



Due Process Digest

News from the Office for Dispute Resolution

Volume 19

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Due Process Digest Information

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

Hearing Officer Decisions/No Appeal Filed

ODR #5952/05-06

In Re The Educational Assignment of a Student in the Keystone Central School District, Before Kenneth Rose, Hearing Officer, March 28, 2006

Parent Pro Se
Karl Romberger, Esquire – School District Attorney

Student is 16 years old and eligible due to a severe learning disability. Student has bilateral hearing loss, but does not wear hearing aids. Student has received special education services since 1st grade and has been identified as having ADHD and CAPD. Parent had been having Student tutored at Sylvan Learning Center.

Parent raised numerous issues. Parent agreed with the three IEPs in question, the underlying ERs, and the resulting placements. Parent questioned whether the IEPs from 2003-2006 documented completion or progress of the IEP goals. The HO found that each IEP had present levels listed and measurable goals. Progress was seen in both reading and math, and if results of testing by Sylvan were used, learning growth was even greater. Various procedural violations were alleged with the following determinations by the HO: 1) the two extra days taken to complete the reevaluation did not constitute a denial of FAPE; 2) The IEP was, in fact, revised after the January 2005 ER. The delays in completing the IEP were attributable to Parent's schedule; and 3) The IEP team was found to be properly constituted.

Issues were raised regarding implementation of Student's program with the following determinations by the HO: 1) The Kurweil 3000 software system was implemented in a timely fashion; 2) The lack of a District-funded laptop was not found to be either a hindrance to Student achieving his IEP goals or a denial of FAPE; 3) Regarding District-funded tutoring, the District offered tutoring to Student,

but tutoring is not listed on the IEPs; 4) Student's academic program is at an appropriate level to permit him to progress in the general curriculum; 5) Parents received progress reports as stated in the IEPs; 6) There was no evidence to suggest that District sought to mislead Parent on Student's capability to participate in the regular classroom and; 7) the trial placement in regulation education history class was not a change in placement.

In sum, Parent failed to meet the burden of establishing a denial of FAPE. Any procedural errors were found to be harmless and of no effect on FAPE.

The Office for Dispute Resolution

As authorized by the Individuals with Disabilities Education Improvement Act of 2004 (IDEA), the Pennsylvania Department of Education (PDE) has contracted with the Central Susquehanna Intermediate Unit (CSIU) to provide fiscal administration of the Office for Dispute Resolution (ODR), which is funded by PDE. ODR, an autonomous entity, is free from interference or influence on any substantive matter by agencies, groups and individuals, including parents, advocacy organizations, school districts, intermediate units (including CSIU) and PDE. Hearing Officers, employed by or independent contractors for CSIU, are independent of ODR, as required by statute, and are not subject to substantive direction or control by ODR or any agency or group that would affect the outcome of due process hearings.

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Hearing Officer Decisions/Appeal Filed

ODR #6205/05-06 | Opinion #1735

In Re The Educational Assignment of a Student in the Wyomissing Area School District, Before Daniel Myers, Esquire, Hearing Officer, May 2, 2006

Vivian Narehood, Esquire – Parent Attorney
Andrew Faust, Esquire – School District Attorney

Student is a 9-year-old child with autism. Parent rejected the most recently proposed December 2005 IEP and contended that District had inappropriately implemented Student's IEPs for the last two SYs. District also desired changes to the last agreed-upon IEP.

HO did not condone District-added restrictions in the IEP as to when Parent could observe Student, while noting that it would be appropriate to require Parent to adhere to District rules and not interfere with programming.

Music therapy was originally included in the IEP "with no real consideration of [Student's] actual need for this particular related service." District was unconvinced of Student's need for this, but HO indicated that some sort of mutually agreed-upon resolution, or a music therapy evaluation, needed to be conducted to support its removal from the IEP.

According to HO, there appeared to be no dispute that the assistive technology evaluation was inadequate. Compensatory education was awarded for failure to provide an appropriate report during the 2004-2005 SY. A standardized S/L evaluation was ordered. HO did not consider the proposed IEP's provisions regarding inclusion, PCA, and staff training to be inappropriate, nor the proposed goals and objectives or its evaluation schedule. There was no basis in the record for concluding that Student was an intermediate learner stuck in his programming and would not become "unstuck" without the assistance of a global expert. "While these assertions may ultimately be true, the record lacks credible evidence supporting them, and this argument appears to [be] based upon an 'optimal programming' standard rather than the 'meaningful benefit' standard." HO rejected Parent's arguments regarding the necessity of having related service providers document the provision of their services in greater detail. For purposes of Student's needs, the IEP's progress monitoring provisions were deemed to constitute sufficient documentation of the provision of related services to Student.

Special Education Opinion #1735

In Re The Educational Assignment of a Student in the Wyomissing Area School District, June 13, 2006

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

Both parties filed exceptions. District challenged the HO's ruling which limited the parties' opportunity to present evidence to three sessions, and it requested that the AP take additional evidence. District also disagreed with the conclusion that

assistive technology and music therapy were Student needs and further objected to the HO-ordered S/L assessment. Parent excepted to various factual findings, and contested the HO's rejection of the need for a full-time TSS worker/PCA, an outside VB consultant, and weekly documentation of the District's delivery of all related services. Parent also objected to the mode of the compensatory education award.

While acknowledging the parties' surprise at being told at the end of a second session, that the parties only had one more session to complete their respective cases, the AP did not believe that either party was prejudiced by the ruling. The AP denied the request for additional evidence to be taken.

The AP agreed with the District assertion that Parent failed to demonstrate the need for assistive technology. The evidence did not demonstrate that Student required music therapy to benefit from special education. HO was reversed in his order for a standardized S/L assessment, as the record supported District's contention that Parent never requested such relief. Moreover, such an evaluation was done sometime after August 2005, and did not need to be duplicated.

Turning to Parent exceptions, the AP found that the record did not support a need for a full-time PCA in order to be provided with FAPE. The same could not be said, however, for when Student received his related services, and the limited evidence did indicate that the PCA was needed during such times for implementation of Student's BP, including collection of necessary data, as well as for Student's safety.

The AP noted it lacked the authority to impose the requirement of an outside VB consultant on the District, while noting that District was already receiving substantial ongoing support and consultation with respect to its programming in the VB classroom. The AP was unaware of any requirement that District provide data to document its delivery of related services to Student.

The compensatory education award was modified to reflect that District did not need to implement the independent assistive technology report, but compensatory education was awarded to replace lost related services during the 2004-2005 and 2005-2006 SYs.

ODR #6710/05-06 | Opinion #1785

In Re The Educational Assignment of a Student in the Marple Newtown School District, Elaine Stanko, Esquire, Hearing Officer, October 25, 2006

Maria Gonzalez-Calvet, Esquire - Parent Attorney
Gina DePietro, Esquire - School District Attorney

Student is a 17-year-old resident with mental retardation and OHI, specifically intractable epilepsy, attending a life skills program in a residential school. Student alleges that he has



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been denied FAPE for the last four years, and Student seeks a new IEP with OT, a vocational evaluation and off-site interactive job training, ESOL, S/L therapy, and bilingual psychotherapy. The HO first determined that Student had established an exception to the two-year statute of limitations with evidence that, although Student's Parent is monolingual Spanish speaking and illiterate, the District did not always provide translation services and the Parent may have signed NOREPs that he did not understand. The HO also determined however that, in light of Student's limited cognitive functioning and the trauma suffered by numerous seizures, his slow and incremental educational progress over the years constituted FAPE. The HO rejected Student's request for direct ESOL instruction, finding that HO lacked jurisdiction over ESOL regulations at 22 Pa. Code Section 4.26, and accepting District evidence that it is appropriate for language instruction to be integrated and imbedded in Student's life skills curriculum, and HO found no evidence to justify a S/L evaluation or therapy. The HO accepted District evidence that Student lacks the abstract thought processes and insight that psychotherapy requires, and HO found no evidence of an educational need for psychotherapy. Finally, the HO rejected Student's request for reimbursement of private evaluations, finding both that Student failed to prove the inappropriateness of the District's evaluation, and that Student's private evaluations involved limited testing, did not evaluate Student in the educational setting, yielded results consistent with the District's, and appeared to have been retained for the purpose of reaching conclusions provided by Student's counsel.

Special Education Opinion #1785

In Re The Educational Assignment of a Student in the Marple Newtown School District, December 20, 2006

Panel Members Constance Lyttle, James McAfee, Barry Smith
Barry Smith – Appeal Author

The AP affirmed the HO's decision to extend the statute of limitations based upon the District's failure to provide Spanish language documents and interpreters at meetings. The AP reversed the HO's FAPE determinations, finding the IEP's transition plan to be lacking any outcome and failing to address a key need (language deficiency.) The AP found that Student needs instruction in Spanish along with an explicit program for learning English, which the AP describes as a unique combination of needs that is unaddressed in his IEPs. The AP also found inappropriate Student's highly restrictive residential placement, with no interactions with either nondisabled peers or Spanish-speaking individuals. The AP affirmed the HO's denial of private evaluation reimbursement, agreeing that they added no new information and that there was no evidence that the District evaluation was inappropriate. Finally, the AP found Student entitled to three full SYs of compensatory education, concluding that nothing short of one-to-one compensation is likely to provide him with the opportunity to gain what has been lost.

ODR #6721/05-06 | Opinion #1786

In Re The Educational Assignment of a Student in the Colonial School District, David Bateman, Ph.D., Hearing Officer, October 27, 2006

Heidi Konkler-Goldsmith, Esquire – Parent Attorney
Hollie John, Esquire – School District Attorney

Student is an 18-year-old resident with a learning disability and emotional disturbance who attended private schools for at least the past two years. Student's first year of private education was paid by the District pursuant to an earlier settlement agreement. Student now seeks tuition reimbursement for one extra month that she stayed at the agreed-upon private school, and one year of compensatory education for the following SY during which she unilaterally attended a different private school. The HO found that the first prong of the tuition reimbursement test was met because the District had not offered an IEP during the extra month that Student stayed at the previously agreed-upon private school. The HO further found, however, no evidence in the record of the appropriateness of the previously agreed-upon private school. HO also found that the equities favored the District because Student's Parents had not given notice to the District that they intended to keep Student at the school for an extra month, and there was no evidence in the record that Student's Parents had actually paid for that extra month. Regarding the following SY, the HO noted that when the parties met in August, Student's Parents made clear that they intended to enroll Student into a parochial school, and the District therefore did not offer to evaluate or develop an IEP for Student. The parties only discussed possible placement options in case the parochial placement did not work out. The HO determined that the District was not required to develop an IEP for a student attending a private school, and therefore Student was not entitled to compensatory education for that SY.

Special Education Opinion #1786

In Re The Educational Assignment of a Student in the Colonial School District, December 14, 2006

Panel Members Madeleine Kaufman, Michael McElligott,
Vincent Quinn
Madeleine Kaufman – Appeal Author

The AP affirmed the HO. Regarding tuition reimbursement, the AP disagreed with the HO that there was no evidence in the record regarding the private school's appropriateness, but the AP noted that there was no specific report regarding the particular month in question. Thus, the record did not establish why Student remained that extra month and what type of program was provided during that summer month. The AP also agreed with the HO's equities analysis because Student's Parents did not give advance notice that Student was staying at the school an extra month. Regarding the following SY, the AP observed that Student's Parents made clear that they were not interested in having Student return to the District for that SY, and so the District was not obligated to evaluate and program for Student. The AP also noted that compensatory education is not



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awarded as a remedy if a student is attending a private school. Finally, it appears that Student had unsuccessfully argued before the HO that the District's failure to timely answer or respond to Student's complaint precluded the District's defenses at hearing. Finding no evidence in the record to support Student's exception on this issue, the AP denied it.

ODR #6689/05-06 | Opinion #1787

In Re The Educational Assignment of a Student in the Haverford Township School District, Joy Fleming, Esquire, Hearing Officer, November 3, 2006

James Clark, Esquire – Parent Attorney
Natalie Habert, Esquire – School District Attorney

Student is a 7-year-old, 2nd grade student, gifted in math and language arts, who challenges the District's proposed GIEP and alleges FAPE denial for the previous SY. The HO first determined that the District bore the burden of proof in a gifted case. HO also concluded that she lacked jurisdiction to consider whether Student's Parent has a right to audiotape a GIEP meeting. Regarding the previous GIEPs, the HO rejected arguments that they lacked present levels of educational functioning, noting that they incorporated both District test results as well as Parent-obtained reading assessments. The HO also disagreed that the previous GIEPs lacked measurable short-term learning outcomes or appropriate SDI. HO determined that short-term benchmarks were listed for achieving Student's acceleration goals and the GIEPs' variety of SDI included flexible math grouping, enriching opportunities, and high-ability peer grouping. The HO also determined that teachers credibly established that the GIEPs were implemented and that Student made meaningful educational progress. The HO found the proposed GIEP to be inappropriate, however, because the District failed to present substantial evidence that Student no longer needed any gifted programming other than regular education math grade acceleration and opportunities with peers of similar ability. The HO ordered a new GIEP, but found that she could not award compensatory education because neither party introduced evidence of the actual gifted programming currently being provided (or denied) under the current, inappropriate GIEP.

Special Education Opinion #1787

In Re The Educational Assignment of a Student in the Haverford Township School District, December 20, 2006

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

The AP first determined that the Student bears the burden of proof in gifted cases pursuant to general civil litigation principles, but noting that two AP decisions have suggested otherwise. The AP next reversed the HO's determination that previous GIEPs were appropriate, finding the two bases for present education levels (a math text book test and a Woodcock Johnson math achievement score) to be too vague to determine the

content Student has already mastered and what instruction is still required. The AP also affirmed the HO's finding that the proposed GIEP was inappropriate. Regarding compensatory education, the AP found that, to bring Student to the position he would have occupied but for the FAPE denial, Student required one hour for every day he attended school under an inappropriate GIEP. The AP ordered a revised GIEP developed within 30 school days, which GIEP must include enrichment across the curriculum, including science or social studies. Finally, the AP determined that audiotaping of a GIEP meeting could fall within Chapter 16 jurisdiction and that, in this case, the District lacked authority to prevent audiotaping because it did not have a preexisting policy prohibiting recording devices at IEP meetings.

ODR #6981/06-07 | Opinion #1788

In Re The Educational Assignment of a Student in the Penn Manor School District, David Bateman, Ph.D., Hearing Officer, November 4, 2006

Parent Pro Se
Stephen Russell, Esquire – School District Attorney

Student is a 9-year-old gifted student who challenges the District's proposed GIEP goal that he shall be taught to 80% proficiency in the 6th grade math curriculum. A previous due process hearing had been conducted to determine the appropriate proficiency level on Student's 5th grade math assessments for purposes of accelerating into the 6th grade math curriculum. Because a new school year was about to start, during which Student would be moving from the 5th to the 6th grade curricula, the previous HO had ordered IEP goals requiring 80% proficiency in both the 5th and 6th grade curricula. In the current due process hearing, while Student agrees that he should be taught in the 6th grade math curriculum, Student wants his proficiency goal to be 90%, rather than 80%. The current HO determined that this issue has already been decided and that he lacked authority to overturn the previous HO's ruling.

Special Education Opinion #1788

In Re The Educational Assignment of a Student in the Penn Manor School District, December 1, 2006

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

The AP affirmed the HO, suggesting that if the previous HO had acted ultra vires by considering the 6th grade proficiency level sua sponte, then the appropriate action would have been for one of the parties to have appealed the previous HO's decision. Absent a timely appeal of the previous HO's decision, the AP agrees with the current HO that authority is lacking to relitigate or review the prior decision on the merits.



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ODR #6837/06-07 | Opinion #1789

In Re The Educational Assignment of a Student in the Harrisburg City School District, Linda Valentini, Ph.D., Hearing Officer, October 30, 2006

Parent Pro Se
Shawn Lochinger, Esquire – School District Attorney

Student is a 12-year-old child with a SLD alleging denial of FAPE for the last two years because his IEPs were neither appropriate nor implemented. The HO determined that Student's IEPs lacked reading goals and SDIs relating to organization/work completion/ study skills/ parent-school communication/ and an AlphaSmart were not implemented. Finding that Student made meaningful progress in reading, but not in his self-advocacy/organizational/ study skills goals, the HO awarded compensatory education of two hours per week for two years, less a two month reasonable rectification period.

Special Education Opinion #1789

In Re The Educational Assignment of a Student in the Harrisburg City School District, December 12, 2006

Panel Members Lorraine Heeter, James McAfee, Barry Smith
Lorraine Heeter – Appeal Author

The Student appealed, contesting the HO's reading-related findings and arguing that he was entitled to more compensatory education because the lack of FAPE pervaded Student's entire school day. The AP found that the record supported the HO's findings, and that Student offered no evidence - only assertions - that the lack of FAPE pervaded Student's entire school day.

ODR #6923/06-07 | Opinion #1790

In Re The Educational Assignment of a Student in the Pottstown School District, Daniel Myers, Esquire, Hearing Officer, November 23, 2006

Parent Pro Se
Stephen Jacobson, Esquire – School District

Student is a 10-year-old, 4th grade child with ADHD, ODD, early onset bipolar disorder, and a learning disorder not otherwise specified. Student's Parents reject the District's proposed Section 504 Service Plan, contending that Student needs an IEP, and they seek reimbursement for a private evaluation. The HO agreed with the District that, although Student's behavior was quite difficult at home, she was behaved quite well at school and her achievement was commensurate with her cognitive abilities. The HO did not give credence to Student's psychiatrist's recommendation for an IEP, because that recommendation was based upon the erroneous belief that Student was exhibiting intense, angry, and oppositional behavior at school. The HO found the proposed Section 504 Service Plan appropriately addressed Student's impulsivity, inattention and need for focus, and that there was no need for a one-on-one personal care

assistant. Finally, reimbursement for the private evaluation was denied because the District's evaluation was appropriate and the private evaluation did not differ substantially from the District's.

Special Education Opinion #1790

In Re The Educational Assignment of a Student in the Pottstown School District, January 3, 2007

Panel Members Joseph Cautilli, Vincent Quinn, Michael McElligott
Joseph Cautilli – Appeal Author

The AP affirmed the HO, finding that, while Student had a disability, she did not have a need for special education services. The AP noted that Student's behavioral problems seem to be primarily at home and have not affected her at school. The AP also agreed that the private evaluator would not have changed the intervention and placement suggestions of the District's psychologist.

ODR #6888/06-07 | Opinion #1791

In Re The Educational Assignment of a Student in the North Penn School District, Marcie Romberger, Esquire, Hearing Officer, November 19, 2006

Parent Pro Se
Mark Fitzgerald, Esquire – School District Attorney

Student is a 12-year-old 6th grade gifted student who challenges the District's GWR and proposed GIEP recommending grade acceleration from 5th grade (elementary school) to 7th grade (middle school.) The HO rejected Student's argument that the District should have conducted standardized tests in academic areas such as reading and written expression, finding that the District's evaluation using curriculum-based assessment was appropriate for determining Student's academic levels. The HO also found flaws in a few areas of the GIEP, but determined that when viewed in its totality, the flaws did not rise to the level of prejudice to the Student.

Special Education Opinion #1791

In Re The Educational Assignment of a Student in the North Penn School District, January 9, 2007

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

The AP reversed the HO. First, the AP noted that the District had already been ordered in unambiguous and painful detail by a previous HO and AP to conduct an appropriate GWR and develop an appropriate GIEP. The AP then found the District's proposed GIEP failed to report present educational performance levels, ignored Student's identified needs in science and literature, lacked objective criteria for determining success in achieving GIEP goals, and failed to identify any SDI. The AP in this case determined that the current HO erred when she excused GIEP flaws because she lacked the authority to rewrite



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the orders of first HO and AP requiring a GIEP that complied with Chapter 16. Noting that the previous HO had ordered three hours of compensatory education for every day that Student lacked a GIEP that complied with Chapter 16, the AP in this case determined that compensatory education continues to accumulate at three hours per day because the District has still failed to develop a GIEP in compliance with Chapter 16. Finally, the AP agreed with Student's Parents' concerns regarding his social and emotional needs to be around same age peers while simultaneously receiving appropriate education. Thus, the AP ordered that Student enroll in advanced math and science at the middle school while receiving the balance of his education at the elementary school.

ODR #7061/06-07 | Opinion #1792

In Re The Educational Assignment of a Student at the MaST Community Charter School, Marcie Romberger, Esquire, Hearing Officer, November 21, 2006

Parent Pro Se
Patricia Hennessy, Esquire – School District Attorney

Student is a 16-year-old 10th grade student with ADHD, ODD, PTSD, and ICD. Student challenges the Charter School's manifestation determination when he was suspended for possessing a knife with a blade greater than 2 ½ inches long. The HO found that Student's IEP was not appropriate nor were services provided consistently to Student. HO also found that neither party provided much evidence regarding whether Student's disabilities impaired his ability to control his behaviors and understand the consequences of his actions. HO also found that Student's perceived need to carry a knife for protection could have been a symptom of his PTSD, and his lack of remorse could have been a symptom of his ODD. Thus, the HO found that the District did not meet its burden of persuasion to prove that Student's actions were not a manifestation of his disability. HO ordered the Student to return to school after his 45-day interim alternative education setting for a weapons violation is completed, ordered a new IEP, and recommended that Student's private counselors be part of the IEP team.

Special Education Opinion #1792

In Re The Educational Assignment of a Student at the MaST Community Charter School, December 26, 2006

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

The AP reversed the HO. First, the AP suggested that it may have been improper to place the burden of persuasion upon the Charter School in a manifestation determination case, but that the issue need not be resolved in this case because the evidence is not in equipoise. Next, the AP observed that the

HO erroneously applied the wrong law, noting that IDEA 2004 dramatically changed the criteria to be applied to manifestation determinations. The AP concluded that the evidence did not establish that Student's ADHD or SLD caused his weapons violation. It also did not find that Student's PTSD, ODD or Impulse Control Disorder (ICD) constituted disabilities in this case because the evidence for them was scant and did not indicate a need for special education. The AP also determined that the Charter School had been implementing Student's IEP, and that evidence to the contrary was ambiguous. Thus, the AP found that the Charter School's manifestation determination was appropriate under the new streamlined criteria of IDEA 2004.

ODR #6887/06-07 | Opinion #1793

In Re The Educational Assignment of a Student in the Scranton City School District, Marcie Romberger, Esquire, Hearing Officer, November 27, 2006

John Bogdanovic, Esquire – Parent Attorney
Harold McGrath, Esquire – School District Attorney

Student is a 16-year-old 10th grade student with autism who seeks independent educational and psychological evaluations at public expense from Rutgers University. The District agrees to fund independent educational and psychological evaluations that will be provided within 150 miles of the District. The HO observed that it was unclear which party requested the due process hearing. The HO determined that the sole issue to be decided was Student's entitlement to the evaluations, and not additional, unspecified claims that Student's Parent first raised in his five-day prehearing disclosure. The HO agreed that Student required educational and psychological evaluations, and she ordered that Student and his family choose from evaluators with particular credentials who are located within 200 miles of Scranton.

Special Education Opinion #1793

In Re The Educational Assignment of a Student in the Scranton City School District, January 17 2007

Panel Members Lorraine Heeter, Constance Lyttle, Barry Smith
Constance Lyttle – Appeal Author

Student's Father appealed pro se, alleging among other things incompetence, misrepresentation, unethical and corrupt behavior by the HO, the District, and Student's own lawyer. The AP determined that Student was represented by competent counsel at the hearing and received a fair and comprehensive hearing. The AP also determined that the exclusive issue for hearing was Student's need for IEEs at public expense, that the HO essentially formalized in her order the Parent's original request for IEEs at public expense, and that the record contained no legal or factual foundation for Parent's exceptions.



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ODR #6812/06-07 | Opinion #1794

In Re The Educational Assignment of a Student in the York City School District, Kenneth Rose, Hearing Officer, November 27, 2006

Parent Pro Se
Stephen Russell, Esquire – School District Attorney

Student was a 14-year-old resident with ADHD and a learning disability who had been attending a private school at public expense for two years pursuant to a settlement agreement. Also pursuant to the agreement, the District reevaluated Student and issued a proposed IEP for the upcoming SY. Because the District proposed a return to the public schools, Student's Parents unilaterally reenrolled Student into the private school and challenged the reevaluation report and proposed IEP. The HO found that neither the reevaluation report nor the IEP were appropriate because the reevaluation report failed to obtain and include Parent input. HO further observed that the proposed IEP had not been developed by the IEP team and contained open blanks in the reading fluency goal. Finally, HO found that the test for tuition reimbursement was satisfied because the District had not offered FAPE and the private school was appropriate.

Special Education Opinion #1794

In Re The Educational Assignment of a Student in the York City School District, January 19, 2007

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

The AP reversed on the basis that the private school placement was not appropriate. The AP determined that Student had made minimal progress in reading and writing over the past two years, as evidenced by comparing WIAT scores two years apart. The AP also noted that, while not controlling, the restrictiveness of the private school (which contained exclusively children with disabilities) may be considered in determining its appropriateness for tuition reimbursement purposes. The AP also disagreed with the HO that the reevaluation report's lack of Parental input was a fatal flaw. In this case, Student's Parent participated in all IEP meetings and some recommendations of Student's privately-secured evaluator were incorporated into IEPs. Although the District argued that reading fluency blanks in the IEPs would be filled in following testing after Student reentered the public school, the AP recommended that the District test Student and fill in the blanks before developing the IEP meeting so that educational goals can be based upon proper starting points.

ODR #6806/06-07 | Opinion #1795

In Re The Educational Assignment of a Student in the East Penn School District, Joy Fleming, Esquire, Hearing Officer, December 2, 2006

David Painter, Esquire – Parent Attorney
Marc Fisher, Esquire – School District Attorney

Student is a 7-year-old 1st grade student with significant behavior problems, including oppositional defiance, aggression, and inattention. Student's Parents challenged the District's evaluation report and its IEP recommending a full-time emotional support program, alleged that Student had been denied FAPE during his kindergarten year and the following summer, and they requested reimbursement of a private educational evaluation. The HO determined that the District's evaluation report was appropriate, and therefore the Student's Parents were not entitled to reimbursement of their private evaluation. HO also concluded that Student had not been denied FAPE during his kindergarten year and the following summer because a variety of IST measures were attempted while Student was being evaluated and an IEP developed, and because the record did not establish a need for ESY. Finally, the HO determined that the District's proposed emotional support program and placement for 1st grade was appropriate because Student would receive intensive intervention as well as mainstreaming opportunities, an appropriate BIP, S/L therapy, and academic goals.

Special Education Opinion #1795

In Re The Educational Assignment of a Student in the East Penn School District, January 18, 2007

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

The AP affirmed, agreeing that the evaluation report was appropriate and therefore reimbursement of the private evaluation report was properly denied. The AP also agreed that the emotional support program and placement was LRE for this Student, and that Student's Parents did not meet their burden of persuasion regarding ESY.

ODR #7020/06-07 | Opinion #1798

In Re The Educational Assignment of a Student in the North Penn School District, Rosemary Mullaly, Esquire, Hearing Officer, January 2, 2007

Parent Pro Se
Mark Fitzgerald, Esquire – School District Attorney

Student is an 11-year-old resident with emotional disturbance attending an out-of-district full-time emotional support program. Student's Parent seeks either after-school placement in the District's after-care program or District transportation to Student's private out-of-district child care provider. The HO determined that Student's Parent did not establish that Student requires an extended-day or after-care program. HO also found, however,



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that the District: 1) provides parentally-paid after-school child care at all of its elementary schools; 2) transports all children to and from babysitters along current school bus routes; and 3) has placed Student in an out-of-district program because of the severity of Student's needs. The HO found that this constituted not only a non-individualized decision about the related service of transportation, but also a lesser quality of transportation service than is offered to Student's non-disabled peers. Thus, the HO ordered the District to provide an IEP that modifies its transportation policy for Student.

Special Education Opinion #1798

In Re The Educational Assignment of a Student in the North Penn School District, February 16, 2007

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

The AP reversed. It noted that it was clear from the record that Student would not be receiving special education at either an after-school program or at a private child care setting. Thus, the AP concluded that transportation could not constitute a related service. The AP distinguished this case from the 5th Circuit's Alamo Heights decision because the transportation ordered in Alamo Heights was to a summer program required by the IEP, whereas the after-school program/child care provider were not required by the IEP.

ODR #6916/06-07 | Opinion #1799

In Re The Educational Assignment of a Student in the Wissahickon School District, Daniel Myers, Esquire, Hearing Officer, December 28, 2006

David Painter, Esquire – Parent Attorney
Scott Wolpert, Esquire – School District Attorney

Student is a 15-year-old resident with ADHD, ODD and Tourette's Disorder attending an out-of-state residential school at Parental expense. The District offered a day school program and placement at a local approved private school. Arguing that Student's emotional and psychological needs require a therapeutic residential school environment, Student's Mother seeks tuition reimbursement and compensatory education. The HO found that Student's behaviors at school were much less severe than at home and could be programmed for in a less restrictive setting than in a residential school. The HO also found that the District's proposed placement at a local APS was appropriate, and, therefore, that Student's Parent was not entitled to tuition reimbursement. HO also denied compensatory education, finding that the District properly responded to Student's behaviors at school.

Special Education Opinion #1799

In Re The Educational Assignment of a Student in the Wissahickon School District, February 15, 2007

Panel Members Cathy Skidmore, Kay Seven, Sam Lonich
Sam Lonich – Appeal Author

The AP agreed that Student's Parent was not entitled to tuition reimbursement because the District offered an appropriate program and placement at the local APS. The AP also agreed that Student was not denied FAPE, at least for the first 1½ of the previous two years. The AP believed, however, that by the second half of Student's last year in the public high school, she was no longer demonstrating success and her IEP was no longer reasonably calculated to yield meaningful educational benefit.



LEGEND OF TERMS

ADD	Attention Deficit Disorder	RR	Reevaluation Report
ADHD	Attention Deficit Hyperactivity Disorder	Rtl	Response to Intervention
AP	Appeals AP	S/L	Speech/Language
APS	Approved Private School	SBBH	School-Based Behavioral Health
BIP	Behavior Intervention Plan	SDI	Specially Designed Instruction
BMP	Behavior Management Plan	SLD	Specific Learning Disability
BP	Behavior Plan	SY	School Year
BPR	Behavior Performance Review	TBI	Traumatic Brain Injury
BSC	Behavioral Specialist Consultant	TSS	Therapeutic Support Services
BSE	Bureau of Special Education	VB	Verbal Behavior
CAPD	Central Auditory Processing Disorder	WISC-IV	Wechsler Intelligence Scales for Children
CASSP	Child and Adolescent Service System Program		
CBA	Curriculum-Based Assessment		
CE	Conductive Education		
CSAP	Comprehensive Student Assistance Program		
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		
FC	Facilitated Communication		
FERPA	Family Educational Rights and Privacy Act		
FBA	Functional Behavior Assessment		
GIEP	Gifted Individualized Education Program		
GWR	Gifted Written Report		
HO	Hearing Officer		
ICD	Impulse Control Disorder		
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		
MDT	Multi-Disciplinary Team		
MH/MR	Mental Health/Mental Retardation		
NOREP	Notice of Recommended Educational Placement		
ODD	Oppositional Defiant Disorder		
ODR	Office for Dispute Resolution		
OHI	Other Health Impairment		
OT	Occupational Therapy		
PCA	Personal Care Assistant		
PDD-NOS	Pervasive Developmental Disorder Not Otherwise Specified		
PE	Physical Education		
PECS	Picture Exchange Communication System		
PELs	Present Education Levels		
PPRA	Pupil Rights Amendment Act		
PT	Physical Therapy		
PTE	Permission to Evaluate Form		
PTSD	Post Traumatic Stress Disorder		
RIC	Regional Intensive Coordinator		