



Due Process Digest

News from the Office for Dispute Resolution

Volume 23

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The Office for Dispute Resolution

When the Pennsylvania Board of Education exercised its discretion, under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA), to change from a local and state level due process hearing system to its one-tier state level counterpart, responsibility for establishing, maintaining, and administering that system statutorily vested in the Pennsylvania Department of Education (PDE). PDE in turn implements the day-to-day operational aspects of that system, with the Central Susquehanna Intermediate Unit (CSIU) as fiscal administration, through the Office for Dispute Resolution (ODR). In order to maximize its independence, integrity, and autonomy, ODR is free from interference or influence on any substantive matters from any entity or individual, including without limitation, parents, advocacy groups, school districts, intermediate units (including CSIU), or PDE. Hearing officers employed are impartial, as required by statute, and are not subject in individual cases to substantive direction from or control by ODR, or any other agency or group, affecting the outcome of a particular hearing.

CSIU is an equal opportunity employer.

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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 #6735/06-07

In Re The Educational Assignment of a Student in the Montgomery County IU/IEI Program, Dr. Vicki McGinley, Hearing Officer, December 29, 2006

Caryl Oberman, Esquire - Parent Attorney
A. Kyle Berman, Esquire – Intermediate Unit Attorney

Student's Parents and the IU disagree over whether or not the 4.5-year-old preschool student in this case is a child with a disability who is eligible for special education services. The Student's expert witnesses diagnosed developmental delays while the IU's experts recommended further evaluation before determining Student's eligibility. Noting that both parties' evidence demonstrated a deficit in pragmatic language skills, difficulties with initiating play, self-help, attention, transitioning, following instructions, and verbalizing feelings, the HO concluded that Student qualifies as a child with a disability, particularly in the areas of pragmatic language and fine motor functioning. HO ordered the IU to convene an IEP team and to reimburse Student's Parents for private S/L and OT services. Because the IU had offered no program or placement at all, the HO awarded reimbursement of Parents' ABA therapy expenses; but HO reduced reimbursement of ABA expenses by one-half because the record lacked data regarding the effectiveness of this therapy.

ODR #6822/06-07

In Re The Educational Assignment of a Student in the Lakeland Area School District, William Culleton II, Esquire, Hearing Officer, December 19, 2006

Drew Christian, Esquire – Parent Attorney
Jane Williams, Esquire – School District Attorney

Student is a 15-year-old with bipolar disorder, PDD, ODD, emotional disturbance and SLD in mathematics seeking one and one half years of compensatory education. Based upon the timing of an earlier due process hearing, at which the Student did not contest the appropriateness of her ESY program, the HO determined that claim preclusion deprived him of jurisdiction to consider the appropriateness of Student's ESY program. The same argument did not apply to Student's claims regarding implementation of ESY, however, because the earlier due process decision was issued before ESY was completed. The HO also rejected the District's argument that the Department of Education has exclusive jurisdiction over ESY implementation. The HO ultimately concluded, however, that because neither party offered sufficient evidence regarding ESY implementation, the record was in equipoise and, therefore, Student had failed to meet her burden of persuasion on that issue. The HO also found that, pursuant to 24 P.S. §13-1306, the District was not responsible for Student's education for the SY that she was assigned by mental health officials to an out-of-district residential treatment facility. The HO also denied compensatory education for the period after Student returned to the District, because Student's Parent first told the District that Student would attend PS and later refused to sign the District's requests for permission to evaluate Student.



HEARING OFFICER DECISIONS/NO APPEAL FILED

ODR #7154|06-07

In Re The Educational Assignment of a Student in the Pittston Area School District, Daniel Myers, Esquire, Hearing Officer, April 25, 2007

Drew Christian, Esquire – Parent Attorney
Angela Januski, Esquire – School District Attorney

Student is a 9th grader with many diagnoses, including seizure disorder, mild cerebral palsy, asthma, allergies, encopresis, cardiac arrhythmia, ADHD, adjustment disorder, provisional Pervasive Developmental Disorder (PDD), and Asperger's disorder. Student requests an IEE as well as compensatory education for the 2006-2007 SY, contending that his IEP was inappropriate. The District, on the other hand, contends that Student is no longer in need of special education services at all. The HO found that the District's reevaluation report contained limited testing and was not sufficiently comprehensive to support the District's broad conclusion that Student no longer required any special education services. HO rejected, as merely speculative and unsupported by any systematic analysis, the District's arguments that Student's classroom performance was negatively affected by his non-disability-based excessive absences, rather than by his attention and social skills deficits, socialization problems and/or social/emotional needs and anxieties. The HO concluded that an IEE was required to determine the educational impact, if any, of Student's excessive absences, as well as his attentional, social/emotional, and academic needs. Finally, the HO found that the District failed to comply with basic IEP responsibilities, producing no written progress monitoring reports regarding IEP goals, failing to create a written expression goal, and failing to provide a copy of Student's IEP to his teacher. The HO awarded one hour of compensatory education for every day that Student attended high school during the period of time at issue.

ODR #7176|06-07

In Re the Educational Assignment of a Student in the West Chester Area School District, Joy Fleming, Esquire, Hearing Officer, April 14, 2007

William Wilson, Esquire – Parent Attorney
Lawrence Dodds, Esquire – School District

Student is a 4th grader contesting the GMDT conclusion that Student is not eligible for gifted programming. The HO found that the GMDT erroneously failed to consider Student's historic performance on norm referenced measures, particularly in math, as well as his overall academic record that indicated superior math abilities. HO further concluded, however, that while Student exhibits gifted ability, his needs are met in the District's general academic program, which includes various enrichment activities and math specialist support. Accordingly, the HO found that Student was not eligible for gifted programming.

ODR #7400|06-07

In Re The Educational Assignment of a Student in the Sugar Valley Rural Charter School, Dr. David Lee, Hearing Officer, April 13, 2007

Andrew Phillips, Esquire – Parent Attorney
J. David Smith, Esquire – School District Attorney

Student, a high school senior with SLD in reading and math, sought compensatory education and an IEE. The HO denied Student's request for an IEE, finding that the CS's reevaluation report met regulatory requirements, but also noting that it could have been better written and contained more data. The HO also found that Student's IEP was appropriate because it met regulatory requirements. The HO found problems with CS implementation of the IEP, however, particularly in the area of reading instruction, which did not occur as described in the IEP and did not appear to be planned or coordinated to meet Student's reading needs. Thus, the HO ordered 88 hours of compensatory education in the form of reading instruction.

ODR #7494|06-07

In Re The Educational Assignment of a Student in the Centennial School District, Marcie Romberger, Esquire, Hearing Officer, May 4, 2007

Parent Pro Se
Andria Saia, Esquire – School District Attorney

The District asked the HO to order an evaluation of a 3rd grade Student whose Parents would not consent to an evaluation. Finding that the District properly conducted an initial screening, that Student's off-task and crying behaviors were not controlled by screening interventions, and that Student had begun exhibiting inappropriate sexual behaviors, the HO granted the District's request and ordered an evaluation of Student over the Parents' consent refusal.



HEARING OFFICER DECISIONS/APPEAL FILED

HEARING OFFICER DECISIONS | APPEAL FILED

ODR #6489/05-06/Opinion #1758

In Re The Educational Assignment of a Student in the Schuylkill Haven Area School District, Kenneth Rose, Hearing Officer, July 5, 2006

Sarah Davis, Esquire – Parent Attorney
Gina DePietro, Esquire – School District

Student, who was identified with emotional disturbance, had been ordered by a court to spend 5th and 6th grades in a local mental health treatment facility. For 7th grade, Student attended a part-time ES class in the District's middle school. After making a bomb threat in the second half of 7th grade, a psychiatric evaluation recommended ES and LS services. The HO found that Student had been denied FAPE since his 5th grade placement in the local mental health treatment facility due to the inappropriateness of his ERs and IEPs, as well as untimely requests for evaluation and untimely IEP team meetings. The HO limited compensatory education to the two-year period prior to filing for due process, reduced by 90 days to allow for District evaluation and IEP development. The HO also ordered the District to develop an appropriate IEP for the Student.

Special Education Opinion #1758 – appeal withdrawn

ODR #6723/05-06/Opinion Appeal #1797

In Re The Educational Assignment of a Student in the Saucon Valley School District, Max Wald, Ed.D., Hearing Officer, December 18, 2006

Drew Christian, Esquire – Parent Attorney
Andria Saia, Esquire – School District Attorney

A gifted 2nd grade student with hearing impairment requiring a personal FM system sought an independent evaluation at public expense as well as compensatory education for denial of S/L services, and for flawed IEPs and a GIEP. The HO found the District's evaluation reports to be appropriate. HO found that the District Gifted Written Report (GWR) was appropriately performed by a state-certified psychologist, rejecting Student's argument that the GIEP must be performed by an independent evaluator well versed in the evaluation of gifted children. HO found the District complied with IEP requirements for hearing support, finding further that Student's Parents introduced no evidence that Student's learning or comprehension was affected during morning announcements, assemblies and audio/visual activities when the FM system was not used. HO found that the S/L and hearing support evaluations were supported by records and corroborated by credible testimony, with no evidence that the evaluations were inaccurate or faulty. HO ordered, however,

90 minutes of compensatory education for three S/L sessions that the District agreed to (but did not) provide when the Student initially transitioned from the IU into kindergarten. Finally, the HO ordered two hours per week of compensatory education for 16 weeks after finding Student's GIEP to be inappropriate because goals were not measurable and the GIEP did not clearly identify and describe Student's gifted program.

Special Education Opinion Appeal #1797 – appeal withdrawn



LEGEND OF TERMS

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