposed 30 minutes of direct OT and 30 minutes of consultative OT per week to be appropriate, and HO determined that ABA certification of District personnel was not required because it is not a state requirement. Noting that the private OT report was used to develop Student's IEP, the HO ordered its reimbursement. HO observed that, while Student would receive less exposure to typical peers in the District's ESY program as compared to the Parents' preference, this was not a fatal flaw. Finding, however, that Student regressed after breaks longer than two weeks, the HO ordered that ESY services begin within two weeks of completion of the SY and extend until two weeks prior to the beginning of the next SY. Finally, the HO denied compensatory education, finding that the District had informally made good any services that had previously been missed.

### **Special Education Opinion #1759**

#### ***In Re The Educational Assignment of a Student in the New Hope-Solebury School District, August 23, 2006***

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

The AP affirmed. It agreed with the HO that 1.5 hours of daily ABA appeared sufficient, and that the Parents had not established that three hours daily ABA were needed. The AP found the District personnel training to be adequate and noted that it lacked authority to impose requirements beyond those required by the state. The AP affirmed the HO's OT and ESY conclusions, finding them supported in the record. Regarding compensatory education, Student's Parents contended that the District should not be permitted to make up previously missed services without first seeking input from Parents. The AP rejected this argument, finding that all missed services were ultimately provided and finding no evidence that the District's actions denied meaningful educational benefit to Student.

### **ODR #6687/05-06 | Opinion #1778**

#### ***In Re The Educational Assignment of a Student in the Dallastown Area School District, Daniel Myers, Esquire, Hearing Officer, September 26, 2006***

Amy Slody, Esquire – Parent Attorney  
Gina DePietro, Esquire – School District Attorney

Student is an 11-year-old 6th grader with learning disabilities in reading and written expression. The District paid for his 5th grade education at the private Janus School and proposed a public school program for 6th grade. Student's Parents unilaterally kept Student at the private school for 6th grade and requested due process to obtain tuition reimbursement. The HO found that the District's proposed program had not been individualized for Student. The three Wilson Reading Program sessions per week were not offered on the basis of any analysis of Student's needs, but rather because that was the number of times that Wilson instruction was provided to any of the District's middle school students, regardless of that Student's need. The twice-weekly support class simply filled the time slot on the two days per week that Wilson instruction was not offered. The collaborative classroom, while generally laudable in offering a smaller-than-typical regular education classroom setting, was likely to overwhelm Student and appeared to lack sufficient opportunity for Student to receive as much assistance as he would need. The HO also found that the private school was appropriate and that the equities favored the Student. HO therefore ordered tuition reimbursement.



**HEARING OFFICER DECISIONS/APEAL FILED**

**Special Education Opinion #1778**

***In Re The Educational Assignment of a Student in the Dallastown Area School District, November 8, 2006***

Panel Members Madeleine Kaufman, Joseph Cautilli, Vincent Quinn  
Vincent Quinn – Appeal Author

The AP reversed. It agreed that Student’s learning disabilities significantly impaired his achievement, but it was convinced that the District’s proposed program in the middle school, with Wilson instruction, collaborative education techniques, and the availability of counselors, was sufficiently different from an earlier program provided at the elementary school, and was appropriate. The AP also noted that Student had made no significant progress at the Janus School during 5th grade. Finally, the AP found that the equities favored the District because it complied with its agreement to place Student at the private school in 5th grade, it subsequently evaluated Student, and it proposed an appropriate IEP.

**ODR #6765/06-07 | Opinion #1780**

***In Re The Educational Assignment of a Student in the Pittsburgh City School District, Dorothy J. O’Shea, Ph.D., Hearing Officer, September 28, 2006***

Pamela Berger, Esquire – Parent Attorney  
Jocelyn Perry, Esquire – School District Attorney

Student is an 8-year-old with autism, mental retardation and PDD, who had been attending an APS for four years. During 2005/2006 SY, Student received at least six injuries at APS, including at least four separate incidents with the same peer. The HO awarded two years of compensatory education, finding that: the District’s October 2003 reevaluation report was insufficient; Student did not make appropriate progress during the 2004-2005 SY; and the APS improperly supervised and monitored Student’s well-being during the 2005-2006 SY. Regarding the 2004-2005 SY, the HO observed that IEP goals had been changed from the previous year without explanation, and that the progress reports were not “parent friendly” and only indicated the introduction of objectives, not their degree of progress.

**Special Education Opinion #1780**

***In Re The Educational Assignment of a Student in the Pittsburgh City School District, October 27, 2006***

Panel Members Mary Leshinskie, Joseph Rogan, Perry Zirkel  
Perry Zirkel – Appeal Author

The AP reversed. The AP found that the October 2003 reevaluation report issue was untimely and that the evidence indicated that the reevaluation did comply with the relevant regulation. The AP disagreed with the HO’s conclusions regarding the 2004-2005 SY, finding the progress reports to be meaningful, and the differences in IEP goals to be rationally based upon testimony of Student’s maturing needs. Finally, the AP found that APS took relatively responsive and escalating steps to protect Student’s safety, considering the nature and severity of the risks, and the AP noted that no IDEA case law predicates FAPE on the safety of a student in the absence of a resulting loss of education.

**ODR #6524/05-06 | Opinion #1781**

***In Re The Educational Assignment of a Student in the Derry Township School District, Margaret Drayden, Esquire, Hearing Officer, October 8, 2006***

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

Student is a 13 ½-year-old with emotional disturbance, severe behavior and aggression, SLD, and S/L impairment. Student has been arrested several times, hospitalized, and placed at various private schools. After his Parent and former school district agreed to a three-month IEP for instruction in the home, Student moved into his current District, which proposed an IU-operated, center-based 45-day diagnostic classroom, and requested permission to reevaluate Student. The HO determined that the District did not seriously consider placing Student in the LRE, deciding early on to place Student at the IU, where he would have no interaction with nondisabled peers. The HO ordered full days of compensatory education for every day of attendance, from date of enrollment to the end of the SY at issue, less three weeks reasonable rectification period. The HO also found no violation of Section 504.



## HEARING OFFICER DECISIONS/APPEAL FILED

### **Special Education Opinion #1781**

#### ***In Re The Educational Assignment of a Student in the Derry Township School District, Margaret Drayden, Esquire, Hearing Officer, November 24, 2006***

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

The AP affirmed the HO's Section 504 finding, noting that neither party had appealed that finding, but reversed the compensatory education award. First, the AP observed that no cases award compensatory education strictly for an LRE violation, particularly where Student does not articulate any benefits that he has been denied (and therefore are compensable) due to the loss of LRE. (The AP observed in a footnote that the appropriate remedy in an LRE case where no specific benefits are identified, is to order a change in placement, not compensatory education.) Second, the AP concluded that compensatory education cannot be awarded against the current school district on the basis of the previous school district's IEP when pendency requires implementation of that old IEP. The AP also determined that there was no basis for the HO's determination that only three weeks was necessary for the District to have developed an appropriate IEP in this case.

### **ODR #6913|06-07 | Opinion #1782**

#### ***In Re The Educational Assignment of a Student in the Mount Union School District, Lynda Cook, Ed.D., Hearing Officer, October 10, 2006***

Yvonne Husic, Esquire – Parent Attorney  
Carl Beard, Esquire – School District Attorney

Student is a 17-year-old, 11th grade student with emotional and learning disabilities. The parties agreed in April 2006 to waive Student's triennial reevaluation. Although they changed their minds at the June 2006 IEP meeting, the District failed to initiate the reevaluation with a request or permission to evaluate. In July, Student's Parents requested an IEE at public expense, which the District denied. In August, the District requested permission to reevaluate Student, which the Parents denied. Both parties requested due process, with Student asking for an IEE at public expense and with the District asking to override Parental refusal to permit the District to evaluate Student. By the time of the September hearing, Student's Parents had withdrawn their request for due process hearing, which left only the District's request that the HO override Parental refusal to permit the District to evaluate Student. The HO determined that the District's June 2006 failure to follow through on the parties' plans to reevaluate Student did not subsequently negate the District's right to reevaluate Student. Thus, the HO overrode the Parental

refusal to permit District reevaluation of Student.

### **Special Education Opinion #1782**

#### ***In Re The Educational Assignment of a Student in the Mount Union School District, December 1, 2006***

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

The AP affirmed the HO. The AP noted that the District is not excused from potential procedural violations relating either to the decision in April 2006 not to evaluate Student or the failure in June 2006 to follow up and obtain Parental permission. The AP concluded, however, that these potential procedural violations do not preclude the District from now obtaining permission to evaluate Student.

### **ODR #6697|05-06 | Opinion #1783**

#### ***In Re The Educational Assignment of a Student in the Warwick School District, David Bateman, Ph.D., Hearing Officer, September 30, 2006***

Amy Slody, Esquire - Parent Attorney  
Jeffrey Champagne, Esquire – School District Attorney

Student is a 16-year-old 11th grader with SLDs in reading comprehension and math reasoning, who seeks two years compensatory education, tuition reimbursement for unilateral Parental placement at the Delaware Valley Friends School, IEE reimbursement, and private summer tutoring reimbursement. Noting final grades of A's and B's in 9th grade, and B's/C's in 10th grade, the HO found no evidence indicating that Student had problems that were not addressed by the District. HO denied compensatory education as well as tuition reimbursement, finding the District's IEP to be appropriate, and the private school to be inappropriate because it was not LRE. Because the District relied extensively upon the IEE, HO awarded IEE reimbursement. HO denied summer tutoring reimbursement because there was no evidence that Student needed ESY.

### **Special Education Opinion #1783**

#### ***In Re The Educational Assignment of a Student in the Warwick School District, December 1, 2006***

Panel Members John Salvia, Kay Seven, Cathy Skidmore  
Cathy Skidmore – Appeal Author

The AP reversed. It found that Student's IEPs contained only one IEP goal that simply projected a grade average of



## HEARING OFFICER DECISIONS/APPEAL FILED

80% (which was reduced to 70% for 11th grade) and that did not specifically address her reading comprehension and math reasoning disabilities. The AP disagreed with the HO that Student's passing report card grades were indicative of educational progress. The AP awarded compensatory education of two hours per school day for two SYs, noting that this result would be the same under either the Third Circuit's M.C. standard or the Commonwealth Court's Penn Manor standard. The AP also awarded tuition reimbursement, observing that the proposed IEP was inappropriate and that the private school, with its small classes, intensive programming, and separate language course will address her needs. Finally, the AP reversed IEE reimbursement because the Parents never disagreed with the District's evaluation report. The AP did not address summer tutoring reimbursement, noting that Student's Parents appeared to have abandoned that claim.

reasonable rectification period. The District also asked to supplement the record on appeal to establish that it had actually provided all 10 ABA consultation services as required by the IEP. The AP denied this request, ordering instead that the District pay for any consultation services not already provided and take any dispute to the state complaint system for resolution.

### **ODR #6509/05-06 | Opinion #1784**

#### ***In Re The Educational Assignment of a Student in the Spring-Ford Area School District, Kenneth Rose, Hearing Officer, October 31, 2006***

Drew Christian, Esquire – Parent Attorney  
Karl Romberger, Esquire – School District Attorney

Student is an 8-year-old 2nd grader with autism and significant behavioral difficulties, who seeks two years of compensatory education for kindergarten and 1st grade, including summers. The HO found, during the first school year, an appropriate initial IEP and valid attempts to correct programming as Student's behaviors intensified. The HO determined, however, that it was clear by October 17, 2005 of the second school year that Student was not making meaningful academic and social/behavioral progress. Further, the District was providing only eight of the 10 monthly ABA consultation services required by the IEP. The HO ordered a new IEP with 1st grade academic goals and compensatory education for full school days from October 17, 2005 until the new IEP is developed, plus an additional two hours per month compensatory education to make up for the missed ABA consultation. Finally, the HO found no ESY violation.

### **Special Education Opinion #1784**

#### ***In Re The Educational Assignment of a Student in the Spring-Ford Area School District, December 5, 2006***

Panel Members Mary Leshinskie, James Nevant, Perry Zirkel  
Mary Leshinskie – Appeal Author

The AP affirmed the HO, but on different grounds than the HO's. The AP considered the District's proposed IEP to be lacking in behavioral, as well as academic, goals. The AP reduced the compensatory education award by 60 days to provide a



## LEGEND OF TERMS

ADD	Attention Deficit Disorder	LRE	Least Restrictive Environment
ADHD	Attention Deficit Hyperactivity Disorder	LS	Learning Support
AP	Appeals AP	MDE	Multi-Disciplinary Evaluation
APS	Approved Private School	MDT	Multi-Disciplinary Team
BIP	Behavior Intervention Plan	MH/MR	Mental Health/Mental Retardation
BMP	Behavior Management Plan	NOREP	Notice of Recommended Educational Placement
BP	Behavior Plan	ODR	Office for Dispute Resolution
BPR	Behavior Performance Review	OHI	Other Health Impairment
BSC	Behavioral Specialist Consultant	OT	Occupational Therapy
BSE	Bureau of Special Education	PDD-NOS	Pervasive Developmental Disorder Not Otherwise Specified
CAP	Central Auditory Processing Disorder	PE	Physical Education
CASSP	Child and Adolescent Service System Program	PECS	Picture Exchange Communication System
CBA	Curriculum-Based Assessment	PELs	Present Education Levels
CE	Conductive Education	PPRA	Pupil Rights Amendment Act
CSAP	Comprehensive Student Assistance Program	PT	Physical Therapy
DPW	Department of Public Welfare	PTE	Permission to Evaluate Form
EI	Early Intervention	RIC	Regional Intensive Coordinator
ER	Evaluation Report	RR	Reevaluation Report
ES	Emotional Support	RtI	Response to Intervention
ESOL	English for Speakers of Other Languages	S/L	Speech/Language
ESY	Extended School Year	SBBH	School-Based Behavioral Health
FAPE	Free Appropriate Public Education	SDI	Specially Designed Instruction
FC	Facilitated Communication	SLD	Specific Learning Disability
FERPA	Family Educational Rights and Privacy Act	SY	School Year
FBA	Functional Behavior Assessment	TBI	Traumatic Brain Injury
GIEP	Gifted Individualized Education Program	TSS	Therapeutic Support Services
HO	Hearing Officer	WISC-IV	Wechsler Intelligence Scales for Children
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		